



BY EMAIL ONLY

**NOTICE OF AMENDMENT TO A CODE**  
**AMENDMENTS TO THE DISTRIBUTION SYSTEM CODE AND THE RETAIL  
SETTLEMENT CODE**

**BOARD FILE NO.: EB-2006-0226**

**To: All Licensed Electricity Distributors  
All Licensed Electricity Generators  
All Participants in Proceeding EB-2005-0463  
All Participants in Proceeding EB-2006-0226  
All Other Interested Parties**

**Facilitating Distributed Generation**

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The Ontario Energy Board (the "Board") has today issued amendments to the Distribution System Code (the "DSC") and the Retail Settlement Code (the "RSC") under section 70.2 of the *Ontario Energy Board Act, 1998* (the "Act").

**Background**

On September 26, 2006, the Board issued a Notice of Proposal to Amend the DSC and the RSC. The amendments to the DSC and the RSC accompanying the Notice of Proposal (the "Proposed Amendments") were intended to:

- facilitate the connection of embedded generation facilities to distribution systems and address related settlement issues;
- help ensure that the Board's regulatory instruments do not act as a barrier to investment in new generation capacity or the development of renewable energy, and that they promote enhanced connectivity to the electricity grid;
- clarify the roles and responsibilities of distributors and customers in relation to embedded generation facilities; and
- support the implementation of the Standard Offer Program (the "SOP") that is described in the *Joint Report to the Minister of Energy: Recommendations on a*

*Standard Offer Program for Small Generators Connected to a Distribution System* (March 17, 2006) prepared by the Board and the Ontario Power Authority.

The Board received seventeen written submissions in response to the Proposed Amendments. The Board has considered the submissions received and has determined that no material changes need to be made to the Proposed Amendments to the DSC and the RSC. However, in light of the comments received, the Board has made minor revisions to the Proposed Amendments to the DSC in order to improve clarity.

### **Summary of Revisions to the Proposed Amendments to the DSC**

The following is a summary of some of the revisions made to the Proposed Amendments to the DSC. For information purposes, a comparison version of the text of the amendments to the DSC (including the connection agreement) that shows all of the revisions made relative to the Proposed Amendments is set out in Attachment A to this Notice. A clean version of the amendments to the DSC (including the connection agreement), as adopted, is set out in Attachment B to this Notice.

#### **Metering (section 5.2)**

The Proposed Amendments to section 5.2.1 of the DSC limited the requirement for a four-quadrant interval meter to larger embedded generation facilities and proposed that, for embedded generation facilities that have a gross name-plate capacity of 10 MW or less, the metering requirements be determined by the distributor with regard to what is reasonably required having regard to the fuel type and technology of the facility and to settlement requirements.

One comment suggested that fuel type was not the appropriate basis for determining metering requirements. The Board will clarify what it meant by fuel type by changing the wording from "fuel type and technology" to "type of generation facility or generation technology". The intention is that distributors will use information regarding the nature of the generation facility and the generation technology to determine the type of meter that is required for each embedded generation facility.

The Board received a number of comments regarding the metering provisions that either stated that the metering requirements should be more clearly defined or that the Proposed Amendments to section 5.2.1 of the DSC create uncertainty by providing distributors with latitude to determine what type of metering is required for a generation facility. As a general rule, the comments did not specify the metering requirements that would be appropriate for different types of embedded generation facilities, and it does not appear that industry participants have been able to achieve consensus on this issue to date.

The Board remains of the view that a four-quadrant interval meter is not necessarily required for all embedded generation facilities. The Board accepts that greater specificity in terms of metering requirements may be a desirable objective. However, the Board does not believe that it is feasible at this time to determine specific metering requirements for each different type of facility or generation technology. The Board believes that further experience gained from the operation of the SOP would facilitate the identification of more specific metering requirements for different generation facility types and technologies. The Board may review at a later date the metering requirements contained in section 5.2.1 of the DSC in light of the practical experience gained with the operation of the SOP and the connection of smaller embedded generation facilities. Until that time, the Board reminds distributors that section 5.2.1 of the DSC, as amended, requires distributors to act reasonably in determining metering requirements and that the metering requirements cannot be more than what is reasonably required having regard to the criteria set out in section 5.2.1 of the DSC.

#### Queuing (sections 6.2.4.1 and 6.2.4.2)

The Proposed Amendments included provisions that require distributors to place most applications for connection into a queue for processing purposes. Under the Proposed Amendments, an application is placed into the queue when the connection impact assessment has been completed, and is removed from the queue if a connection cost agreement has not been signed within twelve months of that date.

Some parties requested clarification of the application of the notice provision in section 6.2.4.1(e). It was the Board's intention that the two month notice period would be included within the 12 month period referred to in section 6.2.4.1(e) and that the notice would therefore be given when the customer's application to connect had been in the

queue for ten months. Section 6.2.4.1(e) has been revised to clarify the Board's intention.

The Board received a number of other comments regarding the queuing process set out in the Proposed Amendments. Some parties suggested different points as the trigger for being placed into the queue, including but not limited to the execution of a connection cost agreement. The Board does not believe that the comments provided sufficient justification for the selection of one trigger over another, nor did the comments demonstrate that the selection of the connection impact assessment as the trigger for being placed into the queue is inherently problematic or unworkable. The Board may revisit this issue at a later date if experience with the operation of the queuing provisions demonstrates that there is a need for reconsideration of the appropriate trigger point.

Some parties commented that certain projects, such as waterpower developments, may not be able to meet the 12-month timeline currently contemplated in the queuing provisions. The Board recognizes that there may be projects for which longer timelines would be appropriate. The Board is prepared to revisit this issue in the future if it is shown to be warranted based on experience gained with the operation of the queuing provisions and on further information at that time regarding the approvals processes for different types of projects.

#### Standard Form Connection Agreements (Appendix E)

The Board will make one minor modification to the standard form connection agreement for micro-embedded generation facilities. Section 1.2 of the micro-embedded generation facility connection agreement will be deleted as it may no longer be the case that the power produced by the micro-embedded generation facility is for the person's own use.

The Board will make minor modifications to the standard form connection agreement for small and mid-sized embedded generation facilities in order to clarify certain provisions. These clarifying revisions include, but are not limited to, the following:

- section 7.1: the phrase "Connection Disconnect Device" will be changed to "Disconnection Device at the Point of Connection" with corresponding changes being made throughout the section;

- section 9.1: customers will have to provide distributors with notice of any cancellation of the customer's insurance by the insurer;
- section 14.1: distributors will only have to provide the information required by this section if a customer requests it—the customer shall only have to make the request once and the request shall apply to any planned outages that affect the customer's facility or its connection on or after the date of the request; and
- section 20.3: distributors will also be allowed to disclose confidential information as permitted by the connection agreement, the DSC, the Market Rules or the distributor's licence – this revision then eliminates the need for the specific reference to Schedule H in section 20.3(g).

As noted below, the DSC amendments, including the new standard form of connection agreement, come into force when published on the Board's website. The Board wishes to clarify that the requirement to use the standard form connection agreement is not meant to apply retroactively. The new standard form connection agreement is only required on a going-forward basis; distributors and generators do not need to enter into new connection agreements in relation to small or mid-sized embedded generation facilities where a connection agreement already exists.

#### Other Amendments

The Board will make minor modifications to Appendix F of the DSC in order to clarify certain provisions. These clarifying revisions include, but are not limited to, the following:

- Appendix F.1.1: the phrase "Load Displacement or Emergency Back-up Generation" will be removed from the title of the Appendix and the name of the contract in the second bullet point under Step 2 will be changed to "Micro-Embedded Generation Facility";
- Appendix F.1.2: the title will be amended to accurately reflect a small embedded generation facility—it will now have "500 kW or less" and "1 MW or less" in the title; and
- Appendix F.1.1 – F.1.3: the second bullet point under Step 3 will be amended to accurately reflect the options available for the different sizes of embedded generation facilities.

### **Amendments to the RSC**

The Board is making one minor change to the Proposed Amendments in relation to the RSC. In order to keep the definition of "embedded retail generator" the same in the RSC as the DSC, the phrase "(as defined in section 6.7.1 of the Distribution System Code)" will be added to the end of paragraph (a) in the definition of "embedded retail generator" in section 1.2 of the RSC.

For information purposes, a comparison version of the text of the amendments to the RSC that shows all of the revisions made relative to the Proposed Amendments is set out in Attachment C to this Notice. A clean version of the amendments to the RSC, as adopted, is set out in Attachment D to this Notice.

### **Other Comments**

The Board received a number of comments in relation to the issue of cost responsibility and the allocation of costs related to system and network upgrades to a distribution system associated with the connection of embedded generation facilities. Some parties submitted that the costs should be shared by generators and distributors. The issue of cost allocation in relation to the connection of embedded generation facilities is outside the scope of this code amendment process. This issue is currently scheduled to be part of the Board's Fundamental Rate Design initiative.

The Board also received comments from distributors stating that there will be costs associated with implementation of the amendments and that they expected that those costs would be recovered either through rates or through an administrative fee. The estimated level of such costs was not specified. The Board recognizes that there will be costs associated with implementing the amendments but, as noted in its September 26, 2006 Notice of Proposal, the Board believes that the overall benefits to the public in relation to increased energy supply from renewable resources will outweigh implementation costs. Distributors will have an opportunity to request recovery of the costs of implementing the amendments. The manner in which distributors may recover their costs of implementing the amendments is outside of the scope of this process, but will be addressed as part of future proceedings.

## **Coming Into Force**

As indicated in the September 26, 2006 Notice of Proposal, the amendments to the DSC and the RSC, revised as described above and as set out more fully in Attachment B and Attachment D to this Notice, will come into force on the date that they are published on the Board's website.

This Notice, including the attached amendments to the DSC and the RSC, will be available for public viewing on the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) and at the office of the Board during normal business hours.

If you have any questions regarding this Notice or the amendments set out in Attachments B and D, please contact Beverley Jaffray at 416-440-8101. The Board's toll free number is 1-888-632-6273.

E-mail inquiries should be directed to [Beverley.Jaffray@oeb.gov.on.ca](mailto:Beverley.Jaffray@oeb.gov.on.ca).

**DATED** at Toronto, October 30, 2006.

## **ONTARIO ENERGY BOARD**

*Original Signed By*

Peter H. O'Dell  
Assistant Board Secretary

### Attachments:

- Attachment A: Comparison Version of the Amendments to the Distribution System Code  
Annex 1: Form of Connection Agreement for a Small Embedded Generation Facility or a Mid-sized Embedded Generation Facility
- Attachment B: Amendments to the Distribution System Code  
Annex 1: Form of Connection Agreement for a Small Embedded Generation Facility or a Mid-sized Embedded Generation Facility
- Attachment C: Comparison Version of the Amendments to the Retail Settlement Code
- Attachment D: Amendments to the Retail Settlement Code

## Attachment A

### Comparison Version of the Amendments to the Distribution System Code

**Note: The text of the proposed amendments is set out in italics below, for ease of identification only.**

1. Section 1.2 of the Distribution System Code is amended by adding the following immediately after the definition of “connection assets”:

*“connection cost agreement” means the agreement referred to in section 6.2.18;*

2. The definition of “embedded generation facility” in section 1.2 of the Distribution System Code is amended by adding the following at the end of the definition:

*, and has the extended meaning given to it in section 1.9;*

3. Section 1.2 of the Distribution System Code is amended by adding the following immediately after the definition of “embedded generation facility”:

*“embedded retail generator” means a customer that:*

(a) *is not a wholesale market participant or a net metered generator (as defined in section 6.7.1);*

(b) *owns or operates an embedded generation facility, other than an emergency backup generation facility; and*

(c) *sells output from the embedded generation facility to the Ontario Power Authority under contract or to a distributor;*

4. The definition of “large embedded generation facility” in section 1.2 of the Distribution System Code is amended by deleting the phrase “10 MW or more” and replacing it with the phrase “*more than 10 MW*”.

5. Section 1.2 of the Distribution System Code is amended by adding the following immediately after the definition of “large embedded generation facility”:

*“load displacement” means, in relation to a generation facility that is connected on the customer side of a connection point, that the output of the generation facility is used or intended to be used exclusively for the customer’s own consumption;*

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6. The definition of “micro-embedded load displacement generation facility” in section 1.2 of the Distribution System Code is deleted and replaced with the following:

*“micro-embedded generation facility” means an embedded generation facility with a name-plate rated capacity of 10 kW or less;*

7. The definition of “mid-sized embedded generation facility” in section 1.2 of the Distribution System Code is amended by deleting the phrase “less than 10 MW” and replacing it with the phrase “10 MW or less”.
8. Section 1 of the Distribution System Code is amended by adding the following immediately after section 1.8:

**1.9 Extended Meaning of Embedded Generation Facility**

*A distributor shall, for all purposes under this Code, treat a generation facility that is connected on the customer side of a connection point to the distribution system as an embedded generation facility. To that end:*

- a. *the terms “connect”, “connected” and “connection” when used in relation to such a generation facility shall be interpreted accordingly; and*
- b. *the distributor shall treat the owner or operator of the generation facility as a generator in relation to the connection and operation of that generation facility.*

9. Section 5.2.1 of the Distribution System Code is deleted and replaced with the following:

*A distributor shall require that an embedded retail generator whose embedded generation facility has a gross name-plate capacity of more than 10 MW install a four-quadrant interval meter. A distributor shall require that a net metered generator (as defined in section 6.7.1) and an embedded retail generator whose embedded generation facility has a gross name-plate capacity of 10 MW or less install such metering as may reasonably be required having regard to:*

- a. *the meter data requirements necessary to enable the distributor to settle amounts owing to or from the embedded retail generator; and*
- b. *the type of generation facility or generation technology, of the embedded generation facility.*

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10. Section 5.2.2 of the Distribution System Code is deleted and replaced with the following:

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*A distributor shall meter a customer with an embedded generation facility, other than an embedded retail generator or a net metered generator (as defined in section 6.7.1), in the same manner as the distributor's other load customers.*

11. Section 6.2.1 of the Distribution System Code is amended by adding the following at the end of that section:

*or an embedded generation facility that is used exclusively for load displacement purposes*

12. Section 6.2.3 of the Distribution System Code is amended as follows:

- (a) by removing the word "and" at the end of paragraph c;
- (b) by replacing the "." at the end of paragraph d with "; and"; and
- (c) by adding the following immediately after paragraph d:
  - e. *the name, telephone number and e-mail address of the distributor's representative for inquiries relating to the connection of embedded generation facilities.*

13. Section 6.2 of the Distribution System Code is amended by adding the following immediately after section 6.2.4:

**Queuing Process**

*6.2.4.1 Subject to section 6.2.4.2, a distributor shall establish and maintain a queuing process under which the distributor will process applications for the connection of embedded generation facilities. The queuing process shall meet the following requirements:*

- a. *each application for connection, including an application under section 6.2.25, will be placed in the queue on a first-come, first-served basis upon completion of the connection impact assessment for the embedded generation facility;*
- b. *the distributor shall notify the applicant of its queue position;*
- c. *an application shall be removed from the queue if a connection cost agreement has not been signed in relation to the connection of the embedded generation facility within*

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12 months of the date on which the application was placed in the queue;

- d. *an application shall be removed from the queue if a new connection impact assessment is prepared for an embedded generation facility under section 6.2.15 and the new assessment differs in a material respect from the original connection impact assessment prepared for that facility; and*
- e. *the distributor shall provide the applicant with two months' advance notice of the expiry of the 12-month period referred to in paragraph c prior to removing the application from the queue.*

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- 6.2.4.2 *Section 6.2.4.1 does not apply to an application to connect a micro-embedded generation facility. Applications to connect to which the queuing process does not apply, including by virtue of section 6.2.1, shall be processed by a distributor in accordance with this Code as and when received.*

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- 14. Sections 6.2.5, 6.2.6, 6.2.7, 6.2.8, 6.2.24 and 6.2.26, Appendix E and Appendix F of the Distribution System Code are amended by deleting the phrase “micro-embedded load displacement generation facility” or “micro-embedded load displacement generator” wherever they appear in those sections and those Appendices and replacing them with the phrase “micro-embedded generation facility”.
- 15. Section 6.2.9 of the Distribution System Code is amended as follows:
  - (a) by deleting the phrase “requesting the meeting” at the end of the first sentence of the opening paragraph of that section and replacing it with the phrase “providing the required information”; and
  - (b) by deleting paragraph d of that section and replacing it with the following:
    - d. *the proposed locations of the proposed generation facility including addresses and account numbers with the distributor where available.*
- 16. Section 6.2 of the Distribution System Code is amended by adding the following immediately after section 6.2.9:
  - 6.2.9.1 *Upon request, a distributor shall provide the following to a person that has requested a meeting under section 6.2.9:*

- a. *a description of the portion of the distributor's distribution system relevant to the person's embedded generation facility, including the corresponding portions of an up-to-date system schematic map showing, at a minimum, the following:*
- *major distribution and sub-transmission lines;*
  - *transformer and distribution stations;*
  - *the voltage levels used for distribution;*
  - *sufficient geographic references to enable the person to correlate all of the above features with a municipal road map; and*
  - *such other information as the Board may from time to time determine; and*
- b. *subject to section 6.2.9.4, information on voltage level, fault level and minimum/maximum feeder loadings for up to three locations in the distributor's service area.*

*6.2.9.2 The distributor shall provide the information referred to in section 6.2.9.1 without charge and within the 15 days referred to in section 6.2.9.*

*6.2.9.3 Upon request, a distributor shall, subject to section 6.2.9.4, provide the information referred to in section 6.2.9.1(b) to a person that has requested a meeting under section 6.2.9 for one or more additional locations beyond the three required by section 6.2.9.1(b). The distributor shall use reasonable efforts to provide such information within the 15 days referred to in section 6.2.9, but shall in any event provide that information within a further 15 days. The distributor may recover from the person the reasonable costs incurred by the distributor in preparing the information for the additional locations.*

*6.2.9.4A distributor may withhold information on minimum/maximum feeder loadings where the distributor believes on reasonable grounds that the disclosure of such information could be used to identify the load characteristics of an existing customer and that the loading information is therefore commercially sensitive. A distributor shall, before deciding to withhold such information, make reasonable efforts to obtain the consent of the existing customer to the disclosure of the loading information.*

17. Section 6.2.18 of the Distribution System Code is amended by adding the following at the beginning of that section:

*A distributor shall enter into a connection cost agreement with an applicant in relation to a small embedded generation facility, a mid-sized embedded generation facility or a large embedded generation facility. The connection cost agreement shall include provisions regarding the applicant's acceptance of the distributor's offer to connect, the connection costs and any security deposit to be paid by the applicant prior to the commencement of any work by the distributor, and the timing of the connection. The distributor's offer to connect shall be attached as an appendix to and form part of the cost connection agreement.*

18. Section 6.2 of the Distribution System Code is amended by adding the following immediately after section 6.2.24:

*6.2.25 A distributor shall require a generator that proposes to increase the output of an embedded generation facility that is then in service to submit a new application to connect, and the provisions of sections 6.2.9 to 6.2.24 shall apply.*

19. Appendix E of the Distribution System Code is amended as follows:

- (a) by deleting the title at the top of the first page of the Appendix and replacing it with the following:

**INFORMATION IN A CONNECTION AGREEMENT FOR A LARGE EMBEDDED GENERATION FACILITY**

- (b) by adding the phrase "*in relation to a large embedded generation facility*" immediately after the words "a generator" in the first line under the heading "INFORMATION IN A CONNECTION AGREEMENT WITH A GENERATOR" on the first page of the Appendix;

- (c) by deleting the heading "Micro-Embedded Load Displacement Generator" and the sentence that follows on the first page of the Appendix;

- (d) by deleting section 1.2 of the "Micro-Embedded Load Displacement Generation Facility Connection Agreement" on the third page of the Appendix;

(e) by deleting sections 4.1 and 4.2 of the “Micro-Embedded Load Displacement Generation Facility Connection Agreement” on the third page of the Appendix and replacing them with the following:

- 4.1 *If you are not an embedded retail generator, you agree that, subject to any applicable law:*
- a. *the LDC will not pay you for any excess generation that results in a net delivery to the LDC between meter reads; and*
  - b. *there will be no carryover of excess generation from one billing period to the next unless you are, at the relevant time, a net metered generator (as defined in section 6.7.1 of the Distribution System Code).*
- 4.2 *If you are an embedded retail generator selling output from the embedded generation facility to the Ontario Power Authority under contract, you agree that the LDC will pay you for generation in accordance with the Retail Settlement Code.*
- 4.3 *If you are an embedded retail generator delivering and selling output to the LDC, you agree that the LDC will pay you for generation in accordance with the Retail Settlement Code.*

(f) by deleting the row that describes a Connection Agreement from the table set out on the fifth page of that Appendix; and

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(g) by adding, after the table set out on the fifth page of that Appendix, the form of Connection Agreement for a Small Embedded Generation Facility or a Mid-sized Embedded Generation Facility set out in the attached Annex 1.

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20. Appendix F.1 of the Distribution System Code is amended as follows:

- (a) by deleting the words “load displacement” in the second line under the heading “INTRODUCTION” on the first page of that Appendix;
- (b) by deleting the words “for customer’s own use” in the “Rating” column for the “Micro” row of the table on the first page of that Appendix.; and

- (c) by deleting the phrase “<10 MW” in the “Rating” column for the “Mid-Sized” row of the table on the first page of that Appendix and replacing it with “≤ 10 MW”.

21. Appendix F.1.1 of the Distribution System Code is amended as follows:

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- (a) by deleting the "- Load Displacement or Emergency Back-up Generation" from the title on the first page of the Appendix;

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- (b) by deleting the fourth bullet under the heading "Step 2 – Provision of Information" and replacing it with the following:

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- contractual requirements (Micro-Embedded Generation Facility Connection Agreement)*

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- (c) by deleting the second bullet point under the heading "Step 3 – Generator Develops Plans" and replacing it with the following:

- load displacement/net metering/isolated from distribution system/grid connection*

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22. Appendix F.1.2 of the Distribution System Code is amended as follows:

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- (a) by deleting the reference to “up to 500 kW” in the title on the first page of the Appendix and replacing it with the phrase “500 kW or less”;

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- (b) by deleting the reference to “up to 1 MW” in the title on the first page of the Appendix and replacing it with the phrase “1 MW or less”;

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- (c) by adding the phrase “and the information required by section 6.2.3(e) of the Code” at the end of the first bullet under the heading “Step 2 – Provision of Information”;

- (d) by deleting the fourth bullet under the heading “Step 2 – Provision of Information” and replacing it with the following:

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- contractual requirements (connection cost agreement and Connection Agreement)*

- (e) by deleting the second bullet point under the heading "Step 3 – Generator Develops Plans" and replacing it with the following:

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- load displacement/net metering/isolated from distribution system/grid connection*

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(f) by deleting the phrase “(No Charge)” at the end of the heading “Step 4 – Initial Consultation” and replacing it with the phrase “(no charge except as permitted by section 6.2.9.3 of the Code)”;

(g) by deleting the last bullet under the sentence “Generator requests preliminary meeting and submits basic information. Information required includes:” under the heading “Step 4 – Initial Consultation” and replacing it with the following:

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- *alternative locations of the proposed generation facility including addresses and account numbers with the distributor where available.*

(h) by deleting the phrase “Within 15 days of receipt of basic information and request for meeting, the distributor meets with the generator to review plans at basic level” under the heading “Step 4 – Initial Consultation” and the three bullets following that phrase and replacing them with the following:

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*Within the time required by the Code, the distributor meets with the generator to review plans at a basic level, including:*

- *location of existing distribution facilities in reference to proposed alternative generation facility locations;*
- *the information required by sections 6.2.9.1 and 6.2.9.3 of the Code, if this has been requested;*
- *rough estimate on time and costs which could be associated with project for each alternative location sufficiently to evaluate the relative merits of the alternative location; and*
- *basic feasibility of project for each alternative location.*

(i) by adding the words “for the chosen location” immediately after the words “by the distributor” in the sentence immediately below the heading “Step 5 – Application for Impact Assessment”.

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23. Appendix F.1.3 of the Distribution System Code is amended as follows:

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- (a) by deleting the reference to “less than 10 MW” in the title on the first page of the Appendix and replacing it with the phrase “10 MW or less”;
- (b) by adding the phrase “*and the information required by section 6.2.3(e) of the Code*” at the end of the first bullet under the heading “Step 2 – Provision of Information”;
- (c) by deleting the fourth bullet under the heading “Step 2 – Provision of Information” and replacing it with the following:
  - *contractual requirements (connection cost agreement and Connection Agreement)*

(d) by deleting the second bullet point under the heading "Step 3 – Generator Develops Plans" and replacing it with the following:

- *load displacement/isolated from distribution system/grid connection*

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(e) by deleting the phrase “(No Charge)” at the end of the heading “Step 4 – Initial Consultation” and replacing it with the phrase “*(no charge except as permitted by section 6.2.9.3 of the Code)*”;

(f) by deleting the last bullet under the sentence “Generator requests preliminary meeting and submits basic information. Information required includes:” under the heading “Step 4 – Initial Consultation” and replacing it with the following:

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- *alternative locations of the proposed generation facility including addresses and account numbers with the distributor where available.*

(g) by deleting the phrase “Within 15 days of receipt of basic information and request for meeting, the distributor meets with the generator to review plans at basic level” under the heading “Step 4 – Initial Consultation” and the three bullets following that phrase and replacing them with the following:

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*Within the time required by the Code, the distributor meets with the generator to review plans at a basic level, including:*

- *location of existing distribution facilities in reference to proposed alternative generation facility locations;*

- *the information required by sections 6.2.9.1 and 6.2.9.3 of the Code, if this has been requested;*
- *rough estimate on time and costs which could be associated with project for each alternative location sufficiently to evaluate the relative merits of the alternative location; and*
- *basic feasibility of project for each alternative location.*

(h) by adding the words “*for the chosen location*” immediately after the words “by the distributor” in the sentence immediately below the heading “Step 5 – Application for Impact Assessment”.

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24. Appendix F.1.4 of the Distribution System Code is amended as follows:

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- by adding the phrase “*and the information required by section 6.2.3(e) of the Code*” at the end of the first bullet under the heading “Step 2 – Provision of Information”;
- by deleting the fourth bullet under the heading “Step 2 – Provision of Information” and replacing it with the following:
  - *contractual requirements (connection cost agreement and Connection Agreement)*
- by deleting the phrase “(No Charge)” at the end of the heading “Step 4 – Initial Consultation” and replacing it with the phrase “*(no charge except as permitted by section 6.2.9.3 of the Code)*”;
- by deleting the last bullet under the sentence “Generator requests preliminary meeting and submits basic information. Information required includes:” under the heading “Step 4 – Initial Consultation” and replacing it with the following:
  - *alternative locations of the proposed generation facility including addresses and account numbers with the distributor where available.*
- by deleting the phrase “Within 15 days of receipt of basic information and request for meeting, the distributor meets with the generator to review plans at basic level” under the heading “Step 4 – Initial Consultation” and the three bullets following that phrase and replacing them with the following:

*Within the time required by the Code, the distributor meets with the generator to review plans at a basic level, including:*

- *location of existing distribution facilities in reference to proposed alternative generation facility locations;*
- *the information required by sections 6.2.9.1 and 6.2.9.3 of the Code, if this has been requested;*
- *rough estimate on time and costs which could be associated with project for each alternative location sufficiently to evaluate the relative merits of the alternative location; and*
- *basic feasibility of project for each alternative location.*

(f) by adding the words “*for the chosen location*” immediately after the words “from the distributor” in the sentence immediately below the heading “Step 5 – Application for Impact Assessment”.

| 25. Appendix F.2 of the Distribution System Code is amended as follows:

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- (a) by deleting the phrase “10 MW and Larger” in the heading of each of the two versions of section 3.2 on the second page of that Appendix and replacing it with “*Larger than 10 MW*”; and
- (b) by deleting the phrase “10 MW and Higher” in the heading of section 9 and replacing it with the phrase “*Higher than 10 MW*”.

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**Annex 1**

**Form of Connection Agreement for a Small Embedded Generation Facility  
or a Mid-sized Embedded Generation Facility**

**FORM OF CONNECTION AGREEMENT FOR A SMALL EMBEDDED  
GENERATION FACILITY OR A MID-SIZED EMBEDDED GENERATION  
FACILITY**

This Connection Agreement is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BETWEEN**

\_\_\_\_\_, (the "Distributor")

**AND**

\_\_\_\_\_, (the "Customer")

(each a "Party" and collectively the "Parties")

**RECITALS**

WHEREAS the Distributor is the owner of the distribution system serving the service area described in electricity distribution licence number \_\_\_\_\_ *[insert licence number]* (the "Licence") issued by the Ontario Energy Board (the "Board") (the "Distributor's distribution system").

AND WHEREAS the Customer owns or operates an embedded generation facility that is located in the Distributor's licensed service area (the "Facility").

AND WHEREAS the Customer has connected or wishes to connect its Facility to the Distributor's distribution system and the Distributor has connected or has agreed to connect the Facility to the Distributor's distribution system.

AND WHEREAS the Distributor has previously reviewed and accepted the Customer's application to connect and related materials that were submitted to the Distributor in accordance with the process set out in the Distribution System Code (the "Code") (altogether, the "Application") and the Distributor and the Customer have signed a connection cost agreement (both of which are attached to this Agreement as Schedule A).

AND WHEREAS in accordance with its Licence and the Code, the Distributor has agreed to offer, and the Customer has agreed to accept, distribution service in relation to the Facility.

**NOW THEREFORE** in consideration of the foregoing, and of the mutual covenants, agreements, terms and conditions herein contained, the Parties, intending to be legally bound, hereby agree as follows:

## 1. Definitions and Schedules

1.1 Words and phrases contained in this Agreement (whether capitalized or not) that are not defined in this Agreement have the meanings given to them in the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998*, any regulations made under either of those *Acts*, or the Code.

1.2 The following schedules form part of this Agreement:

Schedule A – Application and Connection Cost Agreement (recitals)

Schedule B – Single Line Diagram, Connection Point and Location of Facilities (section 2.3)

Schedule C – List of Other Contracts (section 3.4)

Schedule D – Technical and Operating Requirements (section 4.1(d))

Schedule E – Billing and Settlement Procedures (section 5.3)

Schedule F – Contacts for Notice (section 12.1)

Schedule G – Dispute Resolution (section 16.1)

Schedule H – Provisions Applicable if Facility Financed by a Lender (sections 19.3, 20.3 and 21.1)

Where a schedule is to be completed by the Parties, the Parties may not include in that schedule a provision that would be contrary to or inconsistent with the Code or the remainder of this Agreement.

## 2. Type of Facility and Customer

2.1 The Facility has a name-plate rated capacity of:

*[Parties to check the applicable box below]*

more than 10 kW and:

(a) up to and including 500 kW, if the Facility is or will be connected to a less than 15 kV line; or

(b) up to and including 1 MW, if the Facility is or will be connected to a 15 kV or greater line

(in which case the Facility is a “Small Embedded Generation Facility”)

- 10 MW or less and:
  - (a) more than 500 kW, if the Facility is or will be connected to a less than 15 kV line; or
  - (b) more than 1 MW, if the Facility is or will be connected to a 15 kV or greater line

(in which case the Facility is a “Mid-sized Embedded Generation Facility”)

2.2 The Facility is or will be connected:

*[Parties to check the applicable box(es) below]*

- directly to the Distributor’s distribution system
- on the load customer side of a connection point to the Distributor’s distribution system
  - the load customer is the same as the Customer
  - the load customer is: \_\_\_\_\_

2.3 Schedule B sets out the following:

- (a) a single line diagram of the Facility;
- (b) a list of the facilities of one Party that are on the property of the other Party; and
- (c) a diagram of the metering installations applicable to the Facility.

2.4 The Customer:

*[Parties to check the applicable box(es) below]*

- intends to:
  - sell output from the Facility to the Ontario Power Authority and has entered into an agreement with the Ontario Power Authority for that purpose
  - deliver and sell output from the Facility to the Distributor

(in which case the Customer is an “Embedded Retail Generator”)

- does not intend to sell any of the output of the Facility to the Ontario Power Authority or the Distributor

### 3. Incorporation of Code and Application of Conditions of Service and Other Contracts

- 3.1 The Code, as it may be amended from time to time, is hereby incorporated in its entirety by reference into, and forms part of, this Agreement. Unless the context otherwise requires, all references to “this Agreement” include a reference to the Code.
- 3.2 The Distributor hereby agrees to be bound by and at all times to comply with the Code, and the Customer acknowledges and agrees that the Distributor is bound at all times to comply with the Code in addition to complying with the provisions of this Agreement.
- 3.3 In addition to this Agreement, the relationship between the Distributor and the Customer will be governed by the Distributor’s Conditions of Service that are in effect at the relevant time. In the event of a conflict or an inconsistency between a provision of this Agreement and a provision of the Distributor’s Conditions of Service, the provision of this Agreement shall govern.
- 3.4 The Distributor may require or may have already required the Customer to enter into one or more of the other contracts listed in Schedule C. In the event of a conflict or an inconsistency between a provision of the Code or this Agreement and a provision of such other contract, the provision of the Code or this Agreement shall govern.

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### 4. Facility Standards

- 4.1 The Customer shall ensure that the Facility:
  - (a) meets all applicable requirements of the Electrical Safety Authority (“ESA”);
  - (b) conforms to all applicable industry standards, including, but not limited to, those of the Canadian Standards Association (“CSA”), the Institute of Electrical and Electronic Engineers, the American National Standards Institute and the International Electrotechnical Commission;
  - (c) is installed, constructed, operated and maintained in accordance with this Agreement, the Distributor’s offer to connect, the requirements of the ESA, the connection cost agreement, all applicable reliability standards and good utility practice; and
  - (d) meets the technical and operating requirements set out in Schedule D. These requirements shall not exceed any technical or operating requirements set out in the Code unless the Customer agrees.

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## **5. Charges, Settlement and Billing**

- 5.1 The Customer shall pay the Distributor such charges as may be approved by the Board in relation to the connection of, and the provision of distribution service to, the Facility.
- 5.2 The Customer agrees to the following in relation to settlement for the output of the Facility:

*[Parties to check the applicable box below]*

- if the Customer is not an Embedded Retail Generator (see section 2.4)

the Distributor will not pay the Customer for any excess generation that results in a net delivery to the Distributor between meter reads and there will be no carryover of excess generation from one billing period to the next unless the Customer is at the relevant time a net metered generator

- if the Customer is an Embedded Retail Generator (see section 2.4)

the Distributor will settle all applicable payments and charges in accordance with the Retail Settlement Code

- 5.3 Billing and settlement activities will be conducted in accordance with the procedures set out in Schedule E.

## **6. Representations and Warranties**

- 6.1 The Customer represents and warrants to the Distributor as follows, and acknowledges that the Distributor is relying on such representations and warranties without independent inquiry in entering into this Agreement:
- (a) the Facility is fully and accurately described in the Application;
  - (b) all information in the Application is true and correct;
  - (c) the Facility is in compliance with all applicable technical requirements and laws;
  - (d) the Customer has been given warranty information and operation manuals for the Facility;
  - (e) the Customer has been adequately instructed in the operation and maintenance of the Facility and the Customer has developed and implemented an operation and maintenance plan based on those instructions;
  - (f) if the Customer is a corporation or other form of business entity, the Customer is duly incorporated, formed or registered (as applicable)

- under the laws of its jurisdiction of incorporation, formation or registration (as applicable);
- (g) the Customer has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement;
- (h) this Agreement constitutes a legal and binding obligation on the Customer, enforceable against the Customer in accordance with its terms;
- (i) the Customer holds all permits, licences and other authorizations that may be necessary to enable it to own and operate the Facility; and
- (j) any individual signing this Agreement on behalf of the Customer has been duly authorized by the Customer to sign this Agreement and has the full power and authority to bind the Customer.

6.2 The Distributor represents and warrants to the Customer as follows, and acknowledges that the Customer is relying on such representations and warranties without independent inquiry in entering into this Agreement:

- (a) the Distributor is duly incorporated under the laws of Ontario;
- (b) the Distributor has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement;
- (c) this Agreement constitutes a legal and binding obligation on the Distributor, enforceable against the Distributor in accordance with its terms; and
- (d) any individual signing this Agreement on behalf of the Distributor has been duly authorized by the Distributor to sign this Agreement and has the full power and authority to bind the Distributor.

**7. Disconnection Device at the Point of Connection**

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7.1 The Customer shall furnish and install a disconnection switch at the point of connection for the Facility that opens, with a visual break, all ungrounded poles of the connection circuit. The disconnection switch at the point of connection shall be rated for the voltage and fault current requirements of the Facility, and shall meet all applicable CSA standards, ESA requirements, and all other applicable laws. The switch enclosure, if applicable, shall be properly grounded. The disconnection switch at the point of connection shall be accessible at all times, located for ease of access to the Distributor's personnel, and shall be capable of being locked in the open position. The Customer shall follow the Distributor's procedures for switching, clearance, tagging, and locking.

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**8. Modifications to the Facility**

8.1 The Customer shall not modify its connection assets or the Facility except in accordance with this section. Where the modification will not increase the

maximum electrical output of the Facility, the Customer shall give the Distributor no less than 15 working days notice prior to the date on which the modification will be completed. Where the modification will increase the maximum electrical output of the Facility, the Customer shall submit a new application for connection to the Distributor. The Distributor shall process that application for connection in accordance with the Code. The Customer shall not commence such modification until that process has been completed.

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## 9. Insurance

9.1 Throughout the term of this Agreement, the Customer shall carry commercial general liability insurance for third party bodily injury, personal injury, and property damage in an amount as follows:

*[Parties to check the applicable box below]*

- if the Facility is a Small Embedded Generation Facility (see section 2.1)  
not less than \$1,000,000 per occurrence and in the annual aggregate
- if the Facility is a Mid-sized Embedded Generation Facility (see section 2.1)  
not less than \$2,000,000 per occurrence and in the annual aggregate

Prior to execution of this Agreement, the Customer shall provide the Distributor with a valid certificate of insurance. The Customer shall provide the Distributor with prompt notice of any cancellation of the Customer's insurance by the insurer.

## 10. Liability and Force Majeure

- 10.1 The liability provisions of section 2.2 of the Code apply to this Agreement and are hereby incorporated by reference into, and form part of, this Agreement.
- 10.2 A Party shall have a duty to mitigate any losses relating to any claim for indemnification from the other Party that may be made in relation to that other Party. Nothing in this section shall require the mitigating Party to mitigate or alleviate the effects of any strike, lockout, restrictive work practice or other labour dispute.
- 10.3 A Party shall give prompt notice to the other Party of any claim with respect to which indemnification is being or may be sought under this Agreement.

10.4 The force majeure provisions of section 2.3 of the Code apply to this Agreement and are hereby incorporated by reference into, and form part of, this Agreement.

## 11. Facility Commissioning and Testing

11.1 The Customer shall give the Distributor at least fifteen days advance written notice of the date(s) and time(s) on which the Facility will be commissioned and tested prior to connection. The Customer shall give the Distributor the same notice in relation to the commissioning and testing of any material modification to the Customer's connection assets or Facility that occurs after connection.

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11.2 The Distributor shall have the right to witness the commissioning and testing activities referred to in section 11.1.

## 12. Notice

12.1 Any notice, demand, consent, request or other communication required or permitted to be given or made under or in relation to this Agreement shall be given or made: by courier or other personal form of delivery; by registered mail; by facsimile; or by electronic mail. Notices shall be addressed to the applicable representative of the Party identified in Schedule F.

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12.2 A notice, demand, consent, request or other communication referred to in section 12.1 shall be deemed to have been made as follows:

- (a) where given or made by courier or other form of personal delivery, on the date of receipt;
- (b) where given or made by registered mail, on the sixth day following the date of mailing;
- (c) where given or made by facsimile, on the day and at the time of transmission as indicated on the sender's facsimile transmission report; and
- (d) where given or made by electronic mail, on the day and at the time when the notice, demand, consent, request or other communication is recorded by the sender's electronic communications system as having been received at the electronic mail destination.

## 13. Access to Facility

13.1 Each Party shall ensure that its facilities are secured at all times.

13.2 The Customer shall permit and, if the land on which the Facility is located is not owned by Customer, cause such landowner to permit, the Distributor's employees and agents to enter the property on which the Facility is located at any reasonable time. Such access shall be provided for the purposes of

inspecting and/or testing the Facility as and when permitted by this Agreement, the Code or the Distributor's Conditions of Service or as required to ensure the continued safe and satisfactory operation of the Facility, to ensure the accuracy of the Distributor's meters, to establish work protection, or to perform work.

- 13.3 Any inspecting and/or testing referred to in section 13.2 shall not relieve the Customer from its obligation to operate and maintain the Facility and any related equipment owned by the Customer in a safe and satisfactory operating condition and in accordance with this Agreement.
- 13.4 The Distributor shall have the right to witness any testing done by the Customer of the Facility and, to that end, the Customer shall provide the Distributor with at least fifteen working days advance notice of the testing.
- 13.5 Notwithstanding section 10.1, where the Distributor causes damage to the Customer's property as part of this access, the Distributor shall pay to the Customer the Customer's reasonable costs of repairing such property or, if such property cannot be repaired, replacing such property.
- 13.6 Notwithstanding section 10.1, if the Customer has been given access to the Distributor's property, and if the Customer causes damage to the Distributor's property as part of that access, the Customer shall pay to the Distributor the Distributor's reasonable costs of repairing such property or, if such property cannot be repaired, replacing such property.

#### **14. Disconnection of Facility to Permit Maintenance and Repairs**

- 14.1 If the Customer requests it, the Distributor will provide the Customer with reasonable notice of any planned equipment outages in the Distributor's distribution system that occur on or after the date of the Customer's request which will impact the Facility or its connection.
- 14.2 The Distributor will make reasonable efforts to ensure that the outages referred to in section 14.1 will be of minimal duration and cause minimal inconvenience to the Customer.
- 14.3 In connection with any planned equipment outage, either Party may disconnect or isolate, or require the disconnection or isolation of, its Facility or system (as applicable) from the other Party's Facility or system (as applicable) so that the employees, contractors or agents of the Party may construct, maintain, repair, replace, remove, investigate or inspect its own Facility or system (as applicable) in accordance with the terms of this Agreement and good utility practice.

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14.4 Where practical, the Customer shall notify the Distributor prior to temporarily isolating or disconnecting the Facility from the Distributor's distribution system.

## **15. Disconnection of Facility for Other Reasons**

- 15.1 The Customer shall discontinue operation of the Facility and the Distributor may isolate or disconnect the Facility from the Distributor's distribution system, upon any of the following:
- (a) termination of this Agreement in accordance with section 19;
  - (b) if the Customer's connection assets or the Facility are modified by the Customer in a manner contrary to section 8.1;
  - (c) during an emergency or where necessary to prevent or minimize the effects of an emergency;
  - (d) in accordance with section 31, 31.1 or 40(5) of the *Electricity Act, 1998*, other applicable law, the Code, the Distributor's Licence or the Distributor's Conditions of Service; or
  - (e) where required to comply with a decision or order of an arbitrator or court made or given under Schedule G.
- 15.2 In the event of disconnection under section 15.1(b), the Facility shall remain isolated or disconnected from the Distributor's distribution system until the connection process referred to in section 8.1 has been completed.
- 15.3 In the event of disconnection under section 15.1(c), the Distributor shall reconnect, or permit the reconnection of, the Facility to the Distributor's distribution system when it is reasonably satisfied that the emergency has ceased and that all other requirements of this Agreement are met.
- 15.4 In the event of disconnection under section 15.1(d) or 15.1(e), the Distributor shall reconnect, or permit the reconnection of, the Facility to the Distributor's distribution system when the Distributor is reasonably satisfied that the reason for the disconnection no longer exists, the Customer agrees to pay all Board-approved reconnection costs charged by the Distributor, and the Distributor is reasonably satisfied of the following, where applicable:
- (a) the Customer has taken all necessary steps to prevent the circumstances that caused the disconnection from recurring and has delivered binding undertakings to the Distributor that such circumstances shall not recur; and
  - (b) any decision or order of a court or arbitrator made or given under Schedule G that requires a Party to take action to ensure that such circumstances shall not recur has been implemented and/or assurances have been given to the satisfaction of the affected Party that such decision or order will be implemented.

15.5 Where the Facility has been isolated or disconnected, each Party shall be entitled to decommission and remove its assets associated with the connection. Each Party shall, for that purpose, ensure that the other Party has all necessary access to its site at all reasonable times.

15.6 The Customer shall continue to pay for distribution services provided up to the time of isolation or disconnection of its Facility.

15.7 The Customer shall pay all reasonable costs, including, but not limited to, the costs of removing any of the Distributor's equipment from the Customer's site, that are directly attributable to the isolation or disconnection of the Facility and, where applicable, the subsequent decommissioning of the Facility. The Distributor shall not require the removal of the protection and control wiring on the Customer's site.

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15.8. While the Facility is isolated or disconnected, the Distributor shall not be required to convey electricity to or from the Facility.

## 16. Dispute Resolution

16.1 Any dispute between the Customer and the Distributor arising under or in relation to this Agreement will be resolved in accordance with Schedule G. The Parties shall comply with the procedure set out in Schedule G before taking any civil or other proceeding in relation to the dispute, provided that nothing shall prevent a Party from seeking urgent or interlocutory relief from a court of competent jurisdiction in the Province of Ontario in relation to any dispute arising under or in relation to this Agreement.

## 17. Amendments

17.1. The Parties may not amend this Agreement without leave of the Board except where and to the extent permitted by this Agreement.

17.2. The Parties may by mutual agreement amend this Agreement to reflect changes that may from time to time be made to the Code during the term of this Agreement.

17.3. The Parties may by mutual agreement amend any portion of a schedule that was originally to be completed by the Parties.

17.4 No amendment made under section 17.2 or 17.3 shall be contrary to or inconsistent with the Code or the remainder of this Agreement.

17.5 The Parties shall amend this Agreement in such manner as may be required by the Board.

17.6 Any amendment to this Agreement shall be made in writing and duly executed by both Parties.

## 18. Waiver

18.1 A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-compliance, whether of the same or any other nature.

## 19. Term of Agreement and Termination

19.1 This Agreement shall become effective upon execution by the Parties, and shall continue in effect until terminated in accordance with section 19.2 or 19.3.

19.2 The Customer may, if it is not then in default under this Agreement, terminate this Agreement at any time by giving the Distributor thirty days prior written notice setting out the termination date.

19.3 Except as set out in Schedule H, the Distributor may terminate this Agreement upon any material breach of this Agreement by the Customer (a "Default"), if the Customer fails to remedy the Default within the applicable cure period referred to in section 19.4 after receipt of written notice of the Default from the Distributor.

19.4 The Customer shall cure a Default within the applicable cure period specified in the Code or the Distributor's Conditions of Service. If no such cure period is specified in relation to a given Default, the cure period shall be sixty working days.

19.5 Termination of this Agreement for any reason shall not affect:

- (a) the liabilities of either Party that were incurred or arose under this Agreement prior to the time of termination; or
- (b) the provisions that expressly apply in relation to disconnection of the Customer's facilities following termination of this Agreement.

19.6 Termination of this Agreement for any reason shall be without prejudice to the right of the terminating Party to pursue all legal and equitable remedies that may be available to it including, but not limited to, injunctive relief.

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19.7 The rights and remedies set out in this Agreement are not intended to be exclusive but rather are cumulative and are in addition to any other right or remedy otherwise available to a Party at law or in equity. Nothing in this

section 19.7 shall be interpreted as affecting the limitations of liability arising from section 10.1 or the obligation of a Party to comply with section 16 while this Agreement is in force.

19.8 Sections 19.5 to 19.7 shall survive termination of this Agreement.

## **20. Exchange and Confidentiality of Information**

20.1 Confidential information in respect of a Party means (i) information disclosed by that Party to the other Party under this Agreement that is in its nature confidential, proprietary or commercially sensitive and (ii) information derived from the information referred to in (i), but excludes the following:

- (a) information that is in the public domain; or
- (b) information that is, at the time of the disclosure, in the possession of the receiving Party, provided that it was lawfully obtained from a person under no obligation of confidence in relation to the information.

20.2 Subject to section 20.3, each Party shall treat all confidential information disclosed to it by the other Party as confidential and shall not, without the written consent of that other Party:

- (a) disclose that confidential information to any other person; or
- (b) use that confidential information for any purpose other than the purpose for which it was disclosed or another applicable purpose contemplated in this Agreement.

Where a Party, with the written consent of the other Party, discloses confidential information of that other Party to another person, the Party shall take such steps as may be required to ensure that the other person complies with the confidentiality provisions of this Agreement.

20.3 Nothing in section 20.2 shall prevent the disclosure of confidential information:

- (a) where required or permitted under this Agreement, the Code, the Market Rules or the Distributor's Licence;
- (b) where required by law or regulatory requirements;
- (c) where required by order of a government, government agency, regulatory body or regulatory agency having jurisdiction;
- (d) if required in connection with legal proceedings, arbitration or any expert determination relating to the subject matter of this Agreement, or for the purpose of advising a Party in relation thereto;
- (e) as may be required to enable the Distributor to fulfill its obligations to any reliability organization; or

(f) as may be required during an emergency or to prevent or minimize the effects of an emergency.

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(g) as provided in Schedule H.

20.4 Notwithstanding section 10.1, a Party that breaches section 20.2 shall be liable to the other Party for any and all losses of the other Party arising out of such breach.

20.5 The Parties agree that the exchange of information, including, but not limited to, confidential information, under this Agreement is necessary for maintaining the reliable operation of the Distributor's distribution system. The Parties further agree that all information, including, but not limited to, confidential information, exchanged between them shall be prepared, given and used in good faith and shall be provided in a timely and cooperative manner.

20.6 Each Party shall provide the other with such information as the other may reasonably require to enable it to perform its obligations under this Agreement.

20.7 Each Party shall, as soon as practicable, notify the other Party upon becoming aware of a material change or error in any information previously disclosed to the other Party under this Agreement and, in the case of the Customer, in any information contained in its Application. The Party shall provide updated or corrected information as required to ensure that information provided to the other Party is up to date and correct.

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## 21. Assignment, Successors and Assigns

21.1 Except as set out in Schedule H, the Customer shall not assign its rights or obligations under this Agreement in whole or in part without the prior written consent of the Distributor, which consent shall not be unreasonably withheld or unduly delayed. The Distributor may withhold its consent to any proposed assignment until the proposed assignee assumes, in writing, all of the Customer's obligations contained in this Agreement.

21.2 The Distributor shall have the right to assign this Agreement in whole upon written notification to the Customer.

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

## 22. Governing Law

22.1. This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## 23. Entire Agreement

23.1 Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject-matter hereof and supersedes all prior oral or written representations and agreements of any kind whatsoever with respect to the subject-matter hereof.

**IN WITNESS WHEREOF**, the Parties hereto, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives.

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Distributor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

**SCHEDULE A**

**Application and Connection Cost Agreement (recitals)**

See the attached Application and connection cost agreement.

*[To be attached by the Parties]*

## **SCHEDULE B**

### **Single Line Diagram, Connection Point and Location of Facilities (section 2.3)**

#### **B.1 Single Line Diagram and Connection Point**

*[To be inserted by the Parties]*

#### **B.2 List of Facilities on the Property of the Other Party**

B.2.1 The following facilities of the Customer are located on the property of the Distributor:

*[To be completed by the Parties]*

B.2.2 The following facilities of the Distributor are located in the property of the Customer:

*[To be completed by the Parties]*

#### **B.3 Metering Installation Diagram**

*[To be inserted by the Parties]*

**SCHEDULE C**

**List of Other Contracts (section 3.4)**

The following other contracts have been or will be entered into by the Parties:

*[To be completed by the Parties]*

## **SCHEDULE D**

### **Technical and Operating Requirements (section 4.1(d))**

The following technical and operating requirements apply to the Facility:

*[To be completed by the Parties]*

**SCHEDULE E**

**Billing and Settlement Procedures (section 5.3)**

The following provisions apply in relation to billing and settlement in relation to the Facility:

*[To be completed by the Parties]*

**SCHEDULE F**

**Contacts for Notice (section 12.1)**

*[To be completed by the Parties – different contacts may be listed for different purposes]*

## SCHEDULE G

### **Dispute Resolution (section 16.1)**

- G.1 The Party claiming a dispute will provide written notice to the other Party. The Parties will make reasonable efforts through or by their respective senior executives to resolve any dispute within sixty days of receipt of such notice.
- G.2 If a dispute is settled by the senior executives of the Parties, the Parties shall prepare and execute minutes setting forth the terms of the settlement. Such terms shall bind the Parties. The subject-matter of the dispute shall not thereafter be the subject of any civil or other proceeding, other than in relation to the enforcement of the terms of the settlement. If a Party fails to comply with the terms of settlement, the other Party may submit the matter to arbitration under section G.3. A copy of the minutes referred to in this section from which all confidential information has been expunged shall be made available to the public by the Distributor upon request.
- G.3 If the senior executives of the Parties cannot resolve the dispute within the time period set out in section G.1 or such longer or shorter period as the Parties may agree, either Party may submit the dispute to binding arbitration under sections G.4 to G.8 by notice to the other Party.
- G.4 The Parties shall use good faith efforts to appoint a single arbitrator for purposes of the arbitration of the dispute. If the Parties fail to agree upon a single arbitrator within ten working days of the date of the notice referred to in section G.3, each Party shall within five working days thereafter choose one arbitrator. The two arbitrators so chosen shall within fifteen working days select a third arbitrator.
- G.5 Where a Party has failed to choose an arbitrator under section G.4 within the time allowed, the other Party may apply to a court to appoint a single arbitrator to resolve the dispute.
- G.6 A person may be appointed as an arbitrator if that person:
- (a) is independent of the Parties;
  - (b) has no current or past substantial business or financial relationship with either Party, except for prior arbitration; and
  - (c) is qualified by education or experience to resolve the dispute.
- G.7 The arbitrator(s) shall provide each of the Parties with an opportunity to be heard orally and/or in writing, as may be appropriate to the nature of the dispute.

- G.8 The *Arbitration Act, 1991* (Ontario) shall apply to an arbitration conducted under this Schedule G.
- G.9 The decision of the arbitrator(s) shall be final and binding on the Parties and may be enforced in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). The Party against which the decision is enforced shall bear all costs and expenses reasonably incurred by the other Party in enforcing the decision.
- G.10 A copy of the decision of the arbitrator(s) from which any confidential information has been expunged shall be made available to the public by the Distributor upon request.
- G.11 Subject to section G.12, each Party shall be responsible for its own costs and expenses incurred in the arbitration of a dispute and for the costs and expenses of the arbitrator(s) if appointed to resolve the dispute.
- G.12 The arbitrator(s) may, if the arbitrator(s) consider it just and reasonable to do so, make an award of costs against or in favour of a Party to the dispute. Such an award of costs may relate to either or both the costs and expenses of the arbitrator(s) and the costs and expenses of the Parties to the dispute.
- G.13 If a dispute is settled by the Parties during the course of an arbitration, the Parties shall prepare and execute minutes setting forth the terms of the settlement. Such terms shall bind the Parties, and either Party may request that the arbitrator(s) record the settlement in the form of an award under section 36 of the *Arbitration Act, 1991* (Ontario). The subject-matter of the dispute shall not thereafter be the subject of any civil or other proceeding, other than in relation to the enforcement of the terms of the settlement.
- G.14 If a Party fails to comply with the terms of settlement referred to in section G.13, the other Party may submit the matter to arbitration under section G.3 if the settlement has not been recorded in the form of an award under section 36 of the *Arbitration Act, 1991* (Ontario).
- G.15. A copy of the minutes referred to in section G.13 from which all confidential information has been expunged shall be made available to the public by the Distributor upon request.
- G.16 The Parties may not, by means of the settlement of a dispute under section G.2 or section G.13, agree to terms or conditions that are inconsistent with or contrary to the Code or this Agreement.

## SCHEDULE H

### **Provisions Applicable if Facility Financed by a Lender (sections 19.3, 20.3 and 21.1)**

- H.1 For the purposes of this Schedule, "lender" means a bank or other entity whose principal business is that of a financial institution and that is financing or refinancing the Facility.
- H.2 Where notice of a Default has been served on the Customer under section 19.3, an agent or trustee for and on behalf of a lender ("Security Trustee") or a receiver appointed by the Security Trustee ("Receiver") shall upon notice to the Distributor be entitled (but not obligated) to exercise all of the rights and obligations of the Customer under this Agreement and shall be entitled to remedy the Default specified in the notice within the applicable cure period referred to in section 19.4. The Distributor shall accept performance of the Customer's obligations under this Agreement by the Security Trustee or Receiver in lieu of the Customer's performance of such obligations, and will not exercise any right to terminate this Agreement under section 19.3 due to a Default if the Security Trustee, its nominee or transferee, or the Receiver acknowledges its intention to be bound by the terms of this Agreement and such acknowledgment is received within 30 days of the date of receipt by the Customer of the notice of Default.
- H.3 The Customer may, without the prior written consent of the Distributor, assign by way of security only all or any part of its rights or obligations under this Agreement to a lender. The Customer shall promptly notify the Distributor upon making any such assignment.
- H.4 The Customer may disclose confidential information of the Distributor to a lender or a prospective lender.

## Attachment B

### Amendments to the Distribution System Code

**Note:** The text of the proposed amendments is set out in italics below, for ease of identification only.

1. Section 1.2 of the Distribution System Code is amended by adding the following immediately after the definition of “connection assets”:

*“connection cost agreement” means the agreement referred to in section 6.2.18;*

2. The definition of “embedded generation facility” in section 1.2 of the Distribution System Code is amended by adding the following at the end of the definition:

*, and has the extended meaning given to it in section 1.9;*

3. Section 1.2 of the Distribution System Code is amended by adding the following immediately after the definition of “embedded generation facility”:

*“embedded retail generator” means a customer that:*

*(a) is not a wholesale market participant or a net metered generator (as defined in section 6.7.1);*

*(b) owns or operates an embedded generation facility, other than an emergency backup generation facility; and*

*(c) sells output from the embedded generation facility to the Ontario Power Authority under contract or to a distributor;*

4. The definition of “large embedded generation facility” in section 1.2 of the Distribution System Code is amended by deleting the phrase “10 MW or more” and replacing it with the phrase *“more than 10 MW”*.

5. Section 1.2 of the Distribution System Code is amended by adding the following immediately after the definition of “large embedded generation facility”:

*“load displacement” means, in relation to a generation facility that is connected on the customer side of a connection point, that the output of the generation facility is used or intended to be used exclusively for the customer’s own consumption;*

6. The definition of “micro-embedded load displacement generation facility” in section 1.2 of the Distribution System Code is deleted and replaced with the following:

*“micro-embedded generation facility” means an embedded generation facility with a name-plate rated capacity of 10 kW or less;*

7. The definition of “mid-sized embedded generation facility” in section 1.2 of the Distribution System Code is amended by deleting the phrase “less than 10 MW” and replacing it with the phrase “10 MW or less”.
8. Section 1 of the Distribution System Code is amended by adding the following immediately after section 1.8:

### **1.9 Extended Meaning of Embedded Generation Facility**

*A distributor shall, for all purposes under this Code, treat a generation facility that is connected on the customer side of a connection point to the distribution system as an embedded generation facility. To that end:*

- a. *the terms “connect”, “connected” and “connection” when used in relation to such a generation facility shall be interpreted accordingly; and*
  - b. *the distributor shall treat the owner or operator of the generation facility as a generator in relation to the connection and operation of that generation facility.*
9. Section 5.2.1 of the Distribution System Code is deleted and replaced with the following:

*A distributor shall require that an embedded retail generator whose embedded generation facility has a gross name-plate capacity of more than 10 MW install a four-quadrant interval meter. A distributor shall require that a net metered generator (as defined in section 6.7.1) and an embedded retail generator whose embedded generation facility has a gross name-plate capacity of 10 MW or less install such metering as may reasonably be required having regard to:*

- a. *the meter data requirements necessary to enable the distributor to settle amounts owing to or from the embedded retail generator; and*
- b. *the type of generation facility or generation technology of the embedded generation facility.*

10. Section 5.2.2 of the Distribution System Code is deleted and replaced with the following:

*A distributor shall meter a customer with an embedded generation facility, other than an embedded retail generator or a net metered generator (as defined in section 6.7.1), in the same manner as the distributor's other load customers.*

11. Section 6.2.1 of the Distribution System Code is amended by adding the following at the end of that section:

*or an embedded generation facility that is used exclusively for load displacement purposes*

12. Section 6.2.3 of the Distribution System Code is amended as follows:

- (a) by removing the word "and" at the end of paragraph c;
- (b) by replacing the "." at the end of paragraph d with "; and"; and
- (c) by adding the following immediately after paragraph d:
  - e. *the name, telephone number and e-mail address of the distributor's representative for inquiries relating to the connection of embedded generation facilities.*

13. Section 6.2 of the Distribution System Code is amended by adding the following immediately after section 6.2.4:

***Queuing Process***

*6.2.4.1 Subject to section 6.2.4.2, a distributor shall establish and maintain a queuing process under which the distributor will process applications for the connection of embedded generation facilities. The queuing process shall meet the following requirements:*

- a. *each application for connection, including an application under section 6.2.25, will be placed in the queue on a first-come, first-served basis upon completion of the connection impact assessment for the embedded generation facility;*
- b. *the distributor shall notify the applicant of its queue position;*
- c. *an application shall be removed from the queue if a connection cost agreement has not been signed in relation to the connection of the embedded generation facility within*

*12 months of the date on which the application was placed in the queue;*

- d. an application shall be removed from the queue if a new connection impact assessment is prepared for an embedded generation facility under section 6.2.15 and the new assessment differs in a material respect from the original connection impact assessment prepared for that facility; and*
- e. the distributor shall provide the applicant with two months' advance notice of the expiry of the 12-month period referred to in paragraph c prior to removing the application from the queue.*

*6.2.4.2 Section 6.2.4.1 does not apply to an application to connect a micro-embedded generation facility. Applications to connect to which the queuing process does not apply, including by virtue of section 6.2.1, shall be processed by a distributor in accordance with this Code as and when received.*

- 14. Sections 6.2.5, 6.2.6, 6.2.7, 6.2.8, 6.2.24 and 6.2.26, Appendix E and Appendix F of the Distribution System Code are amended by deleting the phrase “micro-embedded load displacement generation facility” or “micro-embedded load displacement generator” wherever they appear in those sections and those Appendices and replacing them with the phrase “*micro-embedded generation facility*”.
- 15. Section 6.2.9 of the Distribution System Code is amended as follows:
  - (a) by deleting the phrase “requesting the meeting” at the end of the first sentence of the opening paragraph of that section and replacing it with the phrase “*providing the required information*”; and
  - (b) by deleting paragraph d of that section and replacing it with the following:
    - d. the proposed locations of the proposed generation facility including addresses and account numbers with the distributor where available.*
- 16. Section 6.2 of the Distribution System Code is amended by adding the following immediately after section 6.2.9:

*6.2.9.1 Upon request, a distributor shall provide the following to a person that has requested a meeting under section 6.2.9:*

- a. *a description of the portion of the distributor's distribution system relevant to the person's embedded generation facility, including the corresponding portions of an up-to-date system schematic map showing, at a minimum, the following:*
- *major distribution and sub-transmission lines;*
  - *transformer and distribution stations;*
  - *the voltage levels used for distribution;*
  - *sufficient geographic references to enable the person to correlate all of the above features with a municipal road map; and*
  - *such other information as the Board may from time to time determine; and*
- b. *subject to section 6.2.9.4, information on voltage level, fault level and minimum/maximum feeder loadings for up to three locations in the distributor's service area.*

*6.2.9.2 The distributor shall provide the information referred to in section 6.2.9.1 without charge and within the 15 days referred to in section 6.2.9.*

*6.2.9.3 Upon request, a distributor shall, subject to section 6.2.9.4, provide the information referred to in section 6.2.9.1(b) to a person that has requested a meeting under section 6.2.9 for one or more additional locations beyond the three required by section 6.2.9.1(b). The distributor shall use reasonable efforts to provide such information within the 15 days referred to in section 6.2.9, but shall in any event provide that information within a further 15 days. The distributor may recover from the person the reasonable costs incurred by the distributor in preparing the information for the additional locations.*

*6.2.9.4 A distributor may withhold information on minimum/maximum feeder loadings where the distributor believes on reasonable grounds that the disclosure of such information could be used to identify the load characteristics of an existing customer and that the loading information is therefore commercially sensitive. A distributor shall, before deciding to withhold such information, make reasonable efforts to obtain the consent of the existing customer to the disclosure of the loading information.*

17. Section 6.2.18 of the Distribution System Code is amended by adding the following at the beginning of that section:

*A distributor shall enter into a connection cost agreement with an applicant in relation to a small embedded generation facility, a mid-sized embedded generation facility or a large embedded generation facility. The connection cost agreement shall include provisions regarding the applicant's acceptance of the distributor's offer to connect, the connection costs and any security deposit to be paid by the applicant prior to the commencement of any work by the distributor, and the timing of the connection. The distributor's offer to connect shall be attached as an appendix to and form part of the cost connection agreement.*

18. Section 6.2 of the Distribution System Code is amended by adding the following immediately after section 6.2.24:

*6.2.25 A distributor shall require a generator that proposes to increase the output of an embedded generation facility that is then in service to submit a new application to connect, and the provisions of sections 6.2.9 to 6.2.24 shall apply.*

19. Appendix E of the Distribution System Code is amended as follows:

- (a) by deleting the title at the top of the first page of the Appendix and replacing it with the following:

***INFORMATION IN A CONNECTION AGREEMENT FOR A LARGE EMBEDDED GENERATION FACILITY***

- (b) by adding the phrase "*in relation to a large embedded generation facility*" immediately after the words "a generator" in the first line under the heading "INFORMATION IN A CONNECTION AGREEMENT WITH A GENERATOR" on the first page of the Appendix;
- (c) by deleting the heading "Micro-Embedded Load Displacement Generator" and the sentence that follows on the first page of the Appendix;
- (d) by deleting section 1.2 of the "Micro-Embedded Load Displacement Generation Facility Connection Agreement" on the third page of the Appendix;

- (e) by deleting sections 4.1 and 4.2 of the “Micro-Embedded Load Displacement Generation Facility Connection Agreement” on the third page of the Appendix and replacing them with the following:
- 4.1 *If you are not an embedded retail generator, you agree that, subject to any applicable law:*
- a. *the LDC will not pay you for any excess generation that results in a net delivery to the LDC between meter reads; and*
- b. *there will be no carryover of excess generation from one billing period to the next unless you are, at the relevant time, a net metered generator (as defined in section 6.7.1 of the Distribution System Code).*
- 4.2 *If you are an embedded retail generator selling output from the embedded generation facility to the Ontario Power Authority under contract, you agree that the LDC will pay you for generation in accordance with the Retail Settlement Code.*
- 4.3 *If you are an embedded retail generator delivering and selling output to the LDC, you agree that the LDC will pay you for generation in accordance with the Retail Settlement Code.*
- (f) by deleting the row that describes a Connection Agreement from the table set out on the fifth page of that Appendix; and
- (g) by adding, after the table set out on the fifth page of that Appendix, the form of Connection Agreement for a Small Embedded Generation Facility or a Mid-sized Embedded Generation Facility set out in the attached Annex 1.

20. Appendix F.1 of the Distribution System Code is amended as follows:

- (a) by deleting the words “load displacement” in the second line under the heading “INTRODUCTION” on the first page of that Appendix;
- (b) by deleting the words “for customer’s own use” in the “Rating” column for the “Micro” row of the table on the first page of that Appendix.; and

- (c) by deleting the phrase “<10 MW” in the “Rating” column for the “Mid-Sized” row of the table on the first page of that Appendix and replacing it with “≤ 10 MW”.
21. Appendix F.1.1 of the Distribution System Code is amended as follows:
- (a) by deleting the "- Load Displacement or Emergency Back-up Generation" from the title on the first page of the Appendix;
  - (b) by deleting the fourth bullet under the heading "Step 2 – Provision of Information" and replacing it with the following:
    - *contractual requirements (Micro-Embedded Generation Facility Connection Agreement)*
  - (c) by deleting the second bullet point under the heading "Step 3 – Generator Develops Plans" and replacing it with the following:
    - *load displacement/net metering/isolated from distribution system/grid connection*
22. Appendix F.1.2 of the Distribution System Code is amended as follows:
- (a) by deleting the reference to “up to 500 kW” in the title on the first page of the Appendix and replacing it with the phrase “500 kW or less”;
  - (b) by deleting the reference to “up to 1 MW” in the title on the first page of the Appendix and replacing it with the phrase “1 MW or less”;
  - (c) by adding the phrase “and the information required by section 6.2.3(e) of the Code” at the end of the first bullet under the heading “Step 2 – Provision of Information”;
  - (d) by deleting the fourth bullet under the heading “Step 2 – Provision of Information” and replacing it with the following:
    - *contractual requirements (connection cost agreement and Connection Agreement)*
  - (e) by deleting the second bullet point under the heading "Step 3 – Generator Develops Plans" and replacing it with the following:
    - *load displacement/net metering/isolated from distribution system/grid connection*

- (f) by deleting the phrase “(No Charge)” at the end of the heading “Step 4 – Initial Consultation” and replacing it with the phrase “*(no charge except as permitted by section 6.2.9.3 of the Code)*”;
- (g) by deleting the last bullet under the sentence “Generator requests preliminary meeting and submits basic information. Information required includes:” under the heading “Step 4 – Initial Consultation” and replacing it with the following:

- *alternative locations of the proposed generation facility including addresses and account numbers with the distributor where available.*

- (h) by deleting the phrase “Within 15 days of receipt of basic information and request for meeting, the distributor meets with the generator to review plans at basic level” under the heading “Step 4 – Initial Consultation” and the three bullets following that phrase and replacing them with the following:

*Within the time required by the Code, the distributor meets with the generator to review plans at a basic level, including:*

- *location of existing distribution facilities in reference to proposed alternative generation facility locations;*
- *the information required by sections 6.2.9.1 and 6.2.9.3 of the Code, if this has been requested;*
- *rough estimate on time and costs which could be associated with project for each alternative location sufficiently to evaluate the relative merits of the alternative location; and*
- *basic feasibility of project for each alternative location.*

- (i) by adding the words “*for the chosen location*” immediately after the words “by the distributor” in the sentence immediately below the heading “Step 5 – Application for Impact Assessment”.

23. Appendix F.1.3 of the Distribution System Code is amended as follows:
- (a) by deleting the reference to “less than 10 MW” in the title on the first page of the Appendix and replacing it with the phrase “10 MW or less”;
  - (b) by adding the phrase “*and the information required by section 6.2.3(e) of the Code*” at the end of the first bullet under the heading “Step 2 – Provision of Information”;
  - (c) by deleting the fourth bullet under the heading “Step 2 – Provision of Information” and replacing it with the following:
    - *contractual requirements (connection cost agreement and Connection Agreement)*
  - (d) by deleting the second bullet point under the heading “Step 3 – Generator Develops Plans” and replacing it with the following:
    - *load displacement/isolated from distribution system/grid connection*
  - (e) by deleting the phrase “(No Charge)” at the end of the heading “Step 4 – Initial Consultation” and replacing it with the phrase “*(no charge except as permitted by section 6.2.9.3 of the Code)*”;
  - (f) by deleting the last bullet under the sentence “Generator requests preliminary meeting and submits basic information. Information required includes:” under the heading “Step 4 – Initial Consultation” and replacing it with the following:
    - *alternative locations of the proposed generation facility including addresses and account numbers with the distributor where available.*
  - (g) by deleting the phrase “Within 15 days of receipt of basic information and request for meeting, the distributor meets with the generator to review plans at basic level” under the heading “Step 4 – Initial Consultation” and the three bullets following that phrase and replacing them with the following:

*Within the time required by the Code, the distributor meets with the generator to review plans at a basic level, including:*

    - *location of existing distribution facilities in reference to proposed alternative generation facility locations;*

- *the information required by sections 6.2.9.1 and 6.2.9.3 of the Code, if this has been requested;*
  - *rough estimate on time and costs which could be associated with project for each alternative location sufficiently to evaluate the relative merits of the alternative location; and*
  - *basic feasibility of project for each alternative location.*
- (h) by adding the words “*for the chosen location*” immediately after the words “by the distributor” in the sentence immediately below the heading “Step 5 – Application for Impact Assessment”.

24. Appendix F.1.4 of the Distribution System Code is amended as follows:

- (a) by adding the phrase “*and the information required by section 6.2.3(e) of the Code*” at the end of the first bullet under the heading “Step 2 – Provision of Information”;
- (b) by deleting the fourth bullet under the heading “Step 2 – Provision of Information” and replacing it with the following:
- *contractual requirements (connection cost agreement and Connection Agreement)*
- (c) by deleting the phrase “(No Charge)” at the end of the heading “Step 4 – Initial Consultation” and replacing it with the phrase “*(no charge except as permitted by section 6.2.9.3 of the Code)*”;
- (d) by deleting the last bullet under the sentence “Generator requests preliminary meeting and submits basic information. Information required includes:” under the heading “Step 4 – Initial Consultation” and replacing it with the following:
- *alternative locations of the proposed generation facility including addresses and account numbers with the distributor where available.*
- (e) by deleting the phrase “Within 15 days of receipt of basic information and request for meeting, the distributor meets with the generator to review plans at basic level” under the heading “Step 4 – Initial Consultation” and the three bullets following that phrase and replacing them with the following:

*Within the time required by the Code, the distributor meets with the generator to review plans at a basic level, including:*

- *location of existing distribution facilities in reference to proposed alternative generation facility locations;*
  - *the information required by sections 6.2.9.1 and 6.2.9.3 of the Code, if this has been requested;*
  - *rough estimate on time and costs which could be associated with project for each alternative location sufficiently to evaluate the relative merits of the alternative location; and*
  - *basic feasibility of project for each alternative location.*
- (f) by adding the words “*for the chosen location*” immediately after the words “from the distributor” in the sentence immediately below the heading “Step 5 – Application for Impact Assessment”.

25. Appendix F.2 of the Distribution System Code is amended as follows:

- (a) by deleting the phrase “10 MW and Larger” in the heading of each of the two versions of section 3.2 on the second page of that Appendix and replacing it with “*Larger than 10 MW*”; and
- (b) by deleting the phrase “10 MW and Higher” in the heading of section 9 and replacing it with the phrase “*Higher than 10 MW*”.

## **Annex 1**

### **Form of Connection Agreement for a Small Embedded Generation Facility or a Mid-sized Embedded Generation Facility**

**FORM OF CONNECTION AGREEMENT FOR A SMALL EMBEDDED  
GENERATION FACILITY OR A MID-SIZED EMBEDDED GENERATION  
FACILITY**

This Connection Agreement is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BETWEEN**

\_\_\_\_\_, (the "Distributor")

**AND**

\_\_\_\_\_, (the "Customer")

(each a "Party" and collectively the "Parties")

**RECITALS**

WHEREAS the Distributor is the owner of the distribution system serving the service area described in electricity distribution licence number \_\_\_\_\_ *[insert licence number]* (the "Licence") issued by the Ontario Energy Board (the "Board") (the "Distributor's distribution system").

AND WHEREAS the Customer owns or operates an embedded generation facility that is located in the Distributor's licensed service area (the "Facility").

AND WHEREAS the Customer has connected or wishes to connect its Facility to the Distributor's distribution system and the Distributor has connected or has agreed to connect the Facility to the Distributor's distribution system.

AND WHEREAS the Distributor has previously reviewed and accepted the Customer's application to connect and related materials that were submitted to the Distributor in accordance with the process set out in the Distribution System Code (the "Code") (altogether, the "Application") and the Distributor and the Customer have signed a connection cost agreement (both of which are attached to this Agreement as Schedule A).

AND WHEREAS in accordance with its Licence and the Code, the Distributor has agreed to offer, and the Customer has agreed to accept, distribution service in relation to the Facility.

**NOW THEREFORE** in consideration of the foregoing, and of the mutual covenants, agreements, terms and conditions herein contained, the Parties, intending to be legally bound, hereby agree as follows:

## **1. Definitions and Schedules**

1.1 Words and phrases contained in this Agreement (whether capitalized or not) that are not defined in this Agreement have the meanings given to them in the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998*, any regulations made under either of those *Acts*, or the Code.

1.2 The following schedules form part of this Agreement:

Schedule A – Application and Connection Cost Agreement (recitals)

Schedule B – Single Line Diagram, Connection Point and Location of Facilities (section 2.3)

Schedule C – List of Other Contracts (section 3.4)

Schedule D – Technical and Operating Requirements (section 4.1(d))

Schedule E – Billing and Settlement Procedures (section 5.3)

Schedule F – Contacts for Notice (section 12.1)

Schedule G – Dispute Resolution (section 16.1)

Schedule H – Provisions Applicable if Facility Financed by a Lender (sections 19.3, 20.3 and 21.1)

Where a schedule is to be completed by the Parties, the Parties may not include in that schedule a provision that would be contrary to or inconsistent with the Code or the remainder of this Agreement.

## **2. Type of Facility and Customer**

2.1 The Facility has a name-plate rated capacity of:

*[Parties to check the applicable box below]*

more than 10 kW and:

(a) up to and including 500 kW, if the Facility is or will be connected to a less than 15 kV line; or

(b) up to and including 1 MW, if the Facility is or will be connected to a 15 kV or greater line

(in which case the Facility is a “Small Embedded Generation Facility”)

- 10 MW or less and:
  - (a) more than 500 kW, if the Facility is or will be connected to a less than 15 kV line; or
  - (b) more than 1 MW, if the Facility is or will be connected to a 15 kV or greater line

(in which case the Facility is a “Mid-sized Embedded Generation Facility”)

2.2 The Facility is or will be connected:

*[Parties to check the applicable box(es) below]*

- directly to the Distributor’s distribution system
- on the load customer side of a connection point to the Distributor’s distribution system
  - the load customer is the same as the Customer
  - the load customer is: \_\_\_\_\_

2.3 Schedule B sets out the following:

- (a) a single line diagram of the Facility;
- (b) a list of the facilities of one Party that are on the property of the other Party; and
- (c) a diagram of the metering installations applicable to the Facility.

2.4 The Customer:

*[Parties to check the applicable box(es) below]*

- intends to:
  - sell output from the Facility to the Ontario Power Authority and has entered into an agreement with the Ontario Power Authority for that purpose
  - deliver and sell output from the Facility to the Distributor

(in which case the Customer is an “Embedded Retail Generator”)

- does not intend to sell any of the output of the Facility to the Ontario Power Authority or the Distributor

### **3. Incorporation of Code and Application of Conditions of Service and Other Contracts**

- 3.1 The Code, as it may be amended from time to time, is hereby incorporated in its entirety by reference into, and forms part of, this Agreement. Unless the context otherwise requires, all references to “this Agreement” include a reference to the Code.
- 3.2 The Distributor hereby agrees to be bound by and at all times to comply with the Code, and the Customer acknowledges and agrees that the Distributor is bound at all times to comply with the Code in addition to complying with the provisions of this Agreement.
- 3.3 In addition to this Agreement, the relationship between the Distributor and the Customer will be governed by the Distributor’s Conditions of Service that are in effect at the relevant time. In the event of a conflict or an inconsistency between a provision of this Agreement and a provision of the Distributor’s Conditions of Service, the provision of this Agreement shall govern.
- 3.4 The Distributor may require or may have already required the Customer to enter into one or more of the other contracts listed in Schedule C. In the event of a conflict or an inconsistency between a provision of the Code or this Agreement and a provision of such other contract, the provision of the Code or this Agreement shall govern.

### **4. Facility Standards**

- 4.1 The Customer shall ensure that the Facility:
  - (a) meets all applicable requirements of the Electrical Safety Authority (“ESA”);
  - (b) conforms to all applicable industry standards including, but not limited to, those of the Canadian Standards Association (“CSA”), the Institute of Electrical and Electronic Engineers, the American National Standards Institute and the International Electrotechnical Commission;
  - (c) is installed, constructed, operated and maintained in accordance with this Agreement, the Distributor’s offer to connect, the requirements of the ESA, the connection cost agreement, all applicable reliability standards and good utility practice; and
  - (d) meets the technical and operating requirements set out in Schedule D. These requirements shall not exceed any technical or operating requirements set out in the Code unless the Customer agrees.

## **5. Charges, Settlement and Billing**

- 5.1 The Customer shall pay the Distributor such charges as may be approved by the Board in relation to the connection of, and the provision of distribution service to, the Facility.
- 5.2 The Customer agrees to the following in relation to settlement for the output of the Facility:

*[Parties to check the applicable box below]*

- if the Customer is not an Embedded Retail Generator (see section 2.4)

the Distributor will not pay the Customer for any excess generation that results in a net delivery to the Distributor between meter reads and there will be no carryover of excess generation from one billing period to the next unless the Customer is at the relevant time a net metered generator

- if the Customer is an Embedded Retail Generator (see section 2.4)

the Distributor will settle all applicable payments and charges in accordance with the Retail Settlement Code

- 5.3 Billing and settlement activities will be conducted in accordance with the procedures set out in Schedule E.

## **6. Representations and Warranties**

- 6.1 The Customer represents and warrants to the Distributor as follows, and acknowledges that the Distributor is relying on such representations and warranties without independent inquiry in entering into this Agreement:
- (a) the Facility is fully and accurately described in the Application;
  - (b) all information in the Application is true and correct;
  - (c) the Facility is in compliance with all applicable technical requirements and laws;
  - (d) the Customer has been given warranty information and operation manuals for the Facility;
  - (e) the Customer has been adequately instructed in the operation and maintenance of the Facility and the Customer has developed and implemented an operation and maintenance plan based on those instructions;
  - (f) if the Customer is a corporation or other form of business entity, the Customer is duly incorporated, formed or registered (as applicable)

- under the laws of its jurisdiction of incorporation, formation or registration (as applicable);
- (g) the Customer has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement;
  - (h) this Agreement constitutes a legal and binding obligation on the Customer, enforceable against the Customer in accordance with its terms;
  - (i) the Customer holds all permits, licences and other authorizations that may be necessary to enable it to own and operate the Facility; and
  - (j) any individual signing this Agreement on behalf of the Customer has been duly authorized by the Customer to sign this Agreement and has the full power and authority to bind the Customer.

6.2 The Distributor represents and warrants to the Customer as follows, and acknowledges that the Customer is relying on such representations and warranties without independent inquiry in entering into this Agreement:

- (a) the Distributor is duly incorporated under the laws of Ontario;
- (b) the Distributor has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement;
- (c) this Agreement constitutes a legal and binding obligation on the Distributor, enforceable against the Distributor in accordance with its terms; and
- (d) any individual signing this Agreement on behalf of the Distributor has been duly authorized by the Distributor to sign this Agreement and has the full power and authority to bind the Distributor.

## **7. Disconnection Device at the Point of Connection**

7.1 The Customer shall furnish and install a disconnection switch at the point of connection for the Facility that opens, with a visual break, all ungrounded poles of the connection circuit. The disconnection switch at the point of connection shall be rated for the voltage and fault current requirements of the Facility, and shall meet all applicable CSA standards, ESA requirements, and all other applicable laws. The switch enclosure, if applicable, shall be properly grounded. The disconnection switch at the point of connection shall be accessible at all times, located for ease of access to the Distributor's personnel, and shall be capable of being locked in the open position. The Customer shall follow the Distributor's procedures for switching, clearance, tagging, and locking.

## **8. Modifications to the Facility**

8.1 The Customer shall not modify its connection assets or the Facility except in accordance with this section. Where the modification will not increase the

maximum electrical output of the Facility, the Customer shall give the Distributor no less than 15 working days notice prior to the date on which the modification will be completed. Where the modification will increase the maximum electrical output of the Facility, the Customer shall submit a new application for connection to the Distributor. The Distributor shall process that application for connection in accordance with the Code. The Customer shall not commence such modification until that process has been completed.

## **9. Insurance**

- 9.1 Throughout the term of this Agreement, the Customer shall carry commercial general liability insurance for third party bodily injury, personal injury, and property damage in an amount as follows:

*[Parties to check the applicable box below]*

- if the Facility is a Small Embedded Generation Facility (see section 2.1)  
  
not less than \$1,000,000 per occurrence and in the annual aggregate
- if the Facility is a Mid-sized Embedded Generation Facility (see section 2.1)  
  
not less than \$2,000,000 per occurrence and in the annual aggregate

Prior to execution of this Agreement, the Customer shall provide the Distributor with a valid certificate of insurance. The Customer shall provide the Distributor with prompt notice of any cancellation of the Customer's insurance by the insurer.

## **10. Liability and Force Majeure**

- 10.1 The liability provisions of section 2.2 of the Code apply to this Agreement and are hereby incorporated by reference into, and form part of, this Agreement.
- 10.2 A Party shall have a duty to mitigate any losses relating to any claim for indemnification from the other Party that may be made in relation to that other Party. Nothing in this section shall require the mitigating Party to mitigate or alleviate the effects of any strike, lockout, restrictive work practice or other labour dispute.
- 10.3 A Party shall give prompt notice to the other Party of any claim with respect to which indemnification is being or may be sought under this Agreement.

10.4 The force majeure provisions of section 2.3 of the Code apply to this Agreement and are hereby incorporated by reference into, and form part of, this Agreement.

## **11. Facility Commissioning and Testing**

11.1 The Customer shall give the Distributor at least fifteen days advance written notice of the date(s) and time(s) on which the Facility will be commissioned and tested prior to connection. The Customer shall give the Distributor the same notice in relation to the commissioning and testing of any material modification to the Customer's connection assets or Facility that occurs after connection.

11.2 The Distributor shall have the right to witness the commissioning and testing activities referred to in section 11.1.

## **12. Notice**

12.1 Any notice, demand, consent, request or other communication required or permitted to be given or made under or in relation to this Agreement shall be given or made: by courier or other personal form of delivery; by registered mail; by facsimile; or by electronic mail. Notices shall be addressed to the applicable representative of the Party identified in Schedule F.

12.2 A notice, demand, consent, request or other communication referred to in section 12.1 shall be deemed to have been made as follows:

- (a) where given or made by courier or other form of personal delivery, on the date of receipt;
- (b) where given or made by registered mail, on the sixth day following the date of mailing;
- (c) where given or made by facsimile, on the day and at the time of transmission as indicated on the sender's facsimile transmission report; and
- (d) where given or made by electronic mail, on the day and at the time when the notice, demand, consent, request or other communication is recorded by the sender's electronic communications system as having been received at the electronic mail destination.

## **13. Access to Facility**

13.1 Each Party shall ensure that its facilities are secured at all times.

13.2 The Customer shall permit and, if the land on which the Facility is located is not owned by Customer, cause such landowner to permit, the Distributor's employees and agents to enter the property on which the Facility is located at any reasonable time. Such access shall be provided for the purposes of

inspecting and/or testing the Facility as and when permitted by this Agreement, the Code or the Distributor's Conditions of Service or as required to ensure the continued safe and satisfactory operation of the Facility, to ensure the accuracy of the Distributor's meters, to establish work protection, or to perform work.

- 13.3 Any inspecting and/or testing referred to in section 13.2 shall not relieve the Customer from its obligation to operate and maintain the Facility and any related equipment owned by the Customer in a safe and satisfactory operating condition and in accordance with this Agreement.
- 13.4 The Distributor shall have the right to witness any testing done by the Customer of the Facility and, to that end, the Customer shall provide the Distributor with at least fifteen working days advance notice of the testing.
- 13.5 Notwithstanding section 10.1, where the Distributor causes damage to the Customer's property as part of this access, the Distributor shall pay to the Customer the Customer's reasonable costs of repairing such property or, if such property cannot be repaired, replacing such property.
- 13.6 Notwithstanding section 10.1, if the Customer has been given access to the Distributor's property, and if the Customer causes damage to the Distributor's property as part of that access, the Customer shall pay to the Distributor the Distributor's reasonable costs of repairing such property or, if such property cannot be repaired, replacing such property.

#### **14. Disconnection of Facility to Permit Maintenance and Repairs**

- 14.1 If the Customer requests it, the Distributor will provide the Customer with reasonable notice of any planned equipment outages in the Distributor's distribution system that occur on or after the date of the Customer's request which will impact the Facility or its connection.
- 14.2 The Distributor will make reasonable efforts to ensure that the outages referred to in section 14.1 will be of minimal duration and cause minimal inconvenience to the Customer.
- 14.3 In connection with any planned equipment outage, either Party may disconnect or isolate, or require the disconnection or isolation of, its Facility or system (as applicable) from the other Party's Facility or system (as applicable) so that the employees, contractors or agents of the Party may construct, maintain, repair, replace, remove, investigate or inspect its own Facility or system (as applicable) in accordance with the terms of this Agreement and good utility practice.

14.4 Where practical, the Customer shall notify the Distributor prior to temporarily isolating or disconnecting the Facility from the Distributor's distribution system.

## **15. Disconnection of Facility for Other Reasons**

15.1 The Customer shall discontinue operation of the Facility and the Distributor may isolate or disconnect the Facility from the Distributor's distribution system, upon any of the following:

- (a) termination of this Agreement in accordance with section 19;
- (b) if the Customer's connection assets or the Facility are modified by the Customer in a manner contrary to section 8.1;
- (c) during an emergency or where necessary to prevent or minimize the effects of an emergency;
- (d) in accordance with section 31, 31.1 or 40(5) of the *Electricity Act, 1998*, other applicable law, the Code, the Distributor's Licence or the Distributor's Conditions of Service; or
- (e) where required to comply with a decision or order of an arbitrator or court made or given under Schedule G.

15.2 In the event of disconnection under section 15.1(b), the Facility shall remain isolated or disconnected from the Distributor's distribution system until the connection process referred to in section 8.1 has been completed.

15.3 In the event of disconnection under section 15.1(c), the Distributor shall reconnect, or permit the reconnection of, the Facility to the Distributor's distribution system when it is reasonably satisfied that the emergency has ceased and that all other requirements of this Agreement are met.

15.4 In the event of disconnection under section 15.1(d) or 15.1(e), the Distributor shall reconnect, or permit the reconnection of, the Facility to the Distributor's distribution system when the Distributor is reasonably satisfied that the reason for the disconnection no longer exists, the Customer agrees to pay all Board-approved reconnection costs charged by the Distributor, and the Distributor is reasonably satisfied of the following, where applicable:

- (a) the Customer has taken all necessary steps to prevent the circumstances that caused the disconnection from recurring and has delivered binding undertakings to the Distributor that such circumstances shall not recur; and
- (b) any decision or order of a court or arbitrator made or given under Schedule G that requires a Party to take action to ensure that such circumstances shall not recur has been implemented and/or assurances have been given to the satisfaction of the affected Party that such decision or order will be implemented.

- 15.5 Where the Facility has been isolated or disconnected, each Party shall be entitled to decommission and remove its assets associated with the connection. Each Party shall, for that purpose, ensure that the other Party has all necessary access to its site at all reasonable times.
- 15.6 The Customer shall continue to pay for distribution services provided up to the time of isolation or disconnection of its Facility.
- 15.7 The Customer shall pay all reasonable costs including, but not limited to, the costs of removing any of the Distributor's equipment from the Customer's site, that are directly attributable to the isolation or disconnection of the Facility and, where applicable, the subsequent decommissioning of the Facility. The Distributor shall not require the removal of the protection and control wiring on the Customer's site.
- 15.8. While the Facility is isolated or disconnected, the Distributor shall not be required to convey electricity to or from the Facility.

## **16. Dispute Resolution**

- 16.1 Any dispute between the Customer and the Distributor arising under or in relation to this Agreement will be resolved in accordance with Schedule G. The Parties shall comply with the procedure set out in Schedule G before taking any civil or other proceeding in relation to the dispute, provided that nothing shall prevent a Party from seeking urgent or interlocutory relief from a court of competent jurisdiction in the Province of Ontario in relation to any dispute arising under or in relation to this Agreement.

## **17. Amendments**

- 17.1. The Parties may not amend this Agreement without leave of the Board except where and to the extent permitted by this Agreement.
- 17.2. The Parties may by mutual agreement amend this Agreement to reflect changes that may from time to time be made to the Code during the term of this Agreement.
- 17.3. The Parties may by mutual agreement amend any portion of a schedule that was originally to be completed by the Parties.
- 17.4 No amendment made under section 17.2 or 17.3 shall be contrary to or inconsistent with the Code or the remainder of this Agreement.
- 17.5 The Parties shall amend this Agreement in such manner as may be required by the Board.

17.6 Any amendment to this Agreement shall be made in writing and duly executed by both Parties.

## **18. Waiver**

18.1 A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-compliance, whether of the same or any other nature.

## **19. Term of Agreement and Termination**

19.1 This Agreement shall become effective upon execution by the Parties, and shall continue in effect until terminated in accordance with section 19.2 or 19.3.

19.2 The Customer may, if it is not then in default under this Agreement, terminate this Agreement at any time by giving the Distributor thirty days prior written notice setting out the termination date.

19.3 Except as set out in Schedule H, the Distributor may terminate this Agreement upon any material breach of this Agreement by the Customer (a "Default"), if the Customer fails to remedy the Default within the applicable cure period referred to in section 19.4 after receipt of written notice of the Default from the Distributor.

19.4 The Customer shall cure a Default within the applicable cure period specified in the Code or the Distributor's Conditions of Service. If no such cure period is specified in relation to a given Default, the cure period shall be sixty working days.

19.5 Termination of this Agreement for any reason shall not affect:

- (a) the liabilities of either Party that were incurred or arose under this Agreement prior to the time of termination; or
- (b) the provisions that expressly apply in relation to disconnection of the Customer's facilities following termination of this Agreement.

19.6 Termination of this Agreement for any reason shall be without prejudice to the right of the terminating Party to pursue all legal and equitable remedies that may be available to it including, but not limited to, injunctive relief.

19.7 The rights and remedies set out in this Agreement are not intended to be exclusive but rather are cumulative and are in addition to any other right or remedy otherwise available to a Party at law or in equity. Nothing in this

section 19.7 shall be interpreted as affecting the limitations of liability arising from section 10.1 or the obligation of a Party to comply with section 16 while this Agreement is in force.

19.8 Sections 19.5 to 19.7 shall survive termination of this Agreement.

## **20. Exchange and Confidentiality of Information**

20.1 Confidential information in respect of a Party means (i) information disclosed by that Party to the other Party under this Agreement that is in its nature confidential, proprietary or commercially sensitive and (ii) information derived from the information referred to in (i), but excludes the following:

- (a) information that is in the public domain; or
- (b) information that is, at the time of the disclosure, in the possession of the receiving Party, provided that it was lawfully obtained from a person under no obligation of confidence in relation to the information.

20.2 Subject to section 20.3, each Party shall treat all confidential information disclosed to it by the other Party as confidential and shall not, without the written consent of that other Party:

- (a) disclose that confidential information to any other person; or
- (b) use that confidential information for any purpose other than the purpose for which it was disclosed or another applicable purpose contemplated in this Agreement.

Where a Party, with the written consent of the other Party, discloses confidential information of that other Party to another person, the Party shall take such steps as may be required to ensure that the other person complies with the confidentiality provisions of this Agreement.

20.3 Nothing in section 20.2 shall prevent the disclosure of confidential information:

- (a) where required or permitted under this Agreement, the Code, the Market Rules or the Distributor's Licence;
- (b) where required by law or regulatory requirements;
- (c) where required by order of a government, government agency, regulatory body or regulatory agency having jurisdiction;
- (d) if required in connection with legal proceedings, arbitration or any expert determination relating to the subject matter of this Agreement, or for the purpose of advising a Party in relation thereto;
- (e) as may be required to enable the Distributor to fulfill its obligations to any reliability organization; or

(f) as may be required during an emergency or to prevent or minimize the effects of an emergency.

20.4 Notwithstanding section 10.1, a Party that breaches section 20.2 shall be liable to the other Party for any and all losses of the other Party arising out of such breach.

20.5 The Parties agree that the exchange of information, including, but not limited to, confidential information, under this Agreement is necessary for maintaining the reliable operation of the Distributor's distribution system. The Parties further agree that all information, including, but not limited to, confidential information, exchanged between them shall be prepared, given and used in good faith and shall be provided in a timely and cooperative manner.

20.6 Each Party shall provide the other with such information as the other may reasonably require to enable it to perform its obligations under this Agreement.

20.7 Each Party shall, as soon as practicable, notify the other Party upon becoming aware of a material change or error in any information previously disclosed to the other Party under this Agreement and, in the case of the Customer, in any information contained in its Application. The Party shall provide updated or corrected information as required to ensure that information provided to the other Party is up to date and correct.

## **21. Assignment, Successors and Assigns**

21.1 Except as set out in Schedule H, the Customer shall not assign its rights or obligations under this Agreement in whole or in part without the prior written consent of the Distributor, which consent shall not be unreasonably withheld or unduly delayed. The Distributor may withhold its consent to any proposed assignment until the proposed assignee assumes, in writing, all of the Customer's obligations contained in this Agreement.

21.2 The Distributor shall have the right to assign this Agreement in whole upon written notification to the Customer.

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

## **22. Governing Law**

22.1. This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**23. Entire Agreement**

23.1 Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject-matter hereof and supersedes all prior oral or written representations and agreements of any kind whatsoever with respect to the subject-matter hereof.

**IN WITNESS WHEREOF**, the Parties hereto, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives.

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Distributor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

**SCHEDULE A**

**Application and Connection Cost Agreement (recitals)**

See the attached Application and connection cost agreement.

*[To be attached by the Parties]*

## **SCHEDULE B**

### **Single Line Diagram, Connection Point and Location of Facilities (section 2.3)**

#### **B.1 Single Line Diagram and Connection Point**

*[To be inserted by the Parties]*

#### **B.2 List of Facilities on the Property of the Other Party**

B.2.1 The following facilities of the Customer are located on the property of the Distributor:

*[To be completed by the Parties]*

B.2.2 The following facilities of the Distributor are located in the property of the Customer:

*[To be completed by the Parties]*

#### **B.3 Metering Installation Diagram**

*[To be inserted by the Parties]*

## **SCHEDULE C**

### **List of Other Contracts (section 3.4)**

The following other contracts have been or will be entered into by the Parties:

*[To be completed by the Parties]*

## **SCHEDULE D**

### **Technical and Operating Requirements (section 4.1(d))**

The following technical and operating requirements apply to the Facility:

*[To be completed by the Parties]*

## **SCHEDULE E**

### **Billing and Settlement Procedures (section 5.3)**

The following provisions apply in relation to billing and settlement in relation to the Facility:

*[To be completed by the Parties]*

**SCHEDULE F**

**Contacts for Notice (section 12.1)**

*[To be completed by the Parties – different contacts may be listed for different purposes]*

## **SCHEDULE G**

### **Dispute Resolution (section 16.1)**

- G.1 The Party claiming a dispute will provide written notice to the other Party. The Parties will make reasonable efforts through or by their respective senior executives to resolve any dispute within sixty days of receipt of such notice.
- G.2 If a dispute is settled by the senior executives of the Parties, the Parties shall prepare and execute minutes setting forth the terms of the settlement. Such terms shall bind the Parties. The subject-matter of the dispute shall not thereafter be the subject of any civil or other proceeding, other than in relation to the enforcement of the terms of the settlement. If a Party fails to comply with the terms of settlement, the other Party may submit the matter to arbitration under section G.3. A copy of the minutes referred to in this section from which all confidential information has been expunged shall be made available to the public by the Distributor upon request.
- G.3 If the senior executives of the Parties cannot resolve the dispute within the time period set out in section G.1 or such longer or shorter period as the Parties may agree, either Party may submit the dispute to binding arbitration under sections G.4 to G.8 by notice to the other Party.
- G.4 The Parties shall use good faith efforts to appoint a single arbitrator for purposes of the arbitration of the dispute. If the Parties fail to agree upon a single arbitrator within ten working days of the date of the notice referred to in section G.3, each Party shall within five working days thereafter choose one arbitrator. The two arbitrators so chosen shall within fifteen working days select a third arbitrator.
- G.5 Where a Party has failed to choose an arbitrator under section G.4 within the time allowed, the other Party may apply to a court to appoint a single arbitrator to resolve the dispute.
- G.6 A person may be appointed as an arbitrator if that person:
- (a) is independent of the Parties;
  - (b) has no current or past substantial business or financial relationship with either Party, except for prior arbitration; and
  - (c) is qualified by education or experience to resolve the dispute.
- G.7 The arbitrator(s) shall provide each of the Parties with an opportunity to be heard orally and/or in writing, as may be appropriate to the nature of the dispute.

- G.8 The *Arbitration Act, 1991* (Ontario) shall apply to an arbitration conducted under this Schedule G.
- G.9 The decision of the arbitrator(s) shall be final and binding on the Parties and may be enforced in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). The Party against which the decision is enforced shall bear all costs and expenses reasonably incurred by the other Party in enforcing the decision.
- G.10 A copy of the decision of the arbitrator(s) from which any confidential information has been expunged shall be made available to the public by the Distributor upon request.
- G.11 Subject to section G.12, each Party shall be responsible for its own costs and expenses incurred in the arbitration of a dispute and for the costs and expenses of the arbitrator(s) if appointed to resolve the dispute.
- G.12 The arbitrator(s) may, if the arbitrator(s) consider it just and reasonable to do so, make an award of costs against or in favour of a Party to the dispute. Such an award of costs may relate to either or both the costs and expenses of the arbitrator(s) and the costs and expenses of the Parties to the dispute.
- G.13 If a dispute is settled by the Parties during the course of an arbitration, the Parties shall prepare and execute minutes setting forth the terms of the settlement. Such terms shall bind the Parties, and either Party may request that the arbitrator(s) record the settlement in the form of an award under section 36 of the *Arbitration Act, 1991* (Ontario). The subject-matter of the dispute shall not thereafter be the subject of any civil or other proceeding, other than in relation to the enforcement of the terms of the settlement.
- G.14 If a Party fails to comply with the terms of settlement referred to in section G.13, the other Party may submit the matter to arbitration under section G.3 if the settlement has not been recorded in the form of an award under section 36 of the *Arbitration Act, 1991* (Ontario).
- G.15. A copy of the minutes referred to in section G.13 from which all confidential information has been expunged shall be made available to the public by the Distributor upon request.
- G.16 The Parties may not, by means of the settlement of a dispute under section G.2 or section G.13, agree to terms or conditions that are inconsistent with or contrary to the Code or this Agreement.

## **SCHEDULE H**

### **Provisions Applicable if Facility Financed by a Lender (sections 19.3, 20.3 and 21.1)**

- H.1 For the purposes of this Schedule, "lender" means a bank or other entity whose principal business is that of a financial institution and that is financing or refinancing the Facility.
  
- H.2 Where notice of a Default has been served on the Customer under section 19.3, an agent or trustee for and on behalf of a lender ("Security Trustee") or a receiver appointed by the Security Trustee ("Receiver") shall upon notice to the Distributor be entitled (but not obligated) to exercise all of the rights and obligations of the Customer under this Agreement and shall be entitled to remedy the Default specified in the notice within the applicable cure period referred to in section 19.4. The Distributor shall accept performance of the Customer's obligations under this Agreement by the Security Trustee or Receiver in lieu of the Customer's performance of such obligations, and will not exercise any right to terminate this Agreement under section 19.3 due to a Default if the Security Trustee, its nominee or transferee, or the Receiver acknowledges its intention to be bound by the terms of this Agreement and such acknowledgment is received within 30 days of the date of receipt by the Customer of the notice of Default.
  
- H.3 The Customer may, without the prior written consent of the Distributor, assign by way of security only all or any part of its rights or obligations under this Agreement to a lender. The Customer shall promptly notify the Distributor upon making any such assignment.
  
- H.4 The Customer may disclose confidential information of the Distributor to a lender or a prospective lender.

## Attachment C

### Comparison Version of the Amendments to the Retail Settlement Code

**Note:** The text of the proposed amendments is set out in italics below, for ease of identification only.

1. Section 1.2 of the Retail Settlement Code is amended by adding the following immediately after the definition of “embedded distributor”:

*“embedded generation facility” means a generation facility which is not directly connected to the IESO-controlled grid but instead is connected to a distribution system, and has the extended meaning given to it in section 1.9 of the Distribution System Code;*

2. Section 1.2 of the Retail Settlement Code is amended by deleting the definition of “embedded retail generator” and replacing it with the following:

*“embedded retail generator” means a customer that:*

- (a) *is not a wholesale market participant or a net metered generator (as defined in section 6.7.1 of the Distribution System Code);*
- (b) *owns or operates an embedded generation facility, other than an emergency backup generation facility; and*
- (c) *sells output from the embedded generation facility to the Ontario Power Authority under contract or to a distributor;*

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Hanging: 36 pt

3. Section 3.2 of the Retail Settlement Code is amended by deleting the four sentences immediately preceding Equation 3.2(e) on page 12 and replacing them with the following:

*A distributor shall purchase energy from an embedded retail generator within its service area where such embedded retail generator has indicated that it intends to generate electricity for delivery and sale directly to the distributor, provided that the embedded retail generator has obtained such licences from the Board as may be required. The price at which such energy sales shall be settled will be the competitive electricity price as described in Appendix “A” to the Code. Notwithstanding any other provision of this Code, where an embedded retail generator has a contract with the Ontario Power Authority under which the Ontario Power Authority is purchasing output from the embedded generation facility, a distributor shall settle all applicable payments or charges associated with the contract, and shall do so in accordance with the pricing provisions of the contract and with such rules as may be determined by the Board. A distributor shall calculate the supply facility loss factor using equation 3.2(e).*

## Attachment D

### Amendments to the Retail Settlement Code

**Note:** The text of the proposed amendments is set out in italics below, for ease of identification only.

1. Section 1.2 of the Retail Settlement Code is amended by adding the following immediately after the definition of “embedded distributor”:

*“embedded generation facility” means a generation facility which is not directly connected to the IESO-controlled grid but instead is connected to a distribution system, and has the extended meaning given to it in section 1.9 of the Distribution System Code;*

2. Section 1.2 of the Retail Settlement Code is amended by deleting the definition of “embedded retail generator” and replacing it with the following:

*“embedded retail generator” means a customer that:*

- (a) *is not a wholesale market participant or a net metered generator (as defined in section 6.7.1 of the Distribution System Code);*
- (b) *owns or operates an embedded generation facility, other than an emergency backup generation facility; and*
- (c) *sells output from the embedded generation facility to the Ontario Power Authority under contract or to a distributor;*

3. Section 3.2 of the Retail Settlement Code is amended by deleting the four sentences immediately preceding Equation 3.2(e) on page 12 and replacing them with the following:

*A distributor shall purchase energy from an embedded retail generator within its service area where such embedded retail generator has indicated that it intends to generate electricity for delivery and sale directly to the distributor, provided that the embedded retail generator has obtained such licences from the Board as may be required. The price at which such energy sales shall be settled will be the competitive electricity price as described in Appendix “A” to the Code. Notwithstanding any other provision of this Code, where an embedded retail generator has a contract with the Ontario Power Authority under which the Ontario Power Authority is purchasing output from the embedded generation facility, a distributor shall settle all applicable payments or charges associated with the contract, and shall do so in accordance with the pricing provisions of the contract and with such rules as may be determined by the Board. A distributor shall calculate the supply facility loss factor using equation 3.2(e).*