

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

STAR AMERICA DPGI ACQUISITION COMPANY, INC.

Applicant

and

DEMAND POWER GROUP INC.

Respondent

APPLICATION UNDER section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43

**APPLICATION RECORD
(Returnable November 22, 2023)**

November 6, 2023

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Guy P. Martel
Tel: 514.397.3163
gmartel@stikeman.com

Nathalie Nouvet
Tel: 514.397.3128
nnouvet@stikeman.com

Zev Smith LSO#70756R
Tel: 416.869.5260
zsmith@stikeman.com

Lawyers for the Applicant

TO: DEMAND POWER GROUP INC.
350 Bay Street, Suite 1100
Toronto, ON M5H 2S6

INDEX

Tab	Document	Pages
1.	Notice of Application issued November 6, 2023	1 – 6
A.	Schedule “A” – Draft Order	7 – 25
2.	Affidavit of Jahred Kallop affirmed November 4, 2023	26 – 43
A.	Exhibit “A” – Articles of Amendment dated February 28, 2020	44 – 71
B.	Exhibit “B” – Amended and Restated Investor Rights Agreement	72 – 114
C.	Exhibit “C” – Amended and Restated Voting Agreement	115 – 168
D.	Exhibit “D” – Amended and Restated Right of First Refusal and Co-Sale Agreement	169 – 196
E.	Exhibit “E” – Investment Agreement dated February 28, 2020	197 – 223
F.	Exhibit “F” – Construction Management, Operations and Maintenance agreement dated February 28, 2020	224 – 280
G.	Exhibit “G” – Deltro SAH Contract	281 – 427
H.	Exhibit “H” – SAH Assignment Agreement	428 – 431
I.	Exhibit “I” – Deltro Jebco Contract	432 – 606
J.	Exhibit “J” – Deltro Liens	607 – 611
K.	Exhibit “K” – Letters of Credit	612 – 619
L.	Exhibit “L” – Draft Non-Consolidated Audited Financial Statements of Demand Power	620 – 658
M.	Exhibit “M” – Board of Directors’ Meeting Minutes	659 – 665
N.	Exhibit “N” – Statement of Claim	666 – 679
O.	Exhibit “O” – Statement of Defence and Counterclaim	680 – 702
P.	Exhibit “P” – Email dated October 5, 2023	703 – 704
Q.	Exhibit “Q” – Email dated September 26, 2023	705 – 707
R.	Exhibit “R” – Emails dated October 10 – October 18, 2023	708 – 713
S.	Exhibit “S” – Draft Term Sheet	714 – 723
T.	Exhibit “T” – Deloitte’s Consent to Act as Receiver	724 – 726



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

STAR AMERICA DPGI ACQUISITION COMPANY, INC.

Applicant

and

DEMAND POWER GROUP INC.

Respondent

APPLICATION UNDER section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing:

- In writing
- In person
- By telephone conference
- By video conference

at the following location:

330 University Avenue, Toronto ON M5G 1R7 on ~~a day to be set by the registrar.~~
Thursday, Nov. 22, 2023 at 12:00 p.m.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

2

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto ON M5G 1R7

TO: DEMAND POWER GROUP INC.
350 Bay Street, Suite 1100
Toronto, ON M5H 2S6

APPLICATION

1. The Applicant, Star America DPGI Acquisition Company, Inc. ("**Star America**" or the "**Applicant**"), makes application for:

- (a) an order, if necessary, abridging the time for delivery and service, and validating service of this Notice of Application and the Application Record, if necessary;
- (b) an order, in the form attached hereto as Schedule "A", appointing Deloitte Restructuring, Inc. ("**Deloitte**") as receiver and manager without security, of all of the assets, undertakings, and properties of the Respondent, Demand Power Group Inc. ("**Demand Power**") acquired for, or used in relation to, a business carried on by Demand Power;
- (c) costs of this motion, plus all applicable taxes; and
- (d) such further and other relief as this Honourable Court may deem just.

2. The grounds for the application are:

- (a) The Applicant, Star America, is a preferred shareholder in the capital of Demand Power. Star America, through affiliated entities, including Narrows Green LP, invests in power supply projects in Ontario.
- (b) The Respondent, Demand Power, is a corporation incorporated pursuant to the laws of Ontario and carries on business as a provider of power supply systems.
- (c) Demand Power is insolvent, as it is presently unable to pay its liabilities as they come due. The Company has approximately \$188,605.77 in liabilities and

\$122,110 in current assets, including only approximately \$60,000 in cash, and continues to accrue liabilities in the ordinary course;

- (d) Demand Power currently has two directors on its board of directors, namely, Jahred Kallop and Vanessa Hartline. Mr. Kallop is a nominee director of Star America, and Ms. Hartline is a nominee director of another significant shareholder in Demand Power, PPL Technology Ventures, LLC (“**PPL**”);
- (e) Both Mr. Kallop and Ms. Hartline agree that Demand Power is insolvent and that the company must undertake immediate proceedings to remedy the dire situation facing Demand Power. However, the parties are deadlocked as to the process the company ought to undertake to maximize value for Demand Power’s stakeholders;
- (f) The appointment of a receiver and manager over Demand Power is just and convenient;
- (g) If appointed, the receiver and manager of Demand Power will undertake the most appropriate path to maximize value for all Demand Power stakeholders, as an officer of the Court;
- (h) Star America and all other stakeholders will suffer irreparable harm if no order is made, as Demand Power continues to accrue additional liabilities in the ordinary course in circumstances where it is insolvent; where it will never have the ability to satisfy these new liabilities; and where the board of Demand Power is deadlocked;

- (i) There is material risk of waste of Demand Power's limited assets. Demand Power has limited, if any, income and whatever assets it has to satisfy its ongoing and accruing liabilities will be dissipated to the detriment of Demand Power's stakeholders;
- (j) There are no other remedies that could serve to protect the interests of the Applicant or any other stakeholder of Demand Power in the circumstances;
- (k) The appointment of a receiver and manager will not prejudice any creditors or other stakeholders of Demand Power. To the contrary, the appointment of a receiver and manager will allow an independent party to consider and, if appropriate, facilitate, to the extent possible, realization on Demand Power's property, assets and undertaking as a going concern, for the benefit of all stakeholders;
- (l) Demand Power will not incur any costs associated with the appointment of the proposed receiver and manager. Star America has agreed to fund Deloitte's appointment, if granted, as Deloitte has recently undertaken a comprehensive review of Demand Power's financial position, it is intimately familiar with Demand Power's operations and is in the best position to assume control of the company in the capacity as a receiver and manager;
- (m) Deloitte has agreed to accept the appointment as receiver and manager on the terms of the proposed order;
- (n) Court intervention is required. Star America, PPL and Demand Power have, for months, attempted to negotiate the terms of a potential insolvency process, but

are unable to resolve a path forward in the best interests of Demand Power and its stakeholders;

- (o) Star America has standing to bring this application under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended (the “**CJA**”);
- (p) Rules 1.04, 1.05, 2.03, 3.02, 16.04, 16.08, 37, 38, 41, 57.03 and 60.02 of the *Rules of Civil Procedure*;
- (q) Section 101 of the CJA; and
- (r) Such further and other grounds as the lawyers may advise.

3. The following documentary evidence will be used at the hearing of the application:

- (a) the affidavit of Jahred Kallop, sworn November 5, 2023;
- (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 6, 2023

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Guy P. Martel
Tel: 514.397.3163
gmartel@stikeman.com

Nathalie Nouvet
Tel: 514.397.3128
nnouvet@stikeman.com

Zev Smith LSO#70756R
Tel: 416.869.5260
zsmith@stikeman.com

Lawyers for the Applicant

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

) THE
)
) DAY OF, 2023

B E T W E E N:

STAR AMERICA DPGI ACQUISITION COMPANY, INC.

Applicant

and

DEMAND POWER GROUP INC.

Respondent

APPLICATION UNDER section 101 of the Courts of Justice Act, R.S.O. 1990, c. C. 43.

**ORDER
(appointing Receiver)**

THIS MOTION made by the Plaintiff for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Demand Power Group Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Jahred Kallop affirmed November 4, 2023 and the exhibits thereto and on hearing the submissions of counsel for the Applicants, and on reading the Consent of Deloitte to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of

business, cease to carry on all or any part of the business, or cease to perform, terminate or disclaim contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies and accounts, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a Purchaser or Purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable and to conduct any investigations associated with the Debtor's business or the Property as the Receiver deems appropriate;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any Trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture, contractual, statutory or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations including opening any mail or other correspondence addressed to the Debtor.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel, direct and indirect, and shareholders or other equity holders, limited partners, general partners, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being

“Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

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

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer, in the cloud, in or on other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter,

erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by

the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the Supplier or service provider and the Receiver, or as may be ordered by this Court.

13. THIS COURT ORDERS that any Person who has provided any kind of letter of credit, guarantee, surety or bond (collectively, "**Financial Assurance**") to or for the benefit of the Debtor, on or before the date of this Order, shall be required to continue honoring such Financial Assurance in accordance with its terms, notwithstanding any default or cross-default arising as a result of this Order, the financial circumstances of the Debtor or otherwise.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

15. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such

amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective Purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The Purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*,

or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for liability arising from any gross negligence or wilful misconduct on its part as determined pursuant to a final Order of this Court that is not subject to appeal or other review and all rights to seek any such appeal or other review shall have expired, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER’S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, including, without limitations, deemed trusts, liens charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise from Star America DPGI Acquisition Company, Inc., such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed: \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures and including, without limitation, the powers outlined in paragraph 3(i) of this Order. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

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

SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Protocol will be effective on transmission.

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

GENERAL

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

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a Trustee in bankruptcy of the Debtor.

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

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

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

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

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$ ●

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the receiver (the "Receiver") of the assets, undertakings and properties of Demand Power Group Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the ● day of ●, 20● (the "Order") made in an action having Court file number ●-CL-●, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$●, being part of the total principal sum of \$● which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

DATED the _____, day of October, 2023.

●, solely in its capacity as Receiver of the Property,
and not in its personal capacity

Per:

Name: ●

Title: ●

24

STAR AMERICA DPGI ACQUISITION COMPANY, INC.
Applicant

-and-

DEMAND POWER GROUP INC.
Respondent

Court File No.

ONTA
SUPERIOR COU
(COMMERC

Proceeding Comm

ORDER

STIKEMAN ELLIOTT LLP

Barristers & Solicitors

5300 Commerce Court West, 1

Toronto, ON M5L 1B9

Guy P. Martel

Tel: 514.397.3163

gmartel@stikeman.com

Nathalie Nouvet

Tel: 514.397.3128

nnouvet@stikeman.com

Zev Smith (LSO# 70756R)

zsmith@stikeman.com

Tel: 416.869.5260

Lawyers for the Applicant

25

STAR AMERICA DPGI ACQUISITION COMPANY, INC.
Applicant

-and-

DEMAND POWER GROUP INC.
Respondent

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL DIVISION)

Proceeding Comm

NOTICE OF A

STIKEMAN ELLIOTT LLP

Barristers & Solicitors

5300 Commerce Court West, 1
Toronto, ON M5L 1B9

Guy P. Martel

Tel: 514.397.3163

gmartel@stikeman.com

Nathalie Nouvet

Tel: 514.397.3128

nnouvet@stikeman.com

Zev Smith (LSO# 70756R)

zsmith@stikeman.com

Tel: 416.869.5260

Lawyers for the Applicant

Court File No. CV-23-00709164-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

STAR AMERICA DPGI ACQUISITION COMPANY, INC.

Applicant

And

DEMAND POWER GROUP INC.

Respondent

APPLICATION UNDER section 101 of the Courts of Justice Act, R.S.O. 1990, c. C. 43.

AFFIDAVIT OF JAHRED KALLOP

I, Jahred Kallop, of the City of East Hampton, in the state of New York, AFFIRM:

1. I am the Executive Director of Tikehau Capital North America, LLC ("**Tikehau Star**") and a member of the Board of Directors of Demand Power Group Inc. (the "**Respondent**" or "**Demand Power**"). Tikehau Star, previously known as Star America Infrastructure Partners, is a subsidiary of Tikehau Capital, a global alternative asset management group, and has made substantial investments, through its subsidiary managed funds, including Star America DPGI Acquisition Company, Inc. ("**Star America**"), into the Respondent, such that it is now a major shareholder of Demand Power. As such, I have knowledge of the matters contained in this Affidavit. Where I make statements on the basis of information and belief, in each case, I state the source of my information and believe it to be true.

2. I make this Affidavit in support of Star America's application for an Order (the "**Appointment Order**") appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver and manager (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings,

27

and properties of the Respondent, Demand Power, acquired for, or used in relation to, a business carried on by Demand Power pursuant to section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended.

Overview

3. Demand Power is currently insolvent. It cannot meet its liabilities as they come due. The Board of Directors of Demand Power is currently comprised of only two nominee directors from Demand Power's largest institutional shareholders, Star America and PPL Technology Ventures, LLC ("PPL"). I am the director nominee for Star America and Vanessa Hartline is the nominee director for PPL. Ms. Hartline and I agree that Demand Power needs to be wound-down and liquidated in some capacity, however we cannot agree on a specific procedure to do so. I have repeatedly advocated for Demand Power to file for proposal proceedings under the *Bankruptcy and Insolvency Act* (Canada) and submitted a term sheet to Ms. Hartline which provides that Star America will fund the appointed trustee's costs (the "**Star Term Sheet**"); however, Ms. Hartline and PPL do not agree that this is the best path forward.

4. While Ms. Hartline and PPL have rejected my proposal, they have not provided me or Demand Power any other viable proposal to wind-down the company, nor have they agreed to provide the requisite funding to do so. They have simply rejected the Star Term Sheet, asking that we speak to the common shareholders and file bankruptcy proceedings, without proposing a trustee or funding sources. As a result, we are now at a deadlock. Demand Power continues to accrue liabilities in the ordinary course and is engaged in ongoing litigation, all of which prejudices the interests of Demand Power's current creditors and other stakeholders.

5. The status quo is no longer feasible and Demand Power requires the Court's intervention by appointing a receiver-manager, as an officer of the Court, to assess and undertake the

28

appropriate liquidation procedures. As discussed below, Star America has agreed to fund the appointment of Deloitte as the receiver-manager of Demand Power, which will ensure that Demand Power does not suffer any additional liabilities as a result of the requested appointment.

I. DEMAND POWER AND ITS SHAREHOLDERS

6. Demand Power is a corporation incorporated pursuant to the laws of Ontario and carries on business as a developer and operator of power supply systems (the “**Projects**”). Generally speaking, Demand Power enters into long-term contracts with its customers, which provide for the installation of certain power supply equipment on the customer’s premises and the supply of power over a fixed term. Although Demand Power charges its customers on a monthly basis, Demand Power does not have any ongoing projects in which it generates cash.

7. Demand Power has three classes of shares issued and outstanding, namely: Class A-1 Preferred Shares, Class A-2 Preferred Shares and Common Shares. The rights associated with each of these classes of shares are provided in the company’s Articles of Amendment dated February 28, 2020, Amended and Restated Investor Rights Agreement, and Amended and Restated Voting Agreement (the “**Voting Agreement**”) and Amended and Restated Right of First Refusal and Co-Sale Agreement, which are attached hereto as **Exhibits A, B, C, and D**, respectively. Generally speaking, the preferred shareholders are entitled to certain preferential rights with respect to significant corporate action, such as a liquidation, wind-up, dissolution, or consolidation, which requires approval by, among other things, a “Preferred Majority” comprised of a majority of the holders of Class A-1 and Class A-2 Preferred Shares.

8. Demand Power’s two largest shareholders are Star America and PPL. Star America is a corporation governed by the *Business Corporations Act* (British Columbia) and carries on business as an investment vehicle managed by Tikehau Star. Star America holds all of the issued

29

and outstanding Class A-2 Preferred Shares of Demand Power, which represents approximately 25.5% of the company's issued and outstanding share capital.

9. Star America is both a passive shareholder and, through one of its special purpose vehicles, Narrows Green LP ("**Narrows Green**"), is the economic beneficiary of certain of Demand Power's power supply projects pursuant to the terms of an Investment Agreement dated February 28, 2020 (the "**Investment Agreement**"). Pursuant to the Investment Agreement, Narrows Green agreed to provide the capital necessary for Demand Power to develop certain power supply projects (the "**Projects**") and acquire all of Demand Power's ownership interests in those Projects in exchange for, among other things, an acquisition fee payable to Demand Power. A copy of the Investment Agreement is attached as **Exhibit "E"**.

10. In conjunction with the Investment Agreement, Narrows Green and Demand Power also entered into a Construction Management, Operations and Maintenance Agreement dated February 28, 2020 (the "**COMA**"). The COMA provides that if Narrows Green agrees to acquire a certain Project from Demand Power in accordance with the Investment Agreement, Demand Power will construct and install the power supply. For example, Section 2.1 of the COMA obligates Demand Power to "*oversee the design, procurement, construction and installation*" of the power supply systems; to use commercially reasonable efforts to achieve the deadline for the commercial operation date contemplated in Demand Power's customer contracts; and to "*oversee the work by an EPC Contractor*". An "EPC Contractor" is defined in the COMA as an engineering, procurement and/or construction contractor for the purpose of designing, installing and constructing the supply system. A copy of the COMA is attached hereto as **Exhibit "F"**.

11. In addition to Star America, PPL is Demand Power's other significant shareholder. PPL carries on business as an investor in power supply projects. PPL owns all of the issued and

30

outstanding Class A-1 Preferred Shares, which represents approximately 19% of the company's issued and outstanding share capital.

12. PPL uses a special purpose vehicle, Envista Energy LP (“**EELP**”), to acquire the ownership rights to certain of Demand Power's Projects. EELP and Demand Power entered into an Investment Agreement dated February 28, 2020 pursuant to which EELP, like Narrows Green, agreed to provide the capital necessary for Demand Power to develop certain Projects and acquire all of Demand Power's ownership interests in those Projects in exchange for, among other things, an acquisition fee payable to Demand Power.

13. At the same time that EELP and Narrows Green entered into their respective Investment Agreements with Demand Power, Demand Power, Star America, and PPL entered into the Voting Agreement, which entitles Star America and PPL to each nominate one director to the board of directors of Demand Power. In particular, the Voting Agreement and Articles of Amendment of Demand Power provide that Demand Power's Board will consist of five directors, comprised of: one Star America nominee, one PPL nominee, two nominees of the 12 common shareholders (voting as a separate class), and the Chief Executive Officer of Demand Power.

14. Despite this, there are currently only two directors of Demand Power – myself, as the nominee of Star America, and Ms. Hartline, as the nominee of PPL. Since March 2023, Demand Power has not had a Chief Executive Officer and, since June 2023, the common shareholders have elected not to appoint their nominee directors. While I do not wish to speculate on their reasons for not doing so, I believe it is because Demand Power is suffering from significant financial difficulties and did not have the funds available to renew its directors and officers insurance.

II. THE NARROWS GREEN PROJECTS

15. Prior to Demand Power experiencing its financial difficulties, Demand Power submitted investment proposals in accordance with the Investment Agreement to Narrows Green in respect of two Projects, namely (i) the “Sault Area Hospital” project (the “**SAH Project**”) and (ii) the Jebco Manufacturing facility project (the “**Jebco Project**”).

A. The SAH Project

16. The SAH Project was to design, build and provide a backup power supply system to the Sault Area Hospital in Sault Ste. Marie, Ontario for a ten-year term pursuant to a power supply agreement entered into between Demand Power and the Sault Area Hospital (the “**SAH PSA**”). Given the intricacies involved in the specific power supply system requested by the Sault Area Hospital (namely, a BESS/UPS system), Demand Power retained Deltro Electric Ltd. (“**Deltro**”) to design and build the system pursuant to the terms of a CCDC14 2013 Design-Build Stipulated Price Contract dated January 28, 2021 (the “**Deltro SAH Contract**”). The purchase price payable by Demand Power to Deltro was \$4,300,000 plus HST under the Deltro SAH Contract. A copy of the Deltro SAH Contract is attached hereto as **Exhibit “G”**.

17. The investment proposal submitted by Demand Power to Narrows Green in connection with the SAH Project included a copy of the SAH PSA and summary of the Deltro SAH Contract. It did not, however, include a copy of Deltro’s most recent financial statements. Demand Power’s Chief Executive Officer at the time, Rajan Chudgar, and Chief Financial Officer, Doug Brown, instead represented to Narrows Green that Deltro was qualified to perform and in an appropriate financial position to complete the design and build of the BESS/UPS system.

32

18. On February 17, 2021, Narrows Green elected to purchase the SAH Project, in part, in reliance on the representations contained in the applicable investment proposal and those of Messrs. Chudgar and Brown regarding Deltro's ability to perform and financial position, as well as the express terms of the SAH PSA, among other things. Upon delivering its acceptance notice, Demand Power executed a bill of sale and assignment agreement (the "**SAH Assignment Agreement**"), pursuant to which Demand Power backstopped this transfer with the representation and warranty at section 2 of the SAH Assignment Agreement, which states that "*there are no Non-Assignable Rights in respect to the Accepted Project.*" A copy of the SAH Assignment Agreement is attached hereto as **Exhibit "H"**.

19. It was ultimately discovered that the Deltro SAH Contract was not assignable or transferable to Narrows Green without the consent of Deltro (which consent was not requested or obtained) and therefore Demand Power was not able to transfer all of its right, title and interest in and to the SAH Project to Narrows Green.

B. The Jebco Accepted Project

20. At the same time that the SAH Project was presented to Narrows Green, Demand Power proposed that Narrows Green acquire the Jebco Project.

21. The Jebco Project was to design, build and provide a backup power supply system to a manufacturing facility located in Colbourne, Ontario, for a period of ten years pursuant to the terms of a power supply agreement (the "**Jebco PSA**"). Similar to the SAH Project, Demand Power outsourced the design and build of the power supply systems (more particularly, a BESS/UPS system) to Deltro pursuant to the terms of a CCDC14 2013 Design-Build Stipulated Price Contract dated January 28, 2021 (the "**Deltro Jebco Contract**"). The purchase price

33

payable by Demand Power to Deltro was \$1,700,000 plus HST under the Deltro Jebco Contract, as appears from a copy of the Deltro Jebco Contract attached hereto as **Exhibit "I"**.

22. The investment proposal submitted to Narrows Green in connection with the Jebco Project included a copy of the Jebco PSA and summary of the Deltro Jebco Contract. It did not, however, include a copy of Deltro's most recent financial statements. As with the SAH Project, Messrs. Chudgar and Brown represented to Narrows Green that Deltro was qualified to perform and in an appropriate financial position to complete the design and build of the BESS/UPS system.

23. On February 17, 2021, Narrows Green elected to purchase the Jebco Project, in part, in reliance on the representations contained in the applicable investment proposal and those of Messrs. Chudgar and Brown regarding Deltro's abilities and financial position, as well as the express terms of the Jebco PSA, among other things. Upon delivering its acceptance notice, Demand Power executed a bill of sale and assignment agreement (the "**Jebco Assignment Agreement**"), which provides identical terms as the SAH Assignment Agreement, including a transfer of the Jebco Project to Narrows Green and a representation and warranty that the Jebco Project was not the subject of any non-assignable rights.

24. As it turns out, the Deltro Jebco Contract was not assignable or transferable to Narrows Green without the consent of Deltro (which consent was not requested or obtained) and therefore Demand Power was not able to transfer all of its right, title and interest in and to the Jebco Project to Narrows Green.

C. Demand Power Breached the COMA

25. Shortly after Narrows Green acquired its beneficial interest in the SAH Project and Jebco Project, Demand Power was required to oversee the construction of the power supply systems

34

contemplated by the SAH PSA and Jebco PSA in accordance with the COMA (Exhibit “F”). However, throughout 2022, Demand Power neglected each of the SAH and Jebco Projects and failed to do so. Leaving aside that the Jebco Project had virtually no construction completed for more than a full calendar year, Demand Power failed to adequately oversee Deltro’s work in connection with the design and build of the BESS/UPS systems, which was problematic since Deltro neglected to advance or do any meaningful work in contravention of its agreements with Demand Power, which ultimately resulted in significant damages for Demand Power. Indeed, by the end of 2021, Demand Power had not met the targeted commercial operation dates for either the SAH Project or Jebco Project.

26. Narrows Green was then required to pay liquidated damages to Jebco at the rate of \$5,000 per week for every week the project was not completed after September 12, 2021, pursuant to the terms of the Jebco PSA (the “**Jebco Liquidated Damages**”). Once it became clear that Demand Power would not cure its default under the COMA, and that Deltro was incapable or unwilling to abide by its contractual obligations, by completing the Jebco Project in a timely and commercially reasonable manner, Narrows terminated the Jebco PSA on June 8, 2023. Narrows Green also terminated the SAH PSA on May 17, 2023 for the same reasons. These terminations resulted in Narrows paying (i) \$450,000 to Jebco due to certain Jebco Liquidated Damages and remediation costs, and (ii) approximately \$40,000 in remediation costs in connection with the SAH Project.

D. The Deltro Litigation and Northbridge Litigation

27. As a result of the foregoing issues, several disputes between Demand Power and Deltro arose throughout the course of the SAH Project and Jebco Project, in large part due to Deltro’s

35

failure to abide by its obligations, that led to significant litigation between the parties and further delays in the performance of Demand Power's obligations under the COMA.

28. On February 11, 2022, Deltro caused a construction lien in the amount of \$6,607,022.87 to be registered in the Land Registry Office No. 1 (Instrument No. AL243217) with respect to the SAH Project (the "**SAH Lien**"), and a construction lien in the amount of \$2,581,442.79 to be registered in the Land Registry Office No. 39 (Instrument No. ND230042) with respect to the Jebco Project (the "**Jebco Lien**", and together with the SAH lien, the "**Deltro Liens**"). Deltro filed these liens because it alleged that Demand Power had repeatedly failed to pay for Deltro's supply of labour, materials and equipment to the SAH and Jebco Projects. Copies of the Deltro Liens are attached hereto as **Exhibit "J"**.

29. Within days of the Deltro Liens being filed, Demand Power approached Narrows to request that Narrows obtain letters of credit and post them as security under the *Construction Act* to vacate the liens. In making this request, Messrs. Chudgar and Carillo:

- (i) represented that Demand Power did not have the means or creditworthiness to post the required security;
- (ii) misrepresented that the SAH and Jebco Projects continued to be economically viable and that there were no scheduling concerns with respect to the delivery of the projects, notwithstanding that Demand Power knew that neither project would meet their commercial operation date and were experiencing significant delays and costs overruns;
- (iii) misrepresented that Demand Power would be capable of satisfying a judgment rendered against it in the future;

36

- (iv) misrepresented that posting security and participating in the construction lien litigation was in the best interest and for the benefit of Narrows; and
- (v) misrepresented that Narrows was obligated to obtain “the proper lien bond” to vacate the Deltro Liens.

30. Based on these misrepresentations, Narrows agreed to post security and its parent, Star America, obtained letters of credit to discharge the Deltro Liens. On March 16, 2022, Star America deposited into Court two Letters of Credit issued by CIBC, namely: (i) Letter of Credit No. SBTGT140398 dated March 23, 2022 for \$6,857,022.87 for the SAH Lien and (ii) Letter of Credit No. SBTGT140101 dated March 16, 2022 in the amount of \$2,831,442.79 for the Jebco Lien (collectively, the “**Letters of Credit**”). Copies of these Letters of Credit are attached as **Exhibit “K”**.

31. Messrs. Chudgar and Carillo then proceeded to retain the law firm Blaney McMurtry LLP (“**Blaneys**”) as Demand Power’s counsel to represent the company in vacating the liens and in any subsequent litigation involving Deltro, which liens were in fact vacated.

32. Demand Power also instructed Blaneys to commence a claim against Deltro claiming damages of approximately \$8.3 million for negligence and breaches of the Deltro SAH Contract and Deltro Jebco Contract. In response, Deltro commenced two actions against Demand Power claiming damages of approximately \$9.65 million for breaches of the Deltro SAH Contract and Deltro Jebco Contract and its unpaid invoices (collectively, the “**Deltro Litigation**”).

33. In addition, Mr. Carillo retained and instructed Pallett Valo LLP (“**Pallett Valo**”) as counsel for Demand Power to commence a claim against Northbridge General Insurance Company (“**Northbridge**”) seeking payment of approximately \$3.5 million in respect of certain construction

37

bonds issued by Northbridge in connection with the SAH and Jebco Projects (the “**Northbridge Litigation**”).

34. The Deltro Litigation and Northbridge Litigation have not materially advanced since they were first commenced. To the best of my knowledge, discovery has not been completed (or even started) in either action and the litigation stalled shortly after pleadings closed, yet Demand Power has incurred legal fees of more than \$400,000 in connection with litigation.

35. It bears mentioning that any potential liability associated with the Deltro Litigation likely rests with Star America, given that the litigation relates to issues pertaining to the SAH and Jebco Projects. Moreover, given Demand Power’s insolvency, if Deltro is successful in obtaining any award of damages against Demand Power, its only realistic avenue for recovery is against the Letters of Credit. As such, Star America has a significant interest in Demand Power continuing to prosecute and defend the Deltro Litigation and, as such, is willing to provide the necessary funding for Deloitte, if appointed as receiver manager, and its counsel to (i) take such steps on behalf of Demand Power and (ii) to bring the Deltro Litigation into the receivership proceedings.

III. ASSETS & LIABILITIES**A. Assets**

36. As of October 30, 2023, Demand Power’s assets are as follows:

Nature	Approximate Book Value (\$CAD)
Cash	\$57,963
Accounts Receivable	\$61,147
Other (funds in a US bank account)	\$3,000
Total:	\$122,110

B. Indebtedness

37. As at October 30, 2023, the total indebtedness of Demand Power amounts to approximately \$188,605.77, all of which is owed to unsecured creditors; Demand Power does not have any secured creditors.

38. As at October 30, 2023, an amount of approximately \$183,005.77 was owing by Demand Power to trade creditors and an amount of approximately \$5,600 was owing by Demand Power for other payables.

39. As at October 2023, the gross accrued normal pay obligations totaled approximately \$27,000. Normal pay obligations are paid every two (2) weeks to Demand Power's four employees. It is worth noting that all other employees, including members of its executive team (the Chief Executive Officer, Rajan Chudgar, Chief Financial Officer, Doug Brown, and Chief Executive Vice President of Sales and Marketing, Daniel McCormick) resigned or were terminated over the past several months.

IV. FINANCIAL DIFFICULTIES

40. There is no question that Demand Power is insolvent and has been experiencing important financial difficulties for several months.

41. For the fiscal year ended December 31, 2022, Demand Power recorded a total comprehensive net loss of approximately \$4,195,882 million, as appears from the draft non-audited financial statements of Demand Power for the year ended December 31, 2022, attached hereto as **Exhibit "L"**.

42. As outlined above, these losses are the result, at least in part, of a number of operational problems that have arisen through the development of its Projects, which has resulted in

39

prolonged litigation that is described in more detail below. These issues have been made significantly worse by internal mismanagement at Demand Power, with certain employees making misrepresentations to the Applicant and others, as well as making decisions without proper approval, the result of which have led to additional financial woes for Demand Power and its stakeholders.

43. Compounding these issues is that over the past several months Demand Power has continued to accumulate significant losses and, despite its financial situation, continues to incur additional liabilities. This is particularly problematic because at least one of Demand Power's officers, Robert Carillo, continues to direct the company to incur additional legal fees, notwithstanding that Demand Power's board specifically directed management to preserve cash on hand and to obtain pre-approval for any significant expenses, which Mr. Carillo has refused to do. A copy of the board of directors' meeting minutes confirming these instructions are attached hereto as **Exhibit "M"**.

44. Most recently, Mr. Carillo engaged external legal counsel on behalf of Demand Power and paid a \$5,000 retainer (or 3.5% of the company's remaining cash) to file a claim against Narrows and its general partner, seeking reimbursement of certain legal fees in connection with the Deltro Litigation. Mr. Carillo did not have any authority to do so and is now the subject of a counterclaim by Narrows for his conduct. A copy of the Statement of Claim and Statement of Defence and Counterclaim in that action is attached hereto as **Exhibits "N" and "O"**, respectively.

45. Demand Power's recent liabilities, including excessive legal fees in the context of ongoing litigation, are being incurred without the approval of the Board of Demand Power, and without any reasonable possibility of payment, in a context where Demand Power is not generating *any* substantial revenues. Despite this, Ms. Hartline and I cannot agree on the termination of any

40

employees, including Mr. Carillo, which has impeded the company's ability to take self-help remedies to preserve its cash flow.

46. Over the past several months, Demand Power has received certain offers to acquire parts of its assets. These offers have included a series of undesirable or unreasonable terms, including among things, limitation of liability clauses in favour of the proposed purchaser, that Demand Power cannot provide in its current position without exposing it and its directors to significant liability. However, even if Star America was interested in the transaction, PPL has refused to engage in any meaningful dialogue relating to these offers.

APPOINTMENT OF A RECEIVER IS JUST AND CONVENIENT

47. The appointment of the Receiver is not only just and convenient, but the only realistic way to ensure that stakeholders' interests are protected as Demand Power has not been able to and cannot carry on business effectively. The board is deadlocked on all major decisions and at least one member of Demand Power's management continues to spend recklessly.

48. First and foremost, Ms. Hartline and I agree that Demand Power is insolvent and that the company *must* undertake immediate proceedings to remedy the dire situation facing Demand Power. However, Ms. Hartline and I cannot agree on the process we should undertake and, absent Court intervention, we remain deadlocked. This was succinctly summarized by Ms. Hartline in the following email dated October 5, 2023:

From: "Hartline, Vanessa D" <VDHartline@pplweb.com>
Date: Oct 5, 2023 6:02 PM
Subject: RE: Demand Power Group Inc. - OVERDUE INVOICES
To: Jahred KALLOP <jkallop@tikehaucapital.com>, Weir <rweir@demandpower.ca>, Carillo <rcarillo@demandpower.ca>
Cc: "DiBona, Cheryl L." <CDiBona@pplweb.com>

Caution: External email. In case of doubt, contact IT Support.

Jahred,

No one has disputed Demand's ability to pay its liabilities. As stated in my email below, we are deadlocked on the correct bankruptcy procedure for Demand and there is no way to break the deadlock.

41

A copy of the full email dated October 5, 2023 is attached hereto as **Exhibit "P"**.

49. In a series of correspondence throughout September and October, I proposed that Demand Power file a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* (Canada), which would result in a sale process, overseen by a trustee. Ms. Hartline has thus far categorically refused to entertain any such proposals, indicating instead that Demand Power should institute bankruptcy proceedings. Efforts however to engage a bankruptcy trustee and initiate this process have not progressed in any meaningful manner because PPL has neither identified an acceptable trustee nor offered to provide any funds to retain the trustee. Instead, representatives of PPL have demanded that Demand Power hold a shareholders' meeting for all of the company's shareholders to determine "a path forward", without providing any explanation as to what that path forward might look like in the absence of an acceptable trustee or funds to pay that trustee. A copy of one of PPL's emails in this regard is attached as **Exhibit Q**.

50. On October 11, 2023, Ms. Hartline then sent me an email asking for a proposed interim financing term sheet, identifying the terms under which Star America was willing to provide the financial support needed to retain a trustee for the contemplated a proposal process under the *Bankruptcy and Insolvency Act*. I sent the draft term sheet on October 18, 2023, and despite multiple follow-ups, have yet to receive any material comments or suggestions. Instead, Ms. Hartline or other representatives of PPL have simply stated that they do not agree to the appointment of Deloitte and would like to commence immediate bankruptcy proceedings, without proposing any trustee or potential source of financing. A copy of the emails and the attached term sheets are attached hereto as **Exhibit "R"** and **"S"**.

42

51. Demand Power is at a stand-still—it continues to incur significant liabilities but no action can be taken. This Court's appointment of a Receiver is the only way to ensure that Demand Power's assets are preserved for the benefit of its stakeholders, including PPL.

52. Aside from Demand Power's existing significant liabilities, immediate action must be taken as the current management is operating Demand Power to the detriment of its stakeholders' interest in Demand Power. In particular, Mr. Carillo does not have the trust of the Board; he has unilaterally frustrated the Board's attempts to ensure that Demand Power's insolvency is managed appropriately and has continued to approve the incurring of substantial legal fees, without means to pay such fees.

53. Given Demand Power's ongoing accrual of indebtedness (which is currently at approx \$188,605), the parties inability to negotiate the terms of an insolvency process, and the prejudicial conduct by management occurring in the interim, the immediate appointment of a Receiver is not only just and convenient, but the only way to ensure that Demand Power's assets are preserved and stakeholders' interests are protected.

54. I am not aware of any potential prejudice to a stakeholder. This process would protect unsecured creditors, PPL, and common shareholders who will otherwise have their interest in Demand Power diminished as the company's limited assets are further depleted by Demand Power's conduct. Moreover, Demand Power will not incur any costs associated with the appointment of the Deloitte; Star America has agreed to fund Deloitte's appointment, largely due to its significant interest in the Deltro Litigation, and to ensure that a meaningful wind-down and liquidation, if deemed appropriate by the Receiver, can take place without additional liabilities being incurred unnecessarily to the detriment of all of Demand Power's stakeholders.

43

55. If this Honourable Court sees fit to make such an appointment, Deloitte has consented to act as Court-appointed receiver. Deloitte is a licensed insolvency trustee and has significant experience in mandates of this nature. Attached as **Exhibit "T"** is a copy of Deloitte's Consent to Act as receiver.

56. Deloitte has already undertaken a comprehensive review of this matter to give advice to Star America. As a result, Deloitte has become familiar with the Demand Power's business, financial position, and assets during this period, and is best-suited to assume this mandate.

AFFIRMED remotely by Jahred Kallop stated as being located in the City of East Hampton, in the State of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



DocuSigned by:

Ben Smith

4F6A7F8BFEE6C441...

Commissioner for Taking Affidavits
(or as may be)

DocuSigned by:

Jahred Kallop

35448235A3A34C9...

JAHRED KALLOP

This is Exhibit "A" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Zev Smith

4E6A7EBBEE6C441

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

46

The Articles of the Corporation be amended:

- (a) to increase the authorized capital of the Corporation by creating an unlimited number of shares of a class designated as “Class A Preferred Shares” and an unlimited number of shares of a class designated as “Special Shares”;
- (b) to declare that, after giving effect to the foregoing, the authorized capital of the Corporation shall consist of:
 - (i) an unlimited number of shares of a class designated as “Common Shares”;
 - (ii) an unlimited number of shares of a class designated as “Class A Preferred Shares”;
 - and
 - (iii) an unlimited number of shares of a class designated as “Special Shares”
- (c) to delete the rights, privileges, restrictions and conditions attaching to the Common Shares as set out in paragraph no. 7 of the Articles of Incorporation (“Articles”);
- (d) to confirm that the transfer/ownership restrictions set out in paragraph no. 8 of the Articles apply to all issued and/or authorized shares in the capital of the Corporation;
- (e) to provide that the rights, privileges, restrictions and conditions attaching to the Common Shares, Class A Preferred Shares and the Special Shares shall be as follows:

A. COMMON SHARES

The rights, privileges, restrictions and conditions attaching to the Common Shares of the Corporation shall be as follows:

1. Voting Rights.

Subject to the prior rights attaching to any other class of shares of the Corporation, the holders of Common Shares shall be entitled to one (1) vote for each share held at all meetings of the shareholders of the Corporation, other than meetings of the holders of a particular class of shares.

The holders of Common Shares shall not be entitled to vote separately as a class or to dissent upon a proposal to amend the Articles or any other action which may affect the rights, privileges, restrictions and conditions attaching to the Common Shares in the case of an amendment referred to in clause (a), (b) or (e) of section 170 of the *Business Corporations Act* (Ontario), as amended, or in any successor legislation.

2. Dividends.

Subject to the prior rights attaching to the Class A Preferred Shares, the holders of the Common Shares shall be entitled to receive dividends and the Corporation shall pay thereon, if, as and when declared by the Board of Directors of the Corporation out of the monies of the Corporation properly applicable to the payment of dividends, in

47

such amounts and payable in such manner as the directors of the Corporation may from time to time determine.

Subject to the prior rights attaching to the Class A Preferred Shares, the Board of Directors of the Corporation may declare dividends on the Common Shares to the exclusion of any other class of shares.

3. Rights on Liquidation Etc.

In the event of the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or in the event of any distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, and subject to the prior rights attaching to any other class of shares of the Corporation, as more specifically identified in Article D hereof, the holders of the Common Shares shall be entitled to receive rateably the remaining property of the Corporation.

B. CLASS A PREFERRED SHARES

The rights, privileges, restrictions and conditions attaching to the Class A Preferred Shares of the Corporation are as follows.

1. Dividends.

From and after the date of the issuance of any Class A Preferred Shares, dividends at the rate per year of eight percent (8%) per share shall accrue on such Class A Preferred Shares (subject to appropriate adjustment in the event of any share dividend, share split, combination or other similar recapitalization with respect to the Class A Preferred Shares) (the “**Accruing Dividends**”). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided, however, that except as set forth in the following sentence of this Section 1 or in Subsection 2.1, the Accruing Dividends shall be payable only when, as, and if declared by the Corporation’s board of directors and the Corporation is under no obligation to pay the Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of shares of the Corporation (other than dividends on Common Shares payable in Common Shares) unless (in addition to the obtaining of any consents required elsewhere in the Articles) the holders of the Class A Preferred Shares then outstanding first receive, or simultaneously receive, a dividend on each outstanding Class A Preferred Share in an amount at least equal to the greater of (i) the amount of the aggregate Accruing Dividends then accrued on a Class A Preferred Share and not previously paid and (ii) (A) in the case of a dividend on Common Shares or any class or series that is convertible into Common Shares, that dividend per Class A Preferred Share as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Shares and (2) the number of Common Shares issuable upon conversion of a Class A Preferred Share, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Shares, at a rate per Class A Preferred Share determined by (1) dividing the amount of the dividend payable on each share of such class or series by the original issuance price of such class or series (subject to appropriate adjustment in the event of any share dividend, share split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Class

48

A Original Issue Price (as defined below); provided that if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of the Corporation, the dividend payable to the holders of Class A Preferred Shares pursuant to this Section 1 shall be calculated based upon the dividend on the class or series that would result in the highest Class A Preferred Shares dividend. The “**Class A Original Issue Price**” means USD\$0.222798747 per share, subject to appropriate adjustment in the event of any share dividend, share split, combination or other similar recapitalization with respect to the Class A Preferred Shares.

2. Liquidation, Dissolution or Winding Up; Deemed Liquidation Events.

2.1 Preferential Payments to Holders of Class A Preferred Shares.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of Class A Preferred Shares then outstanding are entitled to be paid out of the assets of the Corporation available for distribution to its shareholders, and in the event of a Deemed Liquidation Event (as defined below), the holders of Class A Preferred Shares then outstanding are entitled to be paid out of the consideration payable to shareholders in such Deemed Liquidation Event or out of the Available Proceeds (as defined below), as applicable, before any payment is made to the holders of Common Shares or Special Shares by reason of their ownership thereof, an amount per share equal to the greater of (i) two times (2x) the Class A Original Issue Price, plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all Class A Preferred Shares been converted into Common Shares under Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “**Class A Liquidation Amount**”). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its shareholders are insufficient to pay the holders of Class A Preferred Shares the full amount to which they are entitled under this Subsection 2.1, the holders of Class A Preferred Shares shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Payments to Holders of Common Shares.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment in full of all Class A Liquidation Amounts required to be paid to the holders of Class A Preferred Shares, the remaining assets of the Corporation available for distribution to its shareholders or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of Class A Preferred Shares pursuant to Section 2.1 or the remaining Available Proceeds, as the case may be, shall be distributed among the holders of Common

Shares and Special Shares, pro rata based on the number of shares held by each such holder.

2.3 Deemed Liquidation Events.

2.3.1 Definition.

Each of the following events is a “**Deemed Liquidation Event**” unless the holders of at least a majority of the outstanding Class A Preferred Shares (the “**Requisite Holders**”) elect otherwise by written notice sent to the Corporation at least 30 days prior to the effective date of any such event:

(a) an amalgamation or consolidation or other arrangement or reorganization in which

(i) the Corporation is a constituent party or

(ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares pursuant to such amalgamation or consolidation or other arrangement or reorganization,

except any such amalgamation or consolidation or other arrangement or reorganization involving the Corporation or a subsidiary in which the shares of the Corporation outstanding immediately prior to such amalgamation or consolidation or other reorganization continue to represent, or are converted into or exchanged for shares that represent, immediately following such amalgamation or consolidation or other arrangement or reorganization, at least a majority, by voting power, of the shares of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such amalgamation or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is transferred to a third-party, except for bona fide equity financings in which the Corporation is the surviving entity; or

(c) (1) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or (2) the sale or disposition (whether by amalgamation, consolidation, arrangement or other reorganization or otherwise and whether in a single transaction or a series of

related transactions) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

2.3.2 Effecting a Deemed Liquidation Event.

- (a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(i) unless the agreement or plan of arrangement, amalgamation or consolidation for such transaction (the “**Amalgamation Agreement**”) provides that the consideration payable to the shareholders of the Corporation in such Deemed Liquidation Event shall be paid to the holders of shares of the Corporation in accordance with Subsections 2.1 and 2.2.
- (b) In the event of a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii), 2.3.1(b) or 2.3.1(c), if the Corporation does not effect a dissolution of the Corporation within 30 days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Class A Preferred Shares no later than the 30th day after such Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such Class A Preferred Shares, and (ii) if the holders of at least a majority of the then outstanding Class A Preferred Shares so request in a written instrument delivered to the Corporation not later than 120 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its shareholders, all to the extent permitted by law (the “**Available Proceeds**”), on the 150th day after such Deemed Liquidation Event, to redeem all outstanding Class A Preferred Shares at a price per share equal to the Class A Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding Class A Preferred Shares, the Corporation shall redeem a pro rata portion of each holder’s Class A Preferred Shares to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available

Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares as soon as it may lawfully do so. Prior to the distribution or redemption provided for in this Subsection 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event.

2.3.3 Amount Deemed Paid or Distributed.

The amount deemed paid or distributed to the shareholders of the Corporation upon any such amalgamation, consolidation, arrangement, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities to be paid or distributed to such holders pursuant to such Deemed Liquidation Event. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation, including the approval of the Class A Directors (as defined herein).

2.3.4 Allocation of Escrow and Contingent Consideration.

In the event of a Deemed Liquidation Event pursuant to Subsection 2.3.1(a)(i), if any portion of the consideration payable to the shareholders of the Corporation is payable only upon satisfaction of contingencies (the “**Additional Consideration**”), the Amalgamation Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the “**Initial Consideration**”) shall be allocated among the shareholders of the Corporation in accordance with Subsections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the shareholders of the Corporation upon satisfaction of such contingencies shall be allocated among the shareholders of the Corporation in accordance with Subsections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 2.3.4, consideration placed into escrow or retained as a holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

3. Voting.

3.1 General.

On any matter presented to the shareholders of the Corporation for their action or consideration at any meeting of shareholders of the Corporation (or by written

consent of shareholders in lieu of meeting), each holder of outstanding Class A Preferred Shares is entitled to cast the number of votes equal to the number of whole Common Shares into which the Class A Preferred Shares held by such holder are convertible as of the record date for determining shareholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Articles, holders of Class A Preferred Shares shall vote together with the holders of Common Shares as a single class and on an as-converted to Common Share basis.

3.2 Election of Directors.

The holders of record of the Class A Preferred Shares, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (the “**Class A Directors**”) and the holders of record of the Common Shares, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation. The Chief Executive Officer shall be a fifth director. Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the class or series of share capital entitled to elect such director or directors, given either at a special meeting of such shareholders duly called for that purpose or pursuant to a written consent of shareholders. If the holders of Class A Preferred Shares or Common Shares, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Class A Preferred Shares or Common Shares, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by shareholders of the Corporation other than by the shareholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the Common Shares and of any other class or series of voting shares (including the Class A Preferred Shares), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2. The rights of the holders of the Class A Preferred Shares and the rights of the holders of the Common Shares under the first sentence of this Subsection 3.2 shall terminate on the first date following the Original Issue Date (as defined below) on which there are issued and outstanding less than forty-five percent (45%) of the Class A Preferred Shares issued on the Original Issue Date (subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization with respect to the Class A Preferred Shares).

3.3 [RESERVED]

3.4 Class A Preferred Share Protective Provisions.

At any time when Class A Preferred Shares are outstanding, the Corporation shall not, either directly or indirectly by amendment, amalgamation, arrangement, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Articles) the written consent or affirmative vote of the Requisite Holders, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote is null and of no force or effect.

- 3.4.1 liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any amalgamation, arrangement or consolidation or any other Deemed Liquidation Event, or consent to or approve any of the foregoing;
- 3.4.2 amend, alter or repeal any provision of the Articles or the By-laws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Class A Preferred Shares;
- 3.4.3 create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of shares unless the same ranks junior to the Class A Preferred Shares with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of Class A Preferred Shares or increase the authorized number of shares of any additional class or series of shares of the Corporation unless the same ranks junior to the Class A Preferred Shares with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption;
- 3.4.4 (i) reclassify, alter or amend any existing security of the Corporation that is of equal rank with the Class A Preferred Shares in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Class A Preferred Shares in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Class A Preferred Shares in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if the reclassification, alteration or amendment would render such other security senior to or of equal rank with the Class A Preferred Shares in respect of any such right, preference or privilege;
- 3.4.5 purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of the Corporation other than (i) redemptions of or dividends or distributions on the Class A Preferred Shares as expressly authorized in the Articles, (ii)

dividends or other distributions payable on the Common Shares solely in the form of additional Common Shares and (iii) repurchases of shares from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at no greater than the original purchase price;

- 3.4.6 increase or decrease the authorized number of shares of any class of shares in the capital of the Corporation; or
- 3.4.7 increase or decrease the authorized number of directors constituting the Board of Directors.

4. Optional Conversion.

The holders of Class A Preferred Shares have conversion rights as follows (the “**Conversion Rights**”):

4.1 Right to Convert.

4.1.1 Conversion Ratio.

Each Class A Preferred Share shall be convertible, at the option of its holder, at any time and from time to time, and without the payment of additional consideration by its holder, into such number of fully paid and non-assessable Common Shares as is determined by dividing the Class A Original Issue Price by the Class A Conversion Price (as defined below) in effect at the time of conversion. The “**Class A Conversion Price**” shall initially be equal to the Class A Original Issue Price. Such initial Class A Conversion Price, and the rate at which Class A Preferred Shares may be converted into Common Shares, are subject to adjustment as provided below.

4.1.2 Termination of Conversion Rights.

In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Class A Preferred Shares.

4.2 Fractional Shares.

No fractional Common Shares shall be issued upon conversion of Class A Preferred Shares. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a Common Share as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional

shares would be issuable upon such conversion shall be determined on the basis of the total number of Class A Preferred Shares the holder is at the time converting into Common Shares and the aggregate number of Common Shares issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion.

In order for a holder of Class A Preferred Shares to voluntarily convert Class A Preferred Shares into Common Shares, such holder shall (a) provide written notice to the Corporation's transfer agent at the office of the transfer agent for the Class A Preferred Shares (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that the holder elects to convert all or any number of the holder's Class A Preferred Shares and, if applicable, any event on which the conversion is contingent and (b), if the holder's shares are certificated, surrender the certificate or certificates for the Class A Preferred Shares (or, if the registered holder alleges that the certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of the certificate), at the office of the transfer agent for the Class A Preferred Shares (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state the holder's name or the names of the nominees in which the holder wishes the Common Shares to be issued. If required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly signed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the "**Conversion Time**"), and the Common Shares issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of that date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to the holder of Class A Preferred Shares, or to his, her or its nominees, a certificate or certificates for the number of full Common Shares issuable upon such conversion in accordance with these provisions and a certificate for the number (if any) of Class A Preferred Shares represented by the surrendered certificate that were not converted into Common Shares, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a Common Share otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the Class A Preferred Shares converted.

4.3.2 Effect of Conversion.

All Class A Preferred Shares duly surrendered for conversion will no longer be deemed to be outstanding and all rights with respect to such shares will immediately cease and terminate at the Conversion Time, except only the right of their holders to receive Common Shares in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 4.2 and to receive payment of any dividends declared but unpaid thereon.

4.3.3 No Further Adjustment.

Upon any such conversion, no adjustment to the Class A Conversion Price shall be made for any declared but unpaid dividends on the Class A Preferred Shares surrendered for conversion or on the Common Shares delivered upon conversion.

4.4 Adjustments to Class A Conversion Price for Diluting Issues.

4.4.1 Special Definitions.

The following definitions shall apply:

- (a) “**Additional Shares**” means all Common Shares issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Original Issue Date, other than (1) the following Common Shares and (2) Common Shares deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, “**Exempted Securities**”):
 - (i) the Class A Preferred Shares issued pursuant to the Class A Preferred Share Subscription Agreement and the issuance of shares of Common Shares, Options or Convertible Securities issued as a dividend or distribution on Class A Preferred Shares;
 - (ii) Common Shares, Options or Convertible Securities issued by reason of a dividend, share split, split-up or other distribution on Common Shares that is covered by Subsection 4.5, 4.6, 4.7 or 4.8;
 - (iii) Common Shares or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation, including the approval of Class A Directors;

- (iv) Common Shares or Convertible Securities actually issued upon the exercise of Options or Common Shares actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;
 - (v) Common Shares, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real or immovable property leasing transaction approved by the Board of Directors of the Corporation, including the approval of Class A Directors;
 - (vi) Common Shares, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors of the Corporation;
 - (vii) Common Shares, Options or Convertible Securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Corporation by amalgamation, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided that such issuances are approved by the Board of Directors of the Corporation;
 - (viii) Common Shares, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors of the Corporation;
 - (ix) Common Shares, Options or Convertible Securities issued in connection with a Qualified Public Offering (as defined below); or
 - (x) Common Shares, Options or Convertible Securities issued in connection with any settlement or pursuant to any other transaction approved by the Board of Directors of the Corporation.
- (b) **“Class A Preferred Share Subscription Agreement”** means the subscription agreement between PPL Ventures, LLC and the Corporation in connection with the original issuance of Class A Preferred Shares.

- (c) “**Convertible Securities**” means any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Shares, but excluding Options.
- (d) “**Option**” means rights, options or warrants to subscribe for, purchase or otherwise acquire Common Shares or Convertible Securities.
- (e) “**Original Issue Date**” means the date on which the first Preferred Share was issued.

4.4.2 No Adjustment of Class A Conversion Price.

No adjustment in the Class A Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares if the Corporation receives written notice from the Requisite Holders agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares.

4.4.3 Deemed Issue of Additional Common Shares.

- (a) If the Corporation at any time or from time to time after the Original Issue Date issues Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or fixes a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of Common Shares (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any of its provisions for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, will be deemed to be Additional Shares issued as of the time of such issue or, in case such a record date has been fixed, as of the close of business on such record date.
- (b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Class A Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of Common Shares issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2)

any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Class A Conversion Price computed upon the original issue of the Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Class A Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of the Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall increase the Class A Conversion Price to an amount which exceeds the lower of (i) the Class A Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of the Option or Convertible Security, or (ii) the Class A Conversion Price that would have resulted from any issuances of Additional Shares (other than deemed issuances of Additional Shares as a result of the issuance of the Option or Convertible Security) between the original adjustment date and such readjustment date.

- (c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Class A Conversion Price pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.4) of the Additional Shares subject thereto was equal to or greater than the Class A Conversion Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of the Option or Convertible Security) to provide for either (1) any increase in the number of Common Shares issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares subject thereto (determined in the manner provided in Subsection 4.4.3(a)) will be deemed to have been issued effective upon such increase or decrease becoming effective.
- (d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Class A Conversion

Price pursuant to the terms of Subsection 4.4.4, the Class A Conversion Price shall be readjusted to such Class A Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

- (e) If the number of Common Shares issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time the Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Class A Conversion Price provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of Common Shares issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time the Option or Convertible Security is issued or amended, any adjustment to the Class A Conversion Price that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Class A Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Class A Conversion Price Upon Issuance of Additional Shares.

If the Corporation, at any time after the Original Issue Date, issues Additional Shares (including Additional Shares deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than the Class A Conversion Price in effect immediately prior to such issue, then the Class A Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP2 = CPI * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

- (a) “CP₂” means the Class A Conversion Price in effect immediately after such issue of Additional Shares
- (b) “CP₁” means the Class A Conversion Price in effect immediately prior to such issue of Additional Shares;
- (c) “A” means the number of Common Shares outstanding immediately prior to such issue or deemed issue of Additional Shares (treating for this purpose as outstanding all Common Shares issuable upon exercise of Options outstanding immediately prior to such issue or deemed issue or upon conversion or exchange of Convertible Securities (including the Class A Preferred Shares) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);
- (d) “B” means the number of Common Shares that would have been issued if such Additional Shares had been issued or deemed issued at a price per share equal to CP₁ (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP₁); and
- (e) “C” means the number of such Additional Shares issued in such transaction.

4.4.5 Determination of Consideration.

For purposes of this Subsection 4.4, the consideration received by the Corporation for the issue or deemed issue of any Additional Shares shall be computed as follows:

- (a) Cash and Property: Such consideration shall:
 - (i) if it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;
 - (ii) if it consists of property other than cash, be computed at its fair market value at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and
 - (iii) if Additional Shares are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

- (b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares deemed to have been issued pursuant to Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:
- (i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any of its provision for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by
 - (ii) the maximum number of Common Shares (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6 Multiple Closing Dates.

If the Corporation issues on more than one date Additional Shares that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Class A Conversion Price pursuant to the terms of Subsection 4.4.4 then, upon the final such issuance, the Class A Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Share Splits and Combinations.

If the Corporation, at any time or from time to time after the Original Issue Date, subdivides the outstanding Common Shares, the Class A Conversion Price in effect immediately before the subdivision shall be proportionately decreased so that the number of Common Shares issuable on conversion of each share of such class shall be increased in proportion to such increase in the aggregate number of Common Shares outstanding. If the Corporation, at any time or from time to time after the Original Issue Date, combines the outstanding Common Shares, the

Class A Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of Common Shares issuable on conversion of each share of such class shall be decreased in proportion to such decrease in the aggregate number of Common Shares outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions.

If the Corporation, at any time or from time to time after the Original Issue Date, makes or issues, or fixes a record date for the determination of holders of Common Shares entitled to receive, a dividend or other distribution payable on the Common Shares in additional Common Shares, then and in each such event the Class A Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date is fixed, as of the close of business on such record date, by multiplying the Class A Conversion Price then in effect by a fraction:

- (a) the numerator of which is the total number of Common Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and
- (b) the denominator of which is the total number of Common Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of Common Shares issuable in payment of such dividend or distribution.

Notwithstanding the foregoing (a) if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Class A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Class A Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) no such adjustment shall be made if the holders of Class A Preferred Shares simultaneously receive a dividend or other distribution of Common Shares in a number equal to the number of Common Shares as they would have received if all outstanding Class A Preferred Shares had been converted into Common Shares on the date of such event.

4.7 Adjustments for Other Dividends and Distributions.

If the Corporation, at any time or from time to time after the Original Issue Date, makes or issues, or fixes a record date for the determination of holders of Common Shares entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of Common Shares in respect of outstanding Common Shares) or in other property and Section 1 does not apply to such dividend or distribution, then and in each such event the holders of Class A Preferred Shares shall receive, simultaneously with the distribution to

the holders of Common Shares, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding Class A Preferred Shares had been converted into Common Shares on the date of such event.

4.8 Adjustment for Amalgamation or Reorganization, etc.

Subject to Subsection 2.3, if any reorganization, recapitalization, reclassification, consolidation, arrangement or amalgamation occurs involving the Corporation in which the Common Shares (but not the Class A Preferred Shares) are converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation, arrangement or amalgamation, each Class A Preferred Share shall thereafter be convertible in lieu of the Common Shares into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of Common Shares of the Corporation issuable upon conversion of one Class A Preferred Share immediately prior to such reorganization, recapitalization, reclassification, consolidation, arrangement or amalgamation would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of this Section 4.8 with respect to the rights and interests thereafter of the holders of Class A Preferred Shares, to the end that this Section 4.8 (including provisions with respect to changes in and other adjustments of the Class A Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Class A Preferred Shares. For the avoidance of doubt, nothing in this Subsection 4.8 prevents the holders of Class A Preferred Shares from seeking any dissent rights to which they are otherwise entitled under law in connection with an amalgamation triggering an adjustment, nor is this Subsection 4.8 conclusive evidence of the fair value of the Class A Preferred Shares in any such dissent-right proceeding.

4.9 Certificate as to Adjustments.

Upon the occurrence of each adjustment or readjustment of the Class A Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than thirty (30) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Class A Preferred Shares a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Class A Preferred Shares are convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Class A Preferred Shares (but in any event not later than thirty (30) days thereafter), furnish or cause to be furnished to the holder a certificate setting forth (i) the Class A Conversion

Price then in effect, and (ii) the number of Common Shares and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Class A Preferred Shares.

4.10 Notice of Record Date.

If:

- (a) the Corporation takes a record of the holders of Common Shares (or other shares or securities at the time issuable upon conversion of the Class A Preferred Shares) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of any class or any other securities, or to receive any other security; or
- (b) of any capital reorganization of the Corporation, any reclassification of the Common Shares of the Corporation, or any Deemed Liquidation Event; or
- (c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of Class A Preferred Shares a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, amalgamation, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Shares (or such other securities at the time issuable upon the conversion of the Class A Preferred Shares) are entitled to exchange their Common Shares (or such other securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, amalgamation, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Class A Preferred Shares and the Common Shares. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events.

Upon either (a) the closing of the sale of Common Shares to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, and/or a prospectus filed with a securities commission or authority in any of the provinces or territories of Canada resulting in at least USD\$40,000,000.00 of gross proceeds to the Corporation and in connection with such offering the Common Shares are listed

for trading on the Nasdaq Stock Market's National Market, the New York Stock Exchange, the Toronto Stock Exchange or another exchange or marketplace approved by the Board of Directors, including the approval of the Class A Directors (a "**Qualified Public Offering**") or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the Requisite Holders (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "**Mandatory Conversion Time**"), then (i) all outstanding Class A Preferred Shares shall automatically be converted into Common Shares, at the then effective conversion rate as calculated pursuant to Subsection 4.1.1. and (ii) such shares may not be reissued by the Corporation.

5.2 Procedural Requirements.

All holders of record of Class A Preferred Shares shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such Class A Preferred Shares pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of Class A Preferred Shares in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly signed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Class A Preferred Shares converted pursuant to Subsection 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Shares), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Class A Preferred Shares, the Corporation shall (a) issue and deliver to their holder, or to his, her or its nominees, a certificate or certificates for the number of full Common Shares issuable on such conversion in accordance with these provisions and (b) pay cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Shares otherwise issuable upon such conversion and the payment of any Accruing Dividends accrued but unpaid on the Class A Preferred Shares converted. Such converted Class A Preferred Shares shall be retired and cancelled and may not be reissued as shares of such class, and the Corporation may thereafter take such appropriate action (without the need for

67

shareholder action) as may be necessary to reduce the authorized number of Class A Preferred Shares accordingly.

6. Redeemed or Otherwise Acquired Shares.

Any Class A Preferred Shares that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Class A Preferred Shares following redemption.

7. Waiver.

Any of the rights, powers, preferences and other terms of the Class A Preferred Shares may be waived on behalf of all holders of Class A Preferred Shares by the affirmative written consent or vote of the holders of at least a majority of the Class A Preferred Shares then outstanding.

8. Notices.

Any notice required or permitted by these provisions to be given to a holder of Class A Preferred Shares shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication, and will be deemed sent upon such mailing or electronic transmission.

C. SPECIAL SHARES

The rights, privileges, restrictions and conditions attaching to the Special Shares of the Corporation shall be as follows:

1. Voting Rights.

The holders of the Special Shares shall not, as such, be entitled to receive notice of or to attend or vote at any meeting of shareholders of the Corporation except that the holders of Special Shares shall be entitled to receive notice of meetings of shareholders called for the purpose of authorizing the dissolution of the Corporation or the sale, lease or exchange of all or substantially all of the property of the Corporation other than in the ordinary course of business of the Corporation under subsection 184(3) of the *Business Corporations Act* (Ontario).

The holders of Special Shares shall not be entitled to vote separately as a class or to dissent upon a proposal to amend the Articles or any other action which may affect the rights, privileges, restrictions and conditions attaching to the Special Shares in the case of an amendment referred to in clause (a), (b) or (e) of section 170 of the *Business Corporations Act* (Ontario), as amended, or in any successor legislation.

2. Dividends.

Subject to the prior rights attaching to the Class A Preferred Shares, the holders of the Special Shares shall, in each financial year of the Corporation be entitled to receive and the Corporation

shall pay, if declared by the Board of Directors of the Corporation out of the monies or other property of the Corporation properly applicable to the payment of dividends, non-cumulative dividends in an amount to be determined by and in the discretion of the Board of Directors of the Corporation. It shall be in the sole discretion of the Board of Directors of the Corporation whether in any financial year of the Corporation any dividend is declared on the Special Shares. If, within three months after the expiration of any year, the Board of Directors of the Corporation in its discretion does not declare any dividends on the Special Shares for such year, then the rights of the holders of the Special Shares to any dividend for the year shall forever be extinguished. The holders of the Special Shares shall not be entitled to any other dividends other than or in excess of the dividend hereinbefore provided for.

Subject to the prior rights attaching to the Class A Preferred Shares, the Board of Directors of the Corporation may declare dividends on the Special Shares to the exclusion of any other class of shares.

3. Rights on Liquidation Etc.

In the event of a liquidation, dissolution or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding up the affairs of the Corporation, and subject to the prior rights attaching to the Class A Preferred Shares, as more specifically identified in Article D hereof, the holders of the Special Shares shall be entitled to receive from the assets of the Corporation, before any amount is paid or any property or assets of the Corporation is distributed to the holders of any Common Shares, or any other class of shares ranking junior to the Special Shares, for each Special Share held, to receive out of the assets and property of the Corporation an amount equal to the Special Share Redemption Amount, as hereinafter defined, together with all dividends declared thereon and remaining unpaid, if any, (in this paragraph the "Special Distribution"). After payment to the holders of the Special Shares of the Special Distribution so payable to them as provided above, the holders thereof shall not be entitled to share in any further distribution of the property or assets of the Corporation.

4. Redemption at the Option of the Corporation.

Subject to the *Business Corporations Act (Ontario)* and the prior rights attaching to the Class A Preferred Shares, the Corporation may, upon giving notice as hereinafter provided, redeem at any time, the whole or from time to time any part of the then outstanding Special Shares on payment for each share to be redeemed of an amount equal to Twenty Cents (\$0.20) per share (the "Special Share Redemption Amount") together with all declared and unpaid preferential, non-cumulative dividends thereon (the aggregate amount to be paid for each Special Share to be redeemed in accordance with the provisions of this paragraph is herein called the "Special Share Redemption Price"). In the case of redemption of the Special Shares under the provisions of this Section 4, the Corporation shall, at least twenty (20) days before the date specified for redemption, mail to each person who at the date of mailing is a registered holder of the Special Shares to be redeemed a notice in writing of the intention of the Corporation to redeem such Special Shares. Such notice shall be mailed by letter, postage prepaid, addressed to each such shareholder at his address as it appears in the records of the Corporation, or in the event

of the address of any such shareholder not so appearing, then to the last known address of such shareholder; provided, however, that no such notice need be sent to any holder of a Special Shares to be redeemed where such shareholder has waived notice in writing and provided further, that the accidental failure to give any such notice to one (1) or more of such shareholders shall not affect the validity of such redemption. Such notice shall set out the Special Share Redemption Price and the date on which redemption is to take place and if part only of the Special Shares held by the person to whom it is addressed is to be redeemed, the number thereof so to be redeemed. On or after the date so specified for redemption, the Corporation shall pay or cause to be paid to or to the order of the registered holders of the Special Shares to be redeemed, the Special Share Redemption Price for each Special Share being redeemed on presentation and surrender at the registered office of the Corporation or at any other place designated in such notice, of the certificates representing the Special Shares called for redemption and such Special Shares shall thereupon be redeemed. If a part only of the Special Shares represented by any certificate is to be redeemed, a new certificate for the balance shall be issued at the expense of the Corporation. From and after the date specified for redemption in any such notice, the Special Shares called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the Special Share Redemption Prices shall not be made upon presentation of certificates in accordance with the foregoing provisions, in which case, the rights of such shareholders shall remain unaffected. The Corporation shall have the right at any time after the mailing of notice of its intention to redeem the Special Shares, to deposit the Special Share Redemption Prices of the Special Shares so called for redemption, or of such of the said Special Shares represented by certificates as have not at the date of such deposit been surrendered by the holders thereof in connection with such redemption, to a special account in any chartered bank or any trust company in Canada, named in such notice, to be paid without interest to or to the order of the respective holders of such Special Shares called for redemption upon presentation and surrender to such bank or trust company of the certificates representing the same, and upon such deposit being made or upon the date specified for redemption in such notice, whichever is the later, the Special Shares in respect whereof such deposit shall have been made shall be deemed to be redeemed and the rights of the holders thereof after such deposit or such redemption date, as the case may be, shall be limited to receiving, without interest, their proportionate part of the total Special Share Redemption Price so deposited against presentation and surrender of the said certificates held by them, respectively. In the event that only part of the Special Shares is at any time to be redeemed, the shares so redeemed shall be selected pro rata (disregarding fractions) from among the holders of record thereof as at the date of the notice of redemption or in such other manner as the directors of the Corporation in its sole discretion may deem equitable.

5. Purchase for Cancellation.

Subject to the *Business Corporations Act (Ontario)* and the prior rights attaching to the Class A Preferred Shares, the Corporation may at any time and from time to time purchase (if obtainable) for cancellation all or part of the Special Shares outstanding from time to time at the lowest price at which, in the opinion of the directors, such shares are obtainable but not exceeding for each Special Share held an amount equivalent to the

Special Share Redemption Amount and an amount equal to all dividends declared thereon and remaining unpaid. Except where all of the holders of the Special Shares consent to the purchase, the Corporation may purchase Special Shares only pursuant to tenders received by the Corporation upon request for tenders addressed to all the holders of the Special Shares and the Corporation shall accept only the lowest tenders. Where, in response to the invitation for tenders, two or more shareholders submit tenders at the same price and the tenders are accepted by the Corporation as to part only of the Special Shares offered, the Corporation shall accept part of the Special Shares offered in each tender in proportion as nearly as may be to the total number of Special Shares offered in each tender (disregarding fractions).

D. PRIORITY

In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding up its affairs, the remaining property of the Corporation shall be distributed in accordance with the following order of priority:

1. firstly, rateably to the holders of the Class A Preferred Shares up to the Class A Liquidation Amount of all Class A Preferred Shares;
2. secondly, rateably to the holders of the Special Shares up to the Special Shares Redemption Amount of all Special Shares; and
3. lastly, rateably to the holders of the Common Shares.

- 6. The amendment has been duly authorized as required by sections 168 and 170 (as applicable) of the *Business Corporations Act*.
La modification a été dûment autorisée conformément aux articles 168 et 170 (selon le cas) de la *Loi sur les sociétés par actions*.
- 7. The resolution authorizing the amendment was approved by the shareholders/directors (as applicable) of the corporation on
Les actionnaires ou les administrateurs (selon le cas) de la société ont approuvé la résolution autorisant la modification le

2019, June, 17

(Year, Month, Day)
(année, mois, jour)

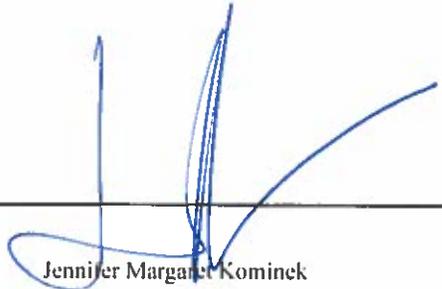
These articles are signed in duplicate.
Les présents statuts sont signés en double exemplaire.

DEMAND POWER GROUP INC.

(Print name of corporation from Article 1 on page 1)
(Veuillez écrire le nom de la société de l'article un à la page une)

By/
Par :

(Signature)
(Signature)



Jennifer Margaret Kominek

DIRECTOR

(Description of Office)
(Fonction)

This is Exhibit "B" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

4F6A7FBBFE6C441...

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
1. Definitions.....	1
2. Registration Rights.....	5
2.1. Demand Registration	5
2.2. Company Registration	7
2.3. Underwriting Requirements.....	8
2.4. Obligations of the Company	9
2.5. Furnish Information	10
2.6. Expenses of Registration.....	11
2.7. Delay of Registration	11
2.8. Indemnification.....	11
2.9. Reports Under Exchange Act.....	13
2.10. Limitations on Subsequent Registration Rights.....	14
2.11. “Market Stand-off” Agreement.....	14
2.12. Restrictions on Transfer.....	15
2.13. Termination of Registration Rights	17
3. Information Rights	17
3.1. Delivery of Financial Statements.....	17
3.2. Inspection.....	18
3.3. Termination of Information Rights.....	19
3.4. Confidentiality	19
4. Rights to Future Share Issuances	19
4.1. Right of First Offer	19
4.2. Termination.....	21
5. Additional Covenants.....	21
5.1. Insurance	21
5.2. Employee Agreements	21
5.3. Employee Shares.....	21
5.4. Matters Requiring Director Approval	22
5.5. Board Matters.....	24
5.6. Successor Indemnification	24
5.7. Indemnification Matters.....	24
5.8. Right to Conduct Activities	24
5.9. Board Observer	25
5.10. Termination of Covenants.....	25
6. Miscellaneous	25
6.1. Successors and Assigns.....	25
6.2. Governing Law	26
6.3. Counterparts; Facsimile	26

75

6.4. Titles and Subtitles..... 26
6.5. Notices 26
6.6. Amendments and Waivers 27
6.7. Severability 27
6.8. Aggregation of Shares..... 28
6.9. Additional Investors..... 28
6.10. Entire Agreement 28
6.11. Dispute Resolution..... 28
6.12. Delays and Omissions..... 29
6.13. Interpretation and Currency 29
6.14. Independent Legal Advice 29
6.15. Unanimous Shareholder Agreement 29

Schedule A - Schedule of Investors
Schedule B Schedule of Key Holders

AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

THIS AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT (this "**Agreement**"), is made as of the 28th day of February, 2020, by and among Demand Power Group Inc., an Ontario corporation (the "**Company**"), each of the investors listed on Schedule A hereto, each of which is referred to in this Agreement as an "**Investor**," each of the shareholders listed on Schedule B hereto, each of whom is referred to herein as a "**Key Holder**."

RECITALS

WHEREAS the Company entered into a Class A Preferred Share Subscription Agreement dated July 15, 2019 (the "**PPL Subscription Agreement**") with PPL Technology Ventures, LLC ("**PPL**"), pursuant to which PPL agreed to purchase certain Class A Preferred Shares (which Class A Preferred Shares have subsequently been converted into Class A-1 Preferred Shares in the capital of the Company, the "**Class A-1 Preferred Shares**");

AND WHEREAS, in connection with the issuance of the Class A-1 Preferred Shares under the PPL Subscription Agreement, the Company, PPL and the Key Holders entered into an Investors' Rights Agreement dated July 15, 2019 (the "**Original Agreement**");

AND WHEREAS, the Company and Star America DPGI Acquisition Company, Inc. ("**Star**") entered into a Class A-2 Preferred Share Subscription Agreement, of even date herewith (the "**Star Subscription Agreement**"), pursuant to which Star has agreed to purchase certain Class A-2 Preferred Shares in the capital of the Company ("**Class A-2 Preferred Shares**");

AND WHEREAS, as an inducement for (i) PPL to convert its Class A Preferred Shares into Class A-1 Preferred Shares, and (ii) Star to enter into the Star Subscription Agreement, the Company and the Key Holders have agreed to enter into this Agreement;

AND WHEREAS, in accordance with Section 6.6 (Amendment) of the Original Agreement, the Company, PPL and the Key Holders wish to amend and restate the Original Agreement and replace it in its entirety with this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Definitions**. For purposes of this Agreement:

(a) "**Affiliate**" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including without limitation any general partner, managing member, officer, director or trustee of such Person, or any venture capital fund or registered investment company now or hereafter existing that is controlled by one or more general partners, managing members or investment adviser of, or shares the same management company or investment adviser with, such Person.

(b) "**Board of Directors**" means the board of directors of the Company.

(c) “**Amended Articles**” means the Articles of Incorporation of the Company, dated the 5th day of March, 2018, as amended by the Articles of Amendment of the Company dated June 18, 2019, as amended by the Articles of Amendment of the Company dated January ___, 2020, and as may be further amended and/or restated from time to time.

(d) “**Canadian Securities Laws**” means the applicable securities legislation of each of the provinces and territories of Canada and the respective regulations and published rules made thereunder, together with all published policy statements, orders, rules, rulings, instruments and interpretation notes issued thereunder or in relation thereto, as the same may hereafter be amended from time to time or replaced.

(e) “**Class A-1 Director**” means any director of the Company that the holders of record of the Class A-1 Preferred Shares are entitled to elect, exclusively and as a separate class, pursuant to the Amended Articles.

(f) “**Class A-2 Director**” means any director of the Company that the holders of record of the Class A-2 Preferred Shares are entitled to elect, exclusively and as a separate class, pursuant to the Amended Articles.

(g) “**Class A Directors**” means, collectively, the Class A-1 Director and Class A-2 Director of the Company and any Class A-1 Director or Class A-2 Director is a “Class A Director”.

(h) “**Class A-1 Preferred Shares**” has the meaning given to it in the Recitals to this Agreement.

(i) “**Class A-2 Preferred Shares**” has the meaning given to it in the Recitals to this Agreement.

(j) “**Class A Preferred Shares**” means collectively the Class A-1 Preferred Shares and Class A-2 Preferred Shares of the Company.

(k) “**Common Shares**” means the common shares in the capital of the Company.

(l) “**Competitor**” means a Person engaged, directly or indirectly (including through any partnership, limited liability company, corporation, joint venture or similar arrangement (whether now existing or formed hereafter)), in the business of the supply and management of power systems for commercial and industrial customers, but shall not include any financial investment firm or collective investment vehicle that, together with its Affiliates, holds less than twenty percent (20)% of the outstanding equity of any Competitor and does not, nor do any of its Affiliates, have a right to designate any members of the board of directors of any Competitor. For greater certainty, no Investor, nor any of their respective Affiliates, will qualify as a Competitor hereunder.

(m) “**Damages**” means any loss, damage, claim or liability (joint or several) to which a party hereto may become subject under Canadian Securities Laws, the Securities Act, the Exchange Act, or other federal, provincial or state law, insofar as such loss, damage, claim or

78

liability (or any action in respect thereof) arises out of or is based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of Canadian Securities Laws, the Securities Act, the Exchange Act, any other securities law, or any rule or regulation promulgated under Canadian Securities Laws, the Securities Act, the Exchange Act, or any other securities law.

(n) **“Deemed Liquidation Event”** has the meaning set forth in the Amended Articles.

(o) **“Derivative Securities”** means any securities or rights convertible into, or exercisable or exchangeable for (in each case, directly or indirectly), Common Share, including options and warrants.

(p) **“Exchange Act”** means the *Securities Exchange Act of 1934*, as amended, and the rules and regulations promulgated thereunder.

(q) **“Excluded Registration”** means (i) a registration relating to the sale or grant of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, equity incentive or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Shares being registered are Common Shares issuable upon conversion of debt securities that are also being registered.

(r) **“Form S-1”** means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC, as well as any similar form relating to the registration of securities of a foreign corporation under the Securities Act.

(s) **“Form S-3”** means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits forward incorporation of substantial information by reference to other documents filed by the Company with the SEC, as well as any similar form relating to the registration of securities of a foreign corporation under the Securities Act.

(t) **“GAAP”** means (i) the accounting standards for private enterprises in Canada from time to time approved by the Chartered Professional Accountants of Canada, or any successor entity thereto, including those recommended in the CPA Canada Handbook, and (ii) generally accepted accounting principles in the United States, as in effect from time to time.

(u) **“Holder”** means any holder of Registrable Securities who is a party to this Agreement.

79

(v) **“Immediate Family Member”** means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including, adoptive relationships, of a natural person referred to herein.

(w) **“Initiating Holders”** means, collectively, Holders who properly initiate a registration request under this Agreement.

(x) **“IPO”** means the Company’s first underwritten public offering of its Common Shares under the Securities Act or Canadian Securities Laws.

(y) **“Key Employee”** means any executive-level employee (including, division director and vice president-level positions) as well as any employee who, either alone or in concert with others, develops, invents, programs, or designs any Company Intellectual Property (as defined in the Star Subscription Agreement).

(z) **“Key Holder Registrable Securities”** means (i) the Common Shares held by the Key Holders, and (ii) any Common Shares issued as (or issuable upon the conversion or exercise of any warrant, right, or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of such shares.

(aa) **“Major Investor”** means any Investor that, individually or together with such Investor’s Affiliates, holds at least 2,500,000 Class A-1 Preferred Shares and/or 2,500,000 Class A-2 Preferred Shares (as adjusted for any subdivision of shares, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof).

(bb) **“New Securities”** means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

(cc) **“Person”** means any individual, corporation, partnership, trust, limited liability company, association or other entity.

(dd) **“Registrable Securities”** means (i) the Common Shares issuable or issued upon conversion of the Class A Preferred Shares; (ii) any Common Shares, or any Common Shares issued or issuable (directly or indirectly) upon conversion and/or exercise of any other securities of the Company, acquired by the Investors after the date hereof; (iii) the Key Holder Registrable Securities, provided, however, that such Key Holder Registrable Securities shall not be deemed Registrable Securities and the Key Holders shall not be deemed Holders for the purposes of Subsection 2.1 (and any other applicable Section or Subsection with respect to registrations under Subsections 2.1), 2.10, 3.1, 3.2, 4.1 and 5.6, and (iv) any Common Shares issued as (or issuable upon the conversion or exercise of any warrant, right, or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clauses (i) and (ii) above; excluding in all cases, however, any Registrable Securities sold by a Person in a transaction in which the applicable rights under this Agreement are not assigned pursuant to Subsection 5.1, and excluding for purposes of Section 2

80

any shares for which registration rights have terminated pursuant to Subsection 2.13 of this Agreement.

(ee) “**Registrable Securities then outstanding**” means the number of shares determined by adding the number of outstanding Common Shares that are Registrable Securities and the number of Common Shares issuable (directly or indirectly) pursuant to then exercisable and/or convertible securities that are Registrable Securities.

(ff) “**registration**” means (a) the registration of securities under the Securities Act, or (b) the qualification of a distribution of securities to the public pursuant to a prospectus filed under Canadian Securities Laws, and “register” and “registered” have corresponding meanings.

(gg) “**registration statement**” means (a) a registration statement filed under the Securities Act or (b) a prospectus filed under Canadian Securities Laws, and any reference to a registration statement becoming effective includes the issuance of a final receipt or decision document under Canadian Securities Laws in respect of a prospectus filed under Canadian Securities Laws.

(hh) “**Restricted Securities**” means the securities of the Company required to be notated with the legend set forth in Subsection 2.12(b) hereof.

(ii) “**Right of First Refusal and Co-Sale Agreement**” means the amended and restated Right of First Refusal and Co-Sale Agreement of the Company dated on or about the date hereof.

(jj) “**SEC**” means the Securities and Exchange Commission.

(kk) “**SEC Rule 144**” means Rule 144 promulgated by the SEC under the Securities Act.

(ll) “**SEC Rule 145**” means Rule 145 promulgated by the SEC under the Securities Act.

(mm) “**Securities Act**” means the *Securities Act of 1933*, as amended, and the rules and regulations promulgated thereunder.

(nn) “**Selling Expenses**” means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Subsection 2.6.

(oo) “**Voting Agreement**” means the amended and restated Voting Agreement of the Company dated on or about the date hereof.

2. **Registration Rights**. The Company covenants and agrees as follows:

2.1. **Demand Registration.**

81

(a) Form S-1 Demand. If at any time after the earlier of (i) five (5) years after the date of this Agreement or (ii) one hundred eighty (180) days after the effective date of the registration statement for the IPO, the Company receives a request from Holders of fifty percent (50%) of the Registrable Securities then outstanding that the Company file a Form S-1 registration statement or a Canadian prospectus with respect to at least sixty percent (60%) of the Registrable Securities then outstanding and an anticipated aggregate offering price, net of Selling Expenses, of not less than \$5 million, then the Company shall (x) within ten (10) days after the date such request is given, give notice thereof (the “**Demand Notice**”) to all Holders other than the Initiating Holders; and (y) as soon as practicable, and in any event within sixty (60) days after the date such request is given by the Initiating Holders, file a Form S-1 registration statement under the Securities Act, or a Canadian prospectus under Canadian Securities Laws, as applicable, covering all Registrable Securities that the Initiating Holders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Subsections 2.1(c) and 2.3.

(b) Form S-3 Demand. If at any time when it is eligible to use a Form S-3 registration statement or a Canadian short-form prospectus, the Company receives a request from Holders of at least ten percent (10%) of the Registrable Securities then outstanding that the Company file a Form S-3 registration statement or a Canadian short-form prospectus with respect to outstanding Registrable Securities of such Holders having an anticipated aggregate offering price, net of Selling Expenses, of at least \$1 million, then the Company shall (i) within ten (10) days after the date such request is given, give a Demand Notice to all Holders other than the Initiating Holders; and (ii) as soon as practicable, and in any event within forty-five (45) days after the date such request is given by the Initiating Holders, file a Form S-3 registration statement under the Securities Act or a Canadian short-form prospectus under Canadian Securities Laws, as applicable, covering all Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Subsections 2.1(c) and 2.3.

(c) Notwithstanding the foregoing obligations, if the Company furnishes to Holders (requesting a registration pursuant to this Subsection 2.1) a certificate signed by the Company’s chief executive officer stating that in the good faith judgment of the Board of Directors it would be materially detrimental to the Company and its shareholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act, the Exchange Act or Canadian Securities Laws, then the Company shall have the right to defer taking action with respect to such filing, and any time periods with respect to filing or effectiveness thereof shall be tolled correspondingly, for a period of not more than thirty (30) days after the request of the Initiating Holders is given; provided, however, that the Company may not invoke this right more than once in any six (6) month period; and provided further that

82

the Company shall not register any securities for its own account or that of any other shareholder during such thirty (30) day period other than an Excluded Registration.

(d) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(a)(i) during the period that is sixty (60) days before the Company's good faith estimate of the date of filing of, and ending on a date that is one hundred eighty (180) days after the effective date of, a Company-initiated registration, provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; (ii) after the Company has effected one (1) registration pursuant to Subsection 2.1(a); or (iii) if the Initiating Holders propose to dispose of Registrable Securities that may be immediately registered on Form S-3 or a Canadian short-form prospectus pursuant to a request made pursuant to Subsection (b). The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(b): (i) during the period that is thirty (30) days before the Company's good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration, provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement or prospectus to become effective; or (ii) if the Company has effected two registrations pursuant to Subsection 2.1(b) within the twelve (12) month period immediately preceding the date of such request. A registration shall not be counted as "effected" for purposes of this Subsection 2.1(d) until such time as the applicable registration statement has been declared effective by the SEC or a final receipt or decision document is issued in respect of the applicable Canadian prospectus, unless the Initiating Holders withdraw their request for such registration, elect not to pay the registration expenses therefor, and forfeit their right to one demand registration statement pursuant to Subsection 2.6, in which case such withdrawn registration statement shall be counted as "effected" for purposes of this Subsection 2.1(d); provided, that if such withdrawal is during a period the Company has deferred taking action pursuant to Subsection (c), then the Initiating Holders may withdraw their request for registration and such registration will not be counted as "effected" for purposes of this Subsection (d).

(e) For purposes of this Agreement, a concurrent filing of a registration statement under the Securities Act and under Canadian Securities Laws will be considered a single filing.

2.2. Company Registration. If the Company proposes to register (including, for this purpose, a registration effected by the Company for shareholders other than the Holders) any of its securities under the Securities Act or Canadian Securities Laws in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give each Holder notice of such registration. Upon the request of each Holder given within twenty (20) days after such notice is given by the Company, the Company shall, subject to the provisions of Subsection 2.3, cause to be registered all of the Registrable Securities that each such Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Subsection 2.2 before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such withdrawn registration shall be borne by the Company in accordance with Subsection 2.6.

2.3. Underwriting Requirements.

(a) If, pursuant to Subsection 2.1, the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Subsection 2.1, and the Company shall include such information in the Demand Notice. The underwriter(s) will be selected by the Board of Directors and shall be reasonably acceptable to a majority in interest of the Initiating Holders. In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Subsection 2.4(e)) enter into an underwriting agreement in customary form with the underwriter(s) selected for such underwriting. Notwithstanding any other provision of this Subsection 2.3, if the managing or lead underwriter(s) advise(s) the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities owned by each Holder or in such other proportion as shall mutually be agreed to by all such selling Holders; provided, however, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares.

(b) In connection with any offering involving an underwriting of shares in the capital of the Company pursuant to Subsection 2.2, the Company shall not be required to include any of the Holders' Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by shareholders to be included in such offering exceeds the number of securities to be sold (other than by the Company) that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable) to the number of Registrable Securities owned by each selling Holder or in such other proportions as shall mutually be agreed to by all such selling Holders. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares. Notwithstanding the foregoing, in no event shall (i) the number of Registrable Securities included in the offering be reduced unless all other securities

84

(other than securities to be sold by the Company) are first entirely excluded from the offering, or (ii) the number of Registrable Securities included in the offering be reduced below twenty percent (20%) of the total number of securities included in such offering, unless such offering is the IPO, in which case the selling Holders may be excluded further if the underwriters make the determination described above and no other shareholder's securities are included in such offering. For purposes of the provision in this Subsection 2.3(b) concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, shareholders, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the foregoing Persons, shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such "selling Holder," as defined in this sentence.

(c) For purposes of Subsection 2.1, a registration shall not be counted as "effected" if, as a result of an exercise of the underwriter's cutback provisions in Subsection 2.3(a), fewer than fifty percent (50%) of the total number of Registrable Securities that Holders have requested to be included in such registration statement are actually included.

2.4. Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC and/or the Canadian securities regulators, as applicable, a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the registration statement has been completed; provided, however, that such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common Shares (or other securities) of the Company, from selling any securities included in such registration;

(b) prepare and file with the SEC and/or the Canadian securities regulators, as applicable, such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the Securities Act and Canadian Securities Laws in order to enable the disposition of all securities covered by such registration statement;

(c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act and Canadian Securities Laws, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities;

(d) use its commercially reasonable efforts to register and qualify the distribution of the securities covered by such registration statement under such other securities or

85

blue-sky laws of such jurisdictions as shall be reasonably requested by the selling Holders; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act or Canadian Securities Laws;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

(f) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on a national securities exchange or trading system in the United States or Canada (as determined by the Company) and each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed;

(g) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) promptly make available for inspection by the selling Holders, any managing or lead underwriter(s) participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the selling Holders, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company's officers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(i) notify each selling Holder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed; and

(j) after such registration statement becomes effective, notify each selling Holder of any request by the SEC or Canadian securities regulators that the Company amend or supplement such registration statement or prospectus.

In addition, the Company shall ensure that, at all times after any registration statement covering a public offering of securities of the Company under the Securities Act or Canadian Securities Laws shall have become effective, its insider trading policy shall provide that the Company's directors may implement a trading program under Rule 10b5-1 of the Exchange Act or similar provisions of Canadian Securities Laws.

2.5. Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such

securities as is reasonably required to effect the registration of such Holder's Registrable Securities.

2.6. Expenses of Registration. All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 2, including all registration, filing, and qualification fees; printers' and accounting fees; fees and disbursements of counsel for the Company; and the reasonable fees and disbursements, not to exceed \$50,000 (and upon delivery of such invoice to the Company) of one counsel for the selling Holders ("Selling Holder Counsel"), shall be borne and paid by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Subsection 2.1 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one registration pursuant to Subsections 2.1(a) or 2.1(b), as the case may be; provided further that if, at the time of such withdrawal, the Holders shall have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness after learning of such information, then the Holders shall not be required to pay any of such expenses and shall not forfeit their right to one registration pursuant to Subsections 2.1(a) or 2.1(b). All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.7. Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8. Indemnification. If any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, officers, directors, and shareholders of each such Holder; legal counsel and accountants for each such Holder; any underwriter (as defined in the Securities Act or under Canadian Securities Laws) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act, the Exchange Act or applicable Canadian Securities Laws, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written

87

information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its directors, each of its officers who has signed the registration statement, each Person (if any), who controls the Company within the meaning of the Securities Act or applicable Canadian Securities Laws, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act or applicable Canadian Securities Laws), any other Holder selling securities in such registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration; and each such selling Holder will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further that in no event shall the aggregate amounts payable by any Holder by way of indemnity or contribution under Subsections 2.8(b) and 2.8(d) exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of fraud or willful misconduct by such Holder.

(c) Promptly after receipt by an indemnified party under this Subsection 2.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Subsection 2.8, give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action. The failure to give notice to the indemnifying party within a reasonable time of the commencement of any such action shall relieve such indemnifying party of any liability to the indemnified party under this Subsection 2.8, to the extent that such failure materially prejudices the indemnifying party's ability to defend such action. The failure to give notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Subsection 2.8.

(d) To provide for just and equitable contribution to joint liability under the Securities Act and Canadian Securities Laws in any case in which either: (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this

Subsection 2.8 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Subsection 2.8 provides for indemnification in such case, or (ii) contribution under the Securities Act and Canadian Securities Laws may be required on the part of any party hereto for which indemnification is provided under this Subsection 2.8, then, and in each such case, such parties will contribute to the aggregate losses, claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case (x) no Holder will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered and sold by such Holder pursuant to such registration statement, and (y) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and provided further that in no event shall a Holder's liability pursuant to this Subsection 2.8(d), when combined with the amounts paid or payable by such Holder pursuant to Subsection 2.8(b), exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of willful misconduct or fraud by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Subsection 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9. Reports Under Exchange Act. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Company for the IPO;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after the Company has become subject to such reporting requirements); and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the registration statement filed by the Company for the IPO), the Securities Act, and the Exchange Act (at any time after the Company has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company; and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration (at any time after the Company has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10. Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of a majority of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that would (i) provide to such holder or prospective holder the right to include securities in any registration on other than either a pro rata basis with respect to the Registrable Securities or on a subordinate basis after all Holders have had the opportunity to include in the registration and offering all Registrable Securities that they wish to so include; (ii) allow such holder or prospective holder to initiate a demand for registration of any securities held by such holder or prospective holder; or (iii) allow such holder or prospective holder to include such securities in any registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the number of the Registrable Securities of the Holders that are included, provided that this limitation shall not apply to Registrable Securities acquired by any additional Investor that becomes a party to this Agreement in accordance with Subsection 6.9.

2.11. “Market Stand-off” Agreement. Each Holder hereby agrees that it will not, without the prior written consent of the managing or lead underwriter (which consent may not be unreasonably withheld), during the period commencing on the date of the final prospectus relating to the registration by the Company for its own behalf of Common Shares or any other equity securities under the Securities Act on a registration statement on Form S-1 or Form S-3 or under Canadian Securities Laws, and ending on the date specified by the Company and the managing or lead underwriter (such period not to exceed one hundred eighty (180) days in the case of the IPO, or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (1) the publication or other distribution of research reports, and (2) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto (i) lend; offer; pledge; sell; contract to sell; sell any option or

contract to purchase; purchase any option or contract to sell; grant any option, right, or warrant to purchase; or otherwise transfer or dispose of, directly or indirectly, any Common Shares or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Shares (whether such shares or any such securities are then owned by the Holder or are thereafter acquired) or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Shares or other securities, in cash, or otherwise. The foregoing provisions of this Subsection 2.11 shall apply only to the IPO, shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, or the transfer of any shares to any trust for the direct or indirect benefit of the Holder or the immediate family of the Holder, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such transfer shall not involve a disposition for value, and shall be applicable to the Holders only if all officers and directors are subject to the same restrictions and the Company uses commercially reasonable efforts to obtain a similar agreement from all shareholders individually owning more than two percent (2%) of the Company's outstanding Common Shares (after giving effect to conversion into Common Shares of all outstanding Class A Preferred Shares). The underwriters in connection with such registration are intended third party beneficiaries of this Subsection 2.11 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Subsection 2.11 or that are necessary to give further effect thereto, and to the extent necessary, the Company will enforce such provisions on their behalf. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply pro rata to all Company shareholders that are subject to such agreements, based on the number of shares subject to such agreements.

2.12. **Restrictions on Transfer.**

(a) The Class A Preferred Shares and the Registrable Securities shall not be sold, pledged, or otherwise transferred, and the Company shall not recognize and shall issue stop-transfer instructions to its transfer agent with respect to any such sale, pledge, or transfer, except upon the conditions specified in this Agreement, which conditions are intended to ensure compliance with the provisions of applicable securities laws. A transferring Holder will cause any proposed purchaser, pledgee, or transferee of the Class A Preferred Shares and the Registrable Securities held by such Holder to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Agreement.

(b) Each certificate representing (i) the Class A Preferred Shares, (ii) the Registrable Securities, and (iii) any other securities issued in respect of the securities referenced in clauses (i) and (ii), upon any subdivision of shares, stock dividend, recapitalization, amalgamation, arrangement, consolidation, or similar event, shall (unless otherwise permitted by the provisions of Subsection (c)) be endorsed with a legend substantially in the following form (in addition to any legends required by applicable Canadian Securities laws and/or a legend restricting resale of such securities into Canada):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR PURSUANT TO ANY OTHER SECURITIES LAWS. SUCH SHARES MAY NOT BE SOLD, PLEDGED, OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR A VALID EXEMPTION FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT.

THE SECURITIES REPRESENTED HEREBY MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE SHAREHOLDERS, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE LATER OF (i) [DATE] AND (ii) THE DATE THE COMPANY BECAME A REPORTING ISSUES IN ANY PROVINCE OR TERRITORY.

The Holders consent to the Company making a notation in its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer set forth in this Subsection 2.12.

(c) The holder of each certificate representing Restricted Securities, by acceptance of ownership thereof, agrees to comply in all respects with the provisions of this Section 2. Before any proposed sale, pledge, or transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act or Canadian Securities Laws covering the proposed transaction, the Holder thereof shall give notice to the Company of such Holder's intention to effect such sale, pledge, or transfer. Each such notice shall describe the manner and circumstances of the proposed sale, pledge, or transfer in sufficient detail and, if reasonably requested by the Company, shall be accompanied at such Holder's expense by either (i) a written opinion of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effected without registration under the Securities Act or qualification under Canadian Securities Laws; (ii) a "no action" letter from the SEC to the effect that the proposed sale, pledge, or transfer of such Restricted Securities without registration will not result in a recommendation by the staff of the SEC that action be taken with respect thereto; or (iii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed sale, pledge, or transfer of the Restricted Securities may be effected without registration under the Securities Act or qualification under Canadian Securities Laws, whereupon the Holder of such Restricted Securities shall be entitled to sell, pledge, or transfer such Restricted Securities in accordance with the terms of the notice given by the Holder to the Company. The Company will not require such a legal opinion or "no action" letter (x) in any transaction in compliance with

92

SEC Rule 144; or (y) in any transaction in which such Holder distributes Restricted Securities to an Affiliate of such Holder for no consideration; provided that each transferee agrees in writing to be subject to the terms of this Subsection 2.12. Each certificate representing the Restricted Securities transferred as above provided shall be endorsed with, except if such transfer is made pursuant to SEC Rule 144, the appropriate restrictive legend set forth in Subsection (b), except that such certificate shall not be endorsed with such restrictive legend if, in the opinion of counsel for such Holder and the Company, such legend is not required in order to establish compliance with any provisions of the Securities Act or Canadian Securities Laws.

2.13. **Termination of Registration Rights.** The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Subsections 2.1 or 2.2 shall terminate upon the earliest to occur of:

- (a) the closing of a Deemed Liquidation Event;
- (b) for any Holder that holds less than 1% of the outstanding shares in the capital of the Company, such time after consummation of the IPO as Rule 144 or another similar exemption under the Securities Act is available for the sale of all of such Holder's shares without limitation during a three-month period without registration; and
- (c) the fifth anniversary of the IPO.

3. **Information Rights.**

3.1. **Delivery of Financial Statements.** The Company shall deliver to each Major Investor, provided that the Board of Directors has not reasonably determined that any such Major Investor is a Competitor of the Company:

(a) as soon as practicable, but in any event within sixty (60) days after the end of each fiscal year of the Company or an earlier date reasonably requested by a Major Investor in order for such Major Investor to meet its public company reporting obligations, as applicable, (i) a balance sheet as of the end of such year, (ii) statements of income and of cash flows for such year, (iii) a statement of shareholders' equity as of the end of such year all prepared in accordance with GAAP (all such financial statements audited and certified by independent public accountants of nationally recognized standing selected by the Company), and (iv) a current capitalization table of the Company;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, a statement showing the number of shares of each class and series and securities convertible into or exercisable for shares outstanding at the end of the period, the Common Shares issuable upon conversion or exercise of any outstanding securities convertible or exercisable for Common Shares and the exchange ratio or exercise price applicable thereto, and the number of shares subject to issued stock options and stock options not yet issued but reserved for issuance, if any, all in sufficient detail as to permit the Major Investors to calculate their respective percentage equity ownership in the Company, and certified by the chief financial officer or chief executive officer of the Company as being true, complete and correct;

(c) as soon as practicable, but in any event within thirty (30) days after the end of each of the first three (3) quarters of each fiscal year of the Company, unaudited statements of income and cash flows for such fiscal quarter, and an unaudited balance sheet and a statement of shareholders' equity as of the end of such fiscal quarter, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments; and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(d) as soon as practicable, but in any event within fifteen (15) days of the end of each month, an unaudited income statement and statement of cash flows for such month, and an unaudited balance sheet and statement of shareholders' equity as of the end of such month, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(e) as soon as practicable, but in any event thirty (30) days before the end of each fiscal year, a budget and business plan for the next fiscal year (collectively, the "**Budget**"), approved by the Board of Directors, including the Class A Directors, and prepared on a monthly basis, including balance sheets, income statements, and statements of cash flow for such months and, promptly after prepared, any other budgets or revised budgets prepared by the Company; and

(f) such other information relating to the financial condition, business, prospects, or corporate affairs of the Company as any Major Investor may from time to time reasonably request; provided, however, that the Company shall not be obligated under this Subsection 3.1 to provide information (i) that the Company reasonably determines in good faith to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in a form acceptable to the Company); or (ii) the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Notwithstanding anything else in this Subsection 3.1 to the contrary, the Company may cease providing the information set forth in this Subsection 3.1 during the period starting with the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules or Canadian Securities Laws applicable to such registration statement and related offering; provided that the Company's covenants under this Subsection 3.1 shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable efforts to cause such registration statement to become effective.

3.2. **Inspection.** The Company shall permit each Major Investor (provided that the Board of Directors has not reasonably determined that such Major Investor is a Competitor of the Company and the Major Investor has executed a confidentiality and non-disclosure agreement), at such Major Investor's expense, to visit and inspect the Company's properties; examine its

94

books of account and records; and discuss the Company's affairs, finances, and accounts with its officers, during normal business hours of the Company as may be reasonably requested by the Major Investor; provided, however, that the Company shall not be obligated pursuant to this Subsection 3.2 to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

3.3. Termination of Information Rights. The covenants set forth in Subsections 3.1 and 3.2 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon the closing of a Deemed Liquidation Event, whichever event occurs first.

3.4. Confidentiality. Each Investor and Key Holder and Class A Director agrees that such Investor and Key Holder and Class A Director will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information obtained from the Company pursuant to the terms of this Agreement (including notice of the Company's intention to file a prospectus or registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Subsection 3.4 by such Investor and Key Holder and Class A Director), (b) is or has been independently developed or conceived by such Investor and Key Holder and Class A Director without use of the Company's confidential information, or (c) is or has been made known or disclosed to such Investor and Key Holder and Class A Director by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that an Investor and Key Holder and Class A Director may disclose confidential information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any Registrable Securities from such Investor and Key Holder and Class A Director, if such prospective purchaser agrees to be bound by the provisions of this Section 3; (iii) to any Affiliate, partner, member, shareholder, or wholly owned subsidiary of such Investor and Key Holder and Class A Director in the ordinary course of business, provided that such Investor informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information; or (iv) as may otherwise be required by law, regulation, rule, court order or subpoena, provided that such Investor and Key Holder and Class A Director promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure. Notwithstanding the foregoing paragraph, each of the parties hereto acknowledges and agrees that the foregoing paragraph shall not apply to a Major Investor providing general information about the subject matter of this Agreement or its investment in the Company in connection with fundraising, marketing, informational or reporting activities.

4. Rights to Future Share Issuances.

4.1. Right of First Offer. Subject to the terms and conditions of this Subsection 4.1 and applicable securities laws, if the Company proposes to offer or sell any New Securities, the Company shall first offer such New Securities to each Holder.

(a) The Company shall give notice (the “**Offer Notice**”) to each Holder, stating (i) its bona fide intention to offer such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) By notification to the Company within twenty (20) days after the Offer Notice is given, each Holder may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such New Securities which equals the proportion that the Common Shares then held by such Holder (including all Common Shares then issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Class A Preferred Shares and any other Derivative Securities then held by such Holder) bears to the total Common Shares of the Company then outstanding (assuming full conversion and/or exercise, as applicable, of all Class A Preferred Shares and any other Derivative Securities then outstanding). At the expiration of such twenty (20) day period, the Company shall promptly notify each Holder that elects to purchase or acquire all the shares available to it (each, a “**Fully Exercising Investor**”) of any other Holder’s failure to do likewise. During the ten (10) day period commencing after the Company has given such notice, each Fully Exercising Investor may, by giving notice to the Company, elect to purchase or acquire, in addition to the number of shares specified above, up to that portion of the New Securities for which Holders were entitled to subscribe but that were not subscribed for by the Holders which is equal to the proportion that the Common Shares issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of Class A Preferred Shares and any other Derivative Securities then held, by such Fully Exercising Investor bears to the Common Shares issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Class A Preferred Shares and any other Derivative Securities then held, by all Fully Exercising Investors who wish to purchase such unsubscribed shares. The closing of any sale pursuant to this Subsection 4.1(b) shall occur within the later of one hundred and twenty (120) days of the date that the Offer Notice is given and the date of initial sale of New Securities pursuant to Subsection 4.1(c).

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in Subsection 4.1(b), the Company shall to the extent remaining following the procedure set forth in Subsection 4.1(c)(i), during the sixty (60) days thereafter, to any Person or Persons, offer and sell the remaining unsubscribed portion of such New Securities at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Company does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Holders in accordance with this Subsection 4.1.

(d) The right of first offer in this Subsection 4.1 shall not be applicable to (i) Exempted Securities (as defined in the Amended Articles); (ii) Common Shares issued in the IPO; and (iii) the issuance of any Class A-1 Preferred Shares or Class A-2 Preferred Shares, as applicable, pursuant to and in accordance with the terms of the PPL Subscription Agreement or the Star Subscription Agreement.

(e) Notwithstanding any provision hereof to the contrary, in lieu of complying with the provisions of this Subsection 4.1, the Company may elect to give notice to the Holders within thirty (30) days after the issuance of New Securities. Such notice shall describe the type, price, and terms of the New Securities. Each Holder shall have twenty (20) days from the date notice is given to elect to purchase up to the number of New Securities that would, if purchased by such Holder, maintain such Holder's percentage-ownership position, calculated as set forth in Subsection 4.1(b) before giving effect to the issuance of such New Securities.

4.2. **Termination.** The covenants set forth in Subsection 4.1 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon the closing of a Deemed Liquidation Event, as such term is defined in the Amended Articles, whichever event occurs first.

5. Additional Covenants.

5.1. **Insurance.** The Company shall obtain, within ninety (90) days of the date hereof, from financially sound and reputable insurers Directors and Officers liability insurance in an amount and on terms and conditions satisfactory to the Board of Directors, and will use commercially reasonable efforts to cause such insurance policies to be maintained until such time as the Board of Directors determines that such insurance should be discontinued. Notwithstanding any other provision of this Section 5.1 to the contrary, for so long as a Class A Director is serving on the Board of Directors, the Company shall not cease to maintain a Directors and Officers liability insurance policy in an amount prudent for a company of a similar size and in the same business as the Company unless approved by such Class A Director, and the Company shall annually, within one hundred twenty (120) days after the end of each fiscal year of the Company, deliver to the Holders of Class A Preferred Shares a certification that such a Directors and Officers liability insurance policy remains in effect.

5.2. **Employee Agreements.** The Company will use best efforts to cause (i) each Person now or hereafter employed by it or by any subsidiary (or engaged by the Company or any subsidiary as a consultant/independent contractor) with access to confidential information and/or trade secrets to enter into a nondisclosure and proprietary rights assignment agreement; and (ii) each Key Employee to enter into a one (1) year noncompetition and nonsolicitation agreement, substantially in the form approved by the Board of Directors.

5.3. **Employee Shares.** Unless otherwise approved by the Board of Directors, including each of the Class A Directors, all future employees and consultants of the Company who purchase, receive options to purchase, or receive awards of shares in the capital of the Company after the date hereof shall be required to execute restricted stock or option agreements, as applicable, providing for (i) vesting of shares over a three (3) year period, with the first one-third (1/3) of such shares vesting following twelve (12) months of continued employment or service, and the remaining shares vesting in equal monthly installments over the following twenty-four (24) months, and (ii) a market stand-off provision substantially similar to that in Subsection 2.11. Without the prior approval by the Board of Directors, including each of the Class A Directors, the Company shall not adopt, amend, modify, terminate, waive or otherwise alter, in whole or in part, any stock purchase, stock restriction or option agreement with any

97

existing employee or service provider if such amendment would cause it to be inconsistent with this Subsection 5.3. In addition, unless otherwise approved by the Board of Directors, including each of the Class A Directors, the Company shall retain (and not waive) a “right of first refusal” on employee transfers until the Company’s IPO and shall have the right to repurchase unvested shares at cost upon termination of employment of a holder of restricted stock.

5.4. Matters Requiring Director Approval. Subject to applicable law and the Amended Articles, so long as the holders of Class A Preferred Shares are entitled to elect at least one Class A Director, the Company hereby covenants and agrees with each of the Investors that it shall not, and none of the Company’s direct or indirect subsidiaries shall, without:

(a) approval of the Board of Directors, which approval must include the affirmative vote of both Class A Directors:

(i) approve or adopt any Budget, including any modifications or amendments thereto;

(ii) liquidate, dissolve or wind-up the business and affairs of the Company, effect any amalgamation, arrangement or consolidation or any other Deemed Liquidation Event, or consent to or approve any of the foregoing;

(iii) make, or permit any subsidiary to make, any loan or advance to, or own any shares or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Company;

(iv) make, or permit any subsidiary to make, any loan or advance to any Person, including, without limitation, any employee or director of the Company or any subsidiary, except advances and similar expenditures in the ordinary course of business or under the terms of an employee stock or option plan approved by the Board of Directors;

(v) guarantee, directly or indirectly, or permit any subsidiary to guarantee, directly or indirectly, any indebtedness except for trade accounts of the Company or any subsidiary arising in the ordinary course of business;

(vi) make any investment inconsistent with any investment policy approved by the Board of Directors or approve any acquisition, strategic partnership, joint venture or similar transaction;

(vii) approve any debt financing with a bank or any other lender;

(viii) hypothecation, pledge, mortgage, charge, incur any aggregate indebtedness or other encumbrances in excess of CDN\$250,000 that is not already included in a budget approved by the Board of Directors, other than trade credit incurred in the ordinary course of business;

(ix) otherwise enter into or be a party to any transaction with any director, officer, or employee of the Company or any “associate” (as defined in Rule 12b-2 promulgated under the Exchange Act or under applicable Canadian Securities Laws) of any such Person except for transactions contemplated by this Agreement, the PPL Subscription Agreement, the Star Subscription Agreement or transactions made in the ordinary course of business and pursuant to reasonable requirements of the Company’s business and upon fair and reasonable terms that are approved by a majority of the Board of Directors;

(x) hire, terminate, or change the compensation of the executive officers, including approving any option grants or stock awards to executive officers or create or alter any employee incentive plan;

(xi) change the principal business of the Company, enter new lines of business, or exit the current line of business;

(xii) sell, assign, license, pledge, or encumber material technology or intellectual property, other than licenses granted in the ordinary course of business;

(xiii) enter into, modify or terminate any contract or corporate strategic relationship involving the payment, contribution, or assignment by the Company or to the Company of money or assets greater than CDN\$100,000;

(xiv) approve or enter into any legal settlement or similar arrangement that is (i) in excess of CDN\$100,000, or (ii) could be reasonably expected to materially affect the business of the Company;

(xv) purchase any assets in an amount over CDN\$250,000; or

(xvi) determine the fair value of any property other than cash.

(b) unanimous approval of the Board of Directors:

(i) change accounting principles or tax elections; or

(ii) enter into any employment agreement, indemnification agreement or consulting agreement with any individual to serve in the role of chief executive officer, or make any changes in the persons serving in those capacities.

In the event that any of the foregoing matters cannot be approved because the Class A Directors are unable to reach a consensus or a Class A Director abstains from voting (a “**Deadlock**”), the Class A Directors shall negotiate in good faith for a period of ten (10) days following the day of the occurrence of Deadlock and try to find a solution to the issue. For greater certainty, if both of the Class A Directors do not provide their affirmative vote as contemplated by this Section 5.4,

the Company shall not take the applicable action listed in this Section 5.4 until such time as the affirmative vote of both Class A Directors is received in accordance with this Section 5.4.

5.5. **Board Matters.** Unless otherwise determined by the vote of a majority of the directors then in office, the Board of Directors shall meet at least quarterly in accordance with an agreed-upon schedule. The Company shall reimburse the nonemployee directors for all reasonable out-of-pocket travel expenses incurred (consistent with the Company's travel policy, if any) in connection with attending meetings of the Board of Directors.

5.6. **Successor Indemnification.** If the Company or any of its successors or assignees amalgamates with any other Person, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately before such transaction, whether such obligations are contained in the Amended Articles or elsewhere, as the case may be.

5.7. **Indemnification Matters.** The Company hereby acknowledges that one (1) or more of the directors nominated to serve on the Board of Directors (each an "**Indemnified Director**") may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more third-parties, including, without limitation, the Investors and certain of their Affiliates (collectively, the "**Investor Indemnitors**"). The Company hereby agrees (a) that it is the indemnitor of first resort (*i.e.*, its obligations to any such Indemnified Director are primary and any obligation of the Investor Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Indemnified Director are secondary), (b) that it shall be required to advance the full amount of expenses incurred by such Indemnified Director and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement by or on behalf of any such Indemnified Director to the extent legally permitted and as required by the Amended Articles, without regard to any rights such Indemnified Director may have against the Investor Indemnitors, and, (c) that it irrevocably waives, relinquishes and releases the Investor Indemnitors from any and all claims against the Investor Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Investor Indemnitors on behalf of any such Indemnified Director with respect to any claim for which such Indemnified Director has sought indemnification from the Company shall affect the foregoing, and the Investor Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Indemnified Director against the Company. The Indemnified Directors and the Investor Indemnitors are intended third-party beneficiaries of this Subsection 5.7 and shall have the right, power and authority to enforce the provisions of this Subsection 5.7 as though they were a party to this Agreement.

5.8. **Right to Conduct Activities.** The Company hereby agrees and acknowledges that PPL and Star are both investment organizations, and as such reviews the business plans and related proprietary information of many enterprises, some of which may compete directly or indirectly with the Company's business (as currently conducted or as currently propose to be conducted). The Company hereby agrees that, to the extent permitted under applicable law, neither PPL, Star nor any of their respective Affiliates shall be liable to the Company for any

100

claim arising out of, or based upon, (i) the investment by PPL or Star, or any of their respective Affiliates, as applicable, in any entity competitive with the Company, or (ii) actions taken by any partner, officer, employee or other representative of PPL or Star, or any of their respective Affiliates, as applicable, to assist any such competitive company, whether or not such action was taken as a member of the board of directors of such competitive company or otherwise, and whether or not such action has a detrimental effect on the Company; provided, however, that the foregoing shall not relieve (x) any of the Investors (including PPL and Star, their respective Affiliates and each of their respective officers, directors, agents, employees, consultants, etc., of the Investors) from liability associated with the unauthorized disclosure of the Company's confidential information obtained pursuant to this Agreement, or (y) any Class A Director from any liability associated with his or her fiduciary duties to the Company.

5.9. **Board Observer.** The Company shall invite up to two representatives of each of Star and PPL to attend all meetings of its Board of Directors and any of its committees in a non-voting observer capacity and, in this respect, shall give such representatives copies of all notices, minutes, consents, and other materials that it provides to its directors at the same time and in the same manner as provided to such directors; provided, however, that such representative(s) shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that majority of the Board of Directors shall have the right to withhold any information and to exclude such representatives from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest, or if such Investor or its representative is a competitor of the Company. Any director nominated by Star or any observer appointed by Star may provide any and all information concerning or relating to the Company or any of its subsidiaries or Affiliates that is furnished (regardless of the manner in which it is furnished, including in written or electronic format or orally, gathered by visual inspection or otherwise) to such director or observer in their capacity as such, to any nominating shareholder and its representatives, subject to the confidentiality restrictions concerning such Company information contained in the Voting Agreement, for the purpose of advising Star on their investment in the Company, and may discuss such Company information with such persons for such purposes.

5.10. **Termination of Covenants.** The covenants set forth in this Section 5, except for Subsections 5.6 and 5.7 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon the closing of a Deemed Liquidation Event, whichever event occurs first.

6. Miscellaneous.

6.1. **Successors and Assigns.** The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to a transferee of Registrable Securities that (i) is an Affiliate of a Holder or (ii) is a Holder's Immediate Family Member or trust for the benefit of an individual Holder or one or more of such Holder's Immediate Family Members; provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee agrees in a written

101

instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement, including the provisions of Subsection 2.11. For the purposes of determining the number of Registrable Securities held by a transferee, the holdings of a transferee (1) that is an Affiliate or shareholder of a Holder; (2) who is a Holder's Immediate Family Member; or (3) that is a trust for the benefit of an individual Holder or such Holder's Immediate Family Member shall be aggregated together and with those of the transferring Holder; provided further that all transferees who would not qualify individually for assignment of rights shall, as a condition to the applicable transfer, establish a single attorney-in-fact for the purpose of exercising any rights, receiving notices, or taking any action under this Agreement. The terms and conditions of this Agreement inure to the benefit of and are binding upon the respective successors and permitted assignees of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

6.2. **Governing Law.** This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

6.3. **Counterparts; Facsimile.** This Agreement may be executed and delivered by facsimile or electronic mail (including in .pdf format) and in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.4. **Titles and Subtitles.** The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

6.5. **Notices.**

(a) All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) when delivered by a nationally recognized overnight courier, freight prepaid with written verification of receipt. All communications shall be sent to the respective parties at their addresses as set forth on Schedule A or Schedule B (as applicable) hereto, or to the principal office of the Company and to the attention of the Chief Executive Officer, in the case of the Company, or to such email address, facsimile number, or address as subsequently modified by written notice given in accordance with this Subsection 6.5. If notice is given to the Company, a copy shall also be sent to Blaney McMurtry LLP, 2 Queen Street East, Suite 1500, Toronto, ON M5C 3G5, Canada, Attention Dan Giantsopoulos, dgiantsopoulos@blaney.com.

(b) Consent to Electronic Notice. Each Investor and Key Holder consents to the delivery of any shareholder notice hereunder by electronic transmission at the email address set forth below such Investor's or Key Holder's name on the Schedules hereto, as updated from time to time by notice to the Company, or as on the books of the Company. Each Investor and

102

Key Holder agrees to promptly notify the Company of any change in its email address, and that failure to do so shall not affect the foregoing.

6.6. Amendments and Waivers. Any term of this Agreement may be amended, modified or terminated and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Company and the holders of at least a majority of the Registrable Securities then outstanding; provided that the Company may in its sole discretion waive compliance with Subsection 2.12(c) (and the Company's failure to object promptly in writing after notification of a proposed assignment allegedly in violation of Subsection 2.12(c) shall be deemed to be a waiver); and provided further that any provision hereof may be waived by any waiving party on such party's own behalf, without the consent of any other party. Notwithstanding the foregoing, (a) this Agreement may not be amended, modified or terminated and the observance of any term hereof may not be waived with respect to any Investor without the written consent of such Investor, unless such amendment, modification, termination, or waiver applies to all Investors in the same fashion (it being agreed that a waiver of the provisions of Section 4 with respect to a particular transaction shall be deemed to apply to all Investors in the same fashion if such waiver does so by its terms, notwithstanding the fact that certain Investors may nonetheless, by agreement with the Company, purchase securities in such transaction) and (b) Subsections 3.1 and 3.2, Section 5 and any other section of this Agreement applicable to the Major Investors (including this clause (b) of this Subsection 6.6) may not be amended, modified, terminated or waived without the written consent of the holders of at least a majority of the Registrable Securities then outstanding and held by the Major Investors. Further, this Agreement may not be amended, modified or terminated, and no provision hereof may be waived, in each case, in any way which would adversely affect the rights of the Key Holders hereunder in a manner disproportionate to any adverse effect such amendment, modification, termination or waiver would have on the rights of the Investors hereunder, without also the written consent of the holders of at least a majority of the Registrable Securities held by the Key Holders. Notwithstanding the foregoing, Schedule A hereto may be amended by the Company from time to time to add transferees of any Registrable Securities in compliance with the terms of this Agreement without the consent of the other parties; and Schedule A hereto may also be amended by the Company after the date of this Agreement without the consent of the other parties to add information regarding any additional Investor who becomes a party to this Agreement in accordance with Subsection 5.1. The Company shall give prompt notice of any amendment, modification or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, modification, termination, or waiver. Any amendment, modification, termination, or waiver effected in accordance with this Subsection 6.6 shall be binding on all parties hereto, regardless of whether any such party has consented thereto. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

6.7. Severability. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

6.8. **Aggregation of Shares.** All Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

6.9. **Additional Investors.** Notwithstanding anything to the contrary contained herein, if the Company issues additional Class A Preferred Shares after the date hereof, whether pursuant to the Star Subscription Agreement or the PPL Subscription Agreement, as applicable, or otherwise, any purchaser of such Class A Preferred Shares may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement, and thereafter shall be deemed an "Investor" for all purposes hereunder. No action or consent by the Investors shall be required for such joinder to this Agreement by such additional Investor, so long as such additional Investor has agreed in writing to be bound by all of the obligations as an "Investor" hereunder.

6.10. **Entire Agreement.** This Agreement (including any Schedule hereto) constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

6.11. **Dispute Resolution.** The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the courts of the Province of Ontario for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the courts located in the Province of Ontario, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

104

6.12. **Delays and Omissions.** No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such nonbreaching or nondefaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

6.13. **Interpretation and Currency.** Unless otherwise specified, all references to money amounts, “dollars” and “\$” are to lawful currency of the United States. Time is of the essence in the performance of the parties’ respective obligations under this Agreement. Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next business day following if the last day of the period is not a business day.

6.14. **Independent Legal Advice.** Each of the parties to this Agreement acknowledges and agrees that such party has been given the opportunity to consult with its own tax and legal advisors regarding the matters contemplated by this Agreement. To the extent that any party has declined to receive independent tax or legal advice, such party hereby waives the right, should a dispute later develop, to rely on such party’s lack of independent tax or legal advisors to avoid his, her or its obligations, to seek indulgences from the other parties or to otherwise attack the integrity of this Agreement or any of the provisions hereof, in whole or in part.

6.15. **Unanimous Shareholder Agreement.** This Agreement, together with Right of First Refusal and Co-Sale Agreement and the Voting Agreement shall be deemed to be a unanimous shareholder agreement within the meaning of the *Canada Business Corporations Act*.

[Signature Page Follows]

105

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DEMAND POWER GROUP INC.

By: Rajan Chudgar
Name: Rajan Chudgar
Title: CEO

Address:

71 Marycroft Avenue, Unit 20
Woodbridge, ON L4L 5Y6
Canada

INVESTORS:

PPL TECHNOLOGY VENTURES, LLC

By: _____
Name: Alexander Torok
Title: President

Address:

c/o Wilmington Trust (registered agent)
1105 North Market Street
Suite 1300
Wilmington, DE 19801

**STAR AMERICA DPGI ACQUISITION
COMPANY, INC.**

By: _____
Name: William A. Marino
Title: CEO

Address:

165 Roslyn Road
Roslyn Heights, NY 11577
U.S.A

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DEMAND POWER GROUP INC.

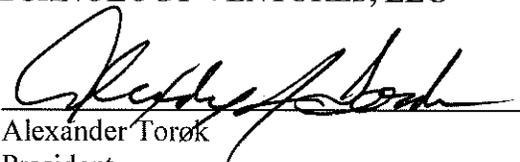
By: _____
Name: Rajan Chudgar
Title: CEO

Address:

71 Marycroft Avenue, Unit 20
Woodbridge, ON L4L 5Y6
Canada

INVESTORS:

PPL TECHNOLOGY VENTURES, LLC

By: 
Name: Alexander Torok
Title: President

Address:

c/o Wilmington Trust (registered agent)
1105 North Market Street
Suite 1300
Wilmington, DE 19801

**STAR AMERICA DPGI ACQUISITION
COMPANY, INC.**

By: _____
Name: William A. Marino
Title: CEO

Address:
165 Roslyn Road
Roslyn Heights, NY 11577
U.S.A

107

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DEMAND POWER GROUP INC.

By: _____
Name: Rajan Chudgar
Title: CEO

Address:

71 Marycroft Avenue, Unit 20
Woodbridge, ON L4L 5Y6
Canada

INVESTORS:

PPL TECHNOLOGY VENTURES, LLC

By: _____
Name: Alexander Torok
Title: President

Address:

c/o Wilmington Trust (registered agent)
1105 North Market Street
Suite 1300
Wilmington, DE 19801

**STAR AMERICA DPGI ACQUISITION
COMPANY, INC.**

By:  _____
Name: William A. Marino
Title: CEO

Address:

165 Roslyn Road
Roslyn Heights, NY 11577
U.S.A

108

KEY HOLDERS:

2617822 ONTARIO INC.

By: 
Name: JENNIFER KOMINEK
Title: DIRECTOR

MANNY BETTENCOURT

ANTHONY QUINTO

GIANFRANCO QUINTO

2070458 ONTARIO INC.

By: _____
Name: _____
Title: _____

DOMENICO TARASCIO

GIUSEPPE TARASCIO

KEY HOLDERS:

2617822 ONTARIO INC.

By: _____
Name: _____
Title: _____

MANNY BETTENCOURT



ANTHONY QUINTO



GIANFRANCO QUINTO



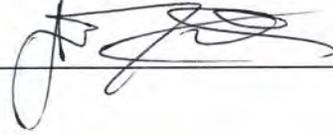
2070458 ONTARIO INC.

By: _____
Name: STEVE GERARD
Title: PRESIDENT

DOMENICO TARASCIO

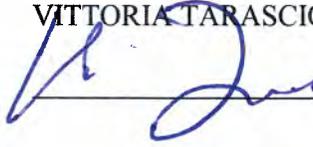


GIUSEPPE TARASCIO



KEY HOLDERS (CONT'D)

VITTORIA TARASCIO



RAJ CHUDGAR

BLANEY MCMURTRY LLP

By: _____
Name: _____
Title: _____

TRANSNET ENERGY INC



By: _____
Name: _____
Title: _____

KEY HOLDERS (CONT'D)

VITTORIA TARASCIO

RAJ CHUDGAR

Rajan Chudgar

BLANEY MCMURTRY LLP

By: _____
Name: _____
Title: _____

TRANSNET ENERGY INC.

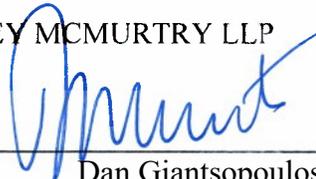
By: _____
Name: _____
Title: _____

KEY HOLDERS (CONT'D)

VITTORIA TARASCIO

RAJ CHUDGAR

BLANEY MCMURTRY LLP

By: 

Name: Dan Giantsopoulos

Title:

TRANSNET ENERGY INC.

By: _____

Name: _____

Title: _____

113

SCHEDULE A
Investors

PPL Technology Ventures, LLC

Star America DPGI Acquisition Company, Inc.

SCHEDULE B
Key Holders

<u>Name</u>	<u>Address</u>	<u>Number of Shares Held</u>	<u>Class of Shares Held</u>
2617822 Ontario Inc.	3884 Chesswood Drive North York, Ontario M3J 2W6	14,000,000	Common
Manny Bettencourt	305 Glebeholme Blvd. Toronto, Ontario M4J 1T1	2,000,000	Common
Anthony Quinto	47 Saddle Tree Cres Woodbridge , ON , L4L 3X4	4,636,365	Common
Gianfranco Quinto	1 Colton Cres North Woodbridge , ON , L4L 3L6	8,000,000	Common
2070458 Ontario Inc.	180 Carmichael Crescent King City, Ontario Canada L7B 0N2	2,000,000	Common
Domenico Tarascio	137 Kingsnorth Blvd Woodbridge, ON L4L 8J6	454,545	Common
Giuseppe Tarascio	14 Slipneedle St. Brampton, ON L6S 6L4	454,545	Common
Vittoria Tarascio	137 Kingsnorth Blvd Woodbridge, ON L4L 8J6	454,545	Common
Raj Chudgar	5722 Belmont Valley Court Raleigh, NC USA 27612	4,000,000	Common
Blaney McMurtry LLP	2 Queen Street East, Suite 1500 Toronto, Ontario Canada M5C 3G5	2,000,000	Common
Transnet Energy Inc.	71 Marycroft Avenue, Unit 20 Woodbridge, Ontario Canada L4L 5Y6	2,010,395	Special Shares
Transnet Energy Inc.	71 Marycroft Avenue, Unit 20 Woodbridge, Ontario Canada L4L 5Y6	4,000,000	Common

115

This is Exhibit "C" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Zev Smith

4F6A7FBBFE6C441...

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

AMENDED AND RESTATED VOTING AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
1. Voting Provisions Regarding the Board	2
1.1. Size of the Board.....	2
1.2. Board Composition	2
1.3. Failure to Designate a Board Member	3
1.4. Removal of Board Members.....	3
1.5. No Liability for Election of Recommended Directors.....	4
2. Drag-Along Right	4
2.1. Definitions.....	4
2.2. Actions to be Taken	4
2.3. Conditions.....	6
2.4. Restrictions on Sales of Control of the Company.....	8
3. Remedies.....	8
3.1. Covenants of the Company.....	8
3.2. Power of Attorney.....	8
3.3. Specific Enforcement.....	9
3.4. Remedies Cumulative	9
4. “Bad Actor” Matters.	9
4.1. Definitions.....	9
4.2. Representations.	9
4.3. Covenants.....	10
5. Term.....	10
6. Miscellaneous	10
6.1. Additional Parties.....	11
6.2. Unanimous Shareholder Agreement	11
6.3. Transfers	11
6.4. Successors and Assigns.....	11
6.5. Governing Law	11
6.6. Counterparts; Facsimile	12
6.7. Titles and Subtitles.....	12
6.8. Notices	12
6.9. Consent Required to Amend, Modify, Terminate or Waive.....	12
6.10. Delays or Omissions	13
6.11. Severability	13
6.12. Entire Agreement.....	13
6.13. Share Certificate Legend.....	14
6.14. Share Subdivisions, Stock Dividends, etc.....	14
6.15. Manner of Voting.....	14
6.16. Further Assurances.....	14
6.17. Dispute Resolution.....	15

118

6.18.	Costs of Enforcement.....	15
6.19.	Aggregation of Shares.....	15
6.20.	Independent Legal Advice	15
6.21.	Reimbursement of Expenses.....	15

Schedule A	-	Investors
Schedule B	-	Key Holders
Exhibit A	-	Adoption Agreement

VOTING AGREEMENT

THIS AMENDED AND RESTATED VOTING AGREEMENT (this “**Agreement**”), is made and entered into as of this 28th day of February, 2020, by and among Demand Power Group Inc., an Ontario corporation (the “**Company**”), each holder of a Class A-2 Preferred shares in the capital of the Company (the “**Class A-2 Preferred Shares**”) and collectively with the Class A-1 Preferred Shares (as defined below) referred to as the “**Class A Preferred Shares**”) listed on Schedule A (together with any subsequent investors, or transferees, who become parties hereto as “**Investors**” pursuant to Subsections 6.1(a) or 6.3 below, the “**Investors**”), and all the other shareholders of the Company listed on Schedule B (together with any subsequent shareholders, or any transferees, who become parties hereto as “**Key Holders**” pursuant to Subsections 6.1(b) below, the “**Key Holders**,” and together collectively with the Investors, the “**Shareholders**”).

RECITALS

A. The Company entered into a Class A Preferred Share Subscription Agreement dated July 15, 2019 (the “**PPL Subscription Agreement**”) with PPL Technology Ventures, LLC (“**PPL**”), pursuant to which PPL agreed to purchase certain Class A Preferred shares (which Class A Preferred Shares have subsequently been converted into Class A-1 Preferred Shares in the capital of the Company, the “**Class A-1 Preferred Shares**”).

B. In connection with the PPL Subscription Agreement, the Company and its Shareholders entered into a Voting Agreement dated July 15, 2019 (the “**Original Agreement**”).

C. On the date hereof, the Company and Star America DPGI Acquisition Company, Inc. (“**Star**”) entered into a Class A-2 Preferred Share Subscription Agreement (the “**Star Purchase Agreement**”) providing for the sale of Class A-2 Preferred Shares and in connection with the Star Purchase Agreement the Company and the Shareholders wish to amend and restate the Original Agreement in order to provide the Investors with the right, among other rights, to designate the election of certain members of the board of directors of the Company (the “**Board**”) in accordance with the terms of this Agreement.

D. In accordance with Subsection 6.9 of the Original Agreement, the Company and the Shareholders wish to amend and restate the Original Agreement and replace it in its entirety with this Agreement.

E. The Articles of Incorporation of the Company, as amended, including by articles of amendment dated June 18, 2019 and Articles of Amendment filed in connection with the Star Purchase Agreement dated February 28, 2020 (the “**Amended Articles**”) provide that (a) the holders of record of the Class A-1 Preferred Shares, exclusively and as a separate class, shall be entitled to elect one (1) director of the Company, (b) the holders of record of the Class A-2 Preferred Shares exclusively and as a separate class, shall be entitled to elect one (1) director of the Company, (c) the holders of record of the Common Shares in the capital of the Company (“**Common Shares**”), exclusively and as a separate class, shall be entitled to elect two (2) directors of the Company; and (d) the Chief Executive Officer of the Company shall be a director of the Company.

F. The parties also desire to enter into this Agreement to set forth their agreements and understandings with respect to how shares in the capital of the Company held by them will be voted on, or tendered in connection with, an acquisition of the Company.

NOW, THEREFORE, the parties agree as follows:

1. **Voting Provisions Regarding the Board.**

1.1. **Size of the Board.** Each Shareholder agrees to vote, or cause to be voted, all Shares (as defined below) owned by such Shareholder, or over which such Shareholder has voting control or direction, from time to time and at all times, in whatever manner as shall be necessary to ensure that the size of the Board shall be set and remain at five (5) directors and may be increased or decreased only in accordance with the provisions of the Amended Articles. For purposes of this Agreement, the term “**Shares**” shall mean and include any securities of the Company that the holders of which are entitled to vote for members of the Board, including without limitation, all Common Shares, Class A Preferred Shares and any other shares in the capital of the Company, by whatever name called, now owned or subsequently acquired by a Shareholder, however acquired, whether through a subdivision of shares, stock dividends, reclassifications, recapitalizations, similar events or otherwise.

1.2. **Board Composition.** Each Shareholder agrees to vote, or cause to be voted, all Shares owned by such Shareholder, or over which such Shareholder has voting control or direction, from time to time and at all times, in whatever manner as shall be necessary to ensure that at each annual or special meeting of shareholders at which an election of directors is held or pursuant to any written consent resolution of the shareholders of the Company, subject to Section 5, the following persons shall be elected to the Board: For the period contemplated in the Amended Articles, one (1) person designated by the holders of record of the Class A-1 Preferred Shares, voting exclusively and as a separate class, all of which shall be designated by PPL or any of its Affiliates that hold Class A-1 Preferred Shares, which individual shall initially be Srikant Akula (the “**Class A-1 Director**”);

(b) For the period contemplated in the Amended Articles, one (1) person designated by the holders of record of the Class A-2 Preferred Shares, voting exclusively and as a separate class, all of which shall be designated by Star or any of its Affiliates that hold Class A-2 Preferred Shares, which individually shall initially be Jahred Kallop (the “**Class A-2 Director**” and together with the Class A-1 Director, the “**Class A Directors**”);

(c) For the period contemplated in the Amended Articles, two (2) persons designated by the holders of record of the Common Shares, voting exclusively and as a separate class, which individuals shall initially be Robert Aiello and Carlo Crozzoli; and

(d) The person, if any, then serving as the Chief Executive Officer of the Company, who is currently Raj Chudgar (the “**CEO Director**”), provided that if for any reason the CEO Director shall cease to serve as the Chief Executive Officer of the Company, each of the Shareholders shall promptly vote their respective Shares, voting together as a single class on an as-converted basis (i) to remove the former Chief Executive Officer of the Company from the Board if such person has not resigned as a member of the Board; and (ii) to elect such person’s replacement as Chief Executive Officer of the Company as the new CEO Director. For greater

121

certainty, the CEO Director shall not be entitled to vote at any meeting of the Board unless there is a tie vote (except for matters specifically requiring the unanimous approval of the Class A Directors), in which instance the CEO Director shall only be entitled to vote to break such tie vote.

To the extent that any of clauses (a) through (d) above shall not be applicable, any member of the Board who would otherwise have been designated in accordance with the terms thereof shall instead be voted upon by all the shareholders of the Company entitled to vote thereon in accordance with, and pursuant to, the Amended Articles.

For purposes of this Agreement, an individual, firm, corporation, partnership, association, limited liability company, trust or any other entity (collectively, a “**Person**”) shall be deemed an “**Affiliate**” of another Person who, directly or indirectly, controls, is controlled by or is under common control with such Person, including, without limitation, any general partner, managing member, investment advisor, officer, director, trustee or employee of such Person, or any venture capital fund or registered investment company now or hereafter existing that is controlled by one or more general partners, managing members or investment advisers of, or shares the same management company or investment adviser with, such Person.

1.3. **Failure to Designate a Board Member.** In the absence of any designation from the Persons or groups with the right to designate a director as specified above, the director previously designated by them and then serving shall be reelected if still eligible and willing to serve as provided herein and otherwise, such Board seat shall remain vacant.

1.4. **Removal of Board Members.** Each Shareholder also agrees to vote, or cause to be voted, all Shares owned by such Shareholder, or over which such Shareholder has voting control or direction, from time to time and at all times, in whatever manner as shall be necessary to ensure that:

(a) no director elected pursuant to Subsections 1.2 or 1.3 of this Agreement may be removed from office other than for cause unless (i) such removal is directed or approved by the affirmative vote of the Person(s), or of the holders of at least a majority of the shares in the capital of the Company, entitled under Subsection 1.3 to designate that director; or (ii) the Person(s) originally entitled to designate or approve such director or occupy such Board seat pursuant to Subsection 1.3 is no longer so entitled to designate or approve such director or occupy such Board seat;

(b) any vacancies created by the resignation, removal or death of a director elected pursuant to Subsections 1.2 or 1.3 shall be filled pursuant to the provisions of this Section 1; and

(c) upon the request of any party or parties entitled to designate a director as provided in Subsection 1.2(a), 1.2(b) or 1.2(c) to remove such director, such director shall be removed.

All Shareholders agree to execute any written resolutions or consents required to perform the obligations of this Section 1, and the Company agrees at the request of any Person or group

122

entitled to designate directors to call a special meeting of shareholders for the purpose of electing directors.

Unless the authorized number of Common Shares is unlimited, each Shareholder agrees to vote or cause to be voted all Shares owned by such Shareholder, or over which such Shareholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to increase the number of authorized Common Shares from time to time to ensure that there will be sufficient Common Shares available for conversion of all of the Preferred Shares outstanding at any given time.

1.5. **No Liability for Election of Recommended Directors.** No Shareholder, nor any Affiliate of any Shareholder, shall have any liability as a result of designating a person for election as a director for any act or omission by such designated person in his or her capacity as a director of the Company, nor shall any Shareholder have any liability as a result of voting for any such designee in accordance with the provisions of this Agreement.

2. Drag-Along Right.

2.1. **Definitions.** A “**Sale of the Company**” shall mean either: (a) a transaction or series of related transactions in which a Person, or a group of related Persons, acquires from shareholders of the Company shares representing more than fifty percent (50%) of the outstanding voting power of the Company (a “**Share Sale**”); or (b) a transaction that qualifies as a “**Deemed Liquidation Event**” (as defined in the Amended Articles); provided, for greater certainty, a “**Sale of the Company**” shall expressly exclude any transfer and/or sale of Shares in accordance with the “**Right to Purchase**” contemplated in Section 4 of the Right to Purchase Agreement .

“**Right to Purchase Agreement**” means the Amended and Restated Right to Purchase Agreement, dated as of February 28, 2020 between the Company, PPL, Star, the Key Holders and certain other shareholders named therein, as may be further amended and/or restated from time to time.

2.2. **Actions to be Taken.** In the event that (i) the holders of a majority of the Class A Preferred Shares, voting as a single class on an as-converted Common Share basis (the “**Selling Investors**”) and (ii) the Board approve a Sale of the Company in writing, specifying that this Section 2.2 shall apply to such transaction, then, subject to satisfaction of each of the conditions set forth in Subsection 2.3 below, each Shareholder and the Company hereby agree:

(a) if such transaction requires shareholder approval, with respect to all Shares that such Shareholder owns or over which such Shareholder otherwise exercises voting power, to vote (in person, by proxy or by action by written consent, as applicable) all Shares in favor of, and adopt, such Sale of the Company (together with any related amendment or restatement to the Amended Articles required to implement such Sale of the Company) and to vote in opposition to any and all other proposals that could reasonably be expected to delay or impair the ability of the Company to consummate such Sale of the Company;

(b) if such transaction is a Share Sale, to sell the same proportion of Shares beneficially held by such Shareholder as is being sold by the Selling Investors to the Person to

123

whom the Selling Investors propose to sell their Shares, and, except as permitted in Subsection 2.3 below, on the same terms and conditions as the other shareholders of the Company;

(c) to execute and deliver all related documentation and take such other action in support of the Sale of the Company as shall reasonably be requested by the Company or the Selling Investors in order to carry out the terms and provision of this Section 2, including, without limitation, executing and delivering instruments of conveyance and transfer, and any purchase agreement, amalgamation agreement, arrangement agreement, any associated indemnity agreement, or escrow agreement, any associated voting, support, or joinder agreement, consent, waiver, governmental filing, share certificates duly endorsed for transfer (free and clear of impermissible liens, claims and encumbrances), and any similar or related documents;

(d) not to deposit, and to cause their Affiliates not to deposit, except as provided in this Agreement, any Shares owned by such party or Affiliate in a voting trust or subject any Shares to any arrangement or agreement with respect to the voting of such Shares, unless specifically requested to do so by the acquirer in connection with the Sale of the Company;

(e) to waive and refrain from (i) exercising any dissent rights or rights of appraisal under applicable law at any time with respect to such Sale of the Company, or (ii); asserting any claim or commencing any suit (x) challenging the Sale of the Company or this Agreement, (y) alleging oppression, unfair prejudice or unfair disregard or (z) alleging a breach of any fiduciary duty of the Selling Investors or any Affiliate or associate thereof (including, without limitation, aiding and abetting breach of fiduciary duty) in connection with the evaluation, negotiation or entry into the Sale of the Company, or the consummation of the transactions contemplated thereby;

(f) if the consideration to be paid in exchange for the Shares pursuant to this Section 2 includes any securities and due receipt thereof by any Shareholder would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities; or (y) the provision to any Shareholder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to “accredited investors” as defined in National Instrument 45-106 Prospectus Exemptions (“**NI 45-106**”) and in Regulation D promulgated under the *Securities Act of 1933*, as amended (the “**Securities Act**”), the Company may cause to be paid to any such Shareholder in lieu thereof, against surrender of the Shares which would have otherwise been sold by such Shareholder, an amount in cash equal to the fair value (as determined in good faith by the Board) of the securities which such Shareholder would otherwise receive as of the date of the issuance of such securities in exchange for the Shares; and

(g) in the event that the Selling Investors, in connection with such Sale of the Company, appoint a shareholder representative (the “**Shareholder Representative**”) with respect to matters affecting the Shareholders under the applicable definitive transaction agreements following consummation of such Sale of the Company, (x) to consent to (i) the appointment of such Shareholder Representative, (ii) the establishment of any applicable escrow, expense or similar fund in connection with any indemnification or similar obligations, and (iii) the payment of such Shareholder’s pro rata portion (from the applicable escrow or expense fund or otherwise) of any and all reasonable fees and expenses to such Shareholder Representative in

124

connection with such Shareholder Representative's services and duties in connection with such Sale of the Company and its related service as the representative of the Shareholders, and (y) not to assert any claim or commence any suit against the Shareholder Representative or any other Shareholder with respect to any action or inaction taken or failed to be taken by the Shareholder Representative, within the scope of the Shareholder Representative's authority, in connection with its service as the Shareholder Representative, absent fraud, bad faith, gross negligence or willful misconduct.

2.3. **Conditions.** Notwithstanding anything to the contrary set forth herein, a Shareholder will not be required to comply with Subsection 2.2 above in connection with any proposed Sale of the Company (the "**Proposed Sale**"), unless: any representations and warranties to be made by such Shareholder in connection with the Proposed Sale are limited to representations and warranties related to authority, ownership and the ability to convey title to such Shares, including, but not limited to, representations and warranties that (i) the Shareholder holds all right, title and interest in and to the Shares such Shareholder purports to hold, free and clear of all liens and encumbrances, (ii) the obligations of the Shareholder in connection with the transaction have been duly authorized, if applicable, (iii) the documents to be entered into by the Shareholder have been duly executed by the Shareholder and delivered to the acquirer and are enforceable (subject to customary limitations) against the Shareholder in accordance with their respective terms; and (iv) neither the execution and delivery of documents to be entered into by the Shareholder in connection with the transaction, nor the performance of the Shareholder's obligations thereunder, will cause a breach or violation of the terms of any agreement to which the Shareholder is a party, or any law or judgment, order or decree of any court or governmental agency that applies to the Shareholder;

(b) such Shareholder is not required to agree (i) if such Shareholder is not a Key Holder, to any restrictive covenant in connection with the Proposed Sale, and (ii) if such Shareholder is a Key Holder, to any restrictive covenant in connection with the Proposed Sale unless such restrictive covenant is, in the aggregate, of the type reasonably requested in the market at such time in connection with a sale similar to the Proposed Sale (including, in the case of both (i) and (ii), without limitation any covenant not to compete or covenant not to solicit customers, employees or suppliers of any party to the Proposed Sale);

(c) such Shareholder and its Affiliates are not required to amend, extend or terminate any contractual or other relationship with the Company, the acquirer or their respective Affiliates, except that the Shareholder may be required to agree to terminate the investment-related documents between or among such Shareholder, the Company and/or other shareholders of the Company;

(d) the Shareholder is not liable for the breach of any representation, warranty or covenant made by any other Person in connection with the Proposed Sale, other than the Company (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any shareholder of any of identical representations, warranties and covenants provided by all shareholders);

(e) liability shall be limited to such Shareholder's applicable share (determined based on the respective proceeds payable to each Shareholder in connection with

125

such Proposed Sale in accordance with the provisions of the Amended Articles) of a negotiated aggregate indemnification amount that applies equally to all Shareholders but that in no event exceeds the amount of consideration otherwise payable to such Shareholder in connection with such Proposed Sale, except with respect to claims related to fraud by such Shareholder, the liability for which need not be limited as to such Shareholder;

(f) upon the consummation of the Proposed Sale (i) each holder of each class or series of Shares will receive the same form of consideration for their Shares of such class or series as is received by other holders in respect of their Shares of such same class or series, and if any holders of any Shares are given a choice as to the form of consideration to be received as a result of the Proposed Sale, all holders of such Shares will be given the same option, (ii) each holder of a class or series of Class A Preferred Shares will receive the same amount of consideration per share of such class or series of Class A Preferred Shares as is received by other holders in respect of their share of such class or series of Class A Preferred Shares, (iii) each holder of Common Shares will receive the same amount of consideration per Common Share as is received by other holders in respect of their Common Shares, and (iv) unless waived pursuant to the terms of the Amended Articles and as may be required by law, the aggregate consideration receivable by all holders of the Class A Preferred Shares and the Common Shares shall be allocated among the holders of Class A Preferred Shares and the Common Shares on the basis of the relative liquidation preferences to which the holders of each respective class or series of Class A Preferred Shares and the holders of the Common Shares are entitled in a Deemed Liquidation Event (assuming for this purpose that the Proposed Sale is a Deemed Liquidation Event) in accordance with the Amended Articles; provided, however, that, notwithstanding the foregoing provisions of this Subsection 2.3(f), if the consideration to be paid in exchange for the Key Holder Shares or Investor Shares, as applicable, pursuant to this Subsection 2.3(f) includes any securities and due receipt thereof by any Key Holder or Investor would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities; or (y) the provision to any Key Holder or Investor of any information other than such information as a prudent issuer would generally furnish in an offering made solely to “accredited investors” as defined in NI 45-106 and in Regulation D promulgated under the Securities Act, the Company may cause to be paid to any such Key Holder or Investor in lieu thereof, against surrender of the Key Holder Shares or Investor Shares, as applicable, which would have otherwise been sold by such Key Holder or Investor, an amount in cash equal to the fair value (as determined in good faith by the Board) of the securities which such Key Holder or Investor would otherwise receive as of the date of the issuance of such securities in exchange for the Key Holder Shares or Investor Shares, as applicable; and

(g) subject to Subsection 2.3(f) above, requiring the same form of consideration to be available to the holders of any single class or series of Shares, if any holders of any Shares are given an option as to the form and amount of consideration to be received as a result of the Proposed Sale, all holders of Shares will be given the same option; provided, however, that nothing in this Subsection 2.3(g) shall entitle any holder to receive any form of consideration that such holder would be ineligible to receive as a result of such holder’s failure to satisfy any condition, requirement or limitation that is generally applicable to the Company’s shareholders.

2.4. **Restrictions on Sales of Control of the Company.** No Shareholder shall be a party to any Share Sale unless (a) all holders of Class A Preferred Shares are allowed to participate in such transaction(s) and (b) the consideration received pursuant to such transaction is allocated among the parties thereto in the manner specified in the Amended Articles (as if such transaction(s) were a Deemed Liquidation Event), unless the holders of at least the requisite percentage required to waive treatment of the transaction(s) as a Deemed Liquidation Event pursuant to the terms of the Amended Articles elect to allocate the consideration differently by written notice given to the Company at least ten (10) days prior to the effective date of any such transaction or series of related transactions.

3. **Remedies.**

3.1. **Covenants of the Company.** The Company agrees to use best efforts, within the requirements of applicable law, to ensure that (i) the rights granted under this Agreement are effective and that the parties enjoy the benefits of this Agreement, including, without limitation, the use of the Company's best efforts to cause the nomination and election of the directors as provided in this Agreement and (ii) the Company and any of its subsidiaries comply with the Venture Capital Operating Company, Social Responsibility Investment Policy, the Responsible Contractor Policy and the Environmental, Social and Governance requirements attached as Schedule C hereto (each, as may be amended by Star from time to time).

3.2. **Power of Attorney.** Each party to this Agreement hereby constitutes and appoints as the proxies of the party, and agrees from time to time to constitute and appoint as the proxies of the party, and hereby grants a power of attorney to the Company's Chief Executive Officer, and a designee of the Selling Investors, and each of them, with full power of substitution, with respect to the matters set forth herein, including, without limitation, election of persons as members of the Board in accordance with Section 1 hereof, votes to increase authorized Shares pursuant to Section 1.4 hereof and votes regarding any Sale of the Company pursuant to Section 2 hereof, and hereby authorizes each of them to represent and vote, if and only if the party (i) fails to vote, or (ii) attempts to vote (whether by proxy, in person or by written consent), in a manner which is inconsistent with the terms of Section 2 of this Agreement, all of such party's Shares in favor of the election of persons as members of the Board determined pursuant to and in accordance with Section 1 hereto, the increase of authorized Shares pursuant to Section 1.4 hereto or approval of any Sale of the Company pursuant to and in accordance with the terms and provisions of Section 2 of this Agreement or to take any action reasonably necessary to effect Section 2 of this Agreement. The power of attorney granted hereunder shall authorize the Company's Chief Executive Officer to execute and deliver the documentation referred to in Section 2.2(c) on behalf of any party failing to do so within five (5) business days of a request by the Company. Each of the proxy and power of attorney granted pursuant to this Section 3.2 is given in consideration of the agreements and covenants of the Company and the parties in connection with the transactions contemplated by this Agreement and, as such, each is coupled with an interest and shall be irrevocable unless and until this Agreement terminates or expires pursuant to Section 5 hereof. Each party hereto hereby revokes any and all previous proxies or powers of attorney with respect to the Shares and shall not hereafter, unless and until this Agreement terminates or expires pursuant to Section 5 hereof, purport to grant any other proxy or power of attorney with respect to any of the Shares except as expressly contemplated above, deposit any of the Shares into a voting trust or enter into any

agreement (other than this Agreement), arrangement or understanding with any person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of the Shares, in each case, with respect to any of the matters set forth herein. The power of attorney granted in this Section 3 is not intended to be a CPOA. The execution of this Agreement shall not terminate any CPOA granted by a Shareholder previously and this power of attorney shall not be terminated by the execution by a Shareholder in the future of a CPOA. "CPOA" means a continuing power of attorney within the meaning of and governed by the *Substitute Decisions Act* (Ontario), or any similar power of attorney under equivalent legislation in any other jurisdiction.

3.3. **Specific Enforcement.** Each party acknowledges and agrees that each party hereto will be irreparably damaged in the event any of the provisions of this Agreement are not performed by the parties in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that each of the Company and the Shareholders shall be entitled to an injunction to prevent breaches of this Agreement, and to specific enforcement of this Agreement and its terms and provisions in any action instituted in any court of competent jurisdiction without any requirement to post bond.

3.4. **Remedies Cumulative.** All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

4. **"Bad Actor" Matters.**

4.1. **Definitions.**

For purposes of this Agreement:

(a) **"Company Covered Person"** means, with respect to the Company as an "issuer" for purposes of Rule 506 promulgated under the Securities Act, any Person listed in the first paragraph of Rule 506(d)(1).

(b) **"Disqualified Designee"** means any director designee to whom any Disqualification Event is applicable, except for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable.

(c) **"Disqualification Event"** means a "bad actor" disqualifying event described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act.

(d) **"Rule 506(d) Related Party"** means, with respect to any Person, any other Person that is a beneficial owner of such first Person's securities for purposes of Rule 506(d) under the Securities Act.

4.2. **Representations.**

(a) Each Person with the right to designate or participate in the designation of a director pursuant to this Agreement hereby represents that (i) such Person has exercised reasonable care to determine whether any Disqualification Event is applicable to such Person, any director designee designated by such Person pursuant to this Agreement or any of

128

such Person's Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable and (ii) no Disqualification Event is applicable to such Person, any Board member designated by such Person pursuant to this Agreement or any of such Person's Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. Notwithstanding anything to the contrary in this Agreement, each Investor makes no representation regarding any Person that may be deemed to be a beneficial owner of the Company's voting equity securities held by such Investor solely by virtue of that Person being or becoming a party to (x) this Agreement, as may be subsequently amended, or (y) any other contract or written agreement to which the Company and such Investor are parties regarding (1) the voting power, which includes the power to vote or to direct the voting of, such security; and/or (2) the investment power, which includes the power to dispose, or to direct the disposition of, such security.

(b) The Company hereby represents and warrants to the Investors that no Disqualification Event is applicable to the Company or, to the Company's knowledge, any Company Covered Person, except for a Disqualification Event as to which Rule 506(d)(2)(ii-iv) or (d)(3) is applicable.

4.3. **Covenants.**

Each Person with the right to designate or participate in the designation of a director pursuant to this Agreement covenants and agrees (i) not to designate or participate in the designation of any director designee who, to such Person's knowledge, is a Disqualified Designee, (ii) to exercise reasonable care to determine whether any director designee designated by such person is a Disqualified Designee, (iii) that in the event such Person becomes aware that any individual previously designated by any such Person is or has become a Disqualified Designee, such Person shall as promptly as practicable take such actions as are necessary to remove such Disqualified Designee from the Board and designate a replacement designee who is not a Disqualified Designee, and (iv) to notify the Company promptly in writing in the event a Disqualification Event becomes applicable to such Person or any of its Rule 506(d) Related Parties, or, to such Person's knowledge, to such Person's initial designee named in Section 1, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable.

5. **Term.** This Agreement shall be effective as of the date hereof and shall continue in effect until and shall terminate upon the earliest to occur of (a) the consummation of the Company's first underwritten public offering of its Common Shares (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to its stock option, stock purchase or similar plan or an SEC Rule 145 transaction); (b) the consummation of a Sale of the Company and distribution of proceeds to or escrow for the benefit of the Shareholders in accordance with the Amended Articles, provided that the provisions of Section 2 hereof will continue after the closing of any Sale of the Company to the extent necessary to enforce the provisions of Section 2 with respect to such Sale of the Company; and (c) termination of this Agreement in accordance with Subsection 6.9 below.

6. **Miscellaneous.**

6.1. **Additional Parties.**

(a) Notwithstanding anything to the contrary contained herein, if the Company issues additional Class A Preferred Shares after the date hereof, as a condition to the issuance of such shares the Company shall require that any purchaser of such shares become a party to this Agreement by executing and delivering (i) the Adoption Agreement attached to this Agreement as Exhibit A, or (ii) a counterpart signature page hereto agreeing to be bound by and subject to the terms of this Agreement as an Investor and Shareholder hereunder. In either event, each such person shall thereafter be deemed an Investor and Shareholder for all purposes under this Agreement.

(b) In the event that after the date of this Agreement, the Company enters into an agreement with any Person to issue shares in the capital of the Company to such Person (other than to a purchaser of Class A Preferred Shares described in Subsection 6.1(a) above), then, the Company shall cause such Person, as a condition precedent to entering into such agreement, to become a party to this Agreement by executing an Adoption Agreement in the form attached hereto as Exhibit A, agreeing to be bound by and subject to the terms of this Agreement as a Shareholder and thereafter such Person shall be deemed a Shareholder for all purposes under this Agreement.

6.2. **Unanimous Shareholder Agreement.** This Agreement together with the Right of First Refusal and Co-Sale Agreement and the Investors' Rights Agreement shall be deemed to be a unanimous shareholder agreement within the meaning of the *Canada Business Corporations Act*.

6.3. **Transfers.** Each transferee or assignee of any Shares subject to this Agreement shall continue to be subject to the terms hereof, and, as a condition precedent to the Company's recognition of such transfer, each transferee or assignee shall agree in writing to be subject to each of the terms of this Agreement by executing and delivering an Adoption Agreement substantially in the form attached hereto as Exhibit A. Upon the execution and delivery of an Adoption Agreement by any transferee, such transferee shall be deemed to be a party hereto as if such transferee were the transferor and such transferee's signature appeared on the signature pages of this Agreement and shall be deemed to be an Investor and Shareholder, or Key Holder and Shareholder, as applicable. The Company shall not permit the transfer of the Shares subject to this Agreement on its books or issue a new certificate representing any such Shares unless and until such transferee shall have complied with the terms of this Subsection 6.3. Each certificate representing the Shares subject to this Agreement if issued on or after the date of this Agreement shall be endorsed by the Company with the legend set forth in Subsection 6.13.

6.4. **Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.5. **Governing Law.** This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

6.6. **Counterparts; Facsimile.** This Agreement may be executed and delivered by facsimile transmission or electronic mail (including in .pdf format) and in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.7. **Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.8. **Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) when delivered by a nationally recognized overnight courier, freight prepaid with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth on Schedule A or Schedule B hereto, or to the principal office of the Company and to the attention of the Chief Executive Officer, in the case of the Company, or to such email address, facsimile number or address as subsequently modified by written notice given in accordance with this Subsection 6.8. If notice is given to the Company, a copy shall also be sent to Blaney McMurtry LLP, 2 Queen Street East, Suite 1500, Toronto, ON M5C 3G5, Canada, Attention Dan Giantsopoulos, dgiantsopoulos@blaney.com.

(b) Consent to Electronic Notice. Each Investor and Key Holder consents to the delivery of any shareholder notice hereunder by electronic transmission at the email address set forth below such Investor's or Key Holder's name on the Schedules hereto, as updated from time to time by notice to the Company, or as on the books of the Company. Each Investor and Key Holder agrees to promptly notify the Company of any change in its email address, and that failure to do so shall not affect the foregoing.

6.9. **Consent Required to Amend, Modify, Terminate or Waive.** This Agreement may be amended, modified or terminated (other than pursuant to Section 5 hereto) and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by (a) the Company; (b) the Key Holders holding at least two thirds (2/3) of the Shares then held by the Key Holders; and (c) the holders of at least two thirds (2/3) of the Common Shares issued or issuable upon conversion of Preferred Shares held by the Investors (voting together as a single class and on an as-converted basis). Notwithstanding the foregoing:

(a) this Agreement may not be amended, modified or terminated and the observance of any term of this Agreement may not be waived with respect to any Investor or Key Holder without the written consent of such Investor or Key Holder unless such amendment, modification, termination or waiver applies to all Investors or Key Holders, as the case may be, in the same fashion;

(b) the provisions of Subsection 1.2(a) and this Subsection 6.9(b) may not be amended, modified, terminated or waived without the written consent of PPL;

131

(c) the provisions of Subsection 1.2(b) and this Subsection 6.9(c) may not be amended, modified, terminated or waived without the written consent of Star;

(d) the provisions of Subsection 1.2(c) and this Subsection 6.9(d) may not be amended, modified, terminated or waived without the written consent of at least two thirds (2/3) of the Key Holders;

(e) the consent of the Key Holders shall not be required for any amendment, modification, termination or waiver if such amendment, modification, termination, or waiver either (A) is not directly applicable to the rights of the Key Holders hereunder; or (B) does not adversely affect the rights of the Key Holders in a manner that is different than the effect on the rights of the other parties hereto; and

(f) any provision hereof may be waived by the waiving party on such party's own behalf, without the consent of any other party, provided that the Schedules hereto may be amended and updated from time to time without the consent of the parties hereto.

The Company shall give prompt written notice of any amendment, modification, termination, or waiver hereunder to any party that did not consent in writing thereto. Any amendment, modification, termination, or waiver effected in accordance with this Subsection 6.9 shall be binding on each party and all of such party's successors and permitted assigns, whether or not any such party, successor or assignee entered into or approved such amendment, modification, termination or waiver. For purposes of this Subsection 6.9, the requirement of a written instrument may be satisfied in the form of an action by written consent of the Shareholders circulated by the Company and executed by the Shareholder parties specified, whether or not such action by written consent makes explicit reference to the terms of this Agreement.

6.10. Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default previously or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

6.11. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

6.12. Entire Agreement. This Agreement (including the Exhibits hereto), the Amended Articles and the other Transaction Agreements (as defined in the Star Purchase Agreement) constitute the full and entire understanding and agreement between the parties with

132

respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

6.13. **Share Certificate Legend.** Each certificate representing any Shares issued from and after the date hereof shall be endorsed by the Company with a legend reading substantially as follows:

“THE SHARES REPRESENTED HEREBY ARE SUBJECT TO AN AMENDED AND RESTATED VOTING AGREEMENT, AS MAY BE AMENDED FROM TIME TO TIME, (A COPY OF WHICH MAY BE OBTAINED UPON WRITTEN REQUEST FROM THE COMPANY), AND BY ACCEPTING ANY INTEREST IN SUCH SHARES THE PERSON ACCEPTING SUCH INTEREST SHALL FIRST BE REQUIRED TO AGREE TO AND MUST BECOME BOUND BY ALL THE PROVISIONS OF THAT AMENDED AND RESTATED VOTING AGREEMENT BEFORE THEIR INTEREST IN THE SHARES WILL BE RECOGNIZED BY THE COMPANY, INCLUDING CERTAIN RESTRICTIONS ON TRANSFER AND OWNERSHIP SET FORTH THEREIN.”

The Company, by its execution of this Agreement, agrees that it will cause the certificates evidencing the Shares issued after the date hereof to be endorsed with the legend required by this Subsection 6.13 of this Agreement, and it shall supply, free of charge, a copy of this Agreement to any holder of such Shares upon written request from such holder to the Company at its principal office. The parties to this Agreement do hereby agree that the failure to cause the certificates, instruments, or book entry evidencing the Shares to be endorsed with the legend required by this Subsection 6.13 herein and/or the failure of the Company to supply, free of charge, a copy of this Agreement as provided hereunder shall not affect the validity or enforcement of this Agreement.

6.14. **Share Subdivisions, Stock Dividends, etc.** In the event of any issuance of Shares or the voting securities of the Company hereafter to any of the Shareholders (including, without limitation, in connection with any subdivision of Shares, stock dividend, recapitalization, reorganization, or the like), such Shares shall become subject to this Agreement and shall be endorsed with the legend set forth in Subsection 6.13.

6.15. **Manner of Voting.** The voting of Shares pursuant to this Agreement may be effected in person, by proxy, by written consent or in any other manner permitted by applicable law and the Amended Articles. For the avoidance of doubt, voting of the Shares pursuant to the Agreement need not make explicit reference to the terms of this Agreement.

6.16. **Further Assurances.** At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as the other party may reasonably request in order to carry out the intent of the parties hereunder.

6.17. **Dispute Resolution.** The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the courts of the Province of Ontario for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the courts located in the Province of Ontario, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.18. **Costs of Enforcement.** If any party to this Agreement seeks to enforce its rights under this Agreement by legal proceedings, the non-prevailing party shall pay all costs and expenses incurred by the prevailing party, including, without limitation, all reasonable legal fees.

6.19. **Aggregation of Shares.** All Shares held or acquired by a Shareholder and/or its Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement, and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

6.20. **Independent Legal Advice.** Each of the parties to this Agreement acknowledges and agrees that such party has been given the opportunity to consult with its own tax and legal advisors regarding the matters contemplated by this Agreement. To the extent that any party has declined to receive independent tax or legal advice, such party hereby waives the right, should a dispute later develop, to rely on such party's lack of independent tax or legal advisors to avoid his, her or its obligations, to seek indulgences from the other parties or to otherwise attack the integrity of this Agreement or any of the provisions hereof, in whole or in part.

6.21. **Reimbursement of Expenses.** Each director of the Company shall be entitled to reimbursement by the Company of reasonable expenses incurred in connection with fulfilling their role as director of the Company, including attending meetings of the Board.

134

[Signature Page Follows]

135

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DEMAND POWER GROUP INC.

By: Rajan Chudgar
Name: Rajan Chudgar
Title: CEO

Address:

71 Marycroft Avenue, Unit 20
Woodbridge, ON L4L 5Y6
Canada

INVESTORS:

**STAR AMERICA DPGI ACQUISITION
COMPANY, INC.**

By: _____
Name: William A. Marino
Title: CEO

Address:

165 Roslyn Road
Roslyn Heights, NY 11577
U.S.A.

PPL TECHNOLOGY VENTURES, LLC

By: _____
Name: Alexander Torok
Title: President

Address:

c/o Wilmington Trust (registered agent)
1105 North Market Street
Suite 1300
Wilmington, DE 19801

136

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DEMAND POWER GROUP INC.

By: _____
Name: Rajan Chudgar
Title: CEO

Address:

71 Marycroft Avenue, Unit 20
Woodbridge, ON L4L 5Y6
Canada

INVESTORS:

**STAR AMERICA DPGI ACQUISITION
COMPANY, INC.**

By:  _____
Name: William A. Marino
Title: CEO

Address:

165 Roslyn Road
Roslyn Heights, NY 11577
U.S.A.

PPL TECHNOLOGY VENTURES, LLC

By: _____
Name: Alexander Torok
Title: President

Address:

c/o Wilmington Trust (registered agent)
1105 North Market Street
Suite 1300
Wilmington, DE 19801

137

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DEMAND POWER GROUP INC.

By: _____
Name: Rajan Chudgar
Title: CEO

Address:

71 Marycroft Avenue, Unit 20
Woodbridge, ON L4L 5Y6
Canada

INVESTORS:

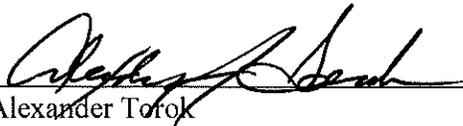
**STAR AMERICA DPGI ACQUISITION
COMPANY, INC.**

By: _____
Name: William A. Marino
Title: CEO

Address:

165 Roslyn Road
Roslyn Heights, NY 11577
U.S.A.

PPL TECHNOLOGY VENTURES, LLC

By:  _____
Name: Alexander Torok
Title: President

Address:

c/o Wilmington Trust (registered agent)
1105 North Market Street
Suite 1300
Wilmington, DE 19801

KEY HOLDERS:

2617822 ONTARIO INC.

By: 
Name: JENNIFER KOMINEK
Title: DIRECTOR

MANNY BETTENCOURT

ANTHONY QUINTO

GIANFRANCO QUINTO

2070458 ONTARIO INC.

By: _____
Name: _____
Title: _____

DOMENICO TARASCIO

GIUSEPPE TARASCIO

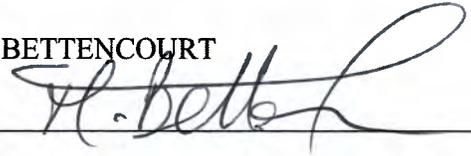
VITTORIA TARASCIO

KEY HOLDERS:

2617822 ONTARIO INC.

By: _____
Name: _____
Title: _____

MANNY BETTENCOURT



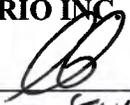
ANTHONY QUINTO



GIANFRANCO QUINTO



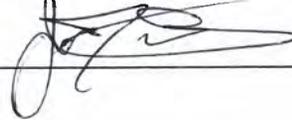
2070458 ONTARIO INC

By: _____
Name:  STEVE GERACI
Title: PRESIDENT

DOMENICO TARASCIO



GIUSEPPE TARASCIO



VITTORIA TARASCIO



KEY HOLDERS (CONT'D)

RAJ CHUDGAR

Rajan Chudgar

BLANEY MCMURTRY LLP

By: _____

Name: _____

Title: _____

TRANSNET ENERGY INC.

By: _____

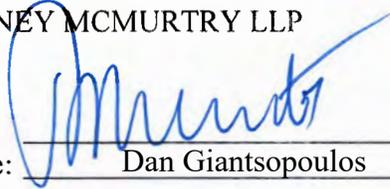
Name: _____

Title: _____

KEY HOLDERS (CONT'D)

RAJ CHUDGAR

BLANEY MCMURTRY LLP

By: 

Name: Dan Giantsopoulos

Title: _____

TRANSNET ENERGY INC.

By: _____

Name: _____

Title: _____

KEY HOLDERS (CONT'D)

RAJ CHUDGAR

BLANEY MCMURTRY LLP

By: _____
Name: _____
Title: _____

TRANSNET ENERGY INC.

By:  _____
Name: ANTHONY QUINTO _____
Title: PRESIDENT _____

143

SCHEDULE A
INVESTORS

<u>Name & Address</u>	<u>Number and Class of Shares Held</u>
PPL Technology Ventures, LLC c/o Wilmington Trust (registered agent) 1105 North Market Street Suite 1300 Wilmington, DE 19801	13,458,120 Class A-1 Preferred Shares
Star America DPGI Acquisition Company, Inc. 165 Roslyn Road Roslyn Heights, NY 11577	13,458,120 Class A-2 Preferred Shares

SCHEDULE B
KEY HOLDERS

<u>Name</u>	<u>Address</u>	<u>Number of Shares Held</u>	<u>Class of Shares Held</u>
2617822 Ontario Inc.	3884 Chesswood Drive North York, Ontario M3J 2W6	14,000,000	Common
Manny Bettencourt	305 Glebeholme Blvd. Toronto, Ontario M4J 1T1	2,000,000	Common
Anthony Quinto	47 Saddle Tree Cres Woodbridge , ON , L4L 3X4	4,636,365	Common
Gianfranco Quinto	1 Colton Cres North Woodbridge , ON , L4L 3L6	8,000,000	Common
2070458 Ontario Inc.	180 Carmichael Crescent King City, Ontario Canada L7B 0N2	2,000,000	Common
Domenico Tarascio	137 Kingsnorth Blvd Woodbridge, ON L4L 8J6	454,545	Common
Giuseppe Tarascio	14 Slipneedle St. Brampton, ON L6S 6L4	454,545	Common
Vittoria Tarascio	137 Kingsnorth Blvd Woodbridge, ON L4L 8J6	454,545	Common
Raj Chudgar	5722 Belmont Valley Court Raleigh, NC USA 27612	4,000,000	Common
Blaney McMurtry LLP	2 Queen Street East, Suite 1500 Toronto, Ontario Canada M5C 3G5	2,000,000	Common
Transnet Energy Inc.	71 Marycroft Avenue, Unit 20 Woodbridge, Ontario Canada L4L 5Y6	2,010,395	Special Shares
Transnet Energy Inc.	71 Marycroft Avenue, Unit 20 Woodbridge, Ontario Canada L4L 5Y6	4,000,000	Common

EXHIBIT A
ADOPTION AGREEMENT

This Adoption Agreement (“**Adoption Agreement**”) is executed on _____, 20__, by the undersigned (the “**Holder**”) pursuant to the terms of that certain Voting Agreement dated as of February 28, 2020 (the “**Agreement**”), by and among Demand Power Group Inc. (the “**Company**”) and certain of its Shareholders, as such Agreement may be amended or amended and restated hereafter. Capitalized terms used but not defined in this Adoption Agreement shall have the respective meanings ascribed to such terms in the Agreement. By the execution of this Adoption Agreement, the Holder agrees as follows.

1.1 Acknowledgement. Holder acknowledges that Holder is acquiring certain shares in the capital of the Company (the “**Shares**”), for one of the following reasons (Check the correct box):

- As a transferee of Shares from a party in such party’s capacity as an “Investor” bound by the Agreement, and after such transfer, Holder shall be considered an “Investor” and a “Shareholder” for all purposes of the Agreement.
- As a transferee of Shares from a party in such party’s capacity as a “Key Holder” bound by the Agreement, and after such transfer, Holder shall be considered a “Key Holder” and a “Shareholder” for all purposes of the Agreement.
- As a new Investor in accordance with Subsection 6.1(a) of the Agreement, in which case Holder will be an “Investor” and a “Shareholder” for all purposes of the Agreement.
- In accordance with Subsection 6.1(b) of the Agreement, as a new party who is not a new Investor, in which case Holder will be a “Shareholder” for all purposes of the Agreement.

1.2 Agreement. Holder hereby (a) agrees that the Shares, and any other shares in the capital of the Company or securities required by the Agreement to be bound thereby, shall be bound by and subject to the terms of the Agreement and (b) adopts the Agreement with the same force and effect as if Holder were originally a party thereto.

1.3 Notice. Any notice required or permitted by the Agreement shall be given to Holder at the address or facsimile number listed below Holder’s signature hereto.

HOLDER: _____

ACCEPTED AND AGREED:

By: _____
Name and Title of Signatory

DEMAND POWER GROUP INC.

Address: _____

By: _____

Facsimile Number: _____

Title: _____

146

SCHEDULE C
VENTURE CAPITAL OPERATING COMPANY, SOCIAL RESPONSIBILITY
INVESTMENT POLICY, THE RESPONSIBLE CONTRACTOR POLICY AND THE
ENVIRONMENTAL, SOCIAL AND GOVERNANCE REQUIREMENTS

(See attached)

SCHEDULE C-1**Venture Capital Operating Company.**

So long as Star America DPGI Acquisition Company, Inc. or any of its Affiliates (the “Investor”) owns a direct or indirect interest in Demand Power Group Inc. (the “Project Company”), the Project Company shall grant the following rights to each Investor (“VCOC Rights”) so that the ownership by such Investor (either directly or indirectly) of ownership interests of the Project Company may qualify as a “venture capital investment” as described in clause (d)(3)(i) of the U.S. Department of Labor Regulations § 2510.3-101 (the “DOL Regulation”), which rights will be reflected in the governance documents of the Project Company:

(a) The Investor (or any authorized representative designated by such Investor or any of its Affiliates) shall have the right to consult with and advise the board (or similar governance body) of the Project Company (the “Board”), upon reasonable notice at reasonable times from time to time, on all matters relating to the operation of the Project Company. Upon reasonable notice at reasonable times from time to time, the Investor (or its authorized representative) may participate in discussions of matters brought to the Board and may address the Board with respect to such Investor’s concerns regarding business issues facing the Project Company, provided such Investor (or its authorized representative) shall have no voting rights with respect to actions taken or elected not to be taken by the Board.

(b) While the Project Company may consider the recommendations of such Investor (or its authorized representative) in connection with the matters on which it is consulted as described above, the ultimate discretion with respect to all such matters shall be retained by the Board and the members (or other equity owners).

(c) The Project Company shall permit any authorized representative designated by each Investor to visit and inspect any of the properties of Project Company, and to discuss its affairs, finances and accounts with its officers, upon reasonable notice at reasonable times from time to time.

(d) To the extent that the Project Company prepares separate financial statements, to provide a copy of such financial statements to each Investor.

(e) The Parties agree that the organizational documents for the Project Company will provide that: (x) if legal counsel for such Investor reasonably concludes that the rights granted hereby should be altered to preserve the qualification of the Investor as a “venture capital operating company” as defined in the DOL Regulation or otherwise to ensure that the assets of such Investor are not considered “plan assets” for purposes of the Employee Retirement Income Security Act of 1974, as amended, the Project Company will in good faith consider any such proposed amendments to this Schedule C-1 and will effect any such alterations as may be agreed to by the members (or other equity owners); provided that no such alteration would result in a material adverse effect on the operation or business of the Project Company, and (y) if such Investor (or its Affiliate) transfers a

148

portion of the direct or indirect equity interests (or ownership interests) it acquires in the Project Company to an Affiliate that is seeking to qualify as a VCOC, the Project Company will enter into an agreement with the transferee containing the same terms and conditions as this Schedule C-1.

(f) Investor agrees to pay all reasonable costs, if any, incurred by the Project Company on behalf of it associated with this Schedule C-1 and also agrees that any visit by such Investor to Project Company properties will be in accordance with Project Company policies and procedures.

SCHEDULE C-2

Socially Responsible Investment Policy

General Principles

The objective of Demand Power Group Inc. (the “Project Company”) is to develop the Projects (as defined the Investment Agreement between the Project Company and Narrows Green, LP dated as of February 28, 2020) and maintain an economically sound and prosperous business while assuming responsibilities toward the communities and environments in which it operates, toward its employees, business partners and society in general. The Project Company wishes to apply, promote and report on the best practices regarding corporate governance and long-term sustainable development issues, including environmental, social and governance issues.

Therefore, the Project Company shall not invest in:

- Any company or an enterprise (whether directly or indirectly) which manufactures weapons and ammunitions falling within NACE code 25.4 for the purposes of the EVCA's sectorial classification (http://www.evca.eu/uploadedFiles/sectorial_classification.pdf);
- Any company or an enterprise which is involved in the production of anti-personnel landmines and cluster bombs (which shall include any company or enterprise whose activity is to produce or supply key components of anti-personnel landmines or cluster bombs)
- Any company or corporation, the core business of which is directly engaged in activities resulting in severe and/or systematic breaches of internationally recognized conventions, norms or protocols regarding environment protection to which France is a signatory. Such severe and/or systematic breaches must be evidenced by an official source such as the UN, the OECD, governments or other similar bodies;
- Any company or corporation, which is associated with material and/or systematic corruption. Such material and/or systematic corruption must be evidenced by an official source such as the UN, the OECD, governments or other similar bodies;
- Enterprises that deliberately and repeatedly violate the law laid down by the national authorities in the markets in which such enterprises operate, such violation must be evidenced by an official source such as the UN, the OECD, governments or other similar bodies;
- Enterprises that are domiciled in countries subject to trade embargos imposed by the United Nations or the European Union;
- Any company or an enterprise that produces tobacco;

150

- Any company or enterprise that derive more than 5% of their annual revenues directly from coal power production and/or extraction of thermal coal; and
- Any company or enterprise that derive more than 5% of their annual revenues directly from production and distribution of cannabis for recreational purposes.
- The Project Company shall endeavor to require its suppliers, subcontractors, and agents to abide by the principles set out in this Socially Responsible Investment Policy with respect to Project Company.

151

SCHEDULE C-3
ESG Questionnaire
(see attached)



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Star America Portfolio Company ESG Questionnaire



Portfolio Company ESG Questionnaire

Project Name:
Person Completing Form:
Reporting Period:
Date Completed:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Star America ESG Policy – Restatement of Purpose

The purpose of the Star America ESG Policy (the “**Policy**”) is to define Star America’s approach to integrating aspects of environmental, social, and governance (“**ESG**”) risks and related value creation opportunities into our investments and company operations. This policy includes Star America’s Responsible Contractor Policy and shall provide an overall framework for improving ESG measures in both investments and operations.

Star America commits to consider material ESG issues in the course of its due diligence and in the monitoring of portfolio investments to the extent reasonably practical under the circumstances, subject, in any event, to the provisions of the Partnership Agreements and the Confidential Private Placement Memorandums of the Funds, and to the duty of Star America to seek to maximize the returns on investment for all of the partners of its Funds.

For the purposes of the Policy, “material” ESG issues are defined as those issues that Star America, in its sole and absolute discretion, determines have the potential to have a direct substantial impact on an organization’s ability to create, preserve, or erode economic value, as well as environmental and social value for itself and its stakeholders.

Portfolio Company Questionnaire - Purpose and Use of Information

The purpose of this Questionnaire is to gather relevant Environmental, Social, and Governance (ESG) information for the various portfolio companies under management by Star America. The data collected on these forms will assist Star America in assessing and reporting ESG opportunities and risks across its portfolio, as well as relevant performance of the investments in relation to ESG criteria. The information provided in this form may be used by Star America in a variety of ways, including ESG reporting to LPs, annual reporting to the Principles of Responsible Investing (PRI) initiative, internal audits/assessments, and development of reports and case studies.

This form shall be completed for each Project Company a minimum of once per year.

Instructions and Guidance

This document should be completed by Asset Management staff of Star America, with assistance from the Investment Team as necessary. In gathering information for the Questionnaire, the person completing the form shall consult with Project Company staff and major subcontractors, particularly the lead contractor and/or operator responsible for construction and operations activities.

Persons are recommended to use their sole discretion and best judgement in completing the form. In completing the document, any ambiguity, questions, or major issues shall be brought to the attention of the Star America ESG Committee for consultation and resolution.



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Environmental

Environment: Opportunities and Environmental Risks

1. Has the project/asset been assessed on its physical vulnerability to climate change (storms, flooding, etc.)?

Yes No

Comments:

2. Has the project/asset faced any environmental litigation over the last three years?

Yes No

Comments:

Environment: Development Phase

3. Is the Project located on or near, or impact in any way, sensitive areas in terms of biodiversity, endangered species, protected wetlands, or other environmentally sensitive areas?

Yes No

Comments/Description of impact and areas of interest:

Have Compensatory and Mitigating Measures been put in place? Explain

4. Has an Environmental Impact Study (EIS) or Environmental Assessment (Phase 1/Phase 2) been performed for the Project?

Yes No EIS Phase 1 EA Phase 2 EA

Comments/Significant Findings:

5. Have Site Remediation, Environmental Management Systems, Water Treatment, Waste Reduction been considered in the Development Phase?

Yes No Site Remediation Water Treatment
 Environmental Management Systems Waste Reduction
 Other

Comments/Description of Measures:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Environment: Construction Phase

6. Has an Environmental Management System been set up to prevent and monitor potential contamination during the construction phase?

Yes No

Comments/Description of Management System:

7. Have initiatives been implemented to treat wastewater on site? (choose all the apply)

Yes No Mobile Water Treatment Plants Rainwater Harvesting
 Non-aqueous cleaning Other

Comments/Description of Wastewater Treatment Efforts:

8. Have initiatives been implemented to reuse or lessen waste production?

Yes No Waste Reuse/Recycling Technical Alternatives
 Optimization of Waste Sorting Other

Comments/Description of Measures:

9. Have initiatives been implemented to reduce disturbance caused by the construction?

Yes No Noise Dust Reduction Other
 Odor Traffic

Comments/Description of Measures:

10. Did a soil or groundwater remediation process occur during the construction of the asset?

Yes No

Comments/Description of Measures:

11. Please list any other notable environmental impact or measure that occurred during the construction phase.

Comments/Description of Measures:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Environment: Operations Phase

12. Have there been efforts during the operations phase to improve energy efficiency, increase the use of renewable energy, or eliminate reliance on fossil fuel based energy sources?

Yes No

Comments/Description of Energy Efficiency Efforts

13. Has an Environmental Management System been set up to prevent and monitor potential contamination during the operations phase?

Yes No

Comments/Description of Management System:

14. Have initiatives been implemented to collect and treat stormwater and wastewater during operations?

Yes No Mobile Water Treatment Plants Rainwater Harvesting
 Green Infrastructure Other

Comments/Description of Stormwater/Wastewater Efforts:

15. Have initiatives been implemented to reuse or lessen waste production during operations?

Yes No Waste Reuse/Recycling Technical Alternatives
 Optimization of Waste Sorting Other

Comments/Description of Measures:

16. Have initiatives been implemented to reduce disturbance caused by the Project?

Yes No Noise Dust Reduction Other
 Odor Traffic Management

Comments/Description of Measures:

17. Please list any other notable environmental impact or measure that occurred during the operations phase.

Comments/Description of Measures:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Social

Social: Opportunities and Social / Societal risk

18. Has the project/asset faced any social or societal litigation over the last year?

Yes No

Comments:

Social: Development Phase

19. Did the project cause any public protest or opposition?

Yes No

Public Protests

Legal Proceedings

Demonstrations

Other

Comments/Description of Incidents:

20. Did the Project provide ample opportunity for community input during the Development Phase?

Yes No

Public Review of EIS/Docs.

Voting Referendum

Public Meetings

Other

Comments/Description of Community Input:

21. Did the project involve the resettlement of local populations? If so, what is the number of displaced persons (real or expected)?

Yes No

Number of Displaced Persons =

Comments on Displaced Persons:

22. Does the Project Involve the use of Eminent Domain?

Yes No

If yes, please explain:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Social: Construction Phase

23. Please provide the contractor and major subcontractors EMR rating (or similar equivalent measure) for the past year:

Main Contractor Subcontractor 1 Subcontractor 2

If any EMR (or equivalent) is greater than 1.0 or has increased by 25% since the past year, please explain:

24. Provide the following information for the past year, including sub-contractors:

- Total permanent FTE employee headcount at beginning/end of fiscal year
- Total permanent FTE women employees at the end of the fiscal year
- Total permanent FTE disabled employees at the end of the fiscal year
- Total non-permanent FTE employee headcount at end if fiscal year

25. Provide the following FTE training information for the past year:

- Training budget as a percentage of total payroll
- Number of FTE employees who have undergone training during the year

26. Provide the following safety information for the past year, including sub-contractors:

- Number of Man-Hours Worked
- Number of Work Accidents (including any lost day)
- Number of Fatal Work Accidents
- Comments/Description of Workplace Accidents/Injuries:*

27. Has the project faced any strikes in the past year?

Yes No

If yes, please explain:

28. Has any member of the public been injured or harmed during the past year?

Yes No

If yes, please explain:

29. Does the Project have DBE/MWBE/SBE/Local Labor, or other similar goals during the Construction Phase?

Yes No

Please provide the Project goals and actual performance for the past year:

30. Has there been any significant impact or disruption to the local community during the construction of the Project (i.e. public safety, disruption/deterioration of living conditions, traffic during construction, and noise protection)

Yes No

If yes, please explain:

31. Did the Project involve impact to culturally significant places and practices, or historic assets during construction?

Yes No

If yes, please explain:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

32. Did the Project include any opportunities for community engagement during the construction phase? Examples include charitable contributions, community events, involvement in local organizations, community outreach meetings, volunteer opportunities, etc.

[] Yes [] No

If yes, please explain:

33. Please list any other notable social impact or measure that occurred during the construction phase.

Comments/Description of Measures:

Social: Operations Phase

34. Please provide the operator and major subcontractors EMR rating (or similar equivalent measure) for the past year:

Main Contractor

Subcontractor 1

Subcontractor 2

If any EMR (or equivalent) is greater than 1.0 or has increased by 25% since the past year, please explain:

35. Provide the following information for the past year, including sub-contractors:

Number of Man-Hours Worked

Number of Work Accidents (including any lost day)

Number of Fatal Work Accidents

Comments/Description of Workplace Accidents/Injuries:

36. Does the Project have DBE/MWBE/SBE/Local Labor, or other similar goals during the Operations Phase?

[] Yes [] No

Please provide the Project goals and actual performance for the past year:

37. Has there been any significant impact or disruption to the local community during the Operations of the Project (i.e. public safety, disruption/deterioration of living conditions, traffic during construction, and noise protection)

[] Yes [] No

If yes, please explain:

38. Did the Project include any opportunities for community engagement during the operations phase? Examples include charitable contributions, community events, involvement in local organizations, community outreach meetings, volunteer opportunities, etc.

[] Yes [] No



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

If yes, please explain:

39. Please list any other notable social impact or measure that occurred during the operations phase.

Comments/Description of Measures:

Governance

Governance: Opportunities and Governance Risk

40. Has the project/asset faced any governance litigation over the last year?

Yes No

Comments:

41. Are there any independent directors on the Project Company Board?

Yes No Percentage =

42. Are there any women on the Project Company Board?

Yes No Percentage =

43. Are there any women holding roles on the Project Company Executive Committee, Management Committee, or equivalent?

Yes No Percentage =

44. Does the Project Company have preventative measures to address bribery and/or money laundering issues that applies to the project and its subcontractors?

Yes No

Comments:

45. Is the Project Company and/or subcontractors subject to limits for political contributions per State or local law?

Yes No

Comments:

46. Is the Project Company and/or subcontractors subject to solicitation of former public-sector officials or owner staff for employment?

Yes No

Comments:

47. Is the Project Company and/or subcontractors subject any conflicts of interest provisions for the project, including conflicts with owners' advisors or other agencies?

Yes No

Comments:

48. Please list any other notable governance issue that relates to the Project



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Comments/Description of Measures:

SCHEDULE C-4
Responsible Contractor Policy

I. PURPOSE

This Responsible Contractor Policy (the "Policy") of Demand Power Group Inc. (the "Project Company") is designed to guide the selection of independent Contractors, and their subcontractors (collectively the "Contractors") who provide construction, repairs, maintenance and infrastructure operating services (each individually a "Service") to the Project Company; provided however, the Project Company may take into account the Project Company's need to maintain a competitive, economically sound and prosperous Project and may seek a waiver of any part of this Policy from DPGI Acquisition Company, Inc. ("Star"), which Star may grant in its sole and absolute discretion so long as it is consistent with Star's fiduciary duties understanding that Star will act with the care, skill, prudence, and diligence. The Policy seeks to ensure that the selection process for independent contractors will include among other things, a demonstrated ability to provide reliable and high quality Services which may be evidenced by their compliance with applicable statutes and payment of fair compensation and benefits to employees, as well as by their relevant experience, reputation, dependability, and ability to provide cost-efficient services, thereby enhancing the value of the Project.

. INTRODUCTION

The Project Company supports a safe and healthy and profitable business environment through selective negotiation, market competition, small business development, and control of operating costs. The Project Company also supports and encourages fair compensation and fair benefits for workers employed by Contractors to the extent possible.

In keeping with these overriding objectives, the Project Company has adopted the Policy described herein in order to support and promote the engagement of independent contractors who can be expected to provide both competitive and high quality Services to Project Company, utilizing appropriately trained and fairly compensated employees, subject to the above-cited principles. The Project Company believes that the utilization of such Contractors adds value to the Project by ensuring that Services are provided by adequately-trained, experienced and motivated workers who deliver high quality products and services.

Furthermore, the Project Company shall endeavor in good faith to recognize the important role and contribution of public employees to the development and operation of such assets. In particular, the Project Company shall make good faith efforts to ensure that such transactions minimize any potentially adverse impacts on employees. These efforts may include working directly with public employees, government officials, or collective bargaining groups, as appropriate, in order to take such actions as may be within the Project Company's control to mitigate such potentially adverse effects.

The preceding paragraphs shall not preclude the Project Company entering into negotiated arrangements and joint ventures with Contractors on an exclusive or preferred basis (i.e. on a non- competitive bid basis), subject to the prior approval of Star.

III. INITIAL REQUIREMENTS OF THE RESPONSIBLE CONTRACTOR

POLICY The Policy provides that the following requirements shall be met:

A. Best Practices: On applicable contracts, Contractors for Services shall be selected through a process that includes consideration of competitive risk adjusted returns and factors such as, but not limited to, demonstrated skill, experience, dependability, fees, safety record, and adherence to the Policy.

B. Local, State and National Laws: The Project Company and all Contractors, and their subcontractors shall observe all local, state and national laws including, but not limited to, those pertaining to insurance, withholding taxes, the classification and misclassification of employees and independent contractors, minimum wage, labor relations, health, and occupational safety.

IV. SELECTION OF RESPONSIBLE CONTRACTOR

If Initial Requirements A and B (see Section III above) are satisfied, a Responsible Contractor shall be hired.

On an annual basis, the Project Company shall provide summary compliance data to Star to demonstrate good faith evidence of monitoring and enforcement.

V. DEFINITION OF A RESPONSIBLE CONTRACTOR

A Responsible Contractor, as used in this Policy, is an independent Contractor who provides high quality Services to Project Company on a comparable and relevant basis in the applicable local market consistent with the desired contracting criteria, and pays workers a fair wage and fair benefits. "Fair benefits" are defined as including, but not limited to: employer paid family health care coverage, pension benefits, and training and/or apprenticeship programs. What constitutes a "fair wage" and a "fair benefit" will depend on the wages and benefits paid by responsible contractors on comparable projects, based upon local market factors that include the nature of the project (e.g., municipal or commercial; public or private), comparable job or trade classifications and the scope and complexity of Services provided. In determining "fair wages" and "fair benefits" concerning a specific contract in a specific market, items that may be considered include local wage practices of responsible contractors, state laws, prevailing wages, labor market conditions and other items.

VI. ENFORCEMENT, MONITORING, AND ADMINISTRATION

A. Good Faith: As used herein, good faith efforts shall include, but are not limited to, encouraging the use of and advocating for Responsible Contractors, supplying the Project Company with timely information on all applicable bidding opportunities for interested Responsible Contractors, and facilitating meetings with interested stakeholders, when possible.

B. Notification: The Project Company shall provide all relevant Contractors with a copy of this Policy.

164

C. Solicitation Documents: All requests for proposals and invitations to bid covered by this Policy shall include the terms of this Policy. Responses by bidders shall include information to assist Project Company staff in evaluating a bid.

D. Contracts and Renewals: All contracts entered into after the effective date of this Policy that are covered by the Policy, including renewals of such contracts, shall include the terms of this Policy. Responsible Contractor compliance will be part of the contract renewal consideration.

E. Responsibilities: The responsibilities of Project Company and Contractors are defined as follows:

1. Project Company: Project Company will have responsibility for the following:

- a. communicate the Policy to independent Contractors seeking to secure applicable Service contracts;
- b. communicate the Policy to any interested party;
- c. endeavor in good faith that there is a selection process that includes potentially eligible Responsible Contractors, where applicable and commercially reasonable;
- d. require independent Contractors seeking to secure applicable Service contracts to provide a Responsible Contractor Self-Certification Form to the Project Company in substantially the form attached to this policy. The Project Company reserves the right to disclose the contents of the Self Certification Form at its discretion;
- e. provide Project Company level annual report information to Star;
- f. maintain documentation for Contractors that have secured applicable Service contracts;
- g. incorporate any trade union/service union input received, where applicable and commercially reasonable, in the development of Responsible Contractor lists;
- h. maintain a list of any interested Responsible Contractors (names, addresses and telephone numbers) to which the Responsible Contractor Policy may be applicable.

2. Contractors: Contractors will have the responsibility for the following:

- a. submit to the Project Company a Responsible Contractor self certification on a form approved by the Project Company; and
- b. communicate the Policy to subcontractors.

165

F. Minimum Contract Value: The Policy shall absolutely apply to all contracts of a minimum size of \$100,000 individually or annually as applicable. Minimum contract size refers to the total project value of the work being contracted for and not to any desegregation by trade or task. For example, a \$100,000 contract to paint two structures in a single complex would not be treated as two \$50,000 contracts, each less than the minimum contract size. Disaggregation designed to evade the requirements of the Policy is not permitted. The Project Company may, at its sole discretion, lower the minimum contract value for a specific Service as it sees appropriate. When the Policy is not applicable by its terms, the Project Company shall attempt not to act in contravention of the Policy.

G. Fair Wages and Fair Benefits: The Policy avoids a narrow definition of "fair wage" and "fair benefits" that might not be practical in all markets. The Policy looks to local practices of responsible contractors concerning type of trade and type of project. The Policy recognizes that practices and labor market conditions vary across the county and that flexibility in implementation is important.

In determining "fair wages" and "fair benefits" concerning a specific contract in a specific market, items that may be considered include local wage practices of responsible contractors, state laws, prevailing wages, labor market conditions and other items.

H. Selection Process: Given the time and expense required to solicit and evaluate potential Contractors, it is not essential that the Project Company solicit all potential Contractors.

The Project Company must ensure for contracts covered by this Policy, to the extent commercially reasonable, that there is a selection process that is inclusive of potentially eligible Responsible Contractors. Competitive bidding does not necessarily assure inclusion of Responsible Contractors. Care must be taken that if applicable Service contracts covered by this policy are competitively bid, then bidders include potentially eligible Responsible Contractors. However, for the avoidance of any doubt, the Project Company will retain full commercial discretion to conduct the bidding process in a manner that is consistent with their overriding responsibilities to enhance investment value for the Project and to seek to minimize or control costs while ensuring the provision of relevant and high quality services.

J. Neutrality: The Project Company supports a position of neutrality in the event there is a legitimate attempt by a labor organization to organize workers performing Services at the Project, and agrees to comply with all applicable laws in connection therewith.

Responsible Contractor Self Certification

In connection with its bid for a contract to provide Services to Demand Power Group Inc. (the “Project Company”), the undersigned Contractor certifies as follows:

1. The undersigned Contractor has received and reviewed the Responsible Contractor Policy of the Project Company (as it may be amended or modified from time to time, the "Policy");

2. The undersigned Contractor qualifies as a Responsible Contractor as defined in the Policy; and

3. The undersigned Contractor agrees to prepare and provide to the Project Company (or its designee) the notices and reports required by the Policy, and further agrees to carry out the other obligations of a Contractor as set out in the Policy.

Any capitalized terms used but not defined herein shall have the meanings set out in the Policy.

Name of Contractor: _____

Name of person signing on behalf of contractor: _____

Signature of Representative: _____

Date: _____

Appendix C

Star America and the Developer are exploring a potential business transaction involving the Project (collectively, the "Transaction") and each Party acknowledge that they have and will continue to be given access to confidential information of the other parties (and their subsidiaries, affiliates and related parties), and all such information, including the Original LOI (as defined in the LOI), Letter of Intent ("LOI"), Term Sheets including all appendices ("Term Sheets"), each as amended from time to time, and including information that relating to the financial status, business processes or otherwise, of the other parties (and their subsidiaries, affiliates and related parties), shall be treated as wholly confidential.

Parties in accordance with this Appendix C. In the course of such discussions regarding the Transaction certain Information (as defined below) will be revealed by or through a Party (whether in writing, orally or by another means) (a "Disclosing Party") to the other Party (a "Receiving Party") to evaluate the Transaction (the "Purpose") The parties agree as follow:

1. "Information" shall include all information, whether conveyed in writing, orally, in electronic format or otherwise that a Receiving Party or any of its affiliates, or any of its or their directors, officers, partners, members, employees, independent contractors, agents, investors (and potential investors), financing sources and/or financial and legal advisors (collectively, "Representatives") receives in connection with the Project from the Disclosing Party or its Representatives concerning any Protected Party (as defined below) or any Protected Party's business and affairs, including without limitation information, whether of a technical, business or other nature, regarding any Protected Party, including, trade secrets, know-how and information relating to the budgets, research and development, technology, business plans, patents, agreements, services, promotional and marketing activities, finances and strategies, business structures, operations or ventures or other business and affairs or plans, of the Protected Parties, together with analyses, compilations, studies or other information prepared, developed or derived by the receiving Party or its Representatives in connection therewith. "Protected Parties" means each Party and such Party's affiliates, principals, investors, business associates, Project partners, Project team members, joint venturers, co-investors, Project investors and each of the principals of the foregoing.

2. The Information shall be kept confidential and shall not, without the Disclosing Party's prior written consent, be disclosed by the receiving Party or its Representatives, in any manner whatsoever, in whole or in part, and shall not be used by the Receiving Party or its Representatives in any way other than for the Purpose. Moreover, the Receiving Party agrees to reveal the Information only to its Representatives who have a need to know the Information for the Purpose and who shall be directed to keep confidential the Information except that there shall be no obligation to inform a Representative of the confidential nature of the Information and direct them to abide with the terms of this Agreement where that person is subject to professional obligations of confidentiality in respect of the Information or is otherwise bound by obligations of confidentiality in respect of the Information that are sufficient to ensure compliance with the obligations of confidentiality and non-use herein. The Receiving Party shall protect such Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case, using no less than a reasonable degree of care. The Receiving Party acknowledges that it shall be responsible for any breach of this obligation by its Representatives.

3. All Information provided to the Receiving Party shall remain the property of the Disclosing Party. This Agreement shall not be construed as creating, conveying, transferring, granting or conferring upon any Party any rights, license or authority in or to the information exchanged, except the limited right to use Information as specified in Section 2. Furthermore and specifically, no license or conveyance of any intellectual property rights is granted or implied by this Appendix C.

4. The Information will be destroyed promptly upon its written request of the Disclosing Party, provided, however, that to the extent required by law, Receiving Party may retain the Information; provided any such retained Information is kept confidential in accordance with this Appendix C so long as it survives.
5. This Appendix C shall be inoperative as to such portions of the Information which (i) are already known to the Receiving Party or its Representatives free of any obligation of confidence at the time it was communicated to the Receiving Party, (ii) become generally available to the public through no fault of or action by the Receiving Party or its Representatives in violation of this Agreement, (iii) becomes available to the Receiving Party or its Representatives, after disclosure hereunder on a non-confidential basis from a source, other than the Disclosing Party or any of its Representative, which, to the Receiving Party's knowledge, is not prohibited from disclosing such portions to the Receiving Party by a legal or fiduciary obligation to the Disclosing Party, or (iv) is or was developed independently by or on behalf of the Receiving Party or its Representatives.
6. In the event that the Receiving Party or anyone to whom it transmits the Information pursuant to this Appendix C is requested or becomes legally compelled to disclose any of the Information, the Receiving Party will provide the Disclosing Party with prompt written notice, if legally permitted, so that it may seek a protective order or other appropriate remedy, at the Disclosing Party's sole cost and expense, and/or waive compliance with the provisions of this Appendix C. In the event that such protective order or other remedy is not obtained, or the Disclosing Party waives compliance with the provisions of this Appendix C, the Receiving Party may furnish only that portion of the Information which the Receiving Party is advised by counsel (including in-house counsel) that it is legally required to provide. Notwithstanding the foregoing, no notice or other compliance with this Section 6 shall be required if Receiving Party or its Representatives are required to disclose Information pursuant to a broad or routine audit, examination or request for information by any legal, judicial, governmental, administrative, or regulatory authority having jurisdiction over Receiving Party or any of its Representatives that is not specific to the Information provided hereunder.
7. In the event of any breach of this Appendix C by the Receiving Party and/or its Representatives, the Disclosing Party would be irreparably and immediately harmed and could not be made whole by monetary damages. Accordingly, the Disclosing Party, in addition to any other remedy to which it may be entitled in law or equity, shall be entitled to seek any injunction(s) to prevent breaches of this Appendix C and to compel specific performance of this Agreement, without the need for proof of actual damages or posting a bond. Any failure by a Party to enforce the strict performance of any provision of this Appendix C shall not constitute a waiver of such Party's right to subsequently enforce such provision.
8. If any provision of this Appendix C is held to be invalid or unenforceable, that provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this Agreement, but without invalidating any of the remaining provisions.
9. Neither Party shall use the other Party's name (or that of any affiliate or related-party of such Party) in any public manner, context or format (including reference on or links to websites, press releases, etc.) without the prior written approval of the other Party.
10. Upon the expiration of the Exclusivity Period, this Appendix C shall terminate on the date (the "Termination Date") which is earlier of (x) the date which is one (1) year after the last day of the Exclusivity Period, (y) the date which is ten (10) days after the date either Party provides the other Party with written notice of termination of the LOI or (z) the date on which the Parties enter into a definitive agreement.
11. Upon the expiration or termination of this Appendix C in accordance with Section 10(x) or (y), the obligations set forth in Sections 1 through 8 of this Appendix C shall survive for a period of one (1) year after the Termination Date and the obligation in **Section 0** shall survive forever.

This is Exhibit "D" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

4F6A7FBBFE6C441...

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

170

**AMENDED AND RESTATED RIGHT OF FIRST REFUSAL AND CO-SALE
AGREEMENT**

TABLE OF CONTENTS

	<u>Page</u>
1. Definitions.....	1
2. Agreement Among the Company, the Investors and the Key Holders.....	4
2.1. Right of First Refusal.....	4
2.2. Right of Co-Sale	6
2.3. Effect of Failure to Comply	8
3. Exempt Transfers	9
3.1. Exempted Transfers	9
3.2. Exempted Offerings	9
3.3. Prohibited Transferees	9
4. Legend.....	10
5. Lock-Up	10
5.1. Agreement to Lock-Up	10
5.2. Stop Transfer Instructions.....	11
6. Miscellaneous	11
6.1. Term.....	11
6.2. Share Split.....	11
6.3. Ownership	11
6.4. Dispute Resolution.....	11
6.5. Notices	12
6.6. Entire Agreement	12
6.7. Delays or Omissions	12
6.8. Amendment; Waiver and Termination	12
6.9. Assignment of Rights.....	13
6.10. Severability	14
6.11. Additional Investors.....	14
6.12. Governing Law	14
6.13. Titles and Subtitles.....	14
6.14. Counterparts; Facsimile	14
6.15. Aggregation of Shares.....	14
6.16. Specific Performance	14
6.17. Additional Key Holders	14
6.18. Independent Legal Advice	15
6.19. Unanimous Shareholder Agreement.....	15
Schedule A - Investors	
Schedule B - Key Holders	

**AMENDED AND RESTATED RIGHT OF FIRST REFUSAL AND CO-SALE
AGREEMENT**

THIS AMENDED AND RESTATED RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT (this “**Agreement**”) is made as of the 28th day of February, 2020 by and among Demand Power Group Inc., an Ontario corporation (the “**Company**”), the Investors (as defined below) listed on Schedule A and the Key Holders (as defined below) listed on Schedule B.

WHEREAS, each Key Holder is the beneficial owner of the number of Shares, or of options to purchase Common Shares, set forth opposite the name of such Key Holder on Schedule B;

AND WHEREAS, the Company entered into a Class A Preferred Share Subscription Agreement dated July 15, 2019 (the “**PPL Subscription Agreement**”) with PPL Technology Ventures, LLC (“**PPL**”), pursuant to which PPL agreed to purchase certain Class A Preferred Shares (which Class A Preferred Shares have subsequently been converted into Class A-1 Preferred Shares in the capital of the Company, the “**Class A-1 Preferred Shares**”);

AND WHEREAS, in connection with the issuance of the Class A-1 Preferred Shares under the PPL Subscription Agreement, the Company, PPL and the Key Holders entered into a Right of First Refusal and Co-Sale Agreement dated July 15, 2019 (the “**Original Agreement**”);

AND WHEREAS, the Company and Star America DPGI Acquisition Company, Inc. (“**Star**”) entered into a Class A-2 Preferred Share Subscription Agreement, of even date herewith (the “**Star Purchase Agreement**”), pursuant to which Star has agreed to purchase certain Class A-2 Preferred Shares in the capital of the Company (“**Class A-2 Preferred Shares**”);

AND WHEREAS, as an inducement for (i) PPL to convert its Class A Preferred Shares into Class A-1 Preferred Shares, and (ii) Star to enter into the Star Subscription Agreement, the Company and the Key Holders have agreed to enter into this Agreement; and

AND WHEREAS, in accordance with Section 6.8 (Amendment) of the Original Agreement, the Company, PPL and the Key Holders wish to amend and restate the Original Agreement and replace it in its entirety with this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Company, the Key Holders and the Investors hereby agree as follows:

1. Definitions.

(a) “**Affiliate**” means, with respect to any specified Investor, any other Investor who directly or indirectly, controls, is controlled by or is under common control with such Investor, including, without limitation, any general partner, managing member, officer,

173

director or trustee of such Investor, or any venture capital fund or registered investment company now or hereafter existing which is controlled by one or more general partners, managing members or investment advisers of, or shares the same management company or investment adviser with, such Investor.

(b) **“Amended Articles”** means the Articles of Incorporation of the Company, dated the 5th day of March, 2018, as amended by the Articles of Amendment of the Company, dated June 18, 2019, as amended by the Articles of Amendment of the Company dated February 28, 2020, and as may be further amended and/or restated from time to time.

(c) **“Board of Directors”** means the board of directors of the Company.

(d) **“Change of Control”** means a transaction or series of related transactions in which a person, or a group of related persons, acquires from shareholders of the Company shares representing more than fifty percent (50%) of the outstanding voting power of the Company.

(e) **“Class A-1 Preferred Shares”** has the meaning given to it in the Recitals to this Agreement.

(f) **“Class A-2 Preferred Shares”** has the meaning given to it in the Recitals to this Agreement.

(g) **“Common Shares”** means the common shares in the capital of the Company.

(h) **“Company Notice”** means written notice from the Company notifying the selling Key Holders and each Investor that the Company intends to exercise its Right of First Refusal as to some or all of the Transfer Shares with respect to any Proposed Key Holder Transfer.

(i) **“Investor Notice”** means written notice from any Investor notifying the Company and the selling Key Holder(s) that such Investor intends to exercise its Secondary Refusal Right as to a portion of the Transfer Shares with respect to any Proposed Key Holder Transfer.

(j) **“Investors”** means the persons named on Schedule A hereto, each person to whom the rights of an Investor are assigned pursuant to Subsection 6.9, each person who hereafter becomes a signatory to this Agreement pursuant to Subsection 6.11 and any one of them, as the context may require.

(k) **“Key Holders”** means the persons named on Schedule B hereto, each person to whom the rights of a Key Holder are assigned pursuant to Subsection 3.1, each person who hereafter becomes a signatory to this Agreement pursuant to Subsection 6.9 or 6.17 and any one of them, as the context may require.

(l) **“Preferred Shares”** means collectively the Class A-1 Preferred Shares and Class A-2 Preferred Shares.

174

(m) **“Proposed Key Holder Transfer”** means any assignment, sale, offer to sell, pledge, mortgage, hypothecation, encumbrance, disposition of or any other like transfer or encumbering of any Transfer Shares (or any interest therein) proposed by any of the Key Holders.

(n) **“Proposed Transfer Notice”** means written notice from a Key Holder setting forth the terms and conditions of a Proposed Key Holder Transfer.

(o) **“Prospective Transferee”** means any person to whom a Key Holder proposes to make a Proposed Key Holder Transfer.

(p) **“Right of Co-Sale”** means the right, but not an obligation, of an Investor to participate in a Proposed Key Holder Transfer on the terms and conditions specified in the Proposed Transfer Notice.

(q) **“Right of First Refusal”** means the right, but not an obligation, of the Company, or its permitted transferees or assigns, to purchase some or all of the Transfer Shares with respect to a Proposed Key Holder Transfer, on the terms and conditions specified in the Proposed Transfer Notice.

(r) **“Right to Purchase Agreement”** means the Amended and Restated Right to Purchase Agreement, dated as of February 28, 2020, between the Company, PPL, Star, the Key Holders and certain other shareholders named therein, as may be further amended and/or restated from time to time.

(s) **“Secondary Notice”** means written notice from the Company notifying the Investors and the selling Key Holder that the Company does not intend to exercise its Right of First Refusal as to all of the Transfer Shares with respect to a Proposed Key Holder Transfer, on the terms and conditions specified in the Proposed Transfer Notice.

(t) **“Secondary Refusal Right”** means the right, but not an obligation, of each Investor to purchase up to its pro rata portion (based upon the total number of Shares then held by all Investors) of any Transfer Shares not purchased pursuant to the Right of First Refusal, on the terms and conditions specified in the Proposed Transfer Notice.

(u) **“Shares”** means any securities of the Company, including (a) Common Shares, Special Shares, Preferred Shares (whether now outstanding or hereafter issued in any context), (b) Common Shares issued or issuable upon conversion of any Preferred Shares, and (c) Common Shares issued or issuable upon exercise or conversion, as applicable, of stock options, warrants or other convertible securities of the Company, in each case now owned or subsequently acquired by any Key Holder, Investor or their respective successors or permitted transferees or assigns. For purposes of determining the number of Shares held by an Investor or Key Holder (or any other calculation based thereon), all Special Shares and Preferred Shares shall be deemed to have been converted into Common Shares at the then-applicable conversion ratio.

(v) **“Special Shares”** means the shares in the capital of the Company designated as “Special Shares”.

(w) “**Transfer Shares**” means Shares owned by a Key Holder as of the date hereof, or issued to a Key Holder after the date hereof (including, without limitation, in connection with any subdivision or consolidation of shares, stock dividend, recapitalization, reorganization, or the like), but does not include any Common Shares (or other shares in the capital of the Company) that are issued or issuable upon conversion of Preferred Shares.

(x) “**Undersubscription Notice**” means written notice from an Investor notifying the Company and the selling Key Holder that such Investor intends to exercise its option to purchase all or any portion of the Transfer Shares not purchased pursuant to the Right of First Refusal or the Secondary Refusal Right.

2. Agreement Among the Company, the Investors and the Key Holders.

2.1. Right of First Refusal.

(a) Grant. Subject to the terms of Section 3 below and except for the sale of (i) 8,000,000 Common Shares of the Company to Anthony Quinto pursuant to that certain share purchase agreement, dated November 21, 2018, by and between Manny Bettencourt and Anthony Quinto, as amended to date, and (ii) 2,000,000 Common Shares to 2070458 Ontario Inc. or Anthony Quinto pursuant to that certain share purchase agreement, dated June 14, 2019, by and among Transnet Energy Inc., 2070458 Ontario Inc., Anthony Quinto and the Company, each Key Holder hereby unconditionally and irrevocably grants to the Company a Right of First Refusal to purchase all or any portion of the Transfer Shares that such Key Holder may propose to transfer in a Proposed Key Holder Transfer, at the same price and on the same terms and conditions as those offered to the Prospective Transferee.

(b) Notice. Each Key Holder proposing to make a Proposed Key Holder Transfer must deliver a Proposed Transfer Notice to the Company and each Investor not later than forty-five (45) days prior to the consummation of such Proposed Key Holder Transfer. Such Proposed Transfer Notice shall contain the material terms and conditions (including price and form of consideration) of the Proposed Key Holder Transfer, the identity of the Prospective Transferee and the intended date of the Proposed Key Holder Transfer. To exercise its Right of First Refusal under this Section 2, the Company must deliver a Company Notice to the selling Key Holder and the Investors within fifteen (15) days after delivery of the Proposed Transfer Notice specifying the number of Transfer Shares to be purchased by the Company. In the event of a conflict between this Agreement and any other agreement that may have been entered into by a Key Holder with the Company that contains a preexisting right of first refusal, the Company and the Key Holder acknowledge and agree that the terms of this Agreement shall control and the preexisting right of first refusal shall be deemed satisfied by compliance with Subsection 2.1(a) and this Subsection 2.1(b).

(c) Grant of Secondary Refusal Right to the Investors. Subject to the terms of Section 3 below, each Key Holder hereby unconditionally and irrevocably grants to the Investors a Secondary Refusal Right to purchase all or any portion of the Transfer Shares not purchased by the Company pursuant to the Right of First Refusal, as provided in this Subsection 2.1(c). If the Company does not provide the Company Notice exercising its Right of First Refusal with respect to all Transfer Shares subject to a Proposed Key Holder Transfer, the Company must deliver a

Secondary Notice to the selling Key Holder and to each Investor to that effect no later than fifteen (15) days after the selling Key Holder delivers the Proposed Transfer Notice to the Company. To exercise its Secondary Refusal Right, an Investor must deliver an Investor Notice to the selling Key Holder and the Company within ten (10) days after the Company's deadline for its delivery of the Secondary Notice as provided in the preceding sentence.

(d) Undersubscription of Transfer Shares. If options to purchase have been exercised by the Investors pursuant to Subsection 2.1(c) with respect to some but not all of the Transfer Shares not purchased pursuant to the Right of First Refusal by the end of the ten (10) day period specified in the last sentence of Subsection 2.1(c) (the "**Investor Notice Period**"), then the Company shall, within five (5) days after the expiration of the Investor Notice Period, send written notice (the "**Company Undersubscription Notice**") to those Investors who fully exercised their Secondary Refusal Right within the Investor Notice Period (the "**Exercising Investors**"). Each Exercising Investor shall, subject to the provisions of this Subsection 2.1(d), have an additional option to purchase all or any part of the balance of any such remaining unsubscribed Transfer Shares on the same terms and conditions set forth in the Proposed Transfer Notice. To exercise such option, an Exercising Investor must deliver an Undersubscription Notice to the selling Key Holder and the Company within ten (10) days after the expiration of the Investor Notice Period. In the event there are two (2) or more such Exercising Investors that choose to exercise the last-mentioned option for a total number of remaining shares in excess of the number available, the remaining Transfer Shares available for purchase under this Subsection 2.1(d) shall be allocated to such Exercising Investors pro rata based on the number of Transfer Shares such Exercising Investors have elected to purchase pursuant to the Secondary Refusal Right (without giving effect to any Transfer Shares that any such Exercising Investor has elected to purchase pursuant to the Company Undersubscription Notice). If the options to purchase the remaining shares are exercised in full by the Exercising Investors, the Company shall immediately notify all of the Exercising Investors and the selling Key Holder of that fact.

(e) Forfeiture of Rights. Notwithstanding the foregoing, if the total number of Transfer Shares that the Company and the Investors have agreed to purchase in the Company Notice, Investor Notices and Undersubscription Notices is less than the total number of Transfer Shares, then the Company and the Investors shall be deemed to have forfeited any right to purchase such Transfer Shares, and the selling Key Holder shall be free to sell all, but not less than all, of the Transfer Shares to the Prospective Transferee on terms and conditions substantially similar to (and in no event more favorable than) the terms and conditions set forth in the Proposed Transfer Notice, it being understood and agreed that (i) any such sale or transfer shall be subject to the other terms and restrictions of this Agreement, including, without limitation, the terms and restrictions set forth in Subsections 2.2 and 6.9(b); (ii) any future Proposed Key Holder Transfer shall remain subject to the terms and conditions of this Agreement, including this Section 2; and (iii) such sale shall be consummated within forty-five (45) days after receipt of the Proposed Transfer Notice by the Company and, if such sale is not consummated within such forty-five (45) day period, such sale shall again become subject to the Right of First Refusal and Secondary Refusal Right on the terms set forth herein.

(f) Consideration; Closing. If the consideration proposed to be paid for the Transfer Shares is in property, services or other non-cash consideration, the fair market value of

the consideration shall be as determined in good faith by the Board of Directors and as set forth in the Company Notice. If the Company or any Investor cannot for any reason pay for the Transfer Shares in the same form of non-cash consideration, the Company or such Investor may pay the cash value equivalent thereof, as determined in good faith by the Board of Directors and as set forth in the Company Notice. The closing of the purchase of Transfer Shares by the Company and the Investors shall take place, and all payments from the Company and the Investors shall have been delivered to the selling Key Holder, by the later of (i) the date specified in the Proposed Transfer Notice as the intended date of the Proposed Key Holder Transfer; and (ii) forty-five (45) days after delivery of the Proposed Transfer Notice.

2.2. **Right of Co-Sale.**

(a) Exercise of Right. If any Transfer Shares subject to a Proposed Key Holder Transfer is not purchased pursuant to Subsection 2.1 above and thereafter is to be sold to a Prospective Transferee, each respective Investor may elect to exercise its Right of Co-Sale and participate on a pro rata basis in the Proposed Key Holder Transfer as set forth in Subsection 2.2(b) below and, subject to Subsection 2.2(d), otherwise on the same terms and conditions specified in the Proposed Transfer Notice. Each Investor who desires to exercise its Right of Co-Sale (each, a “**Participating Investor**”) must give the selling Key Holder written notice to that effect within fifteen (15) days after the deadline for delivery of the Secondary Notice described above, and upon giving such notice such Participating Investor shall be deemed to have effectively exercised the Right of Co-Sale.

(b) Shares Includable. Each Participating Investor may include in the Proposed Key Holder Transfer all or any part of such Participating Investor’s Shares equal to the product obtained by multiplying (i) the aggregate number of Transfer Shares subject to the Proposed Key Holder Transfer by (ii) a fraction, the numerator of which is the number of Shares owned by such Participating Investor immediately before consummation of the Proposed Key Holder Transfer and the denominator of which is the total number of Shares owned, in the aggregate, by all Participating Investors immediately prior to the consummation of the Proposed Key Holder Transfer, plus the number of Transfer Shares held by the selling Key Holder. To the extent one (1) or more of the Participating Investors exercise such right of participation in accordance with the terms and conditions set forth herein, the number of Transfer Shares that the selling Key Holder may sell in the Proposed Key Holder Transfer shall be correspondingly reduced.

(c) Purchase and Sale Agreement. The Participating Investors and the selling Key Holder agree that the terms and conditions of any Proposed Key Holder Transfer in accordance with this Subsection 2.2 will be memorialized in, and governed by, a written purchase and sale agreement with the Prospective Transferee (the “**Purchase and Sale Agreement**”) with customary terms and provisions for such a transaction, and the Participating Investors and the selling Key Holder further covenant and agree to enter into such Purchase and Sale Agreement as a condition precedent to any sale or other transfer in accordance with this Subsection 2.2.

(d) Allocation of Consideration.

(i) Subject to Subsection 2.2(d)(ii), the aggregate consideration payable to the Participating Investors and the selling Key Holder shall be allocated based on the number of Shares sold to the Prospective Transferee by each Participating Investor and the selling Key Holder as provided in Subsection 2.2(b), provided that if a Participating Investor wishes to sell Preferred Shares, the price set forth in the Proposed Transfer Notice shall be appropriately adjusted based on the applicable conversion ratio of the applicable Preferred Shares into Common Shares.

(ii) In the event that the Proposed Key Holder Transfer constitutes a Change of Control, the terms of the Purchase and Sale Agreement shall provide that the aggregate consideration from such transfer shall be allocated to the Participating Investors and the selling Key Holder in accordance with the Amended Articles as if (A) such transfer were a “Deemed Liquidation Event” (as defined in the Amended Articles), and (B) the Shares sold in accordance with the Purchase and Sale Agreement were the only Shares outstanding. In the event that a portion of the aggregate consideration payable to the Participating Investor(s) and selling Key Holder is placed into escrow and/or is payable only upon satisfaction of contingencies, the Purchase and Sale Agreement shall provide that (x) the portion of such consideration that is not placed in escrow and is not subject to contingencies (the “**Initial Consideration**”) shall be allocated in accordance with the Amended Articles as if the Initial Consideration were the only consideration payable in connection with such transfer, and (y) any additional consideration which becomes payable to the Participating Investor(s) and selling Key Holder upon release from escrow or satisfaction of such contingencies shall be allocated in accordance with the Amended Articles after taking into account the previous payment of the Initial Consideration as part of the same transfer.

(e) Purchase by Selling Key Holder; Deliveries. Notwithstanding Subsection 2.2(c) above, if any Prospective Transferee or Transferees refuse(s) to purchase securities subject to the Right of Co-Sale from any Participating Investor or Investors or upon the failure to negotiate in good faith a Purchase and Sale Agreement reasonably satisfactory to the Participating Investors, no Key Holder may sell any Transfer Shares to such Prospective Transferee or Transferees unless and until, simultaneously with such sale, such Key Holder purchases all securities subject to the Right of Co-Sale from such Participating Investor or Investors on the same terms and conditions (including the proposed purchase price) as set forth in the Proposed Transfer Notice and as provided in Subsection 2.2(d)(i); provided, however, if such sale constitutes a Change of Control, the portion of the aggregate consideration paid by the selling Key Holder to such Participating Investor or Investors shall be made in accordance with the first sentence of Subsection 2.2(d)(ii). In connection with such purchase by the selling Key Holder, such Participating Investor or Investors shall deliver to the selling Key Holder any share certificates, properly endorsed for transfer (or together with a duly signed share transfer form and power of attorney), representing the Shares being purchased by the selling Key Holder (or request that the Company effect such transfer in the name of the selling Key Holder). Any such shares transferred to the selling Key Holder will be transferred to the Prospective Transferee against payment therefor in consummation of the sale of the Transfer Shares pursuant to the terms and conditions specified in the Proposed Transfer Notice, and the selling Key Holder shall concurrently therewith remit or direct payment to each such Participating Investor the portion of the aggregate consideration to which each such Participating Investor is entitled by reason of its participation in such sale as provided in this Subsection 2.2(e).

(f) Additional Compliance. If any Proposed Key Holder Transfer is not consummated within forty-five (45) days after receipt of the Proposed Transfer Notice by the Company, the Key Holders proposing the Proposed Key Holder Transfer may not sell any Transfer Shares unless they first comply in full with each provision of this Section 2. The exercise or election not to exercise any right by any Investor hereunder shall not adversely affect its right to participate in any other sales of Transfer Shares subject to this Subsection 2.2.

2.3. **Effect of Failure to Comply.**

(a) Transfer Void; Equitable Relief. Any Proposed Key Holder Transfer not made in compliance with the requirements of this Agreement shall be null and void *ab initio*, shall not be recorded on the books of the Company or its transfer agent and shall not be recognized by the Company. Each party hereto acknowledges and agrees that any breach of this Agreement would result in substantial harm to the other parties hereto for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocably agree that any non-breaching party hereto shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales and other transfers of Transfer Shares not made in strict compliance with this Agreement) without any requirement to post bond.

(b) Violation of First Refusal Right. If any Key Holder becomes obligated to sell any Transfer Shares to the Company or any Investor under this Agreement and fails to deliver such Transfer Shares in accordance with the terms of this Agreement, the Company and/or such Investor may, at its option, in addition to all other remedies it may have, send to such Key Holder the purchase price for such Transfer Shares as is herein specified and transfer to the name of the Company or such Investor (or request that the Company effect such transfer in the name of an Investor) on the Company's books any certificates representing the Transfer Shares to be sold.

(c) Violation of Co-Sale Right. If any Key Holder purports to sell any Transfer Shares in contravention of the Right of Co-Sale (a "**Prohibited Transfer**"), each Participating Investor who desires to exercise its Right of Co-Sale under Subsection 2.2 may, in addition to such remedies as may be available by law, in equity or hereunder, require such Key Holder to purchase from such Participating Investor the type and number of Shares that such Participating Investor would have been entitled to sell to the Prospective Transferee had the Prohibited Transfer been effected in compliance with the terms of Subsection 2.2. The sale will be made on the same terms, including, without limitation, as provided in Subsection 2.2(d)(i) and the first sentence of Subsection 2.2(d)(ii), as applicable, and subject to the same conditions as would have applied had the Key Holder not made the Prohibited Transfer, except that the sale (including, without limitation, the delivery of the purchase price) must be made within ninety (90) days after the Participating Investor learns of the Prohibited Transfer, as opposed to the timeframe proscribed in Subsection 2.2. Such Key Holder shall also reimburse each Participating Investor for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Participating Investor's rights under Subsection 2.2.

3. Exempt Transfers.

3.1. **Exempted Transfers.** Notwithstanding the foregoing or anything to the contrary herein, the provisions of Subsections 2.1 and 2.2 shall not apply (a) in the case of a Key Holder that is an entity, upon a transfer by such Key Holder to its shareholders, members, partners or other equity holders, (b) to a repurchase of Transfer Shares from a Key Holder by the Company at a price no greater than that originally paid by such Key Holder for such Transfer Shares and pursuant to an agreement containing vesting and/or repurchase provisions approved by a majority of the Board of Directors, (c) in the case of a Key Holder that is a natural person, upon a transfer of Transfer Shares by such Key Holder made for *bona fide* estate planning purposes, either during his or her lifetime or on death by will or intestacy to his or her spouse, child (natural or adopted), or any other direct lineal descendant of such Key Holder (or his or her spouse) (all of the foregoing collectively referred to as “**family members**”), or any other relative/person approved by the Board of Directors, or any custodian or trustee of any trust, partnership or limited liability company for the benefit of, or the ownership interests of which are owned wholly by such Key Holder or any such family members, or (d) any transfer of Shares by a Key Holder in accordance with the “Right to Purchase” contemplated by Section 4 (Right to Purchase) of the Right to Purchase Agreement; provided that in the case of clause(s) (a), (b), (c) or (d), the Key Holder shall deliver prior written notice to the Investors of such gift or transfer and such Transfer Shares shall at all times remain subject to the terms and restrictions set forth in this Agreement and such transferee shall, as a condition to such issuance, deliver a counterpart signature page to this Agreement as confirmation that such transferee shall be bound by all the terms and conditions of this Agreement as a Key Holder (but only with respect to the securities so transferred to the transferee), including the obligations of a Key Holder with respect to Proposed Key Holder Transfers of such Transfer Shares pursuant to Section 2; and provided further in the case of any transfer pursuant to clause (a) or (c) above, that such transfer is made pursuant to a transaction in which there is no consideration actually paid for such transfer.

3.2. **Exempted Offerings.** Notwithstanding the foregoing or anything to the contrary herein, the provisions of Section 2 shall not apply to the sale of any Transfer Shares (a) to the public in an offering pursuant to a prospectus filed with the securities regulatory authority of any province or territory of Canada or an effective registration statement under the Securities Act of 1933, as amended (each, a **Public Offering**); (b) pursuant to a Deemed Liquidation Event, or (c) in connection with the exercise of any rights under Section 4 (Right to Purchase) of the Right to Purchase Agreement.

3.3. **Prohibited Transferees.** Notwithstanding the foregoing, no Key Holder shall transfer any Transfer Share to (a) any entity which, in the determination of the Board of Directors, directly or indirectly competes with the Company; or (b) any customer, distributor or supplier of the Company, if the Board of Directors should determine that such transfer would result in such customer, distributor or supplier receiving information that would place the Company at a competitive disadvantage with respect to such customer, distributor or supplier.

4. **Legend.** Each certificate representing a Transfer Share held by the Key Holders or issued to any permitted transferee in connection with a transfer permitted by Subsection 3.1 hereof shall be endorsed with the following legend:

“THE SALE, PLEDGE, HYPOTHECATION, OR TRANSFER OF THE SECURITIES REPRESENTED HEREBY IS SUBJECT TO, AND IN CERTAIN CASES PROHIBITED BY, THE TERMS AND CONDITIONS OF A CERTAIN AMENDED AND RESTATED RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT BY AND AMONG THE SHAREHOLDER, THE COMPANY AND CERTAIN OTHER SHAREHOLDERS OF THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE COMPANY.”

Each Key Holder agrees that the Company may instruct its transfer agent to impose transfer restrictions on the shares endorsed with the legend referred to in this Section 4 above to enforce the provisions of this Agreement, and the Company agrees to promptly do so. The legend shall be removed upon termination of this Agreement at the request of the holder.

5. **Lock-Up.**

5.1. **Agreement to Lock-Up.** Each Key Holder hereby agrees that it will not, without the prior written consent of the lead underwriter, during the period commencing on the date of the final prospectus or registration statement relating to the Company’s initial public offering (the “**IPO**”) and ending on the date specified by the Company and the lead underwriter (such period not to exceed one hundred eighty (180) days), or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (1) the publication or other distribution of research reports; and (2) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto), (a) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Shares held immediately prior to the effectiveness of the final prospectus or registration statement for the IPO; or (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Shares, whether any such transaction described in clause (a) or (b) above is to be settled by delivery of Shares or other securities, in cash or otherwise. The foregoing provisions of this Section 5 shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the Key Holders if all officers, directors and holders of more than one percent (1%) of the outstanding Common Shares (after giving effect to the conversion into Common Shares of all Preferred Shares) enter into similar agreements. The underwriters in connection with the IPO are intended third-party beneficiaries of this Section 5 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto, and to the extent necessary, the Company will enforce such provisions on their behalf. Each Key Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in the IPO that are consistent with this Section 5 or that are necessary to give further effect thereto.

5.2. **Stop Transfer Instructions.** In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Shares of each Key Holder (and transferees and assignees thereof) until the end of such restricted period.

6. **Miscellaneous.**

6.1. **Term.** This Agreement shall automatically terminate upon the earlier of (a) immediately prior to the consummation of the Company's IPO and (b) the consummation of a Deemed Liquidation Event.

6.2. **Share Split.** All references to numbers of shares in this Agreement shall be appropriately adjusted to reflect any stock dividend, subdivision or consolidation of shares or other recapitalization affecting the Shares occurring after the date of this Agreement.

6.3. **Ownership.** Each Key Holder represents and warrants that such Key Holder is the sole legal and beneficial owner of the Transfer Shares subject to this Agreement and that no other person or entity has any interest in such Shares (other than a community property interest as to which the holder thereof has acknowledged and agreed in writing to the restrictions and obligations hereunder).

6.4. **Dispute Resolution.** The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the courts of the Province of Ontario for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the courts located in the Province of Ontario, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.5. Notices.

(a) All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) when delivered by a nationally recognized overnight courier, freight prepaid with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth on Schedule A or Schedule B hereto, or to the principal office of the Company and to the attention of the Chief Executive Officer, in the case of the Company, or to such email address, facsimile number or address as subsequently modified by written notice given in accordance with this Section 6.5. If notice is given to the Company, a copy shall also be sent to Blaney McMurtry LLP, 2 Queen Street East, Suite 1500, Toronto, ON, M5C 3G5, Canada, Attention Dan Giantsopoulos, dgiantsopoulos@blaney.com.

(b) **Consent to Electronic Notice.** Each Investor and Key Holder consents to the delivery of any shareholder notice hereunder by electronic transmission at the email address set forth below such Investor's or Key Holder's name on the Schedules hereto, as updated from time to time by notice to the Company, or as on the books of the Company. Each Investor and Key Holder agrees to promptly notify the Company of any change in its email address, and that failure to do so shall not affect the foregoing.

6.6. **Entire Agreement.** This Agreement (including, the Exhibits and Schedules hereto) constitutes the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled.

6.7. **Delays or Omissions.** No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

6.8. **Amendment; Waiver and Termination.** This Agreement may be amended, modified or terminated (other than pursuant to Section 6.1 above) and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by (a) the Company, (b) the Key Holders holding at least two thirds (2/3) of the Transfer Shares then held by all such the Key Holders, and

184

(c) the holders of at least two thirds (2/3) of the Common Shares issued or issuable upon conversion of the then outstanding Preferred Shares held by the Investors (voting together as a single class and on an as-converted basis). Any amendment, modification, termination or waiver so effected shall be binding upon the Company, the Investors, the Key Holders and all of their respective successors and permitted assigns whether or not such party, assignee or other shareholder entered into or approved such amendment, modification, termination or waiver. Notwithstanding the foregoing, (i) this Agreement may not be amended, modified or terminated and the observance of any term hereunder may not be waived with respect to any Investor or Key Holder without the written consent of such Investor or Key Holder unless such amendment, modification, termination or waiver applies to all Investors and Key Holders, respectively, in the same fashion, (ii) this Agreement may not be amended, modified or terminated and the observance of any term hereunder may not be waived with respect to any Investor without the written consent of such Investor, if such amendment, modification, termination or waiver would adversely affect the rights of such Investor in a manner disproportionate to any adverse effect such amendment, modification, termination or waiver would have on the rights of the other Investors under this Agreement, (iii) the consent of the Key Holders shall not be required for any amendment, modification, termination or waiver if such amendment, modification, termination or waiver does not affect any provision directly relevant to the Key Holders, and (iv) Schedule A hereto may be amended by the Company from time to time in accordance with the Purchase Agreement to add information regarding Additional Purchasers (as defined in the Purchase Agreement) without the consent of the other parties hereto. The Company shall give prompt written notice of any amendment, modification or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, modification, termination or waiver. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

6.9. Assignment of Rights.

(a) The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(b) Any successor or permitted assignee of any Key Holder, including any Prospective Transferee who purchases any Transfer Shares in accordance with the terms hereof, shall deliver to the Company and the Investors, as a condition to any transfer or assignment, a counterpart signature page hereto pursuant to which such successor or permitted assignee shall confirm their agreement to be subject to and bound by all of the provisions set forth in this Agreement that were applicable to the predecessor or assignor of such successor or permitted assignee.

(c) The rights of the Investors hereunder are not assignable without the Company's written consent (which shall not be unreasonably withheld, delayed or conditioned), except (i) by an Investor to any Affiliate, or (ii) an Investor to an assignee or transferee who

185

acquires all of the Shares legally or beneficially owned by such Investor (as adjusted for any share consolidation, subdivision of shares, stock dividend, recapitalization or other similar transaction), it being acknowledged and agreed that any such assignment, including an assignment contemplated by the preceding clauses (i) or (ii) shall be subject to and conditioned upon any such assignee's delivery to the Company and the other Investors of a counterpart signature page hereto pursuant to which such assignee shall confirm their agreement to be subject to and bound by all of the provisions set forth in this Agreement that were applicable to the assignor of such assignee.

(d) Except in connection with an assignment by the Company by operation of law to the acquirer of the Company, the rights and obligations of the Company hereunder may not be assigned under any circumstances.

6.10. **Severability.** The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

6.11. **Additional Investors.** Notwithstanding anything to the contrary contained herein, if the Company issues additional Preferred Shares after the date hereof pursuant to the Star Purchase Agreement or the PPL Purchase Agreement, as applicable, or otherwise, any purchaser of such Preferred Shares may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and thereafter shall be deemed an "Investor" for all purposes hereunder.

6.12. **Governing Law.** This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

6.13. **Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.14. **Counterparts; Facsimile.** This Agreement may be executed and delivered by facsimile or electronic mail (including in .pdf format) and in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.15. **Aggregation of Shares.** All Shares held or acquired by Affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

6.16. **Specific Performance.** In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, each Investor shall be entitled to specific performance of the agreements and obligations of the Company and the Key Holders hereunder and to such other injunction or other equitable relief as may be granted by a court of competent jurisdiction without a requirement to post bond.

6.17. **Additional Key Holders.** In the event that after the date of this Agreement, the Company issues Common Shares, or options to purchase Common Shares, to any employee or consultant, which shares or options would collectively constitute with respect to such employee

186

or consultant (taking into account all Common Shares, options and other purchase rights held by such employee or consultant) one percent (1%) or more of the Company's then outstanding Common Shares (treating for this purpose all Common Shares issuable upon exercise of or conversion of outstanding options, warrants or convertible securities, as if exercised or converted), the Company shall, as a condition to such issuance, cause such employee or consultant to execute a counterpart signature page hereto as a Key Holder, and such person shall thereby be bound by, and subject to, all the terms and provisions of this Agreement applicable to a Key Holder.

6.18. **Independent Legal Advice.** Each of the parties to this Agreement acknowledges and agrees that such party has been given the opportunity to consult with its own tax and legal advisors regarding the matters contemplated by this Agreement. To the extent that any party has declined to receive independent tax or legal advice, such party hereby waives the right, should a dispute later develop, to rely on such party's lack of independent tax or legal advisors to avoid his, her or its obligations, to seek indulgences from the other parties or to otherwise attack the integrity of this Agreement or any of the provisions hereof, in whole or in part.

6.19. **Unanimous Shareholder Agreement.** This Agreement together with the Voting Agreement and the Investors' Rights Agreement shall be deemed to be a unanimous shareholder agreement within the meaning of the *Canada Business Corporations Act*, and the power of the board of directors of the Company to manage or supervise the management of the business and affairs of the Company is restricted in accordance with the terms of this Agreement.

[Signature Page Follows]

187

IN WITNESS WHEREOF, the parties have executed this Right of First Refusal and Co-Sale Agreement as of the date first written above.

DEMAND POWER GROUP INC.

By: Rajan Chudgar
Name: Rajan Chudgar
Title: CEO

Address:

71 Marycroft Avenue, Unit 20
Woodbridge, ON L4L 5Y6
Canada

INVESTORS:

**STAR AMERICA DPGI ACQUISITION
COMPANY, INC.**

By: _____
Name: William A. Marino
Title: CEO

Address:

165 Roslyn Road
Roslyn Heights, NY 11577
U.S.A.

PPL TECHNOLOGY VENTURES, LLC

By: _____
Name: Alexander Torok
Title: President

Address:

c/o Wilmington Trust (registered agent)
1105 North Market Street
Suite 1300
Wilmington, DE 19801

188

IN WITNESS WHEREOF, the parties have executed this Right of First Refusal and Co-Sale Agreement as of the date first written above.

DEMAND POWER GROUP INC.

By: _____
Name: Rajan Chudgar
Title: CEO

Address:

71 Marycroft Avenue, Unit 20
Woodbridge, ON L4L 5Y6
Canada

INVESTORS:

**STAR AMERICA DPGI ACQUISITION
COMPANY, INC.**

By:  _____
Name: William A. Marino
Title: CEO

Address:

165 Roslyn Road
Roslyn Heights, NY 11577
U.S.A.

PPL TECHNOLOGY VENTURES, LLC

By: _____
Name: Alexander Torok
Title: President

Address:

c/o Wilmington Trust (registered agent)
1105 North Market Street
Suite 1300
Wilmington, DE 19801

IN WITNESS WHEREOF, the parties have executed this Right of First Refusal and Co-Sale Agreement as of the date first written above.

DEMAND POWER GROUP INC.

By: _____
Name: Rajan Chudgar
Title: CEO

Address:

71 Marycroft Avenue, Unit 20
Woodbridge, ON L4L 5Y6
Canada

INVESTORS:

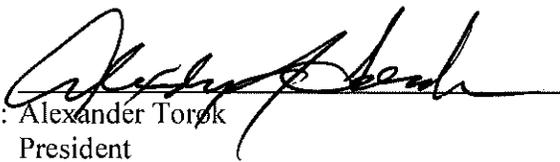
**STAR AMERICA DPGI ACQUISITION
COMPANY, INC.**

By: _____
Name: William A. Marino
Title: CEO

Address:

165 Roslyn Road
Roslyn Heights, NY 11577
U.S.A.

PPL TECHNOLOGY VENTURES, LLC

By: 
Name: Alexander Torok
Title: President

Address:

c/o Wilmington Trust (registered agent)
1105 North Market Street
Suite 1300
Wilmington, DE 19801

KEY HOLDERS:

2617822 ONTARIO INC.

By: _____
Name: JENNIFER KOMINEK
Title: DIRECTOR

MANNY BETTENCOURT

ANTHONY QUINTO

GIANFRANCO QUINTO

2070458 ONTARIO INC.

By: _____
Name: _____
Title: _____

DOMENICO TARASCIO

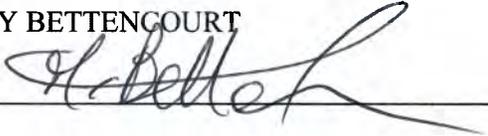
GIUSEPPE TARASCIO

KEY HOLDERS:

2617822 ONTARIO INC.

By: _____
Name: _____
Title: _____

MANNY BETTENCOURT

_____ 

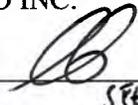
ANTHONY QUINTO

_____ 

GIANFRANCO QUINTO

_____ 

2070458 ONTARIO INC.

By: _____ 
Name: _____ STEVE CORRAL
Title: _____ PRESIDENT

DOMENICO TARASCIO

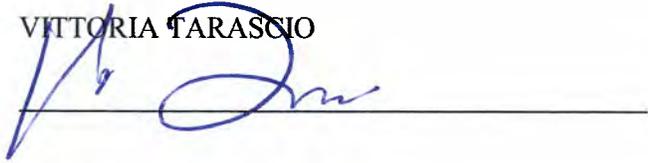
_____ 

GIUSEPPE TARASCIO

_____ 

KEY HOLDERS (CONT'D)

VITTORIA TARASCIO



RAJ CHUDGAR

BLANEY MCMURTRY LLP

By: _____
Name: _____
Title: _____

TRANSNET ENERGY INC.

By: _____
Name: ANTHONY QUINN
Title: PRESIDENT

KEY HOLDERS (CONT'D)

VITTORIA TARASCIO

RAJ CHUDGAR

Rajan Chudgar

BLANEY MCMURTRY LLP

By: _____
Name: _____
Title: _____

TRANSNET ENERGY INC.

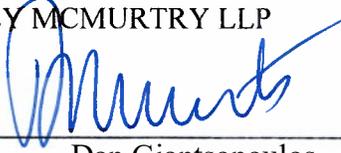
By: _____
Name: _____
Title: _____

KEY HOLDERS (CONT'D)

VITTORIA TARASCIO

RAJ CHUDGAR

BLANEY MCMURTRY LLP

By: 

Name: Dan Giantsopoulos

Title: _____

TRANSNET ENERGY INC.

By: _____

Name: _____

Title: _____

195

SCHEDULE A
INVESTORS

Name

PPL Technology Ventures, LLC

c/o Wilmington Trust (registered agent)

1105 North Market Street

Suite 1300

Wilmington, DE 19801

Star America DPGI Acquisition Company, Inc.

165 Roslyn Road

Roslyn Heights, NY 11577

U.S.A.

Number of Shares Held

13,458,120 Class A-1 Preferred
Shares

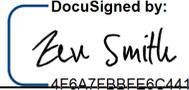
13,458,120 Class A-2 Preferred
Shares

SCHEDULE B
KEY HOLDERS

<u>Name</u>	<u>Address</u>	<u>Number of Shares Held</u>	<u>Class of Shares Held</u>
2617822 Ontario Inc.	3884 Chesswood Drive North York, Ontario M3J 2W6	14,000,000	Common
Manny Bettencourt	305 Glebeholme Blvd. Toronto, Ontario M4J 1T1	2,000,000	Common
Anthony Quinto	47 Saddle Tree Cres Woodbridge , ON , L4L 3X4	4,636,365	Common
Gianfranco Quinto	1 Colton Cres North Woodbridge , ON , L4L 3L6	8,000,000	Common
2070458 Ontario Inc.	180 Carmichael Crescent King City, Ontario Canada L7B 0N2	2,000,000	Common
Domenico Tarascio	137 Kingsnorth Blvd Woodbridge, ON L4L 8J6	454,545	Common
Giuseppe Tarascio	14 Slipneedle St. Brampton, ON L6S 6L4	454,545	Common
Vittoria Tarascio	137 Kingsnorth Blvd Woodbridge, ON L4L 8J6	454,545	Common
Raj Chudgar	5722 Belmont Valley Court Raleigh, NC USA 27612	4,000,000	Common
Blaney McMurtry LLP	2 Queen Street East, Suite 1500 Toronto, Ontario Canada M5C 3G5	2,000,000	Common
Transnet Energy Inc.	71 Marycroft Avenue, Unit 20 Woodbridge, Ontario Canada L4L 5Y6	2,010,395	Special Shares
Transnet Energy Inc.	71 Marycroft Avenue, Unit 20 Woodbridge, Ontario Canada L4L 5Y6	4,000,000	Common

This is Exhibit "E" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

A blue ink signature that reads "Zev Smith". The signature is written in a cursive style. It is enclosed in a blue rounded rectangular box.

4E6A7EBBEE6C441...

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

INVESTMENT AGREEMENT

THIS INVESTMENT AGREEMENT (“*Agreement*”) is entered into as of February 28, 2020 (the “*Effective Date*”), by and between Demand Power Group Inc., an Ontario corporation (“*Developer*”), and Narrows Green, LP a Manitoba limited partnership (“*DPSII*”). Developer and DPSII are sometimes hereinafter referred to individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, the Parties desire to provide for a process to determine the viability of certain Projects (as defined below);

AND WHEREAS, should a Project become an Accepted Project (as defined below), the Parties desire to set out the terms pursuant to which DPSII will own and provide the capital required for the development of such Accepted Project, subject to the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the premise and the mutual covenants contained herein, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, unless otherwise defined herein:

(a) “*Affiliate*” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. For the purposes of this definition, “control” and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise. “Control” may be deemed to exist notwithstanding that a Person owns or holds, directly or indirectly, less than 50% of the beneficial equity interest in another Person, provided that, with respect to Developer, the term “Affiliates”, shall not include DPSII, Star America Fund II GP, LLC or their Affiliates.

(b) “*Applicable Law*” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, including the interpretation and administration thereof by such Governmental Authority.

(c) “*Applicable Permit*” means, with respect to an Accepted Project, each and every license, authorization, certification, designation, filing, recording, permit, franchise, registration or other approval with or of any Governmental Authority required in connection with the development, operation, maintenance or financing of that Project.

199

(d) “*Assumed Liabilities*” means, with respect to an Accepted Project, the obligations of Developer under the contracts and agreements included in the Property related to such Accepted Project that are to be performed after the Closing in respect of such Accepted Project and which arise out of events occurring after the Closing in respect of such Accepted Project.

(e) “*Capital Invested*” means the capital contribution of SAIF DP HoldCo, LP or its Affiliates in the Class A Units of DPSII at the relevant time in question.

(f) “*Cash Flow*” means the pre-tax cash flow distributed or distributable from DPSII to SAIF DP HoldCo, LP pursuant to the terms of the Limited Partnership Agreement.

(g) “*Closing*” means, with respect to an Accepted Project, the completion of the acquisition by DPSII or a DPSII SPV of such Accepted Project from Developer.

(h) “*Closing Date*” means, in respect of an Accepted Project, the date which is five (5) business days after the later of (i) NTP and (ii) the delivery of Acceptance Notice by DPSII with respect to such Accepted Project.

(i) “*Commercial Operation Date*” means the date after which all testing and commissioning with respect to an Accepted Project has been completed to the satisfaction of DPSII (acting reasonably and in consultation with the Independent Engineer) and is the initiation date on which DPSII could start earning revenue with respect to such Accepted Project.

(j) “*Construction Management, Operations and Maintenance Agreement*” means that certain Construction Management, Operations and Maintenance Agreement by and between Developer and DPSII of even date herewith (as amended, restated or replaced from time to time).

(k) “*Customers*” means certain industrial, commercial, agricultural and/or municipal entities with operations in Ontario, Canada, each of which is a Class A customer under the terms of Ontario’s Industrial Conservation Initiative.

(l) “*Distributed Energy Systems*” means distributed energy facilities incorporating:

(1) a battery with the capacity to meet a Customer’s electricity requirements for at least two hours; and/or

(2) a generation unit.

(m) “*Documentation*” means the Accepted Project documentation as more specifically set forth on Exhibit B.

200

(n) “**DPSII Pre-Tax IRR**” means an internal rate of return based on:

- (1) Capital Invested; and
- (2) the return on Capital Invested from Cash Flow

calculated per annum on a cumulative basis, compounded quarterly without taking into account income tax.

(o) “**DPSII SPV**” means a limited partnership or other Person to be formed in which DPSII owns 100% of the equity interests and that is designated by DPSII to acquire a Project.

(p) “**Governmental Approval**” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

(q) “**Governmental Authority**” means any federal, state, provincial, town, city, or municipal government, or any department, agency, bureau, or other administrative, regulatory or judicial or tribunal body of any such government, including, for clarity, the IESO.

(r) “**Governmental Incentive**” means any payment, grant, tax incentive, program, or other benefit provided by a utility or Governmental Authority as an inducement to produce, install or use energy storage equipment and includes any accelerated depreciation, installation or production-based incentives, investment tax credits, ancillary services or capacity products and subsidies and all other storage or energy subsidies and incentives.

(s) “**IESO**” means the Independent Electricity System Operator of Ontario established under Part II of the Electricity Act, and its successors and assigns.

(t) “**Independent Engineer**” means such Person designated in writing by DPSII from time to time.

(u) “**Liability**” means any liability or obligation, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated and whether due or to become due, regardless of when asserted.

(v) “**Liens**” means (i) any liens, security interests, charges, rights of first refusal, rights of first offer, options, conditional sale agreements, mortgages, deeds of trust, pledges, collateral assignments, claims, claims of easement, easements, equitable interests, or (ii) any other encumbrance of any nature which, in substance, secures payment or performance of an obligation or affects, by way of a conflicting interest, the right, title or interest in or to any particular Project or any assets related thereto, in each case other than Permitted Liens.

(w) “**Limited Partnership Agreement**” means that certain Limited Partnership Agreement by and between SAIF DP OpCo GP, Inc., SAIF DP HoldCo, LP, and Developer dated as of February 28, 2020 (as amended, restated or replaced from time to time).

201

(x) “**Marks**” means, collectively, the trade name “Demand Power” and other names, brands, trade names, marks, trademarks, service marks, designs, logos and slogans utilizing, derived from or constituting a composite of such trade name.

(y) “**NTP**” means, with respect to a specific Project, a notice to proceed received from a reputable engineering and construction company mutually acceptable to DPSII and Developer.

(z) “**Person**” means an individual, partnership, corporation, limited liability company, joint venture, trust or unincorporated association, Governmental Authority or any other entity.

(aa) “**Power Purchase Agreements**” means multi-year, fixed-price, retail power purchase agreements to be entered into between Developer and Customers.

(bb) “**Pre-Closing Tax Period**” means any taxable period or portion thereof ending on or before the Closing Date and the portion of any Straddle Period ending on or before the Closing Date.

(cc) “**Pre-Closing Taxes**” means, with respect to any Accepted Project, any Taxes of or with respect to the Accepted Project for any Pre-Closing Tax Period. Taxes for a Straddle Period shall be allocated to the Pre-Closing Tax Period (i) ratably based on the number of days in the period if they are imposed on a periodic basis and (ii) based on an interim closing of the books if they are based upon or related to income or receipts.

(dd) “**Projects**” means energy development projects under which Developer will install and operate Distributed Energy Systems at Customer sites pursuant to the terms of a Power Purchase Agreement.

(ee) “**Property**” means, with respect to any Accepted Project, all tangible, intangible and other properties, assets and rights of the Developer related to such Accepted Project, including the Power Purchase Agreement and all other contracts and agreements related to the development, construction, ownership and operation of such Accepted Project, all equipment, inverters, batteries, power electronics, communications equipment and switchgear related to such Accepted Project, all Applicable Permits related to such Accepted Project and all Governmental Incentives related to such Accepted Project.

(ff) “**Straddle Period**” means any taxable period that includes but does not end on the Closing Date.

(gg) “**Tax Return**” means any and all returns (including any withholding tax returns and information return), reports, declarations, elections, designations, notices, filings, forms, statements, and other documents (whether in tangible or intangible form) and including any amendments, schedules, attachments, supplements, appendices and exhibits thereto, filed or required to be filed with any applicable Governmental Authority in respect of Taxes.

(hh) “**Taxes**” means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by

202

any Governmental Authority, including all supranational, national, federal, provincial, state, local or other taxes whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to income, branch, earnings, profits, capital gains, gross receipts, windfall profits, value added, severance, ad valorem, property, capital, net worth, production, sales, use, goods and services, harmonized sales, value added, licence, franchise, environmental, transfer, withholding or similar, payroll, employment, employer health, government pension plan premiums and contributions, social security premiums, workers' compensation premiums, employment/unemployment insurance or compensation premiums and contributions, stamp, occupation, premium, alternative or add-on minimum, and transfer, gift, production, real or personal property, import or export and customs duties, (ii) any instalments in respect thereof, (iii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority, and (iv) any liability for any of the foregoing as a transferee, successor, guarantor, or by contract, operation of law or otherwise.

(ii) “**Transaction Documents**” means documents and instruments related to any of the transactions contemplated by this Agreement, including this Agreement, the Limited Partnership Agreement, the Construction Management, Operations and Maintenance Agreement and any other agreements, documents or instruments executed and delivered pursuant to any of the foregoing.

(jj) “**Transfer Tax**” means any sales, use, value added, gross receipts, excise, registration, stamp duty, transfer, land transfer or other similar Taxes or governmental fees (including any interest or penalties related thereto) payable in connection with the purchase and sale of any Accepted Project.

ARTICLE 2
PROJECT ACCEPTANCE

2.1 From the date hereof until this Agreement is terminated by the Parties, Developer shall submit to DPSII comprehensive investment proposals with respect to each Project, including (i) the budget for development, construction and operation of such Project (each, a “**Budget**”), (ii) the Base Case Model for such Project, and (iii) the proposed Power Purchase Agreement for such Project, including a confirmation from the Developer as to whether such proposed Power Purchase Agreement is substantially in the form set forth on Exhibit C hereto (each, an “**Investment Proposal**”).

2.2 Following receipt by DPSII from Developer of an Investment Proposal in respect of a Project, DPSII shall have a period of twenty (20) days to review the Project. During this period, DPSII shall be afforded the opportunity to conduct a full diligence investigation, which may include the engagement by DPSII of an independent third-party engineering firm to review the Project, the Investment Proposal, the Base Case Model, the Budget and the items listed in Exhibit A. In furtherance of the foregoing, Developer shall make available its personnel to DPSII and any of its representatives or third-party contractors (including the Independent Engineer and members of the Star America Fund II GP, LLC investment committee) as to allow such Persons to conduct a full due diligence investigation and shall provide a correct and complete copy of the Base Case Model. The time period for consideration of a Project may be extended by mutual agreement of the Parties.

203

2.3 It is the current expectation of the Parties that the financial metrics of each Project, as set forth in the base case financial model provided by Developer in connection with such Project (the “*Base Case Model*”), should meet or exceed the following (the “*Base Case Financial Threshold*”):

- (a) a total budgeted capital expenditure greater than USD 1,000,000; and
- (b) a projected DPSII Pre-Tax IRR that is:
 - (1) greater than 8%, in the case of a Customer with debt (or debt of its controlling parent) rated at or above BBB- or the equivalent thereof; or
 - (2) 8% plus the percentage set out in the Portfolio Comparison Score in the Dun & Bradstreet report on the Customer, in the case of any other Customer.

2.4 To the extent that the Base Case Model included in any Investment Proposal does not meet the Base Case Financial Threshold, the Developer shall include in the Investment Proposal for such Project full details with respect to which provision(s) of the Base Case Financial Threshold were not met and the reasons therefor.

2.5 Upon the completion of the review period set forth in Section 2.2, DPSII will give notice to Developer with respect to each Project:

- (a) stating that DPSII or a DPSII SPV shall purchase such Project (an “*Acceptance Notice*”); or
- (b) stating that it is rejecting the acquisition of such Project (a “*Rejection Notice*”). The Rejection Notice shall contain the reason or reasons for such rejection. If the reason(s) set out in the Rejection Notice have been cured to the satisfaction of DPSII in its sole and absolute discretion, then the Project may be resubmitted for consideration upon mutual agreement of the Parties. Following resubmission, DPSII shall have ten (10) days to reconsider its position on the Project and at the end of such period shall give an Acceptance Notice or a Rejection Notice.

Notwithstanding anything to the contrary herein (i) the decision as to whether to submit an Acceptance Notice or Rejection Notice with respect to each Investment Proposal and Project shall be made by DPSII in its sole and absolute discretion and (ii) DPSII shall not be required to give an Acceptance Notice in respect to any Investment Proposal or any Project or acquire any Project, regardless of whether such Project meets the Base Case Financial Threshold or whether the matters set out in the Rejection Notice are cured pursuant to Section 2.5(b).

2.6 Each Project accepted by DPSII through the issuance of an Acceptance Notice (an “*Accepted Project*”) must be contracted under a Power Purchase Agreement or, in markets where Power Purchase Agreements are not permitted, a lease, in each case on terms acceptable to DPSII. The Power Purchase Agreement or lease must be entered into with a Customer or counterparty of a credit quality acceptable to DPSII in its sole discretion.

2.7 Pursuant to the Construction Management, Operations and Maintenance Agreement, Developer shall build and, on behalf of DPSII or the applicable DPSII SPV, place the

204

Accepted Projects into service for electric power production as per the terms of the applicable Power Purchase Agreement and utility requirements. It is the current intention of the Parties that the Developer and DPSII will comply with the Socially Responsible Investing Policies set out in Exhibit “E” hereto.

2.8 Subject to Article 3, Developer shall transfer or assign the Property in each Accepted Project, as well as the supporting Documentation, including the Power Purchase Agreement, to DPSII or the applicable DPSII SPV in accordance with Article 3 such that following such transfer DPSII or the applicable DPSII SPV shall own the Accepted Project pursuant to the terms of this Agreement.

ARTICLE 3
ACQUISITION AND ASSIGNMENT PROCESS

3.1 Acquisition. Subject to the terms of this Agreement, DPSII or one or more DPSII SPVs nominated by DPSII shall acquire from Developer and Developer shall transfer, assign, convey and deliver to DPSII or the DPSII SPV, as applicable, all of Developer’s right, title and interest in and to each Accepted Project, free and clear of all Liens, including all the Property relating to such Accepted Project.

3.2 Assumed Obligations. Subject to the terms of this Agreement, on the Closing Date in respect of an Accepted Project, DPSII or the applicable DPSII SPV shall assume the Assumed Liabilities in respect of such Accepted Project. For greater certainty, other than the Assumed Liabilities in respect of an Accepted Project, neither DPSII nor any DPSII SPV shall be obligated to assume or be liable for any Liabilities of Developer or any of its Affiliates whatsoever, regardless of whether the same are contingent or fixed, or accrued prior to, on, or after each Closing Date (all other Liabilities of Developer not assumed by DPSII or the applicable DPSII SPV, the “**Retained Liabilities**”). Developer shall remain responsible for and shall pay, discharge and perform all of the Retained Liabilities and shall indemnify and hold DPSII and the applicable DPSII SPV harmless with respect thereto.

3.3 Non-Assignable Rights. Nothing in this Agreement shall be construed as an assignment of, or an attempt to assign to DPSII or the applicable DPSII SPV, any Property in connection with the Accepted Projects which, as a matter of Applicable Law or by its terms, is (i) not assignable, or (ii) not assignable without the approval or consent of the issuer thereof or the other party or parties thereto without first obtaining such approval or consent (collectively, the “**Non-Assignable Rights**”). In connection with such Non-Assignable Rights, Developer shall, at the request of DPSII:

(a) cooperate with DPSII or the applicable DPSII SPV in any reasonable arrangements designed to provide the benefits of such Non-Assignable Rights to DPSII or the applicable DPSII SPV, including holding any such Non-Assignable Rights in trust for DPSII or the applicable DPSII SPV or acting as agent for DPSII. Without limiting the foregoing, except where prohibited by such Non-Assignable Rights, Developer shall enforce, at the expense of DPSII or the applicable DPSII SPV, any rights of Developer arising from such Non-Assignable Rights against the issuer thereof or the other party or parties thereto;

205

(b) take all such actions and do, or cause to be done, all such things at the request of DPSII, and at the expense of Developer, as shall reasonably be necessary in order that the value of any Non-Assignable Rights shall be preserved and shall inure to the benefit of DPSII or the applicable DPSII SPV;

(c) promptly upon receipt, pay over to DPSII or the applicable DPSII SPV all monies collected by or paid to Developer in respect of such Non-Assignable Rights, without deduction of any kind; and

(d) transfer and assign to DPSII or the applicable DPSII SPV without further consideration all Non-Assignable Rights as soon as such Non-Assignable Rights are capable of being transferred or assigned to DPSII or the applicable DPSII SPV

3.4 IP License. As on the Closing Date in respect of an Accepted Project, Developer hereby grants to DPSII or as applicable one or more DPSII SPVs nominated by DPSII, a non-exclusive, transferable, fully paid-up, royalty-free, worldwide license (with right to sublicense) to use the Marks in connection with such Accepted Project and in the name of DPSII or of such DPSII SPVs.

3.5 Accepted Projects.

(a) After a Project becomes an Accepted Project, Developer promptly shall upload the final Power Purchase Agreement and all relevant information relating to the Accepted Project to the online file sharing system ("*Portal*") maintained by DPSII. Should the Portal be unavailable, Developer will send the Power Purchase Agreement and convey the information to DPSII via email as promptly as practicable. The information uploaded or sent via email will include the Documentation and such other information that DPSII may reasonably request from time to time.

(b) The funds invested by DPSII and its Affiliates under this Agreement shall be used for the following purposes:

(i) acquisition of the Projects, including associated Power Purchase Agreements, permits and completed engineering work;

(ii) funding of the capital costs of equipment, such as batteries and Uninterrupted Power Supply (UPS) systems, generator systems, and funding of additional potentially necessary costs of permits and engineering work of completing the Projects; and

(iii) funding of costs not otherwise covered by revenues.

3.6 Closing and Payment Conditions.

The Closing in respect of any Accepted Project shall occur on the Closing Date. At the Closing in respect of any Accepted Project, Developer shall execute and deliver to DPSII or any DPSII SPV nominated by DPSII all agreements, documents and instruments necessary or desirable to transfer and assign all Property in respect of such Accepted Project to DPSII or such DPSII SPV free and clear of all Liens and to otherwise consummate the Closing and to transfer the Accepted Project to DPSII or such DPSII SPV. From time to time after the Closing, Developer

206

shall take such further actions and execute upon request any further documents as may reasonably be required or desired by DPSII to effectuate fully the terms, conditions, and intent of this Article 3, including to transfer any Property to DPSII or the applicable DPSII SPV.

Acquisition Fee.

(a) Subject to this Article 3, with respect to each Accepted Project, the acquisition fee to be paid by DPSII or the applicable DPSII SPV shall be based on and paid as follows:

Amount	Payable at
The sum of all documented and prudently incurred out-of-pocket costs that are contemplated by the Budget for such Accepted Project incurred by Developer up to the Closing Date, including amounts paid or due to contractors (the “ Closing Date Cost Payment ”).	Closing Date
4.0% of the total budgeted capital expenditure in respect of the construction of the Accepted Project, as set out in the Base Case Model (the “ Closing Date Capex Payment ” and, together with the Closing Date Cost Payment, the “ Closing Date Payment ”).	Closing Date
5.0% of the total actual capital expenditure in respect of the construction of the Accepted Project (the “ COD Capex Payment ” and, together with the Closing Date Payment, the “ Acquisition Fee ”).	Commercial Operation Date

(b) Twelve (12) days prior to each Closing Date, the Developer shall provide an estimate of the Closing Date Cost Payment with respect to each Project to DPSII and the Independent Engineer and such Closing Date Cost Payment shall only be payable to the extent that the Independent Engineer agrees with such estimate.

3.7 Adjustments to Acquisition Fee. Developer and DPSII may by mutual agreement establish a system under which the Acquisition Fee for any particular Project will be (i) reduced if the capital costs on an Accepted Project exceed the projected capital costs or (ii) increased if the capital costs on an Accepted Project fall below the projected capital costs.

3.8 Date and Place. Each Closing under this Agreement shall take place by electronic delivery unless otherwise agreed to by the Parties. Each Closing shall be deemed to have occurred at 12:01 a.m. Eastern Time on the applicable Closing Date.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF DEVELOPER

As an inducement to DPSII to enter into this Agreement and to consummate the transactions contemplated hereby, Developer represents and warrants to DPSII that each of the following statements is true on the date of this Agreement and will be true on each Closing Date and Commercial Operation Date:

4.1 Organization, Power, Authority and Good Standing. Developer is a corporation duly organized and validly existing and in good standing under the laws of the Province of Ontario and has all requisite power and authority to own, lease and operate its assets and properties and to carry on its business as presently conducted. Developer is not insolvent, as determined under any Federal, provincial or state insolvency statutes.

4.2 Authorization, Execution and Enforceability. Developer has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the Transaction Documents and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Developer of this Agreement and all the other Transaction Documents, and the performance by Developer of its obligations hereunder and thereunder have been duly and validly authorized by all requisite action on the part of Developer, and this Agreement and each other Transaction Document has been, or upon the execution thereof will be, duly and validly executed and delivered by Developer, and constitutes, or upon its execution and delivery will constitute, a valid and binding obligation of Developer, enforceable against Developer, in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforceability of creditors' rights generally and to general equity principles. None of the execution and delivery by Developer of this Agreement, and each of the other Transaction Documents, the performance by Developer of its obligations under this Agreement and each of the other Transaction Documents, or the consummation of the transactions contemplated hereby or thereby, does, or, upon such execution, performance or consummation will, (a) violate any Applicable Law applicable to Developer, or result in the creation of a Lien, other than Permitted Liens, upon any of the Accepted Projects or (b) result in any violation or breach of any of the terms, conditions or provisions of, or constitute (with due notice or lapse of time, or both) a default or give rise to any right of contingent payment, termination, cancellation, acceleration, non-renewal or any other contingent right, or result in the creation of any Lien, other than Permitted Liens, upon any of such Accepted Projects, under any provision of any organizational document of Developer or any agreement, contract or arrangement to which Developer is a party or by which any of its assets may be bound.

4.3 Consents. No consent, approval, Applicable Permit, Governmental Approval, notification or authorization of, or any exemption from or registration, declaration or filing with, any Governmental Authority or any Person is required to be obtained or provided by Developer, in connection with the execution, delivery and performance by Developer of this Agreement, or any of the other Transaction Documents or the consummation of the transactions by Developer contemplated hereby or thereby.

4.4 Taxes. All Tax Returns required to be filed by or with respect to Developer and its respective assets or activities, in each case, in respect of the Accepted Projects have been timely filed, and all such Tax Returns were prepared in substantial compliance with Applicable Law and

208

were complete and correct in all material respects. All Taxes due and owing by or with respect to Developer and its respective assets or activities, in each case, in respect of the Accepted Projects (whether or not shown due on any Tax Return) have been paid. There are no Liens for Taxes on the assets of Developer. At the time of transfer, none of the assets comprising the Accepted Projects will be “taxable Canadian property” as defined in the *Income Tax Act* (Canada).

4.5 Title to Accepted Projects.

(a) Developer has or will have good and marketable title to all of the Property with respect to the Accepted Projects immediately prior to the time of transfer pursuant to Section 3.1, free and clear of all Liens of any kind or character; and (b) each such Accepted Project, including the relevant Property conveyed hereunder, comprises all of the tangible and intangible properties and assets necessary for such Accepted Project to be operated under the applicable contracts related to such Accepted Project, including the Power Purchase Agreement.

(b) Developer is and shall be the legal and beneficial owner of each Accepted Project and the Property related thereto at all times prior to the sale to DPSII. There are no options, rights, commitments, agreements or contracts to sell, assign, mortgage, convey or dispose of the applicable Accepted Project(s) or the Property related thereto or any interest therein other than as may be provided under the applicable Power Purchase Agreement. There is no breach or default under any contract related to any Accepted Project, including the Power Purchase Agreement, or any Applicable Permits related to any Accepted Project.

4.6 Conflicts of Interest. Other than the Transaction Documents and the Contracts, neither Developer, nor any director, officer, employee, agent or other Person acting on behalf of Developer has, directly or indirectly, given or agreed to give any money, gift or similar benefit (other than legal price concessions to, business entertainment of or reasonable gifts of non-cash property to customers in the ordinary course of business) to any customer, supplier, employee or agent of a customer or supplier, or other Person who was, is or may be in a position to help or hinder the operations or prospects of Developer’s business (or assist in connection with any actual or proposed transaction). Neither Developer, nor any director, officer, employee, agent or other Person acting on behalf of Developer has, directly or indirectly, given or agreed to give any money, gift or similar benefit to any official or employee of any Governmental Authority. There is not now, and there has never been, any employment by Developer of, or beneficial ownership in Developer by, any official of any Governmental Authority in any jurisdiction in which Developer has conducted or proposes to conduct business.

4.7 No Untrue Statements.

(a) No statement by Developer contained in this Agreement and no written statement contained in any certificate or other document required to be furnished by Developer or any officer or agent of Developer to DPSII pursuant to or in connection with this Agreement or any other information made available by Developer to DPSII contains any untrue statement of a material fact, or omits to state a material fact necessary in order to make the statements therein contained not misleading.

(b) With respect to each Accepted Project, Developer has made available to DPSII for DPSII’s review all material information related to such Accepted Project, including all

209

information that could reasonably impact the performance of such Accepted Project provided by the respective Customer prior to entering into the applicable Power Purchase Agreement or otherwise obtained by Developer in connection with entry into such Power Purchase Agreement.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES BY DPSII

DPSII represents and warrants to Developer as of the date of this Agreement:

5.1 **Organization.** DPSII is a limited partnership duly organized, validly existing and in good standing under the laws of the Province of Manitoba and has the power and authority to carry on the business now being conducted by DPSII. As of each Closing Date, DPSII or the applicable DPSII SPV will be duly organized, validly existing and in good standing under the laws of the Province of Manitoba.

5.2 **Authorization of Agreement; No Violation.** The execution and delivery by DPSII of this Agreement, the purchase of each Accepted Project and the consummation of the other transactions contemplated hereby have been duly and validly authorized by all requisite action on the part of DPSII and each applicable DPSII SPV, and this Agreement has been duly and validly executed and delivered by DPSII, and is a valid and binding obligation of DPSII, enforceable against DPSII, in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforceability of creditors' rights generally and to general equity principles. The execution and delivery by DPSII or the applicable DPSII SPV of the Transaction Documents to be executed by DPSII or the applicable DPSII SPV and the purchase of each Accepted Project to be purchased by DPSII will, as of the date of such execution, delivery or purchase, as applicable, be duly and validly authorized by all requisite action on the part of DPSII or the applicable DPSII SPV.

ARTICLE 6
COVENANTS

Developer covenants and agrees with DPSII as follows:

6.1 **Periodic Reporting; Access to Information.**

(a) Developer will provide monthly reports to DPSII substantially in the form set out in Exhibit D or as mutually determined by the Parties, on its financial performance and the operational performance of each Accepted Project.

(b) Developer will give to DPSII, the applicable DPSII SPV, the Independent Engineer and their agents and representatives (including accountants, engineers, lawyers and appraisers) full and complete access during normal working hours to any and all of its properties, assets, books, records and other documents to enable DPSII and the Independent Engineer to make such examination of the business, properties, assets, books, records and other documents of Developer as DPSII or the Independent Engineer reasonably determines is necessary for purposes of purchasing any of the Projects, assessing development progress in respect of any of the Projects, or otherwise relating to DPSII's rights under any Transaction Document, and Developer will furnish to DPSII, the Independent Engineer and their respective agents and representatives

210

(including accountants, engineers, lawyers and appraisers) such information and copies of such documents and records as DPSII or the Independent Engineer shall reasonably request, which shall apply to any inspection of a Project by DPSII and the Independent Engineer. As part of such examination, DPSII may make such inquiries of such Persons having business relationships with Developer (including suppliers, licensees, distributors and customers as DPSII shall determine) upon prior notice to Developer and Developer shall cooperate fully with DPSII in connection therewith.

(c) Developer shall provide regular updates and keep DPSII and the Independent Engineer fully apprised of all developments with respect to achieving NTP and the Commercial Operation Date with respect to each Accepted Project.

6.2 Permits. Developer shall obtain on behalf of and in the name of DPSII or the applicable DPSII SPV each and every license, authorization, certification, designation, filing, recording, permit, franchise, registration or other approval with or of any Governmental Authority required in connection with the development, ownership, operation, maintenance or financing of that Project.

6.3 Tax Matters. Developer shall indemnify DPSII and each DPSII SPV and hold them harmless for any (i) income or franchise Taxes of the Developer or any Affiliate of Developer, (ii) Pre-Closing Taxes for all Accepted Projects, (iii) Transfer Tax and (iv) Taxes attributable to a breach by Developer of its representations, warranties, or covenants pursuant to Section 4.4. Developer shall prepare and file all Tax Returns for any Transfer Tax and shall remit the Transfer Tax shown as due on each such Tax Return.

ARTICLE 7
OTHER PROJECT MATTERS

7.1 Subsequent Financing of DPSII. The Parties hereby acknowledge and agree that following the completion of the Accepted Projects, it is the intent of the Parties to pursue a financing or re-financing of DPSII, by way of a bank financing (third party debt), asset-back financing or other financing or re-financing (each a “*Subsequent Financing*”). Any Subsequent Financing shall be at the sole discretion of DPSII.

7.2 End of Power Purchase Agreements. At the end of a Power Purchase Agreement with respect to each Project, provided the term of such Power Purchase Agreement is not extended and no new Contract is entered into with such Customer, DPSII will transfer the assets associated with that Project to Developer for CAD 1.00, at the Developer’s sole cost, and Developer will (i) assume all Liabilities associated with such Project, (ii) assume the cost of removing those assets from the Customer site if necessary, (iii) assume all responsibilities and obligations with respect to any remediation that is required at the Customer site.

ARTICLE 8
SURVIVAL OF REPRESENTATIONS AND WARRANTIES

8.1 Survival of Representations and Warranties. All representations and warranties contained in this Agreement and any certificate of Developer or DPSII or the applicable DPSII SPV delivered at any Closing Date shall survive each Closing and shall be deemed to have been

211

relied upon notwithstanding any investigation heretofore or hereafter made or omitted by any Party and shall survive indefinitely.

ARTICLE 9
MISCELLANEOUS

9.1 Dispute Resolution.

(a) The senior managers of each Party shall negotiate in good faith and attempt to resolve any dispute, controversy, or claim arising out of or relating to this Agreement or the breach, interpretation, termination, or validity thereof (a “*Dispute*”) within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

(b) In the event the Parties are unable to reach an agreement or resolution of such Dispute with such thirty (30) days (or such longer period as the Parties may agree), such Dispute shall be finally settled by arbitration. The arbitration shall be conducted in accordance with the *Arbitration Act, 1991* (Ontario) in effect at the time of the arbitration, except as they may be modified herein or by agreement of the parties. The seat of the arbitration shall be Toronto, Ontario, Canada.

(c) The arbitration shall be conducted by three arbitrators. The Party initiating arbitration (the “*Claimant*”) shall appoint its arbitrator in his or her request for arbitration (a “*Request*”). The other Party (the “*Respondent*”) shall appoint their arbitrator within 30 days of receipt of the Request and shall notify the Claimant of such appointment in writing. If the Respondent fails to appoint an arbitrator within such 30-day period, the arbitrator named in the Request shall decide the Dispute as the sole arbitrator. Otherwise, the two arbitrators appointed by the parties shall appoint a third arbitrator within 30 days after the Respondent has notified the Claimant of the appointment of the Respondent’s arbitrator. When the arbitrators appointed by the parties have appointed a third arbitrator and the third arbitrator has accepted the appointment, the two arbitrators shall promptly notify the parties of such appointment. If the two arbitrators appointed by the parties fail or are unable to appoint a third arbitrator or to notify the parties of such appointment, then the third arbitrator shall be appointed by the President of ADR Institute of Ontario who shall promptly notify the parties of the appointment of the third arbitrator. The third arbitrator shall act as chair of the panel.

(d) NOTWITHSTANDING THE FOREGOING, AND TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY OTHERWISE HAVE TO A JURY TRIAL IN ANY ACTION, SUIT, OR PROCEEDING EXISTING UNDER OR RELATING TO THIS AGREEMENT.

9.2 Confidentiality. Neither Party will disclose to any third party any information obtained from the other Party or otherwise obtained in connection with this Agreement (“*Confidential Information*”), and will use reasonable efforts to have all such Confidential Information kept confidential; provided that (a) each Party may disclose any such Confidential Information to its Affiliates, employees, representatives, subcontractors, agents, counsel, lenders (current and prospective), investors (current and prospective), purchasing parties (current and prospective) and public accountants, if such information shall have been provided to the party in question with the understanding that such party keep such information confidential to the extent

212

provided in this Section 6.2, (b) each Party may disclose any such Confidential Information that has previously been publicly disclosed (other than in contravention of this Section 6.2) and (c) a Party may disclose Confidential Information as required pursuant to Applicable Law, to the extent that the receiving Party, if legally permissible, gives the disclosing Party prompt notice of such request so that the disclosing Party may seek an appropriate protective order, such protective order is not obtained and the receiving Party is nonetheless advised by counsel that disclosure of the information is finally required. Nothing in this Section 6.2 shall bar a Party from enforcing this Agreement or from disclosing the existence of this Agreement.

9.3 Indemnification. Each Party (the “*Indemnifying Party*”) shall indemnify the applicable other Party, its members, partners or shareholders, present and future managers, officers, directors, agents, employees, Affiliates, and assigns (each, an “*Indemnified Party*”), and undertake to defend and hold the Indemnified Party harmless, for, from and against any claim, demand, suit, cause of action, losses, penalties, obligations, liabilities, damages, and expenses (including court costs, reasonable attorneys’ fees, interest expenses and amounts paid in compromise or settlement) related to, caused by, or arising from or on account of the Indemnifying Party’s (1) failure to comply in all material respects with any covenant, provision or agreement of the Indemnifying Party contained in this Agreement; or (2) fraud, gross negligence or intentional misconduct.

9.4 Notices. All notices that Developer or DPSII may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by registered or certified mail, postage prepaid, return receipt requested or by a national recognized overnight courier service, or by facsimile (if received during the normal business hours of the recipient or, if not received during such normal business hours, then on the next business day of the recipient) and shall be deemed sufficient if addressed to Developer or DPSII at the following addresses:

Developer: Demand Power Group Inc.
71 Marycroft Avenue, Suite 20
Woodbridge, Ontario L4L 5Y6
Attention: Raj Chudgar
Email: rchudgar@demandpower.ca

with a copy to: Blaney McMurtry LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5
Attention: Dan Giantsopoulos
Email: dgiantsopoulos@blaney.com

DPSII: Narrows Green, LP
c/o Star Infrastructure Partners, LLC
165 Roslyn Road
Roslyn Heights
NY 11577
Attention: President
Email: DPNotices@starinfrapartners.com

213

with a copy to: Torys LLP
79 Wellington Street West, Suite 3000
Toronto, Ontario M5K 1N2
Attention: Huw Evans
Email: hevans@torys.com

A Party may change its designated representative from time to time, by means of a written notice to the other party.

9.5 Integration; Exhibits. This Agreement, together with any Exhibits attached hereto, constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Parties further agree that no representation, warranty, agreement or covenant has been made with regard to this Agreement, except as expressly recited herein, and that in entering into this Agreement neither Party is relying upon any representation, warranty, agreement or covenant not expressly set forth herein.

9.6 Waiver. Any waiver under this Agreement shall be in writing and shall not be a waiver concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any rights or remedies shall impair such right or remedy or be construed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act.

9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario without reference to the Province's choice of law principles.

9.8 Venue. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario. The Parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

9.9 Equitable Relief. The Parties agree that irreparable damage would occur if any provision of this Agreement was not performed in accordance with the terms hereof and that the Parties are entitled to seek equitable relief following the completion of (a) any curing period as provided in this Agreement and/or (b) the dispute resolution procedure set out in Section 9.1, including injunctive relief or specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

214

9.10 Partial Invalidity. If any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Agreement, and shall not render this Agreement unenforceable or invalid as a whole. Rather, the part of this Agreement that is found invalid, illegal or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of applicable law or applicable court decisions, and the remainder of this Agreement will remain in full force.

9.11 Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns, but shall not be assignable by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, DPSII shall have the right to assign all of its rights and obligations under this Agreement to its Affiliates.

9.12 Interpretation.

(a) Drafting Ambiguities. The rule of construction that any ambiguities are to be resolved against the drafting parties shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

(b) Gender and Number. In this Agreement, unless the context requires otherwise, words in one gender include all genders, and words in the singular include the plural and *vice versa*.

(c) Section References. Unless the context requires otherwise, references in this Agreement to Articles, Sections or Exhibits are to Articles or Sections of this Agreement and Exhibits to this Agreement.

(d) Words of Inclusion. Wherever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

(e) References to this Agreement. The words “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Section or portion of it.

(f) Statute References. Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated or replaced from time to time, and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision.

(g) Document References. All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance

215

with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.

9.13 Amendment. This Agreement may be modified only by an agreement in writing executed by each of the Parties.

9.14 Further Assurances. Each of the Parties hereto covenants, without the need for additional consideration, that it shall take such further actions and execute upon request any further documents as may reasonably be required or desired to effectuate fully the terms, conditions, and intent of this Agreement and to fully vest in the other Party the rights and other benefits provided hereunder.

9.15 Costs and Expenses. Each Party shall be liable for its own costs and expenses incurred in negotiation and preparation of this Agreement. Should legal action be brought to enforce any term or agreement herein contained, the prevailing Party in such action shall be entitled to recover reasonable attorneys' fees, regardless of whether the matter is concluded by court action or otherwise.

9.16 Limited Partnership Acknowledgement. Each party hereto acknowledges that (i) DPSII is a limited partnership formed under the laws of the Province of Manitoba, the sole general partner of which is SAIF DP Opco GP, Inc. (the "**General Partner**"), (ii) the only Person with whom any party hereto has had dealings on behalf of DPSII is the General Partner, and (iii) in no event will any party hereto have any recourse in connection with this Agreement and the transactions contemplated hereby against any limited partner of DPSII or any director, officer, employee, shareholder or representative of the General Partner or any of their respective properties or assets, and each party hereto hereby waives any claims however arising that it may have against any such Person.

9.17 Counterparts; Facsimile and E-Mail Signatures. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be executed and delivered by facsimile, or by e-mail in portable document format (.pdf) and delivery of the signature page by such method will be deemed to have the same effect as if the original signature had been delivered to any other signatory hereof.

[SIGNATURE PAGE FOLLOWS]

216

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Investment Agreement as of the Effective Date.

DEVELOPER:

DEMAND POWER GROUP INC.

By: *Rajan Chudgar*

Name: Rajan Chudgar

Title: Chief Executive Officer

217

NARROWS GREEN, LP, by its general partner, **SAIF DP OPCO GP, INC.**



By: _____

Name: William A. Marino

Title: CEO

Exhibit A

Criteria for Projects

- Technical diligence on the related technologies and Project scope
- Validation of all economic assumptions
- Credit analysis of expected counterparties
- Tax, legal and regulatory review
- Development timelines and key milestones
- Capabilities of anticipated construction and O&M service providers
- Environmental due diligence

Exhibit B

Project Documents

- Financial models and all financial information and forecasts
- Power Purchase Agreement and any agreements with local distribution utilities
- Host Agreements
- Interconnection Agreements
- Any agreements with IESO with regard to potential ancillary revenue
- EPC/Construction Management Agreement
- Scheduling Coordinator / Power Marketing Agreement
- STAR Base Case Model
- Customer credit file

220

Exhibit C

Form of Power Purchase Agreement

(see attached)

221

Exhibit D

Form of Monthly Report

(see attached)

Exhibit E

Socially Responsible Investment Policy

General Principles

The objective of the Parties is to develop Projects and maintain an economically sound and prosperous business while assuming responsibilities toward the communities and environments in which they operate, toward their employees, business partners and society in general. The Parties wish to apply, promote and report on the best practices regarding corporate governance and long-term sustainable development issues, including environmental, social and governance (“**ESG**”) issues.

The Parties shall:

- (a) follow internationally established norms and guidelines, such as UN Global Compact and OECD Guidelines for Multinational Enterprises;
- (b) recognize certain principles associated with ESG issues embodied in the United Nations Principles for Responsible Investing (“**UNPRI**”);
- (c) consider environmental, public health, safety, and social issues in the regular course of business and operations;
- (d) regularly report on material ESG related activities, including, the completion of an ESG related questionnaire at a minimum of once per calendar year;
- (e) encourage the investment in energy efficient technology and practices, including at its facilities;
- (f) encourage reduction of waste and implementation of recycling programs;
- (g) respect the human rights of all stakeholders affected by the Partnership (and its subsidiaries); and
- (h) encourage their suppliers, subcontractors, and agents to abide by the principles set out in this Socially Responsible Investment Policy.

The Parties shall not:

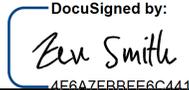
- (a) participate in activities resulting in severe and/or systematic breaches of internationally recognized conventions, norms or protocols regarding environment protection to which the United States or France is a signatory such severe and/or systematic breaches must be evidenced by an official source such as the UN, the OECD, governments or other similar bodies;
- (b) knowingly be associated with any entity that deliberately and repeatedly violates the law laid down by the national authorities in the markets in which

such entity operates, such violation must be evidenced by an official source such as the UN, the OECD, governments or other similar bodies;

- (c) be associated with any entity that engages in material and/or systematic corruption. Such material and/or systematic corruption must be evidenced by an official source such as the UN, the OECD, governments or other similar bodies;
- (d) be domiciled in countries subject to trade embargos imposed by the United Nations or the European Union;
- (e) engage in bribery or other improper payments to public officials prohibited by the U.S. Foreign Corrupt Practices Act and any similar laws of any other jurisdiction where it conducts business;
- (f) knowingly accept subscriptions from any investor in which 10% or more of such investor is owned by (i) any person or entity designated as a Specially Designated National (“SDN”) by the Treasury Department’s Office of Foreign Asset Control (“OFAC”) or (ii) citizens of or governmental entities of countries designated by OFAC as Sanctioned Countries;
- (g) knowingly engage in business with (i) the government of Sudan or any entity that is affiliated with the Sudanese government, (ii) any entity that supplies military equipment within Sudan, and (iii) any entity that is complicit in the Darfur genocide;
- (h) manufacture weapons and ammunitions falling within NACE code 25.4 for the purposes of the EVCA’s sectorial classification (http://www.evca.eu/uploadedFiles/sectorial_classification.pdf);
- (i) be involved in the production, development, or distribution of anti-personnel landmines and cluster bombs (which shall include any company or enterprise whose activity is to produce or supply key components of anti-personnel landmines or cluster bombs), or weapons for mass destruction like chemical weapons, biological weapons or nuclear weapons;
- (j) engage in the operations of private prisons or detention facilities. For clarity, this issue does not apply if the Parties are engaged in the design, construction, and maintenance of a private prison or detention facility that will be operated by a public-sector owner;
- (k) engage in oil or gas exploration or development;
- (l) derive more than 5% of their annual revenues directly from coal power production and/or extraction of thermal coal; or
- (m) derive more than 5% of their annual revenues directly from production and distribution of cannabis for recreational purposes.

This is Exhibit "F" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

A blue ink signature of Zev Smith is written over a blue DocuSign signature line. The signature is cursive and reads "Zev Smith".

4E6A7EBBEE6C441...

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

CONSTRUCTION MANAGEMENT, OPERATIONS AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION MANAGEMENT, OPERATIONS AND MAINTENANCE AGREEMENT (this “*Agreement*”) is entered into as of February 28, 2020 (the “*Effective Date*”), by and between Demand Power Group Inc. (“*Operator*”), a corporation incorporated under the laws of the Province of Ontario, and Narrows Green, LP, a limited partnership formed under the laws of the Province of Manitoba (“*Owner*”). Operator and Owner are hereinafter referred to individually as a “*Party*” and collectively as the “*Parties*”.

RECITALS

WHEREAS, Owner and certain of its Affiliates will develop and own distributed energy facilities incorporating (a) a battery with the capacity to meet a Customer’s (as defined below) electricity requirements for at least two (2) hours; and/or (b) a generation unit ((a) and (b) together, “*Systems*”); and

WHEREAS, Owner will retain one or more engineering, procurement and construction contractors (each an “*EPC Contractor*”) through Operator for the purpose of designing, installing, and constructing the Systems; and

WHEREAS, many components within the Systems will have manufacturer or vendor warranties (the “*Warranties*”), and such Warranties may impose various operational requirements, recordkeeping requirements, or other conditions; and

WHEREAS, Operator will operate and maintain the Systems for the purpose of delivering electric power to Owner’s customers, which may be industrial, commercial, agricultural and/or municipal entities with operations in Ontario, Canada, all of which have the ability to be Class A customers under the terms of Ontario’s Industrial Conversion Initiative (collectively, the “*Customers*”); and

WHEREAS, in performing its construction management, operations, maintenance, and management services (together, the “*Services*”), Operator will ensure that Owner receives the full benefit of any and all Warranties obtained from manufacturers and/or suppliers; and

WHEREAS, in performing its operations, maintenance, and management services, Operator will ensure that the Systems are operated safely, efficiently, and to their full capacity; and

WHEREAS, Operator will manage the construction of and manage, operate, and maintain all of the Systems lawfully, in accordance with Prudent Industry Practices and for the benefit of Owner; and

WHEREAS, the Systems will be located at the various Customers’ premises, and Owner will obtain all access rights needed in order for Operator to perform the required construction management, operations, maintenance, and management functions; and

WHEREAS, Operator will enter into individual Power Purchase Agreements (“*PPAs*”) with the various Customers, which will later be assigned to Owner as appropriate; and

226

WHEREAS, in providing its operations, maintenance, and management services, Operator will use best efforts to comply with and to satisfy the requirements imposed on the Owner or Operator by the PPAs.

NOW, THEREFORE, in consideration of the premise and the mutual covenants contained herein, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS

To the extent not otherwise defined herein, the following terms shall have meanings set out in this ARTICLE 1:

1.1 “*Affiliate*” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. For the purposes of this definition, “control” and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise. “Control” may be deemed to exist notwithstanding that a Person owns or holds, directly or indirectly, less than 50% of the beneficial equity interest in another Person; provided that, with respect to the Operator, the term “Affiliates”, shall not include DPSII or Star America (each as defined in the Investment Agreement) or their Affiliates.

1.2 “*Annual System Operating Plan*” has the meaning given to it in Section 2.10.

1.3 “*Applicable Law*” has the meaning given to it in Section 2.19(c).

1.4 “*Approved Vendors*” means the persons set forth on Exhibit F.

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

1.6 “*Commercial Operation Date*” means the date after which all testing and commissioning with respect to a System has been completed to the satisfaction of the Owner (in consultation with the Independent Engineer) and is the initiation date on which the Owner could start earning revenue using the System.

1.7 “*Commercially Reasonable Efforts*” means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the transaction therein contemplated.

1.8 “*Components*” means any and all materials and equipment used to build, assemble or install the Systems, including, without limitation, lithium batteries, uninterrupted power supplies, generators, switchgear, transformers, switches, protection gear, fuses, breakers, containers, safety equipment, HVAC, and peripherals.

227

1.9 “**Components Warranties**” means all available manufacturer’s warranties in respect of the Components, including those set out on Exhibit G.

1.10 “**Contractor**” means any Person, satisfactory to the Owner, which provided services, materials or solutions to an EPC Contractor.

1.11 “**Customers**” has the meaning given to it in the Recitals.

1.12 “**Dispute**” has the meaning given to it in Section 16.1.

1.13 “**EPC Contractor**” has the meaning given to it in the Recitals.

1.14 “**Governmental Authority**” has the meaning given to it in Section 2.9(c).

1.15 “**Independent Engineer**” means such Person designated in writing by Owner from time to time.

1.16 “**Insurance Requirements**” has the meaning given to it in Section 8.1.

1.17 “**Investment Agreement**” means the agreement entered into as of the date hereof by and between the Operator and Narrows Green, LP.

1.18 “**Operator Default**” has the meaning given to it in Section 10.3(a).

1.19 “**Owner Default**” has the meaning given to it in Section 10.4(a).

1.20 “**Partnership Agreement**” means that certain Limited Partnership Agreement by and between SAIF DP OpCo GP, Inc., SAIF DP HoldCo, LP, and Operator dated as of February 28, 2020 (as amended, restated or replaced from time to time).

1.21 “**Person**” means an individual, partnership, corporation, limited liability company, joint venture, trust or unincorporated association, Governmental Authority or any other entity.

1.22 “**PPAs**” has the meaning given to it in the Recitals.

1.23 “**Project Specifications**” means the Project’s location as well as the issued for construction designs and technical specifications for the Components, software, Project footprint, foundations, batteries and electrical balance of plant, in each case as reviewed and confirmed by the Independent Engineer.

1.24 “**Prudent Industry Practices**” has the meaning given to it in Section 2.19(b).

1.25 “**Required Contract Terms**” means such terms as relate to material System, Component and Service agreements with an EPC Contractor, Contractor, Approved Vendors or any other Persons which are reasonably required by the Owner, in consultation with DPGI and with one or more of the Independent Engineer or Owner’s counsel.

1.26 “**Services**” has the meaning given to it in the Recitals.

228

- 1.27 “*Systems*” has the meaning given to it in the Recitals.
- 1.28 “*Term*” has the meaning given to it in Section 4.1.
- 1.29 “*Warranties*” has the meaning given to it in the Recitals.

ARTICLE 2
SERVICES

2.1 Construction and Installation Management by Operator. Operator shall: (a) oversee the design, procurement, construction, and installation of particular Systems; and (b) shall oversee the work by an EPC Contractor. During the construction and installation phase, Operator shall interface with the affected Customers, as needed. Exhibit A identifies or lists the management services and operations and maintenance services that will be provided by Operator, as well as specific services that may require Operator to retain third party suppliers or contractors. In respect of the construction of the Systems:

(a) Operator shall use Commercially Reasonable Efforts to achieve the Commercial Operation Date for each System. Operator shall construct and complete each System in a workmanlike manner and in compliance with Applicable Law in all material respects and in accordance with Prudent Industry Practices. Each of the Systems shall be constructed in accordance with the Project Specifications.

(b) The Components of each System shall be insured by Operator against loss and damage in respect of such System. If any portion of the Components of a System shall sustain any damage or loss at any time in respect of such System, (i) any moneys received by Operator in respect of the insurance shall be applied to repairing the damage or loss and (ii) Operator shall repair and restore the loss, damage or destruction and cause the Components to be restored to substantially the condition in which they existed immediately prior to the occurrence of the damage or loss (including restoring the capacity of the battery storage system to substantially its level immediately prior to the occurrence of the damage or loss).

(c) Operator shall provide Owner upon request and otherwise make available for inspection any information reasonably required to evaluate the System’s permitting, construction, interconnection, commissioning, economics and performance within Operator’s possession reasonably requested by Owner, and Owner shall be permitted to disseminate such information to any of its agents and representatives (including, without limitation, accounts, engineers, lawyers and appraisers).

(d) Notwithstanding anything herein to the contrary, Operator shall be solely responsible for, and Owner shall not assume, any liabilities arising under any agreement between Operator and its suppliers or service providers.

2.2 Procurement of Components by Operator. Operator shall procure Components only from Approved Vendors. Operator and Owner may, from time to time amend the list of Approved Vendors by written agreement and without the need to formally amend this Agreement. Operator and Owner may amend the Required Contract Terms by written agreement and without the need to formally amend this Agreement. The Components Warranties must have the warranty periods

229

set forth on Exhibit G, or such other periods or terms as are consented to by Owner (such consent not to be unreasonably withheld, conditioned, or delayed).

2.3 Procurement of Intellectual Property by Operator. Operator shall procure all relevant licenses and intellectual property rights to ensure that Owner has access and a perpetual, non-exclusive license to all software and data used and generated by the Systems.

2.4 Management of Owner by Operator. Subject to Section 2.5, Operator shall manage and oversee all of the day-to-day operations of Owner, including without limitation, those set out in Exhibit B, and shall seek guidance or direction from Owner on significant decisions affecting the economic performance of Owner or any individual Systems. Operator shall procure on Owner's behalf all licenses and approvals required for Owner to operate as a retail electricity provider in the Province of Ontario. Operator shall provide to Owner (a) accounting and bookkeeping services; (b) regulatory compliance services; (c) energy trading services; (d) scheduling of operations; and (e) maintenance services. Exhibit B identifies or lists the management services and operations and maintenance services that will be provided by Operator, as well as specific services that may require Operator to retain third party suppliers or contractors. Insofar as Operator utilizes the services of third-party suppliers or subcontractors, the costs for such services shall be passed through to Owner with a 3% markup.

2.5 Limitations on Operator's Authority. Notwithstanding any provision in this Agreement to the contrary, unless previously approved in the applicable Annual System Operating Plan or otherwise approved in writing by the Owner, the Operator shall not (and shall not permit any of its representatives or subcontractors to):

(a) lease, pledge, mortgage, convey, license, exchange or make any other transfer or disposition of any property or assets of the Owner, including any tangible personal property acquired by the Operator under this Agreement;

(b) make or commit to make or incur any costs or acquire any Components or other equipment, materials, assets or other items; provided, however, that in the event of an emergency affecting the safety or protection of Persons or endangering the System or property on which the System is located, the Operator, without approval from the Owner, shall be authorized to take all reasonable actions to prevent such threatened damage, injury or loss and shall be entitled to reimbursement of the reasonable costs thereof;

(c) except as otherwise expressly required or permitted by this Agreement, settle, compromise, assign, pledge, transfer, release, or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, the Owner, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same;

(d) except as otherwise expressly required or permitted by this Agreement, enter into, execute, suspend or terminate, or amend, modify or supplement in any material respect, or give or accept material waivers under any contract or agreement entered into by or on behalf of or in the name of the Owner (irrespective of whether the Owner shall be a party thereto); or

230

(e) engage in any transactions on behalf of the Owner or take or agree to take any other action that varies from the applicable Annual System Operating Plan except as otherwise set forth in this Agreement.

2.6 Direction by Owner. Operator shall carry out all instructions or follow all guidance provided by Owner consistent with Applicable Law and Prudent Industry Practices. Insofar as Operator has reservations, concerns, or objections relating to any such instructions or guidance, Operator shall promptly notify Owner and provide all necessary explanation. Owner reserves the right to modify its instructions or guidance as appropriate.

2.7 Interconnection Agreements or Approvals. Operator shall obtain all necessary interconnection approvals or agreements from the local public utility or from any municipal utility or cooperative, including any studies or assessments mandated by such utilities or cooperatives. Operator shall from time to time advise Owner on the status of the interconnection approvals or agreements for each of the Systems.

2.8 Recordkeeping. Operator shall retain, update, and make available to Owner upon the Owner's request (acting reasonably) all documents and records relating to each System, including but not limited to, as-built drawings, records required for licensing and interconnection purposes, and records required for tax purposes or compliance with governmental requirements.

2.9 Financial Reporting. Operator shall provide the following reports to Owner using (i) the accounting standards for private enterprises in Canada from time to time approved by the Chartered Professional Accountants of Canada, or any successor entity thereto, including those recommended in the CPA Canada Handbook, and (ii) generally accepted accounting principles in the United States, as in effect from time to time (together, "**GAAP**") and in a form that provides financial data on each System being managed, operated, and maintained by Operator individually and in the aggregate for all Systems:

(a) as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year or an earlier date reasonably requested by Owner in order for Owner to meet its reporting obligations to its partners, as applicable, for Owner, (i) a balance sheet as of the end of such year; (ii) statements of income and of cash flows for such year; and (iii) a statement of each partner's capital account as of the end of such year all prepared in accordance with GAAP (all financial statements audited and certified by independent public accountants of nationally recognized standing selected by Owner and approved by Operator);

(b) as soon as practicable, but in any event within fifteen (15) Business Days after the end of each of the first three (3) quarters of each fiscal year, for Owner, (i) an unaudited balance sheet; (ii) an unaudited statement of income and cash flows for such fiscal quarter; and (iii) a statement of each partner's capital account as of the end of such fiscal quarter (all prepared in accordance with GAAP except that such financial statements may be subject to normal year-end audit adjustments; and not contain all notes thereto that may be required in accordance with GAAP);

231

(c) as soon as practicable, but in any event within five (5) Business Days of the end of each month, for Owner, (i) an unaudited balance sheet; (ii) an unaudited income statement and statement of cash flows for such month; and (iii) an unaudited statement of each partner's capital account as of the end of such month (all prepared in accordance with GAAP except that such financial statements may be subject to normal year-end audit adjustments; and not contain all notes thereto that may be required in accordance with GAAP);

(d) such additional information as may be needed to enable the Parties to file their various tax returns.

2.10 Annual System Operating Plan. For any System which is projected to achieve the Commercial Operation Date after the Effective Date, the Operator shall prepare and submit to the Owner, no later than sixty (60) days prior to the Commercial Operation Date for such System and thereafter no later than sixty (60) days prior to the calendar year end the separate annual operating and capital costs including spare parts costs, anticipated operations plans and costs, including repairs and capital improvements (including Component acquisitions and spare parts and consumable inventories indicating a breakdown of capital items and expense items), staffing, personnel and labor activities (including unit rates for labor and holidays to be observed), administrative activities, data regarding other work proposed to be undertaken by the Operator and regarding expected environmental performance, together with an itemized estimate, in detail reasonably acceptable to the Owner and the Independent Engineer, of all reimbursable costs to be incurred in connection therewith. Such budget shall be accompanied by an annual operating plan setting forth the underlying assumptions and implementation plans in connection with the budget (such assumptions and plans as approved by the Owner (in consultation with the Independent Engineer) and the Operator, the "*Annual System Operating Plan*"). The Owner shall promptly review the Operator's proposed Annual System Operating Plan and shall submit to the Operator any proposed changes, additions, deletions and modifications not later than thirty (30) days prior to the Commercial Operation Date for such System. The Owner and the Operator will then meet to agree upon a final Annual System Operating Plan for first operating year not later than fifteen (15) days prior to the Commercial Operation Date for such System. The Owner's approval of the Annual System Operating Plan shall, subject to consultation with the Independent Engineer, not be unreasonably withheld or delayed. Such final Annual System Operating Plan shall remain in effect throughout the operating year, subject to such other updating, revision and amendment as may be proposed by either Party and consented to in writing by the other Party. Any actions proposed under the Annual System Operating Plan shall be consistent with the Warranties and applicable operating and manual plans and the Operator's obligations set forth herein.

2.11 Service to Customers. Operator shall interface with individual Customers as needed. Operator shall use Commercially Reasonable Efforts to resolve any technical issues or operational issues of concern to individual Customers. Operator shall prepare and issue to Customers, or arrange for a subcontractor to prepare and issue to Customers, all invoices required under the procedures specified in the applicable PPAs. Operator shall ensure that such invoices are accurate, complete, and understandable. If any individual Customers are late in making payments, Operator shall take appropriate steps to request or demand timely payments and to impose any applicable interest charges or penalties.

232

2.12 Other Sources of Revenue. Operator shall manage any other transactions involving ancillary services, merchant-based services or demand-response services or any other services offered to Customer or to third parties. Operator shall document such transactions as needed and shall track and collect any associated revenue as appropriate, subject, in each case, to the Owner's prior consent.

2.13 Compliance Obligations. Operator shall obtain on Owner's behalf all permits, approvals, and licenses required for the construction, installation, or operation of each System. Operator shall retain all documentation relating to applicable permits, licenses, and approvals. Operator shall promptly notify Owner of any known non-compliance with Applicable Law, regulations, permit or license conditions, or other applicable requirements.

2.14 Specific Operations and Maintenance Services. Operator shall:

- (a) operate and maintain each System in good working condition;
- (b) conduct system inspections and take other appropriate steps to preserve and, if necessary, to enforce manufacturer or vendor Warranties, guarantees, or indemnities;
- (c) coordinate all testing and commissioning activities;
- (d) perform all necessary preventive and corrective maintenance;
- (e) maintain in stock or procure in a timely manner from reputable and qualified providers, all spare parts required for the operation and maintenance of the Systems;
- (f) calibrate and maintain all meters (if the meter is owned by the Owner);
- (g) serve as the utility system point of contact on behalf of Customer with respect to operation of the Systems;
- (h) perform remote monitoring of each System on a daily basis;
- (i) visually inspect each System on an annual basis and as often as needed or directed by the Owner;
- (j) perform electrical performance testing of each System on an annual basis;
- (k) furnish to Owner annual maintenance/inspection reports for each System (the "***Technical Annual Reports***") on or before April 1 of each calendar year for the preceding calendar year (or partial year, as applicable) during the Term (or, in respect of the calendar year in which this Agreement terminates, within ninety (90) days after the date of termination). Each Technical Annual Report shall include the following:

233

- (i) summary of operations and System performance;
 - (ii) electricity production data;
 - (iii) reports of any environmental disturbances involving any of the Systems;
 - (iv) safety/accident reports;
 - (v) summary of maintenance performed; and
 - (vi) proposals for any actions recommended to be taken; and
- (l) complete the ESG Questionnaires appended hereto as Exhibit E on an annual basis.

2.15 Production Reports. Operator shall provide access to monthly system energy output production figures to Customer and to Owner. Operator will also provide Owner with online access to System production data.

2.16 Interference with Customer Operations. In performing the Services, Operator shall use Commercially Reasonable Efforts to avoid or minimize interference with the Customers' normal business operations. Operator shall ensure that Owner meets all of its obligations to individual Customers as delineated in the applicable PPAs.

2.17 Prompt Repair Services. If any of the Systems fail to operate properly or fail to generate and deliver electric power at the expected production levels, Operator shall use Commercially Reasonable Efforts to investigate and make repairs or coordinate repairs required pursuant to this Agreement. After the Operator receives notice of material production failures, either through its own monitoring or through electronic mail from Customer, Operator shall respond to such failures within seventy-two (72) hours, provided that starting from the earliest date on which the Operator or any of its Affiliates owns or operates a network operations center, such response time shall be reduced to twenty-four (24) hours.

2.18 Subcontractors. Operator may utilize qualified and licensed subcontractors subject to compliance with the Responsible Contractor Policy appended hereto as Exhibit D; *provided, however* that retention of subcontractors and each subcontractor agreement (including the compensation thereunder) shall be subject to Owner's prior review and approval in writing. Before entering into contracts with the Contractor or with any subcontractors, Operator shall give prior written notice to Owner and shall await Owner's approval. All subcontracts shall require the subcontractor to obtain insurance in accordance with the Insurance Requirements and to contemporaneously copy Owner on all invoices, change orders, certificates of insurance, and any material communications issued or made to Operator. To the extent required by individual PPAs or other agreements with individual Customers, when subcontractors are chosen, Operator shall give any required advance notice to the affected Customer. No subcontract or other engagement with a subcontractor shall relieve Operator of any of its duties, responsibilities, obligations, or liabilities hereunder.

234

Operator shall be solely responsible for all matters relating to the payment of the subcontractors and employees, including compliance with social security, withholding and all other similar regulations governing such matters.

2.19 Standard of Performance. Operator shall perform all of the obligations of the Services in accordance with:

(a) all of the practices, methods and acts, as changed from time to time, that (i) are required by the operation and maintenance manual(s) provided by EPC Contractor, EPC Contractor's subcontractors and EPC Contractor's vendors to Owner; and (ii) that are required by the warranties provided by EPC Contractor, EPC Contractor's subcontractors and EPC Contractor's vendors to Owner;

(b) all those general practices, methods and standards, as the same may be changed from time to time, as are commonly used in the operation and maintenance of distributed generation facilities similar to the Systems, which in the exercise of commercially reasonable judgment and in light of the facts known at the time a decision was made, are considered good, safe and prudent practice in connection with distributed electricity generation facilities similar to the Systems ("**Prudent Industry Practices**");

(c) any federal, provincial or municipal law, statute, regulation, rule, code, license, approval, permit or ordinance enacted, adopted, issued or promulgated by any Governmental Authority ("**Applicable Law**") ((a), (b) and (c) collectively, the "**Requirements**"). "**Governmental Authority**" shall mean any federal, provincial or municipal government in any jurisdiction having authority over Owner, Operator, the Systems or the System sites, or any ministry, department, court, commission, board, agency, institution, or similar entity of any such government; and

(d) the terms of this Agreement and each PPA.

(e) the Socially Responsible Investment Policy appended hereto as Exhibit C.

2.20 Environmental Liabilities. Operator shall be responsible for all breaches of environmental law caused by the Operator, including liabilities related to discharge, deposit, release or emission of hazardous substances in connection with the construction, operation and maintenance of any of the Systems.

2.21 Liens. Operator shall keep the Systems free and clear of all liens and shall be responsible for vacating any and all liens on any of the Systems or on the property of any Customer that relates to any of the Systems.

2.22 Beneficiary of the Services. The Operator shall perform the Services hereunder for the benefit of the Owner, or any Affiliate of the Owner (which Affiliate owns one or more Systems) (each an "**Affiliate Owner**"), in each case as designated or directed by the Owner. The Owner shall hold its rights under this Agreement on behalf of itself and each Affiliate Owner, agrees to enforce such rights on behalf of each Affiliate Owner and may delegate such enforcement to any Person designated by the Owner. Any reference to the Owner hereunder, shall be deemed to include each Affiliate Owner.

ARTICLE 3
ENGAGEMENT AND COMPENSATION

3.1 Compensation. In consideration of the Services to be provided by Operator, Owner or, in respect of a particular System, its Affiliate, agrees to pay the following compensation to Operator:

(a) Compensation. The compensation paid by Owner or its Affiliate, as applicable to Operator shall be market-based, shall take into account economies of scale and volume-based discounts from third-party vendors and shall be reviewed annually by the Parties and established by mutual written agreement (all Parties acting in a commercially reasonable manner and negotiating in good faith). Initially, Owner, or its Affiliate, as applicable, shall pay to Operator a fee (the "***Fee***") of CDN \$5,000.00 per installed megawatt of uninterruptible power supply. The Fee shall be paid by Owner or its Affiliate, as applicable in twelve (12) equal installments, on or before the first (1st) Business Day of each month. Any past due payments shall accrue interest at the prime rate plus 1% per annum.

3.2 Replacement Parts; Consumable Items.

(a) Replacement Parts. Purchases of replacement parts having a value, individually or in the aggregate, in excess of twenty-five thousand Canadian dollars (CAN \$25,000) shall require Owner's review and approval. Operator shall use Commercially Reasonable Efforts to ensure that all purchases of replacement parts comply with and follow any standards or procedures imposed by applicable Warranties.

(b) Consumable Items. Owner shall pay for items expected to require regular replacement, including but not limited to, fuses, lubricant, paint, and filters ("***Consumable Items***").

3.3 Invoices. Operator shall issue a monthly invoice to Owner covering (a) the Fee; (b) the costs of replacement parts; (c) the costs of Consumable Items; and (d) costs attributable to use of subcontractors or third-party service providers. All costs attributable to use of subcontractors or third-party service providers shall be passed through by Operator without any markup or commission. Owner shall pay such invoices within twenty (20) days of receipt. If Owner (acting reasonably) disputes any portion of an invoice, Owner shall promptly notify Operator and shall pay the undisputed portion of the invoice within the twenty (20) day period. Disputes relating to invoices shall be resolved as provided in ARTICLE 16 hereof. Operator shall retain and, upon request of the Owner (acting reasonably), shall make available to Owner all records and documentation relating to such invoices and to any costs incurred under this Agreement.

ARTICLE 4
TERM OF AGREEMENT

4.1 The "***Term***" of this Agreement shall commence on the Effective Date and shall continue for ten (10) years, unless and until terminated earlier or extended pursuant to the provisions of this Agreement.

ARTICLE 5
OWNER RESPONSIBILITIES

5.1 Access. Owner shall provide Operator commercially reasonable access to the Systems and Owner interconnection equipment at all times as necessary for Operator, and Operator's personnel and subcontractors, if any, to provide the Services hereunder.

5.2 Other Owner Responsibilities.

(a) Insofar as Owner's review and approval is required for specific actions by Operator, Owner shall, whenever practicable, complete its review and approval within five (5) Business Days.

(b) Insofar as Operator reasonably requests (in writing) information or documents from Owner, Owner shall whenever practicable and subject to the Owner's confidentiality obligations, provide such information within five (5) Business Days of request.

ARTICLE 6
PERMITS

6.1 Operator shall be responsible for procuring, obtaining, maintaining and complying with all permits required to perform the Services under this Agreement, except for any permits which are applied for, or are held by, Owner ("***Owner Acquired Permits***"). Operator shall assist Owner in applying for and maintaining the Owner Acquired Permits. Operator shall keep Owner informed on the status of all permit applications submitted by Operator. To the extent practicable, Operator shall allow Owner the opportunity to review and approve permit applications before they are filed.

ARTICLE 7
METERING AND ACCESS

7.1 Metering. Operator shall install, operate, and maintain all meters required under the terms of the individual PPAs ("***Contract Meters***") and any other meters required under the terms of interconnection agreements with local public utilities (including any municipal utilities, investor-owned utilities, or cooperatives).

7.2 Testing.

(a) Operator shall arrange for the testing and calibration of all Contract Meters on installation and thereafter as needed.

(b) Operator shall ensure that insofar as testing requirements for Contract Meters are imposed in particular PPAs, such requirements shall be fully satisfied. Even if there are no such requirements in particular PPAs, no more than once in any twelve (12)-month period (except as otherwise recommended by the manufacturer), Owner shall (acting reasonably) have the right to direct Operator to arrange for additional testing of any Contract Meter or measuring equipment; *provided, however*, if (i) Owner has commercially reasonable grounds to suspect that such Contract Meter or measuring equipment is not accurate in any respect; and (ii) Owner shall have notified Operator of the discrepancy or suspected discrepancy, Operator shall conduct such additional testing as is requested by Owner during such twelve (12)- month period.

ARTICLE 8 **INSURANCE**

8.1 Operator Insurance. Operator shall procure and maintain the following insurance coverages (the "*Insurance Requirements*"):

(a) Property. The Operator shall obtain and keep in force an "all risk" property insurance for the full replacement value insuring all buildings, improvements, fixtures, and equipment, and such policy shall: (1) include coverage for theft, vandalism, collapse, wind and hail; (2) include coverage for the perils of flood, water damage and earth movement including earthquake, subject to reasonable sublimits for flood, wind, and earth movement coverages; and (3) include coverage for business income for a twelve (12) month indemnity period.

(b) Builder's Risk. The Operator shall obtain and keep in force builder's risk course of construction insurance policy covering all insurable work at their projects; materials, supplies, machinery, fixtures and equipment intended to become a permanent part of the Systems or for permanent use in the Systems or incidental to the construction; all temporary structures at the project site that are to be used in or incidental to the fabrication, erection, testing, or completion of the project. Such builder's risk policy: (1) shall be in an amount not less than the replacement value of the Systems; (2) shall be written on an all risk basis, including coverage for the perils of equipment breakdown, flood, water damage, earth movement including earthquake, collapse, machinery breakdown, testing and commissioning of equipment, wind and hail, and subject to reasonable sublimits for flood, wind, and earth movement coverages; (3) shall include coverage for delay in completion covering the Operator soft costs, loss of revenue, and other indirect construction costs necessarily incurred due to the delay in completion. The limit will reflect an indemnity period of at least twelve (12) months.

(c) Commercial General Liability. The Operator shall obtain and keep in force a commercial general liability insurance policy, written on form reasonably acceptable to the Owner and covering liabilities arising out of the construction and operation of the Systems, including independent contractors, employers' liability, products and completed operations, personal and advertising liability, and liability assumed under an insured contract provided in connection with the construction or operation of a System. This insurance policy shall: (1) have minimum limits of CAN \$2,000,000 each occurrence, CAN \$2,000,000 aggregate for products/completed operations, CAN \$2,000,000 aggregate employers' liability insurance, and CAN \$10,000,000 general aggregate limit; (2) include the Owner as additional insured;

238

(d) **Workers' Compensation and Employer s' Liability.** The Operator shall obtain and keep in force, workers' compensation per applicable provincial law.

(e) **Umbrella Excess Liability.** The Operator shall obtain and keep in force, umbrella and/or excess liability insurance policy(ies) with minimum limits of CAN \$8,000,000. This insurance shall include the commercial general liability, commercial automobile liability and employers' liability coverages on the applicable schedule of underlying insurance. This insurance shall afford insured status to all individuals and entities required to be insureds on underlying insurance, to the same extent as the underlying insurance, and shall "follow-form" to the underlying insurance on all other respects.

(f) **Contractor Pollution Liability.** The Operator shall obtain and keep in force, contractor's pollution liability insurance policy with limits of not less than CAN \$2,000,000, covering sums the insured becomes legally obligated to pay to a third party or for the investigation, removal, remediation (including associated monitoring) or disposal of soil, surface water, groundwater or other contamination to the extent required by Applicable Laws caused by pollution conditions caused by the performance of the work. Such policy shall: (1) include bodily injury, property damage, clean-up costs, legal defense costs, transportation including loading and unloading; and (2) include the Owner as additional insured.

(g) **Professional Liability Insurance.** The Operator shall obtain and keep in force, professional liability errors and omissions insurance policy, which shall: (1) be in an amount not less than CAN \$2,000,000 per claim and in the aggregate; and (2) such policy shall have a retroactive date to the date of first design.

(h) **Business Auto Liability.** The Operator shall obtain and keep in force, or cause to be obtained and kept in force, business auto liability insurance with limits of liability of not less than CAN \$2,000,000 per accident. The insurance must cover liability arising from the ownership, maintenance or use of any auto, including owned, hired or non-owned autos, assigned to or used in connection with the operations or projects of the Operator.

(i) **Cyber Liability.** The Operator shall obtain and keep in force, or cause to be obtained and kept in force, network interruption, data loss, and cyber liability insurance with a limit of not less than CAN \$1,000,000 per claim. Coverage shall include invasion of privacy violations, information theft, damage or destruction of electronic information, release of private information, extortion, network security, breach response costs, credit monitoring, and regulatory fines and penalties. The policy shall include the Owner as additional insured with respect to third-party coverage.

(j) **Director's & Officers Liability.** The Operator shall obtain and keep in force, or cause to be obtained and kept in force Director's & Officers Liability insurance with a limit of not less than CAN \$5,000,000. Coverage shall include claims against the directors and officers of the insured alleging breach of duty, neglect, error or omission in their capacity as such Director or Officer. The policy shall include the Operator and Owner as insureds.

(k) **Other.** The Operator shall obtain and keep in force, or cause to be obtained and kept in force, any other form of insurance and with such limits, in such form, in amounts and for risks as the Owner, acting reasonably, may require from time to time.

239

(l) **Additional Insureds.** In addition to any requirements under Article 8 (Insurance), the Operator shall ensure the Owner is an additional insured on all Operator procured insurance policies, except with respect to professional liability, worker's compensation and employer's liability insurance.

(m) **Waiver of Subrogation.** A waiver of subrogation shall be provided in favor of the Owner with respect to each policy of insurance required to be maintained under this Article 8, with the exception of any professional liability insurance policy.

(n) **No Prejudice to Owner.** The Operator shall use reasonable efforts to ensure that the insurance it procures and maintains under this Agreement shall provide that the interest of the Owner, will not be prejudiced by the Operator error, omission or mis-description of the risk insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement, nor by any other misrepresentation, act or omission by the Operator that would otherwise result in forfeiture or reduction of coverage.

(o) **Waiver of Insurance Requirements.** If the Operator cannot fulfill all insurance requirements in this Article 8, the Operator shall forward a written request to the Owner for the Owner's approval of an alternate insurance coverage or self-insurance arrangements.

(p) **Subcontractors.** The Operator shall maintain and shall require all subcontractors to maintain during the term of this Agreement appropriate types and levels of insurance coverage that meet the minimum requirements specified Article 8. The Operator's and subcontractors' certificates of insurance shall be provided by the Operator to Owner immediately upon request.

(q) **Deductibles and Self-Insured Retentions.** Any deductible or retention amounts elected by the Operator or subcontractors shall be the sole responsibility of the party with the deductible or retention and are not chargeable as expenses. Deductibles or retentions of \$100,000 or greater shall not be permitted except with the Owner written approval. In the event that any required insurance coverage contains a self-insured retention, the Owner agrees to treat all losses within the self-insured retention as though commercial insurance is in place, with all rights and protection that would be provided by traditional insurance, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies. The Operator shall, at its sole expense, pay for all claims, defenses, any claims related costs and damages without any contribution from the Owner.

(r) **Notification of Claims.** The Operator shall notify the Owner as soon as reasonably practicable of any incident(s) that could give rise to a claim against the Operator; provided, however, that this obligation shall be deemed to have been breached in any circumstance where the Operator notifies the relevant insurer on a date which the insurer alleges, or has the right to allege, constitute untimely notice as to entitle the insurer to deny coverage for the claim.

240

8.2 Owner Insurance. Owner shall procure and maintain the following insurance coverages: (a) Commercial General Liability insurance that insures against any claims for personal injury, bodily injury, death, or property damage and against any claims for personal injury, bodily injury, death, or property damage related to Owner's activities under this Agreement, with a combined single limit of not less than CDN 2,000,000 per each occurrence and CDN 4,000,000 in the aggregate; (b) if required by Applicable Law, Workers' Compensation insurance to the statutory limit, and Employer's Liability with limits of CDN 1,000,000 for each accident, and CDN 1,000,000 policy limits; and (c) Excess Liability (Umbrella) insurance in an amount of not less than CDN 5,000,000 per each occurrence, on a following form basis, sitting excess of the underlying Commercial General Liability and Employer's Liability policies.

8.3 Insurance Policy Requirements. All insurance policies required pursuant to this Agreement shall be taken out with insurers rated at least A-VII by A. M. Best Company and either licensed to do business in the Province of Ontario, or be an insurer providing coverage on an excess/surplus lines basis. No such insurance may be materially changed in a manner that adversely affects the other Party, be reduced in coverage, cancelled or otherwise terminated unless the insurers notify the affected Party and its lenders of same in writing, not less than thirty (30) Days prior to such planned change, reduction or cancellation/termination.

ARTICLE 9 **LIMITATION OF LIABILITY**

9.1 No Party shall be liable for any indirect, special, incidental or consequential damages, including without limitation, loss of profit, loss of revenue, loss of use, loss of power, cost of replacement power (except as specified in a particular PPA), or for punitive damages, arising out of or in relation to the performance of this Agreement whether or not such liability is claimed in contract, tort or otherwise; *provided, however*, the preceding limitation of liability shall not apply to either Party's indemnity obligations set forth in ARTICLE 12 solely as they relate to claims by third parties for bodily injury or property damage.

9.2 Nothing in this ARTICLE 9 shall bar a Party from making a claim against the other Party or its subcontractors that would be covered by the insurance maintained by such other Party under ARTICLE 8, but only to the extent actually covered by such insurance.

ARTICLE 10 **FORCE MAJEURE; EVENTS OF DEFAULT**

10.1 Definition of Force Majeure.

(a) The term "*Force Majeure*", as used in this Agreement, means causes or events that delay or prevent a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of Commercially Reasonable Efforts, cannot be avoided by and is beyond the control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

241

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of Commercially Reasonable Efforts, cannot be avoided by, and are beyond the control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, Force Majeure events may include without limitation: acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, ice storms, landslides or tornadoes; high winds of sufficient strength or duration to materially damage any of the Systems or significantly impair its operation for a period of time longer than normally encountered in similar businesses under comparable circumstances; lightning; fire; volcanic activity; sabotage; vandalism; terrorism; war; riots; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); directives from Ontario's Independent Electric System Operator (IESO) or any utility causing Operator to divert energy to address reliability concerns or forced facility outage; forced facility outages affecting the Systems; System emergency; and actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act prevent or delay performance; and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any Governmental Authority.

(c) Notwithstanding anything to the contrary in this Section 10.1, as it applies to the Operator, if the applicable PPA does not provide for Force Majeure relief in respect of a cause or event, then the Operator shall not be entitled to Force Majeure relief hereunder.

(d) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of Operator, unless such acts or omissions are themselves excused by reason of Force Majeure; and (ii) any full or partial curtailment in the electric output of the Systems that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by Force Majeure.

10.2 Applicability of Force Majeure.

(a) Notwithstanding anything to the contrary in this Agreement, neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Operator Default or Owner Default (as applicable and each as defined below), to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, *provided* that:

(i) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;

(ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(iii) the non-performing Party uses Commercially Reasonable Efforts to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

242

(iv) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding the foregoing, if Operator is unable to provide its Services due to events or conditions of Force Majeure, Owner's payment obligations shall be equitably adjusted to account for periods in which Operator does not provide the services it otherwise would have provided.

10.3 Operator Defaults and Owner Remedies.

(a) Operator Defaults. The following events shall be defaults with respect to Operator (each, an "*Operator Default*"):

(i) Operator (A) commences a voluntary case of bankruptcy, insolvency, reorganization or arrangement under any bankruptcy law; (B) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Operator in an involuntary case of bankruptcy, insolvency, reorganization or arrangement under any bankruptcy law; or (C) any involuntary bankruptcy, insolvency, reorganization or arrangement proceeding commenced against Operator remains undismissed or undischarged for a period of sixty (60) days; or

(ii) Operator breaches any material term of this Agreement and (A) if such breach is capable of being cured within sixty (60) days after Owner's notice of such breach, Operator has failed to cure the breach within such sixty (60) day period; or (B) if Operator has diligently commenced work to cure such breach during such sixty (60) day period but additional time is needed to cure the breach, not to exceed a total of ninety (90) days from the date of Owner's notice, Operator has failed to cure the breach within such ninety (90) day period.

(iii) Operator breaches any material term of the Investment Agreement, Limited Partnership Agreement or the applicable PPA.

(iv) An event of Force Majeure in respect of the Operator continues for more than one hundred and eighty (180) days individually or in aggregate in respect of any calendar year.

(b) Owner's Remedies. If an Operator Default has occurred and is not cured within the sixty (60) day period specified in Section 10.3(a), in addition to any remedies which Owner may have at law or in equity, Owner may terminate this Agreement upon at least fifteen (15) days prior written notice to Operator (or immediately without prior written notice with respect to an Operator Default described in Section 10.3(a)(i)). Upon such termination, the Operator shall, if requested by Owner, assist with the transition of the operations of the Systems to its successor or Owner. The Owner and Operator shall each be responsible for 50% of the Operator's cost of such transition services. Operator shall not stop providing the Services until such time as the transition of operations to its successor or Owner has been completed unless otherwise instructed by Owner.

243**10.4 Owner Defaults and Operator's Remedies.**

(a) Owner Default. The following events shall be a default with respect to Owner (each, an "***Owner Default***") under this Agreement:

(i) Owner (A) commences a voluntary case of bankruptcy, insolvency, reorganization or arrangement under any bankruptcy law; (B) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Owner in an involuntary case of bankruptcy, insolvency, reorganization or arrangement under any bankruptcy law; or (C) any involuntary bankruptcy, insolvency, reorganization or arrangement proceeding commenced against Owner remains undismissed or undischarged for a period of sixty (60) days;

(ii) Owner breaches any material term of this Agreement, and (A) if such breach is capable of being cured within sixty (60) days after Operator's notice of such breach to Owner, the breach has not been cured within such sixty (60) day period; or (B) if Owner has diligently commenced work to cure such breach during such sixty (60) day period but additional time is needed to cure the breach, not to exceed a total of ninety (90) days from the date of Operator's notice, the breach has not been cured within such ninety (90) day period; or

(iii) Owner fails to pay Operator any amounts due under this Agreement (other than amounts which are subject to a bona fide dispute) within fourteen (14) days after receiving written notice from Operator that a payment was not received within seven (7) days of the due date hereunder.

(b) Operator's Remedies. If an Owner Default has occurred and is not cured within the ninety (90) day period specified in Section 10.4(a), in addition to any remedies which Operator may have at law or in equity, Operator may terminate this Agreement upon at least fifteen (15) days prior written notice to Owner (or immediately without prior written notice with respect to an Owner Default described in Section 10.4(a)(i)). Upon such termination, the Operator shall, at the Owner's cost and expense, assist with the transition of the operations of the Systems to its successor or Owner. Operator shall not stop providing the Services until such time as the transition of operations to its successor or Owner has been completed.

ARTICLE 11
SUCCESSION AND ASSIGNMENT

11.1 Binding Nature. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

11.2 General Assignments. Except as otherwise provided in this Section 11.2, neither Party may assign this Agreement or any of its rights, interests, or obligations under this Agreement without the prior written approval of the other Party, which consent shall not unreasonably be withheld; *provided* that a Party may assign this Agreement or any of its rights, interests or obligations under this Agreement, in whole or in part, to: (i) a wholly-owned affiliate of such Party; (ii) with respect to Operator, pursuant to a merger of the Operator with any entity controlled by Operator parent; (iii) with respect to the Owner, in connection with a financing and security granted in support thereof, in each case without such written approval of the other Party; *provided further*, that if either Party so assigns any such rights, interests, or obligations under this Agreement to any

244

of its Affiliates, such assignment shall not release such Party from any obligation or liability under this Agreement. If the Owner assigns any such rights, interests, or obligations pursuant to (iii) above, Operator shall be required to enter into standard lender acknowledgment agreements effecting the assignment.

ARTICLE 12
INDEMNIFICATION

12.1 Operator shall indemnify Owner, its successors and permitted assigns, and their respective Affiliates, officers, directors, agents, employees, and members, and shall defend, save and hold them harmless from and against all losses and claims for personal injury or death, or damage to tangible property of a third party, and against all claims, demands, proceedings, damages, liabilities, costs, charges and expenses (including reasonable legal fees) whatsoever in respect thereof or in relation thereto incurred by or asserted against any of them arising out of or in consequence of (a) the failure of Operator to perform its obligations hereunder; or (b) the negligence, reckless or willful misconduct, or fraud of Operator or Operator's employees, agents or subcontractors.

12.2 Owner shall indemnify Operator, its successors, and their respective Affiliates, officers, directors, agents, members and employees, and shall defend, save and hold them harmless from and against all losses and claims for personal injury or death, or damage to tangible property of a third party, and against all claims, demands, proceedings, damages, liabilities, costs, charges and expenses (including reasonable legal fees) whatsoever in respect thereof or in relation thereto incurred by or asserted against any of them arising out of or in consequence of (a) the failure of Owner to perform its obligations hereunder; or (b) the negligence, reckless or willful misconduct, or fraud of Owner or Owner's employees, agents or subcontractors.

12.3 Neither Party shall be indemnified for damages resulting from its own (or its respective employees', representatives', subcontractors' or agents') negligence, intentional acts, reckless or willful misconduct or fraud. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties of Owner.

(a) Owner possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein.

(b) Owner's execution, delivery and performance of this Agreement have been duly authorized and this Agreement has been duly executed and delivered and constitutes Owner's legal, valid and binding obligation, enforceable against Owner in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency and other legal principles pertaining to creditor's rights.

245

(c) Except as otherwise contemplated herein, no material consent or approvals are required in connection with the execution, delivery and performance by Owner of this Agreement.

(d) The execution, delivery and performance by Owner of this Agreement will not (i) violate any Applicable Law applicable to Owner; (ii) result in any breach of, or constitute any default under, the formation and organizational documents of Owner or any contractual obligation of Owner; or (iii) result in, or require, the imposition of any lien or other encumbrance on any of the properties or revenues of Owner.

13.2 Representations and Warranties of Operator.

(a) Operator is experienced in the operation and maintenance of distributed electricity generation systems and is and will remain qualified during the term of this Agreement to perform the Services required by this Agreement.

(b) Operator is a corporation duly organized and existing in good standing under the laws of the Province of Ontario and is qualified to do business in and is in good standing in every jurisdiction in which the nature or conduct of its business requires such qualification, including the Province of Ontario.

(c) Operator possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein.

(d) Operator's execution, delivery and performance of this Agreement have been duly authorized and this Agreement has been duly executed and delivered and constitutes Operator's legal, valid and binding obligation, enforceable against Operator in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency and other legal principles pertaining to creditor's rights.

(e) Except as otherwise contemplated herein, no material consent or approvals are required in connection with the execution, delivery and performance by Operator of this Agreement.

(f) The execution, delivery and performance by Operator of this Agreement will not (i) violate any Applicable Law applicable to Operator; (ii) result in any breach of, or constitute any default under, the formation and organizational documents of Operator or any contractual obligation of Operator; or (iii) result in, or require, the imposition of any lien or other encumbrance on any of the properties or revenues of Operator.

(g) (A) all insurance policies held by the Operator as of the date of this Agreement relating to the businesses, assets, liabilities and operations of the Operator are in full force and effect, all premiums with respect thereto have been paid and, no notice of cancellation or termination has been received by the Operator with respect to any such policy and (B) the Operator has no reason to believe that it will not be able to (i) renew its existing insurance policies as and when such policies expire or (ii) obtain comparable coverage from comparable insurers as may be necessary to continue its business without a material increase in costs.

ARTICLE 14
WARRANTY AND INSURANCE CLAIMS

14.1 Enforcement of Warranties Insurance Policies. During the term of the Warranties, Operator and Owner each acknowledge that the Systems may be covered by (a) Warranties provided by component suppliers and indemnities or guarantees provided by Operator's subcontractors and vendors; and (b) insurance provided by the Operator and the Owner.

The Operator shall use Commercially Reasonable Efforts to: (i) obtain warranties for parts, equipment, materials and services provided by suppliers in fulfilling the Operator's obligations under this Agreement and (ii) ensure that all material warranties with respect to such parts, materials and services are assignable to the Owner. The Operator hereby assigns (and shall promptly assign) to the Owner all manufacturer's warranties which are assignable and that the Operator shall receive with regard to any parts or materials provided to and used by the Operator under this Agreement that are incorporated into the Systems. The Operator shall notify the Owner of any claims which the Owner may have under such warranties or guarantees of which the Operator becomes aware during the performance of the Services.

As part of the Services hereunder, at the direction and on behalf of Owner, at Owner's sole cost and at Owner's election, in its sole discretion, Operator shall submit, process and pursue all claims under such warranties and insurance. Owner shall provide such cooperation and assistance as Operator may reasonably require in connection with the submission, processing and pursuit of any such warranty or insurance claims.

ARTICLE 15
INDEPENDENT CONTRACTOR

In performing the Services under this Agreement, Operator shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of Owner. Nothing herein shall be construed to create a joint venture or partnership between the Parties and neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party. Owner acknowledges that some of the Services may be performed by subcontractors of the Operator. Operator shall cause all subcontractors to perform their work in conformity with all provisions of this Agreement. No subcontractor is intended to be, or shall be deemed to be, a third-party beneficiary of this Agreement. Operator agrees that it shall be fully responsible to Owner for the acts and omissions of Operator's subcontractors and of any persons or entities directly or indirectly employed by them.

ARTICLE 16
DISPUTE RESOLUTION

16.1 Good Faith Negotiation. The senior managers of each Party shall negotiate in good faith and attempt to resolve any dispute, controversy, or claim arising out of or relating to this Agreement or the breach, interpretation, termination, or validity thereof (a "*Dispute*") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

247

16.2 Arbitration. In the event the Parties are unable to reach an agreement or resolution of such Dispute with such thirty (30) days (or such longer period as the Parties may agree), such Dispute shall be finally settled by arbitration. The arbitration shall be conducted in accordance with the Arbitration Act, 1991 (Ontario) in effect at the time of the arbitration, except as they may be modified herein or by agreement of the parties. The seat of the arbitration shall be Toronto, Ontario, Canada.

16.3 Appointment of Arbitrators. The arbitration shall be conducted by three arbitrators. The Party initiating arbitration (the “Claimant”) shall appoint its arbitrator in his or her request for arbitration (a “Request”). The other Party (the “Respondent”) shall appoint their arbitrator within 30 days of receipt of the Request and shall notify the Claimant of such appointment in writing. If the Respondent fails to appoint an arbitrator within such 30-day period, the arbitrator named in the Request shall decide the Dispute as the sole arbitrator. Otherwise, the two arbitrators appointed by the parties shall appoint a third arbitrator within 30 days after the Respondent has notified the Claimant of the appointment of the Respondent’s arbitrator. When the arbitrators appointed by the parties have appointed a third arbitrator and the third arbitrator has accepted the appointment, the two arbitrators shall promptly notify the parties of such appointment. If the two arbitrators appointed by the parties fail or are unable to appoint a third arbitrator or to notify the parties of such appointment, then the third arbitrator shall be appointed by the President of ADR Institute of Ontario who shall promptly notify the parties of the appointment of the third arbitrator. The third arbitrator shall act as chair of the panel.

16.4 Waiver. NOTWITHSTANDING THE FOREGOING, AND TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY OTHERWISE HAVE TO A JURY TRIAL IN ANY ACTION, SUIT, OR PROCEEDING EXISTING UNDER OR RELATING TO THIS AGREEMENT.

ARTICLE 17 **CONFIDENTIALITY**

17.1 Confidentiality. Neither Party will disclose to any third party any information obtained from the other Party or otherwise obtained in connection with this Agreement (“*Confidential Information*”), and will use Commercially Reasonable Efforts to have all such Confidential Information kept confidential; provided that (a) each Party may disclose any such Confidential Information to its Affiliates, employees, representatives, subcontractors, agents, counsel, lenders (current and prospective), investors (current and prospective), purchasing parties (current and prospective) and public accountants, if such information shall have been provided to the party in question with the understanding that such party keep such information confidential to the extent provided in this ARTICLE 17; (b) each Party may disclose any such Confidential Information that has previously been publicly disclosed (other than in contravention of this Article 16); and (c) a Party may disclose Confidential Information as required pursuant to Applicable Law, to the extent that the receiving Party gives the disclosing Party prompt notice of such request so that the disclosing Party may seek an appropriate protective order, such protective order is not obtained and the receiving Party is nonetheless advised by counsel that disclosure of the information is finally required.

17.2 Enforcement of Agreement. Nothing in this ARTICLE 17 shall bar a Party from enforcing this Agreement or from disclosing the existence of this Agreement.

ARTICLE 18
MISCELLANEOUS

18.1 Notices. All notices which Operator or Owner may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by registered or certified mail, postage prepaid, return receipt requested or by a national recognized overnight courier service, or by facsimile (if received during the normal business hours of the recipient or, if not received during such normal business hours, then on the next Business Day of the recipient) or by email (provided that receipt has been confirmed by the recipient, other than by automated response) and shall be deemed sufficient if addressed to Operator or Owner at the following addresses:

Operator: Demand Power Group Inc.
71 Marycroft Avenue, Suite 20
Woodbridge, Ontario L4L 5Y6
Attention: Raj Chudgar
Email: rchudgar@demandpower.ca

with a copy to: Blaney McMurtry LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5
Attention: Dan Giantsopoulos
Email: dgiantsopoulos@blaney.com

Owner: Narrows Green, LP
c/o Star Infrastructure Partners, LLC
165 Roslyn Road
Roslyn Heights
NY 11577
Attention: President
Email: DPNotices@starinfrapartners.com

with a copy to: Torys LLP
79 Wellington Street West, Suite 3000
Toronto, Ontario M5K 1N2
Attention: Milosz Zemanek
Email: mzemanek@torys.com

A Party may change its designated representative from time to time, by means of a written notice to the other party.

249

18.2 Integration; Exhibits. This Agreement, together with any Exhibits attached hereto, constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Parties further agree that no representation, warranty, agreement or covenant has been made with regard to this Agreement, except as expressly recited herein, and that in entering into this Agreement no Party is relying upon any representation, warranty, agreement or covenant not expressly set forth herein.

18.3 Waiver. Any waiver under this Agreement shall be in writing and shall not be a waiver concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any rights or remedies shall impair such right or remedy or be construed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act.

18.4 Time of the Essence. Time is of the essence in this Agreement.

18.5 Partial Invalidity. If any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Agreement, and shall not render this Agreement unenforceable or invalid as a whole. Rather, the part of this Agreement that is found invalid, illegal or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this Agreement will remain in full force.

18.6 Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

18.7 Drafting Ambiguities. The rule of construction that any ambiguities are to be resolved against the drafting parties shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

18.8 Amendment. This Agreement may be modified only by an agreement in writing executed by each of the Parties.

18.9 Further Assurances. Each of the Parties hereto covenants, without the need for additional consideration, that it shall take such further actions and execute upon request any further documents as may reasonably be required or desired to effectuate fully the terms, conditions, and intent of this Agreement and to fully vest in the other Party the rights and other benefits provided hereunder.

18.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without reference to the Province of Ontario's choice of law principles.

250

18.11 Costs and Expenses. Each Party shall be liable for its own costs and expenses incurred in negotiation and preparation of this Agreement. Should legal action be brought to enforce any term or agreement herein contained, the prevailing Party in such action shall be entitled to recover reasonable legal fees, disbursements and charges, regardless of whether the matter is concluded by court action or otherwise.

18.12 Counterparts; Facsimile and E-Mail Signatures. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be executed and delivered by facsimile, or by e-mail in portable document format (.pdf) and delivery of the signature page by such method will be deemed to have the same effect as if the original signature had been delivered to any other signatory hereof.

18.13 Limited Partnership Acknowledgement. Each party hereto acknowledges that (i) the Owner is a limited partnership formed under the laws of the Province of Manitoba, the sole general partner of which is SAIF DP Opco GP, Inc. (the “**General Partner**”), (ii) the only Person with whom any party hereto has had dealings on behalf of the Owner is the General Partner, and (iii) in no event will any party hereto have any recourse in connection with this Agreement and the transactions contemplated hereby against any limited partner of the Owner or any director, officer, employee, shareholder or representative of the General Partner or any of their respective properties or assets, and each party hereto hereby waives any claims however arising that it may have against any such Person.

18.14 Survival of Obligations. The expiration or earlier termination of this Agreement shall be without prejudice to the obligations which one Party owed to the other Party hereunder as of the time of such expiration or termination. Provisions of this Agreement which expressly provide for survival shall survive the expiration or termination of this Agreement for the periods of time so noted. The provisions of Articles 9, 10, 12, 13, 16, 17 and 18 and Section 3.3 shall survive any such expiration or termination.

[SIGNATURE PAGE FOLLOWS]

251

IN WITNESS WHEREOF, the Parties have executed this Management Operations and Maintenance Agreement as of the Effective Date.

OPERATOR:

DEMAND POWER GROUP INC.

By: *Rajan Chudgar*

Name: Rajan Chudgar

Title: Chief Executive Officer

252

NARROWS GREEN, LP, by its general partner, **SAIF DP OPCO GP, INC.**

A handwritten signature in blue ink, appearing to be 'William A. Marino', written over a horizontal line.

By: _____

Name: William A. Marino

Title: CEO

EXHIBIT A**Construction Management Services and Procurement**

Except as set forth in this Exhibit A, as part of the Services, the Operator shall perform all procurement and construction services necessary for the construction and commercial operation of the Systems, including without limitation, the following procurement and construction services in conformity with the applicable provisions of this Agreement and the Investment Agreement:

1. **Construction Management Services and Procurement** Commencing on the Effective Date and during the Term, the Operator shall provide the following procurement and construction management services on behalf of the Owner:
 - (i) negotiating the agreements (the “**Construction Agreement(s)**”) with the Contractor and other subcontractors (the “**Construction Contractor(s)**”) (subject to direction from the Owner) and recommending such agreements to the Owner for approval or disapproval;
 - (ii) representing the Owner as its designated representative under such agreements, and in such capacity serve as the point of contact with the Construction Contractor(s) under the Construction Agreement(s), overseeing and managing the Construction Contractor(s) and its obligations under the Construction Agreement(s) as Owner’s designated representative, including:
 - (a) administrating and monitoring the compliance with the terms and conditions of the Construction Agreement(s), including without limitation the coordination and resolution of any contractual, technical, operational or commissioning issues under the Construction Agreement(s);
 - (b) representing the Owner as the on-site point of contact with the Construction Contractor(s) under the Construction Agreement(s) to supervise the Construction Contractor(s)’ obligations to the Owner under the Construction Agreement(s);
 - (c) reviewing and monitoring all activities under the Construction Agreement(s), including work progress, compliance with the construction and technical specifications thereunder and compliance with the health, safety, insurance and security provisions of the Construction Agreement(s) by the Construction Contractor(s), including the testing procedures and results, the preparation and supervision of punch list items and the achievement of System completion; and
 - (d) overseeing the Construction Contractor(s)’ administration and resolution of issues with vendors, suppliers and contractors related to the construction of the Systems;

254

- (iii) advising the Owner with respect to those change orders under the Construction Agreement(s) that are subject to Owner approval;
- (iv) coordinating the dispatch of energy to or from the Systems prior to the Commercial Operation Date during back-feed, startup and commissioning, operation and testing of the Systems; and
- (v) to the extent necessary and required, coordinating the implementation of any procedures or actions required or advisable to be done or performed by the Owner or the applicable counterparties under any other agreements related to the Systems.

2. Procurement

2.1 Perform all procurement services required during the development and construction of the Systems.

2.2 Manage procurement of Components utilized in the Systems to include the following items or their equivalent:

- (i) BESS
 - (a) batteries
 - (b) batteries, pad mount
 - (c) battery management system
 - (d) transformers
 - (e) inverters
 - (f) power conversion system
 - (g) cabling
 - (h) junction box
 - (i) meters
 - (j) circuit breakers
 - (k) SCADA

- (ii) **Generator (behind the meter generation)**
 - (a) Generator

255

- (b) Automated Transfer Switch
- (c) Transformers
- (d) Generator pad mount
- (e) Meters
- (f) Fuel Supply and connection
- (iii) Components Shipping
 - (a) Logistics / transportation studies
 - (b) Shipping and handling
- (iv) Miscellaneous
 - (a) System signage
 - (b) Fencing
 - (c) Security

3. Coordination

Coordinate with the service providers under the Construction Agreement(s) in respect of the transition from construction to operation, including meeting as necessary and developing a transition checklist to assign tasks set out therein;

EXHIBIT B**Management and O&M Services****Operations**

- Accounting - Operator
 - Energy market transactions (settlements, invoices)
 - Customer reconciliation (LDC)
 - SPV reconciliation
 - General system operation AR and AP
 - Dispute management
 - Reports to all entities
 - Filings of assets with IESO / LDC
 - Daily P/L of assets
- Regulatory and Legal
 - Regulatory Filings - Operator
 - Maintenance - Operator
 - Legal – 3rd Party
 - Licenses (fees, filings, and other documentation) - Operator
 - Registrations of assets, updates to assets, etc. - Operator
 - Customer retail contract registration and updates - Operator
 - Market Updates and committee meetings (including appropriate gov't meetings) – Operator / 3rd Party
 - Regulatory filings for change in law intervention as needed – 3rd Party
 - General Market information - Operator
 - Vendor contracts and supply contracts (EEI) – Operator
 - All actions necessary to obtain and maintain any required permits and licenses
- Energy/Market transactions
 - Dispatch scheduling - Operator
 - Hedging of supply or assets – Operator / 3rd Party
 - Bilateral energy contract negotiations – Operator
 - Bilateral contracts – Operator / 3rd Party
- System Dispatch - Others (NOC) / Operator

257

- Customer Service – Operator
- Maintenance coordination - Operator
- Outage coordination against market obligations - Operator
- Meter management (submission of meter data) - Operator

Maintenance

- Maintenance Scheduling - Operator
- Scheduled maintenance dispatch - Operator
- System service and maintenance – 3rd party
 - Battery
 - UPS
 - Generator
 - Switch gear
 - Grounds/Landscaping/etc.
- Emergency service dispatch – 3rd Party (NOC) / Operator

Dispute resolution/Legal – 3rd Party / Operator

Contract Management

- Management of Owner obligations (and enforcement of Owner rights) under all contracts (including, without limitation, the PPA and the Construction Agreements)
- Management of all billing and collections processes, including any coordination and interface with applicable LDCs

EXHIBIT C

Socially Responsible Investment Policy

General Principles

The objective of the Parties is to develop projects and maintain an economically sound and prosperous business while assuming responsibilities toward the communities and environments in which they operate, toward their employees, business partners and society in general. The Parties wish to apply, promote and report on the best practices regarding corporate governance and long-term sustainable development issues, including environmental, social and governance (“*ESG*”) issues.

The Parties shall:

- (a) follow internationally established norms and guidelines, such as UN Global Compact and OECD Guidelines for Multinational Enterprises;
- (b) recognize certain principles associated with ESG issues embodied in the United Nations Principles for Responsible Investing (“*UNPRI*”);
- (c) consider environmental, public health, safety, and social issues in the regular course of business and operations;
- (d) regularly report on material ESG related activities, including, the completion of an ESG related questionnaire at a minimum of once per calendar year;
- (e) encourage the investment in energy efficient technology and practices, including at its facilities;
- (f) encourage reduction of waste and implementation of recycling programs;
- (g) respect the human rights of all stakeholders affected by the entity (and its subsidiaries); and
- (h) encourage their suppliers, subcontractors, and agents to abide by the principles set out in this Socially Responsible Investment Policy.

The Parties shall not:

- (i) participate in activities resulting in severe and/or systematic breaches of internationally recognized conventions, norms or protocols regarding environment protection to which the United States or France is a signatory such severe and/or systematic breaches must be evidenced by an official source such as the UN, the OECD, governments or other similar bodies;
- (j) knowingly be associated with any entity that deliberately and repeatedly violates the law laid down by the national authorities in the markets in which

- such entity operates, such violation must be evidenced by an official source such as the UN, the OECD, governments or other similar bodies;
- (k) be associated with any entity that engages in material and/or systematic corruption. Such material and/or systematic corruption must be evidenced by an official source such as the UN, the OECD, governments or other similar bodies;
 - (l) be domiciled in countries subject to trade embargos imposed by the United Nations or the European Union;
 - (m) engage in bribery or other improper payments to public officials prohibited by the U.S. Foreign Corrupt Practices Act and any similar laws of any other jurisdiction where it conducts business;
 - (n) knowingly accept subscriptions from any investor in which 10% or more of such investor is owned by (i) any person or entity designated as a Specially Designated National (“*SDN*”) by the Treasury Department’s Office of Foreign Asset Control (“*OFAC*”) or (ii) citizens of or governmental entities of countries designated by OFAC as Sanctioned Countries;
 - (o) knowingly engage in business with (i) the government of Sudan or any entity that is affiliated with the Sudanese government, (ii) any entity that supplies military equipment within Sudan, and (iii) any entity that is complicit in the Darfur genocide;
 - (p) manufacture weapons and ammunitions falling within NACE code 25.4 for the purposes of the EVCA’s sectorial classification (http://www.evca.eu/uploadedFiles/sectorial_classification.pdf);
 - (q) be involved in the production, development, or distribution of anti-personnel landmines and cluster bombs (which shall include any company or enterprise whose activity is to produce or supply key components of anti-personnel landmines or cluster bombs), or weapons for mass destruction like chemical weapons, biological weapons or nuclear weapons;
 - (r) engage in the operations of private prisons or detention facilities. For clarity, this issue does not apply if the Parties are engaged in the design, construction, and maintenance of a private prison or detention facility that will be operated by a public-sector owner;
 - (s) engage in oil or gas exploration or development;
 - (t) derive more than 5% of their annual revenues directly from coal power production and/or extraction of thermal coal; or
 - (u) derive more than 5% of their annual revenues directly from production and distribution of cannabis for recreational purposes.

260

EXHIBIT D

Responsible Contractor Policy

See Attached.



Star America Fund GP LLC
 165 Roslyn Road
 Roslyn Heights, NY 11577
 Phone 516-882-4100
 Fax 516-882-4058

III. Responsible Contractor Policy

Responsible Contractor Policy

I. PURPOSE

This Responsible Contractor Policy (the "Policy") of the Project Company is designed to guide the selection of independent Contractors, and their subcontractors (collectively the "Contractors") who provide construction, repairs, maintenance and infrastructure operating services (each individually a "Service") to the Project Company; provided however, the Project Company may take into account the Project Company's need to maintain a competitive, economically sound and prosperous Project and may seek a waiver of any part of this Policy from Star America Fund GP LLC³ ("Star"), which Star may grant in its sole and absolute discretion so long as it is consistent with Star's fiduciary duties understanding that Star will act with the care, skill, prudence, and diligence. The Policy seeks to ensure that the selection process for independent contractors will include among other things, a demonstrated ability to provide reliable and high quality Services which may be evidenced by their compliance with applicable statutes and payment of fair compensation and benefits to employees, as well as by their relevant experience, reputation, dependability, and ability to provide cost-efficient services, thereby enhancing the value of the Project.

II. INTRODUCTION

The Project Company supports a safe and healthy and profitable business environment through selective negotiation, market competition, small business development, and control of operating costs. The Project Company also supports and encourages fair compensation and fair benefits for workers employed by Contractors to the extent possible.

In keeping with these overriding objectives, the Project Company has adopted the Policy described herein in order to support and promote the engagement of independent contractors who can be expected to provide both competitive and high quality Services to Project Company, utilizing appropriately trained and fairly compensated employees, subject to the above-cited principles. The Project Company believes that the utilization of such Contractors adds value to the Project by ensuring that Services are provided by adequately-trained, experienced and motivated workers who deliver high quality products and services.

Furthermore, the Project Company shall endeavor in good faith to recognize the important role and contribution of public employees to the development and operation of such assets. In particular, the Project Company shall make good faith efforts to ensure that such transactions minimize any potentially adverse impacts on employees. These efforts may include working directly with public employees, government officials, or collective bargaining groups, as appropriate, in order to take such actions as may be within the Project Company's control to mitigate such potentially adverse effects.

The preceding paragraphs shall not preclude the Project Company entering into negotiated arrangements and joint ventures with Contractors on an exclusive or preferred basis (i.e. on a non-

³ Acting in its capacity as General Partner of each of Star America Infrastructure Fund, LP and Star America Infrastructure Fund Affiliates, LP.



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

competitive bid basis), subject to the prior approval of Star.

III. INITIAL REQUIREMENTS OF THE RESPONSIBLE CONTRACTOR POLICY

The Policy provides that the following requirements shall be met:

- A. Best Practices: On applicable contracts, Contractors for Services shall be selected through a process that includes consideration of competitive risk adjusted returns and factors such as, but not limited to, demonstrated skill, experience, dependability, fees, safety record, and adherence to the Policy.
- B. Local, State and National Laws: The Project Company and all Contractors, and their subcontractors shall observe all local, state and national laws including, but not limited to, those pertaining to insurance, withholding taxes, the classification and misclassification of employees and independent contractors, minimum wage, labor relations, health, and occupational safety.

IV. SELECTION OF RESPONSIBLE CONTRACTOR

If Initial Requirements A and B (see Section III above) are satisfied, a Responsible Contractor shall be hired.

On an annual basis, the Project Company shall provide summary compliance data to Star to demonstrate good faith evidence of monitoring and enforcement.

V. DEFINITION OF A RESPONSIBLE CONTRACTOR

A Responsible Contractor, as used in this Policy, is an independent Contractor who provides high quality Services to Project Company on a comparable and relevant basis in the applicable local market consistent with the desired contracting criteria, and pays workers a fair wage and fair benefits. "Fair benefits" are defined as including, but not limited to: employer paid family health care coverage, pension benefits, and training and/or apprenticeship programs. What constitutes a "fair wage" and a "fair benefit" will depend on the wages and benefits paid by responsible contractors on comparable projects, based upon local market factors that include the nature of the project (e.g., municipal or commercial; public or private), comparable job or trade classifications and the scope and complexity of Services provided. In determining "fair wages" and "fair benefits" concerning a specific contract in a specific market, items that may be considered include local wage practices of responsible contractors, state laws, prevailing wages, labor market conditions and other items.

VI. ENFORCEMENT, MONITORING, AND ADMINISTRATION

- A. Good Faith: As used herein, good faith efforts shall include, but are not limited to, encouraging the use of and advocating for Responsible Contractors, supplying the Project Company with timely information on all applicable bidding opportunities for interested Responsible Contractors, and facilitating meetings with interested stakeholders, when possible.
- B. Notification: The Project Company shall provide all relevant Contractors with a copy of this Policy.



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

C. Solicitation Documents: All requests for proposals and invitations to bid covered by this Policy

shall include the terms of this Policy. Responses by bidders shall include information to assist Project Company staff in evaluating a bid.

D. Contracts and Renewals: All contracts entered into after the effective date of this Policy that are covered by the Policy, including renewals of such contracts, shall include the terms of this Policy. Responsible Contractor compliance will be part of the contract renewal consideration.

E. Responsibilities: The responsibilities of Project Company and Contractors are defined as follows:

1. Project Company: Project Company will have responsibility for the following:

- a. communicate the Policy to independent Contractors seeking to secure applicable Service contracts;
- b. communicate the Policy to any interested party;
- c. endeavor in good faith that there is a selection process that includes potentially eligible Responsible Contractors, where applicable and commercially reasonable;
- d. require independent Contractors seeking to secure applicable Service contracts to provide a Responsible Contractor Self-Certification Form to the Project Company in substantially the form attached to this policy. The Project Company reserves the right to disclose the contents of the Self Certification Form at its discretion;
- e. provide Project Company level annual report information to Star;
- f. maintain documentation for Contractors that have secured applicable Service contracts;
- g. incorporate any trade union/service union input received, where applicable and commercially reasonable, in the development of Responsible Contractor lists;
- h. maintain a list of any interested Responsible Contractors (names, addresses and telephone numbers) to which the Responsible Contractor Policy may be applicable.

2. Contractors: Contractors will have the responsibility for the following:

- a. submit to the Project Company a Responsible Contractor self certification on a form approved by the Project Company; and



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

b. communicate the Policy to subcontractors.

F. Minimum Contract Value: The Policy shall absolutely apply to all contracts of a minimum size

of \$100,000 individually or annually as applicable. Minimum contract size refers to the total project value of the work being contracted for and not to any desegregation by trade or task. For example, a \$100,000 contract to paint two structures in a single complex would not be treated as two \$50,000 contracts, each less than the minimum contract size. Disaggregation designed to evade the requirements of the Policy is not permitted. The Project Company may, at its sole discretion, lower the minimum contract value for a specific Service as it sees appropriate. When the Policy is not applicable by its terms, the Project Company shall attempt not to act in contravention of the Policy.

G. Fair Wages and Fair Benefits: The Policy avoids a narrow definition of "fair wage" and "fair benefits" that might not be practical in all markets. The Policy looks to local practices of responsible contractors concerning type of trade and type of project. The Policy recognizes that practices and labor market conditions vary across the county and that flexibility in implementation is important.

In determining "fair wages" and "fair benefits" concerning a specific contract in a specific market, items that may be considered include local wage practices of responsible contractors, state laws, prevailing wages, labor market conditions and other items.

H. Selection Process: Given the time and expense required to solicit and evaluate potential Contractors, it is not essential that the Project Company solicit all potential Contractors.

The Project Company must ensure for contracts covered by this Policy, to the extent commercially reasonable, that there is a selection process that is inclusive of potentially eligible Responsible Contractors. Competitive bidding does not necessarily assure inclusion of Responsible Contractors. Care must be taken that if applicable Service contracts covered by this policy are competitively bid, then bidders include potentially eligible Responsible Contractors. However, for the avoidance of any doubt, the Project Company will retain full commercial discretion to conduct the bidding process in a manner that is consistent with their overriding responsibilities to enhance investment value for the Project and to seek to minimize or control costs while ensuring the provision of relevant and high quality services.

J. Neutrality: The Project Company supports a position of neutrality in the event there is a legitimate attempt by a labor organization to organize workers performing Services at the Project, and agrees to comply with all applicable laws in connection therewith.



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Responsible Contractor Self Certification

In connection with its bid for a contract to provide Services to the Project Company, the undersigned Contractor certifies as follows:

1. The undersigned Contractor has received and reviewed the Responsible Contractor Policy of the Project Company (as it may be amended or modified from time to time, the "Policy");

2. The undersigned Contractor qualifies as a Responsible Contractor as defined in the Policy; and

3. The undersigned Contractor agrees to prepare and provide to the Project Company (or its designee) the notices and reports required by the Policy, and further agrees to carry out the other obligations of a Contractor as set out in the Policy.

Any capitalized terms used but not defined herein shall have the meanings set out in the Policy.

Name of Contractor: _____

Name of person signing on behalf of Contractor: _____

Signature of representative: _____

Date: _____



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Appendix C

Star America and the Developer are exploring a potential business transaction involving the Project (collectively, the "Transaction") and each Party acknowledge that they have and will continue to be given access to confidential information of the other parties (and their subsidiaries, affiliates and related parties), and all such information, including the Original LOI (as defined in the LOI), Letter of Intent ("LOI"), Term Sheets including all appendices ("Term Sheets"), each as amended from time to time, and including information that relating to the financial status, business processes or otherwise, of the other parties (and their subsidiaries, affiliates and related parties), shall be treated as wholly confidential.

Parties in accordance with this Appendix C. In the course of such discussions regarding the Transaction certain Information (as defined below) will be revealed by or through a Party (whether in writing, orally or by another means) (a "Disclosing Party") to the other Party (a "Receiving Party") to evaluate the Transaction (the "Purpose") The parties agree as follow:

1. "Information" shall include all information, whether conveyed in writing, orally, in electronic format or otherwise that a Receiving Party or any of its affiliates, or any of its or their directors, officers, partners, members, employees, independent contractors, agents, investors (and potential investors), financing sources and/or financial and legal advisors (collectively, "Representatives") receives in connection with the Project from the Disclosing Party or its Representatives concerning any Protected Party (as defined below) or any Protected Party's business and affairs, including without limitation information, whether of a technical, business or other nature, regarding any Protected Party, including, trade secrets, know-how and information relating to the budgets, research and development, technology, business plans, patents, agreements, services, promotional and marketing activities, finances and strategies, business structures, operations or ventures or other business and affairs or plans, of the Protected Parties, together with analyses, compilations, studies or other information prepared, developed or derived by the receiving Party or its Representatives in connection therewith. "Protected Parties" means each Party and such Party's affiliates, principals, investors, business associates, Project partners, Project team members, joint venturers, co-investors, Project investors and each of the principals of the foregoing.

2. The Information shall be kept confidential and shall not, without the Disclosing Party's prior written consent, be disclosed by the receiving Party or its Representatives, in any manner whatsoever, in whole or in part, and shall not be used by the Receiving Party or its Representatives in any way other than for the Purpose. Moreover, the Receiving Party agrees to reveal the Information only to its Representatives who have a need to know the Information for the Purpose and who shall be directed to keep confidential the Information except that there shall be no obligation to inform a Representative of the confidential nature of the Information and direct them to abide with the terms of this Agreement where that person is subject to professional obligations of confidentiality in respect of the Information or is otherwise bound by obligations of confidentiality in respect of the Information that are sufficient to ensure compliance with the obligations of confidentiality and non-use herein. The Receiving Party shall protect such Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case, using no less than a reasonable degree of care. The Receiving Party acknowledges that it shall be responsible for any breach of this obligation by its Representatives.

3. All Information provided to the Receiving Party shall remain the property of the Disclosing Party. This Agreement shall not be construed as creating, conveying, transferring, granting or conferring upon any Party any rights, license or authority in or to the information exchanged, except the limited right to use Information as specified in Section 2. Furthermore and specifically, no license or conveyance of any intellectual property rights is granted or implied by this Appendix C.

4. The Information will be destroyed promptly upon its written request of the Disclosing Party, provided, however, that to the extent required by law, Receiving Party may retain the Information; provided any such retained Information is kept confidential in accordance with this Appendix C so long as it survives.



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

5. This Appendix C shall be inoperative as to such portions of the Information which (i) are already known to the Receiving Party or its Representatives free of any obligation of confidence at the time it was communicated to the Receiving Party, (ii) become generally available to the public through no fault of or action by the Receiving Party or its Representatives in violation of this Agreement, (iii) becomes available to the Receiving Party or its Representatives, after disclosure hereunder on a non-confidential basis from a source, other than the Disclosing Party or any of its Representative, which, to the Receiving Party's knowledge, is not prohibited from disclosing such portions to the Receiving Party by a legal or fiduciary obligation to the Disclosing Party, or (iv) is or was developed independently by or on behalf of the Receiving Party or its Representatives.

6. In the event that the Receiving Party or anyone to whom it transmits the Information pursuant to this Appendix C is requested or becomes legally compelled to disclose any of the Information, the Receiving Party will provide the Disclosing Party with prompt written notice, if legally permitted, so that it may seek a protective order or other appropriate remedy, at the Disclosing Party's sole cost and expense, and/or waive compliance with the provisions of this Appendix C. In the event that such protective order or other remedy is not obtained, or the Disclosing Party waives compliance with the provisions of this Appendix C, the Receiving Party may furnish only that portion of the Information which the Receiving Party is advised by counsel (including in-house counsel) that it is legally required to provide. Notwithstanding the foregoing, no notice or other compliance with this Section 6 shall be required if Receiving Party or its Representatives are required to disclose Information pursuant to a broad or routine audit, examination or request for information by any legal, judicial, governmental, administrative, or regulatory authority having jurisdiction over Receiving Party or any of its Representatives that is not specific to the Information provided hereunder.

7. In the event of any breach of this Appendix C by the Receiving Party and/or its Representatives, the Disclosing Party would be irreparably and immediately harmed and could not be made whole by monetary damages. Accordingly, the Disclosing Party, in addition to any other remedy to which it may be entitled in law or equity, shall be entitled to seek any injunction(s) to prevent breaches of this Appendix C and to compel specific performance of this Agreement, without the need for proof of actual damages or posting a bond. Any failure by a Party to enforce the strict performance of any provision of this Appendix C shall not constitute a waiver of such Party's right to subsequently enforce such provision.

8. If any provision of this Appendix C is held to be invalid or unenforceable, that provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this Agreement, but without invalidating any of the remaining provisions.

9. Neither Party shall use the other Party's name (or that of any affiliate or related-party of such Party) in any public manner, context or format (including reference on or links to websites, press releases, etc.) without the prior written approval of the other Party.

10. Upon the expiration of the Exclusivity Period, this Appendix C shall terminate on the date (the "Termination Date") which is earlier of (x) the date which is one (1) year after the last day of the Exclusivity Period, (y) the date which is ten (10) days after the date either Party provides the other Party with written notice of termination of the LOI or (z) the date on which the Parties enter into a definitive agreement.

11. Upon the expiration or termination of this Appendix C in accordance with Section 9(x) or (y), the obligations set forth in Sections 1 through 8 of this Appendix C shall survive for a period of one (1) year after the Termination Date and the obligation in Section 0 shall survive forever.

268

EXHIBIT E

ESG Questionnaire

See Attached



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Star America Portfolio Company ESG Questionnaire



Portfolio Company ESG Questionnaire

Project Name:
Person Completing Form:
Reporting Period:
Date Completed:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Star America ESG Policy – Restatement of Purpose

The purpose of the Star America ESG Policy (the “**Policy**”) is to define Star America’s approach to integrating aspects of environmental, social, and governance (“**ESG**”) risks and related value creation opportunities into our investments and company operations. This policy includes Star America’s Responsible Contractor Policy and shall provide an overall framework for improving ESG measures in both investments and operations.

Star America commits to consider material ESG issues in the course of its due diligence and in the monitoring of portfolio investments to the extent reasonably practical under the circumstances, subject, in any event, to the provisions of the Partnership Agreements and the Confidential Private Placement Memorandums of the Funds, and to the duty of Star America to seek to maximize the returns on investment for all of the partners of its Funds.

For the purposes of the Policy, “material” ESG issues are defined as those issues that Star America, in its sole and absolute discretion, determines have the potential to have a direct substantial impact on an organization’s ability to create, preserve, or erode economic value, as well as environmental and social value for itself and its stakeholders.

Portfolio Company Questionnaire - Purpose and Use of Information

The purpose of this Questionnaire is to gather relevant Environmental, Social, and Governance (ESG) information for the various portfolio companies under management by Star America. The data collected on these forms will assist Star America in assessing and reporting ESG opportunities and risks across its portfolio, as well as relevant performance of the investments in relation to ESG criteria. The information provided in this form may be used by Star America in a variety of ways, including ESG reporting to LPs, annual reporting to the Principles of Responsible Investing (PRI) initiative, internal audits/assessments, and development of reports and case studies.

This form shall be completed for each Project Company a minimum of once per year.

Instructions and Guidance

This document should be completed by Asset Management staff of Star America, with assistance from the Investment Team as necessary. In gathering information for the Questionnaire, the person completing the form shall consult with Project Company staff and major subcontractors, particularly the lead contractor and/or operator responsible for construction and operations activities.

Persons are recommended to use their sole discretion and best judgement in completing the form. In completing the document, any ambiguity, questions, or major issues shall be brought to the attention of the Star America ESG Committee for consultation and resolution.



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Environmental

Environment: Opportunities and Environmental Risks

1. Has the project/asset been assessed on its physical vulnerability to climate change (storms, flooding, etc.)?

Yes No

Comments:

2. Has the project/asset faced any environmental litigation over the last three years?

Yes No

Comments:

Environment: Development Phase

3. Is the Project located on or near, or impact in any way, sensitive areas in terms of biodiversity, endangered species, protected wetlands, or other environmentally sensitive areas?

Yes No

Comments/Description of impact and areas of interest:

Have Compensatory and Mitigating Measures been put in place? Explain

4. Has an Environmental Impact Study (EIS) or Environmental Assessment (Phase 1/Phase 2) been performed for the Project?

Yes No EIS Phase 1 EA Phase 2 EA

Comments/Significant Findings:

5. Have Site Remediation, Environmental Management Systems, Water Treatment, Waste Reduction been considered in the Development Phase?

Yes No Site Remediation Water Treatment
 Environmental Management Systems Waste Reduction
 Other

Comments/Description of Measures:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Environment: Construction Phase

6. Has an Environmental Management System been set up to prevent and monitor potential contamination during the construction phase?

Yes No

Comments/Description of Management System:

7. Have initiatives been implemented to treat wastewater on site? (choose all the apply)

Yes No Mobile Water Treatment Plants Rainwater Harvesting
 Non-aqueous cleaning Other

Comments/Description of Wastewater Treatment Efforts:

8. Have initiatives been implemented to reuse or lessen waste production?

Yes No Waste Reuse/Recycling Technical Alternatives
 Optimization of Waste Sorting Other

Comments/Description of Measures:

9. Have initiatives been implemented to reduce disturbance caused by the construction?

Yes No Noise Dust Reduction Other
 Odor Traffic

Comments/Description of Measures:

10. Did a soil or groundwater remediation process occur during the construction of the asset?

Yes No

Comments/Description of Measures:

11. Please list any other notable environmental impact or measure that occurred during the construction phase.

Comments/Description of Measures:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Environment: Operations Phase

12. Have there been efforts during the operations phase to improve energy efficiency, increase the use of renewable energy, or eliminate reliance on fossil fuel based energy sources?

Yes No

Comments/Description of Energy Efficiency Efforts

13. Has an Environmental Management System been set up to prevent and monitor potential contamination during the operations phase?

Yes No

Comments/Description of Management System:

14. Have initiatives been implemented to collect and treat stormwater and wastewater during operations?

Yes No Mobile Water Treatment Plants Rainwater Harvesting
 Green Infrastructure Other

Comments/Description of Stormwater/Wastewater Efforts:

15. Have initiatives been implemented to reuse or lessen waste production during operations?

Yes No Waste Reuse/Recycling Technical Alternatives
 Optimization of Waste Sorting Other

Comments/Description of Measures:

16. Have initiatives been implemented to reduce disturbance caused by the Project?

Yes No Noise Dust Reduction Other
 Odor Traffic Management

Comments/Description of Measures:

17. Please list any other notable environmental impact or measure that occurred during the operations phase.

Comments/Description of Measures:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Social

Social: Opportunities and Social / Societal risk

18. Has the project/asset faced any social or societal litigation over the last year?

Yes No

Comments:

Social: Development Phase

19. Did the project cause any public protest or opposition?

Yes No

Public Protests

Legal Proceedings

Demonstrations

Other

Comments/Description of Incidents:

20. Did the Project provide ample opportunity for community input during the Development Phase?

Yes No

Public Review of EIS/Docs.

Voting Referendum

Public Meetings

Other

Comments/Description of Community Input:

21. Did the project involve the resettlement of local populations? If so, what is the number of displaced persons (real or expected)?

Yes No

Number of Displaced Persons =

Comments on Displaced Persons:

22. Does the Project Involve the use of Eminent Domain?

Yes No

If yes, please explain:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Social: Construction Phase

23. Please provide the contractor and major subcontractors EMR rating (or similar equivalent measure) for the past year:

Main Contractor Subcontractor 1 Subcontractor 2

If any EMR (or equivalent) is greater than 1.0 or has increased by 25% since the past year, please explain:

24. Provide the following information for the past year, including sub-contractors:

- Total permanent FTE employee headcount at beginning/end of fiscal year
- Total permanent FTE women employees at the end of the fiscal year
- Total permanent FTE disabled employees at the end of the fiscal year
- Total non-permanent FTE employee headcount at end if fiscal year

25. Provide the following FTE training information for the past year:

- Training budget as a percentage of total payroll
- Number of FTE employees who have undergone training during the year

26. Provide the following safety information for the past year, including sub-contractors:

- Number of Man-Hours Worked
- Number of Work Accidents (including any lost day)
- Number of Fatal Work Accidents
- Comments/Description of Workplace Accidents/Injuries:*

27. Has the project faced any strikes in the past year?

Yes No

If yes, please explain:

28. Has any member of the public been injured or harmed during the past year?

Yes No

If yes, please explain:

29. Does the Project have DBE/MWBE/SBE/Local Labor, or other similar goals during the Construction Phase?

Yes No

Please provide the Project goals and actual performance for the past year:

30. Has there been any significant impact or disruption to the local community during the construction of the Project (i.e. public safety, disruption/deterioration of living conditions, traffic during construction, and noise protection)

Yes No

If yes, please explain:

31. Did the Project involve impact to culturally significant places and practices, or historic assets during construction?

Yes No

If yes, please explain:



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

32. Did the Project include any opportunities for community engagement during the construction phase? Examples include charitable contributions, community events, involvement in local organizations, community outreach meetings, volunteer opportunities, etc.

[] Yes [] No

If yes, please explain:

33. Please list any other notable social impact or measure that occurred during the construction phase.

Comments/Description of Measures:

Social: Operations Phase

34. Please provide the operator and major subcontractors EMR rating (or similar equivalent measure) for the past year:

Main Contractor

Subcontractor 1

Subcontractor 2

If any EMR (or equivalent) is greater than 1.0 or has increased by 25% since the past year, please explain:

35. Provide the following information for the past year, including sub-contractors:

Number of Man-Hours Worked

Number of Work Accidents (including any lost day)

Number of Fatal Work Accidents

Comments/Description of Workplace Accidents/Injuries:

36. Does the Project have DBE/MWBE/SBE/Local Labor, or other similar goals during the Operations Phase?

[] Yes [] No

Please provide the Project goals and actual performance for the past year:

37. Has there been any significant impact or disruption to the local community during the Operations of the Project (i.e. public safety, disruption/deterioration of living conditions, traffic during construction, and noise protection)

[] Yes [] No

If yes, please explain:

38. Did the Project include any opportunities for community engagement during the operations phase? Examples include charitable contributions, community events, involvement in local organizations, community outreach meetings, volunteer opportunities, etc.

[] Yes [] No



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

If yes, please explain:

39. Please list any other notable social impact or measure that occurred during the operations phase.

Comments/Description of Measures:

Governance

Governance: Opportunities and Governance Risk

40. Has the project/asset faced any governance litigation over the last year?

Yes No

Comments:

41. Are there any independent directors on the Project Company Board?

Yes No Percentage =

42. Are there any women on the Project Company Board?

Yes No Percentage =

43. Are there any women holding roles on the Project Company Executive Committee, Management Committee, or equivalent?

Yes No Percentage =

44. Does the Project Company have preventative measures to address bribery and/or money laundering issues that applies to the project and its subcontractors?

Yes No

Comments:

45. Is the Project Company and/or subcontractors subject to limits for political contributions per State or local law?

Yes No

Comments:

46. Is the Project Company and/or subcontractors subject to solicitation of former public-sector officials or owner staff for employment?

Yes No

Comments:

47. Is the Project Company and/or subcontractors subject any conflicts of interest provisions for the project, including conflicts with owners' advisors or other agencies?

Yes No

Comments:

48. Please list any other notable governance issue that relates to the Project



Star America Fund GP LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Phone 516-882-4100
Fax 516-882-4058

Comments/Description of Measures:

279

EXHIBIT F

Approved Vendors

To be separately agreed to between EPC Contractor and Owner in consultation with the Independent Engineer.

EXHIBIT G

Components Warranties' Specifications

To be provided by EPC Contractor to Owner on a case by case, based on the System and Components and subject to the Owner's prior approval in consultation with the Independent Engineer.

281

This is Exhibit "G" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

4F6A7FBBFE6C441...

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

CCDC 14

**Design-Build
Stipulated Price Contract**

2 0 1 3

**SAULT AREA HOSPITAL
BESS/UPS System Project**

This agreement is protected by copyright and is intended by the parties to be an unaltered version of CCDC 14 - 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.



CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

The Canadian Construction Documents Committee (CCDC) is a national joint committee responsible for the development, production and review of standard Canadian construction contracts, forms and guides. Formed in 1974 the CCDC is made up of volunteer representatives from:

Public-Sector Owners

Private-Sector Owners

*The Association of Consulting Engineering Companies-Canada

*The Canadian Construction Association

*Construction Specifications Canada

*The Royal Architectural Institute of Canada

*Committee policy and procedures are directed and approved by the four constituent national organizations.

This document has also been endorsed by the Canadian Design-Build Institute.



Comments and inquiries should be directed to:
Canadian Construction Documents Committee
1900-275 Slater Street
Ottawa, ON
K1P 5H9
613 236-9455
info@ccdc.org
ccdc.org

CCDC guides are products of a consensus-building process aimed at balancing the interests of all parties on the construction project. They reflect recommended industry practices. Readers are cautioned that CCDC guides do not deal with any specific fact situation or circumstance. CCDC guides do not constitute legal or other professional advice. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use and interpretation of these guides.

CCDC Copyright 2013

Must not be copied in whole or in part without the written permission of the CCDC.



TABLE OF CONTENTS

AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

- A-1 Design Services and the Work
- A-2 Agreements and Amendments
- A-3 Contract Documents
- A-4 Contract Price
- A-5 Payment
- A-6 Receipt of and Addresses for Notices in Writing
- A-7 Language of the Contract
- A-8 Succession

DEFINITIONS

- Change Directive
- Change Order
- Construction Documents
- Construction Equipment
- Consultant
- Contract
- Contract Documents
- Contract Price
- Contract Time
- Design-Builder
- Design Services
- Drawings
- Notice in Writing
- Other Consultant
- Owner
- Owner's Advisor
- Owner's Statement of Requirements
- Payment Certifier
- Place of the Work
- Product
- Project
- Shop Drawings
- Specifications
- Subcontractor
- Substantial Performance of the Work
- Supplemental Instruction
- Supplier
- Temporary Work
- Value Added Taxes
- Work
- Working Day

GENERAL CONDITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT**PART 1 GENERAL PROVISIONS**

- GC 1.1 Contract Documents
- GC 1.2 Law of the Contract
- GC 1.3 Rights and Remedies
- GC 1.4 Assignment
- GC 1.5 Confidentiality

PART 2 OWNER'S RESPONSIBILITIES

- GC 2.1 Owner's Information
- GC 2.2 Role of the Owner
- GC 2.3 Owner's Advisor
- GC 2.4 Role of the Payment Certifier
- GC 2.5 Owner's Review of the Design and the Work
- GC 2.6 Work by Owner or Other Contractors

PART 3 DESIGN-BUILDER'S RESPONSIBILITIES

- GC 3.1 Control of the Design Services and the Work
- GC 3.2 Design-Builder's Review of Owner's Information
- GC 3.3 Role of the Consultant
- GC 3.4 Other Consultants, Subcontractors, and Suppliers
- GC 3.5 Construction Documents
- GC 3.6 Design Services and Work Schedule
- GC 3.7 Supervision
- GC 3.8 Labour and Products
- GC 3.9 Documents at the Site
- GC 3.10 Shop Drawings
- GC 3.11 Non-Conforming Design and Defective Work

PART 4 ALLOWANCES

- GC 4.1 Cash Allowances
- GC 4.2 Contingency Allowance

PART 5 PAYMENT

- GC 5.1 Financing Information Required of the Owner
- GC 5.2 Applications for Progress Payment
- GC 5.3 Progress Payment
- GC 5.4 Substantial Performance of the Work
- GC 5.5 Payment of Holdback upon Substantial Performance of the Work
- GC 5.6 Progressive Release of Holdback
- GC 5.7 Final Payment
- GC 5.8 Deferred Work
- GC 5.9 Non-conforming Design Services and Work

PART 6 CHANGES IN THE CONTRACT

- GC 6.1 Owner's Right to Make Changes
- GC 6.2 Change Order
- GC 6.3 Change Directive
- GC 6.4 Concealed or Unknown Conditions
- GC 6.5 Delays
- GC 6.6 Claims for a Change in Contract Price

PART 7 RIGHT TO SUSPEND OR TERMINATE

- GC 7.1 Owner's Right to Suspend the Design Services or Terminate the Contract Before the Work Commences
- GC 7.2 Owner's Right to Perform the Design Services or Work, Terminate the Design-Builder's Right to Continue with the Design Services or Work, or Terminate the Contract
- GC 7.3 Design-Builder's Right to Suspend the Design Services or Work, or Terminate the Contract

PART 8 DISPUTE RESOLUTION

- GC 8.1 Negotiation, Mediation and Arbitration
- GC 8.2 Retention of Rights

PART 9 PROTECTION OF PERSONS AND PROPERTY

- GC 9.1 Protection of Work and Property
- GC 9.2 Toxic and Hazardous Substances and Materials
- GC 9.3 Artifacts and Fossils
- GC 9.4 Construction Safety
- GC 9.5 Mould

PART 10 GOVERNING REGULATIONS

- GC 10.1 Taxes and Duties
- GC 10.2 Laws, Notices, Permits, and Fees
- GC 10.3 Patent Fees
- GC 10.4 Workers' Compensation

PART 11 INSURANCE AND CONTRACT SECURITY

- GC 11.1 Insurance
- GC 11.2 Contract Security

PART 12 INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY

- GC 12.1 Definition and Survival
- GC 12.2 Indemnification
- GC 12.3 Limitation of Liability for Design Services
- GC 12.4 Waiver of Claims
- GC 12.5 Warranty

CCDC 14 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 14 can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 14.

CCDC Copyright 2013

Must not be copied in whole or in part without the written permission of the CCDC.

285

AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

For use when a stipulated price is the basis of payment.

This Agreement made on the 28th day of January in the year 2021.

by and between the parties:

Demand Power Group Inc.

hereinafter called the "Owner"
and

Deltro Electric Ltd.

hereinafter called the "Design-Builder"

The Owner and the Design-Builder agree as follows:

ARTICLE A-1 DESIGN SERVICES AND THE WORK

The Design-Builder shall:

- 1.1 provide the Design Services, and
- 1.2 perform the Work for

SAULT AREA HOSPITAL
BESS/UPS System Project

insert above the name of the Work

located at

750 Great Northern Road, Sault Ste. Marie, ON

insert above the Place of the Work

for which the Agreement has been signed by the parties, and for which

N-Sci. Technologies Inc.

insert above the name of the Consultant

is acting as, and is hereinafter called, the "Consultant", and for which

insert above the name of the Payment Certifier

is acting as, and is hereinafter called the Payment Certifier, and for which

insert above the name of the Owner's Advisor

is acting as, and is hereinafter called the Owner's Advisor[®];
(*Strike out if none appointed)

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.
CCDC 14 – 2013

286

1.3 subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work* by the tbd day of tbd in the year 2021 .

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 This *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, including bidding documents that are not expressly listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS.
- 2.2 This *Contract* may be amended only as provided for in the *Contract Documents*.

ARTICLE A-3 CONTRACT DOCUMENTS

- 3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – DESIGN SERVICES AND THE WORK:
 - Agreement Between *Owner* and *Design-Builder*
 - Definitions in this *Contract*
 - General Conditions of this *Contract*
 - *Owner's Statement of Requirements*, consisting of the following (list those written requirements and information constituting those documents intended to comprise the *Owner's Statement of Requirements*):

ITEM (attached to this contract)

1. DPGI - SAH RFP Document , Dated November 27, 2020 - 25 pages
2. N-Sci 90% Drawings Package - rev 4, dated November 26, 2020 - 11 pages
3. Q & A response from RFP period - 3 pages
7. DPGI Master Technical Requirement Specification, dated 01 - 33 pages
8. DPGI Submission List - dated 01/20/21 - 5 pages

- *Construction Documents*

- * ITEM (attached to this contract)
 4. Deltro Submission package, dated December 11, 2020 - 9 pages
 5. Deltro Electric Proposal breakdown for full scope award. - 1 page
 6. Supplementary Conditions - dated January 20, 2021-

IFC drawings once completed and signed off by the owner.

* (Insert here, attaching additional pages if required, a list identifying all other *Contract Documents*, e.g. *Supplementary Conditions*; *Proposals*; *Specifications* (giving a list of contents with section numbers and titles, number of pages, date and revision date(s), if any); *Drawings* (giving drawing number, title, date, revision date or mark); *Addenda* (giving title, number, date).

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

287

ARTICLE A-4 CONTRACT PRICE

4.1 The *Contract Price*, which excludes *Value Added Taxes*, is:

Four Million, Three Hundred Thousand, and -----00 /100 dollars \$ 4,300,000.00

4.2 *Value Added Taxes* (of 13 %) payable by the *Owner* to the *Design-Builder* are:

Five Hundred & Fifty Nine Thousand, and -----00 /100 dollars \$ 559,000.00

4.3 Total amount payable by the *Owner* to the *Design-Builder* is:

Four Million, Eight Hundred & Fifty Nine Thousand, and -----00 /100 dollars \$ 4,859,000.00

4.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

4.5 Amounts are in Canadian funds.

ARTICLE A-5 PAYMENT

5.1 Subject to provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of -----Ten----- percent (10 %), the *Owner* shall:

- .1 make progress payments to the *Design-Builder* on account of the *Contract Price* when due in the amount certified by the *Payment Certifier*, together with such *Value Added Taxes* as may be applicable to such payment, and
- .2 upon *Substantial Performance of the Work*, pay to the *Design-Builder* the unpaid balance of the holdback amount when due, together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, pay to the *Design-Builder* the unpaid balance of the *Contract Price* when due, together with such *Value Added Taxes* as may be applicable to such payment.

5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler and machinery insurance policies, payments shall be made to the *Design-Builder* in accordance with the provisions of GC 11.1 – INSURANCE.

5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
 - (1) 2% per annum above the prime rate for the first 60 days.
 - (2) 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

The Royal Bank of Canada

(Insert name of chartered lending institution whose prime rate is to be used)

for prime business loans as it may change from time to time.

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of claims in dispute that are resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date on which the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

6.1 *Notices in Writing* will be addressed to the recipient at the address set out below.

6.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

288

- 6.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 6.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission.
- 6.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

Owner

Demand Power Group Inc.

*name of Owner**

2 Pardee Ave., Suite 302, Toronto ON, M6K 3H5

Address

(855) 336-2368
facsimile number

dbrown@demandpower.ca
email address

Design-Builder

Deltro Electric Ltd.

*name of Design-Builder**

1706 Mattawa Avenue, Mississauga, ON L4X 1K1

Address

(905) 566-8217
facsimile number

samuel.mcfall@deltro.ca
email address

Owner's Advisor^{*}**

*name of Owner's Advisor**

Address

facsimile number

email address

* If it is intended that the notice must be received by a specific individual, indicate that individual's name.
** Strike out this entry if no Owner's Advisor is designated as per GC 2.3 – OWNER'S ADVISOR.

ARTICLE A-7 LANGUAGE OF THE CONTRACT

7.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English/~~French~~^{***} language shall prevail.

*** Complete this statement by striking out the inapplicable term.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

289

7.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

ARTICLE A-8 SUCCESSION

8.1 This *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and permitted assigns.

In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED

in the presence of:

WITNESS

OWNER

Demand Power Group Inc.

name of Owner

signature

signature

name of person signing

name and title of person signing

signature

name of person signing

WITNESS

DESIGN-BUILDER

Deltro Electric Ltd.

name of Design-Builder

signature

signature

name of person signing

name and title of person signing

signature

name of person signing

- N.B. Where legal jurisdiction, local practice, or Owner or Design-Builder requirement calls for:
- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
 - (b) the affixing of a corporate seal, this Agreement should be properly sealed.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CCDC 14 – 2013

290

DEFINITIONS

The following Definitions shall apply to all *Contract Documents*.

Change Directive

A *Change Directive* is a written instruction signed by the *Owner* directing a change in the *Work* or in the *Design Services* within the general scope of the *Contract Documents*.

Change Order

A *Change Order* is a written amendment to the *Contract* signed by the *Owner* and the *Design-Builder* stating their agreement upon:

- a change in the *Work* or in the *Design Services*;
- an amendment to the *Owner's Statement of Requirements*, if any;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.

Construction Documents

The *Construction Documents* consist of *Drawings*, *Specifications*, and other documents prepared by or on behalf of the *Design-Builder*, based on the *Contract Documents*, and accepted in writing by the *Owner* and the *Design-Builder* as meeting the *Owner's Statement of Requirements* and the general intent of the *Contract Documents*.

Construction Equipment

Construction Equipment means machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

Consultant

The *Consultant* is the person or entity identified as such in the Agreement. The *Consultant* is the architect, the engineer, or entity licensed to practise in the province or territory of the *Place of the Work* and engaged by the *Design-Builder* to provide all or part of the *Design Services*.

Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities, and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

Contract Documents

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments thereto agreed upon between the parties.

Contract Price

The *Contract Price* is the amount stipulated in Article A-4 of the Agreement – CONTRACT PRICE.

Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – DESIGN SERVICES AND THE WORK from the date of the Agreement to the date of *Substantial Performance of the Work*.

Design-Builder

The *Design-Builder* is the person or entity identified as such in the Agreement.

Design Services

Design Services are the professional design and related services required by the *Contract Documents*.

Drawings

The *Drawings* are the graphic and pictorial portions of the *Construction Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

Notice in Writing

A *Notice in Writing* is a written communication between the parties that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Other Consultant

Other Consultant is a person or entity, other than the *Consultant*, that may be engaged by the *Design-Builder* to perform part of the *Design Services*.

Owner

The *Owner* is the person or entity identified as such in the Agreement.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

291

Owner's Advisor

The *Owner's Advisor*, if any, is the person or entity appointed by the *Owner* and identified as such in the Agreement.

Owner's Statement of Requirements

The *Owner's Statement of Requirements* consists of written requirements and information provided by the *Owner* and as listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments thereto agreed upon between the parties.

Payment Certifier

The *Payment Certifier* is the person or entity identified as such in the Agreement responsible for the issuance of certificates for payment.

Place of the Work

The *Place of the Work* is the designated site or location of the *Work* identified in the *Contract Documents*.

Product

Product or Products means material, machinery, equipment, and fixtures incorporated into the *Work*, but does not include *Construction Equipment*.

Project

The *Project* means the *Owner's* entire undertaking of which the *Work* may be the whole or a part thereof.

Shop Drawings

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Design-Builder* provides to illustrate details of portions of the *Work*.

Specifications

The *Specifications* are that portion of the *Construction Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the necessary services for the *Work*.

Subcontractor

A *Subcontractor* is a person or entity having a direct contract with the *Design-Builder* to perform a part or parts of the *Work* at the *Place of the Work*.

Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

Supplemental Instruction

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Owner* to supplement the *Contract Documents* as required for the performance of the *Work*.

Supplier

A *Supplier* is a person or entity having a direct contract with the *Design-Builder* to supply *Products*.

Temporary Work

Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the *Work* but not incorporated into the *Work*.

Value Added Taxes

Value Added Taxes means such sum as shall be levied upon the *Contract Price* by the federal or any provincial or territorial government and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Design-Builder* by tax legislation.

Work

The *Work* means the total construction and related services required by the *Contract Documents*, but does not include *Design Services*.

Working Day

Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

GENERAL CONDITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT**PART 1 GENERAL PROVISIONS****GC 1.1 CONTRACT DOCUMENTS**

- 1.1.1 The intent of the *Contract Documents* is to include the design, the labour, the *Products* and other services necessary for the design and performance of the *Work* by the *Design-Builder* in accordance with these documents. It is not intended, however, that the *Design-Builder* shall supply products or perform services or work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between the *Owner* and the *Consultant*, an *Other Consultant*, a *Subcontractor*, a *Supplier*, or their agent, employee, or any other person performing any portion of the *Design Services* or the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.6 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and the *Design-Builder*,
 - the Definitions,
 - Supplementary Conditions,
 - the General Conditions,
 - the *Owner's Statement of Requirements*,
 - the *Construction Documents*,
 - .2 later dated documents shall govern over earlier documents of the same type, and
 - .3 amendments to documents shall govern over documents so amended.
- 1.1.7 Copyright for the design and *Drawings* and electronic media, prepared on behalf of the *Design-Builder* belongs to the *Consultant* or *Other Consultants* who prepared them. Plans, sketches, *Drawings*, graphic representations, and *Specifications*, including, but not limited to computer generated designs, are instruments of the *Consultant's* or *Other Consultant's* services and shall remain their property, whether or not the *Work* for which they are made is executed and whether or not the *Design-Builder* has paid for the *Design Services*. Their alteration by the *Owner* is prohibited.
- 1.1.8 The *Owner* may retain copies, including reproducible copies, of plans, sketches, *Drawings*, graphic representations, and *Specifications* for information and reference in connection with the *Owner's* use and occupancy of the *Work*. Copies may only be used for the purpose intended and for a one time use, on the same site, and for the same *Project*. Except for reference purposes, the plans, sketches, *Drawings*, electronic files, graphic representations, and *Specifications* shall not be used for additions or alterations to the *Work* or on any other project without a written license from the *Consultant* or *Other Consultants* who prepared the documents, for their limited or repeat use.
- 1.1.9 The *Owner* shall be entitled to keep original models or renderings specifically commissioned and paid for.
- 1.1.10 Should the *Owner* alter a *Consultant's* or *Other Consultant's* instrument of service, or use or provide them to third parties other than in connection with the *Work* without informing the *Consultant* and without the *Consultant's* or *Other Consultant's* prior written consent, the *Owner* shall indemnify the *Design-Builder* against claims and costs (including legal costs) associated with such improper alteration or use.

GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

293

- 1.3.2 No action or failure to act by the *Owner, Design-Builder, Consultant, Other Consultant, Payment Certifier, or Owner's Advisor* shall constitute a waiver of any right or duty afforded to either the *Owner* or the *Design-Builder* under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed to in writing.

GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the prior written consent of the other, which consent shall not be unreasonably withheld.

GC 1.5 CONFIDENTIALITY

- 1.5.1 Where a confidentiality agreement exists or as the *Owner* otherwise expressly identifies and requires, the *Owner* and the *Design-Builder* shall keep confidential all matters respecting technical and commercial issues relating to or arising from the performance of the *Contract* and shall not, without the prior written consent of the other party, disclose any such matters, except in strict confidence, to their respective professional advisors.

PART 2 OWNER'S RESPONSIBILITIES**GC 2.1 OWNER'S INFORMATION**

- 2.1.1 The *Owner* shall furnish the information required to complete the *Contract* promptly to avoid delay in the performance of the *Contract*.
- 2.1.2 Unless the *Contract Documents* specifically state otherwise, the *Design-Builder* is entitled to rely on the accuracy of all information provided by or on behalf of the *Owner* without regard for the source of such information.
- 2.1.3 Notwithstanding any other provision of the *Contract*, the *Design-Builder* is not responsible for any design errors or omissions in any designs or *Specifications* provided by or on behalf of the *Owner* unless the *Design-Builder* has been specifically requested to review and has accepted in writing those designs and *Specifications* under the *Contract*.

GC 2.2 ROLE OF THE OWNER

- 2.2.1 The *Owner* will render any necessary decisions or provide instructions promptly to avoid delay in the performance of the *Contract*.
- 2.2.2 All communications between the *Owner* and the *Consultant, an Other Consultant, a Subcontractor, or a Supplier* shall be forwarded through the *Design-Builder*.
- 2.2.3 The *Owner* will be, in the first instance, the interpreter of the requirements of the *Owner's Statement of Requirements*.
- 2.2.4 The *Owner* will have authority to reject by *Notice in Writing* design or work which in the *Owner's* opinion does not conform to the requirements of the *Owner's Statement of Requirements*.
- 2.2.5 Whenever the *Owner* considers it necessary or advisable, the *Owner* will have authority to require a review of the *Design Services* and inspection or testing of the *Work*, whether or not such work is fabricated, installed or completed, in accordance with paragraph 2.5.5 of GC 2.5 – OWNER'S REVIEW OF THE DESIGN AND THE WORK.
- 2.2.6 During the progress of the *Design Services* or of the *Work* the *Owner* will furnish *Supplemental Instructions* related to the *Owner's Statement of Requirements* to the *Design-Builder* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Owner* and the *Design-Builder*.

GC 2.3 OWNER'S ADVISOR

- 2.3.1 When the *Owner* appoints an *Owner's Advisor*, the duties, responsibilities and limitations of authority of the *Owner's Advisor* shall be as set forth in the *Contract Documents*.
- 2.3.2 The duties, responsibilities and limitations of authority of the *Owner's Advisor* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Design-Builder*.
- 2.3.3 Subject to any notified limitations in authority, the *Design-Builder* may rely upon any written instructions or directions provided by the *Owner's Advisor*. Neither the authority of the *Owner's Advisor* to act, nor any decision to exercise or not exercise such authority, shall give rise to any duty or responsibility of the *Owner's Advisor* to the *Design-Builder, the Consultant, Other Consultants, Subcontractors, Suppliers, or their agents, employees or other persons performing any portion of the Design Services or the Work*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

- 2.3.4 If the employment of the *Owner's Advisor* is terminated, the *Owner* may appoint or reappoint an *Owner's Advisor* against whom the *Design-Builder* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Owner's Advisor*.

GC 2.4 ROLE OF THE PAYMENT CERTIFIER

- 2.4.1 The *Owner* shall designate a *Payment Certifier* who will review the *Design-Builder's* applications for payment and certify the value of the *Design Services* and of *Work* performed and *Products* delivered to the *Place of the Work*.
- 2.4.2 The duties, responsibilities and limitations of authority of the *Payment Certifier* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Design-Builder*.
- 2.4.3 Neither the authority of the *Payment Certifier* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Payment Certifier* to the *Design-Builder*, the *Consultant*, *Other Consultants*, *Subcontractors*, *Suppliers*, or their agents, employees or other persons performing any of the *Design Services* or the *Work*.
- 2.4.4 The *Payment Certifier* will take all reasonable steps to be accessible to the *Design-Builder* during performance of the *Contract* and shall render any necessary decisions or instructions promptly as provided in GC 5.3 – PROGRESS PAYMENT to avoid delay in the processing of payment claims.
- 2.4.5 Based on the *Payment Certifier's* observations and evaluation of the *Design-Builder's* applications for payment, the *Payment Certifier* will determine the amounts owing to the *Design-Builder* under the *Contract* and will issue certificates for payment as provided in Article A-5 of the Agreement – PAYMENT, GC 5.3 – PROGRESS PAYMENT and GC 5.7 – FINAL PAYMENT.
- 2.4.6 All communications between the *Payment Certifier* and the *Consultant*, an *Other Consultant*, a *Subcontractor*, or a *Supplier* shall be forwarded through the *Design-Builder*.
- 2.4.7 The *Payment Certifier* will promptly inform the *Owner* of the date of receipt of the *Design-Builder's* applications for payment as provided in paragraph 5.3.1.1 of GC 5.3 – PROGRESS PAYMENT.
- 2.4.8 If the *Payment Certifier's* services are terminated, the *Owner* shall immediately designate a new *Payment Certifier* against whom the *Design-Builder* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Payment Certifier*.
- 2.4.9 The *Owner* may provide to the *Consultant*, *Other Consultants*, *Subcontractors* or *Suppliers*, through the *Payment Certifier*, information as to the percentage of the *Design Services* and *Work* that has been certified for payment.

GC 2.5 OWNER'S REVIEW OF THE DESIGN AND THE WORK

- 2.5.1 The *Owner* shall review the design as set out in the design development documents and proposed *Construction Documents* as the *Design Services* proceed, to confirm that the design is in compliance with the *Owner's Statement of Requirements* and the *Contract Documents*.
- 2.5.2 The *Owner* shall complete the reviews in accordance with the schedule agreed upon, or in the absence of an agreed schedule, with reasonable promptness so as to cause no delay.
- 2.5.3 The *Owner's* review shall not relieve the *Design-Builder* of responsibility for errors or omissions in the *Construction Documents* or for meeting all requirements of the *Contract Documents* unless the *Owner* accepts in writing a deviation from the *Contract Documents*.
- 2.5.4 No later than 10 days after completing the review, the *Owner* shall advise the *Design-Builder* in writing that the *Owner* has accepted or rejected the proposed *Construction Documents*. If rejected, the *Owner* shall inform the *Design-Builder* of the reasons of non-conformance and the *Design-Builder* shall revise the proposed *Construction Documents* to address such non-conformance. The *Design-Builder* shall inform the *Owner* in writing of any revisions other than those requested by the *Owner*.
- 2.5.5 The *Owner* may order any portion or portions of the *Work* to be examined to confirm that the *Work* performed is in accordance with the requirements of the *Contract Documents*. If the *Work* is not in accordance with the requirements of the *Contract Documents*, the *Design-Builder* shall correct the *Work* and pay the cost of examination and correction. If the *Work* is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay all costs incurred by the *Design-Builder* as a result of such examination and restoration.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

GC 2.6 WORK BY OWNER OR OTHER CONTRACTORS

- 2.6.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform other design or other work with its own forces.
- 2.6.2 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall:
- .1 provide for the co-ordination of the activities and work of other contractors and *Owner's* own forces with the *Design Services* and the *Work*;
 - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
 - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*;
 - .4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the *Design-Builder* as it affects the *Design Services* and the *Work*; and
 - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors or the *Owner's* own forces.
- 2.6.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Design-Builder* shall:
- .1 afford the *Owner* and other contractors reasonable opportunity to store their products and execute their work;
 - .2 cooperate with other contractors and the *Owner* in reviewing their construction schedules; and
 - .3 promptly report to the *Owner* in writing any apparent deficiencies in the work of other contractors or of the *Owner's* own forces, where such work affects the proper execution of any portion of the *Design Services* or of the *Work*, prior to proceeding with that portion of the *Design Services* or of the *Work*.
- 2.6.4 Where the *Contract Documents* identify work to be performed by other contractors or the *Owner's* own forces, the *Design-Builder* shall co-ordinate and schedule the *Design Services* and the *Work* with the work of other contractors and the *Owner's* own forces as specified in the *Contract Documents*.
- 2.6.5 Where a change in the *Design Services* or in the *Work* is required as a result of the co-ordination and integration of the work of other contractors or *Owner's* own forces with the *Design Services* or with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 2.6.6 Disputes and other matters in question between the *Design-Builder* and the *Owner's* other contractors shall be dealt with as provided in Part 8 of the General Conditions – DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Design-Builder* shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the *Owners* contains a similar agreement to arbitrate.

PART 3 DESIGN-BUILDER'S RESPONSIBILITIES**GC 3.1 CONTROL OF THE DESIGN SERVICES AND THE WORK**

- 3.1.1 The *Design-Builder* shall have total control of the *Design Services* and of the *Work* and shall direct and supervise the *Design Services* and the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Design-Builder* shall be solely responsible for the *Design Services* and construction means, methods, techniques, sequences, and procedures with respect to the *Work*.
- 3.1.3 The *Design-Builder* shall preserve and protect the rights of the parties under the *Contract* with respect to the *Design Services* to be performed by the *Consultant* and *Other Consultants*, and shall enter into a contract with the *Consultant* and *Other Consultants* to perform *Design Services* as provided in the *Contract*, in accordance with laws applicable at the *Place of the Work*.
- 3.1.4 The *Design-Builder's* contract with the *Consultant* shall:
- .1 be based on the version of CCDC 15 – Design Services Contract between Design-Builder and Consultant in effect as at the date of this *Contract* or incorporate terms and conditions consistent with this version of CCDC 15, and
 - .2 incorporate terms and conditions of the *Contract Documents*, insofar as they are applicable.
- 3.1.5 Upon the *Owner's* request, the *Design-Builder* shall promptly provide the *Owner* with proof of compliance with paragraph 3.1.4.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

296

- 3.1.6 The *Design-Builder* shall be as fully responsible to the *Owner* for acts and omissions of the *Consultant* and *Other Consultants*, and of persons directly or indirectly employed by the *Consultant* and *Other Consultants*, as for acts and omissions of persons directly employed by the *Design-Builder*.
- 3.1.7 The *Design-Builder's* responsibility for *Design Services* performed by the *Consultant* and *Other Consultants* shall be limited to the degree of care, skill and diligence normally provided by consultants in the performance of comparable services in respect of projects of a similar nature to that contemplated by this *Contract*. The *Design-Builder* shall ensure that the *Consultant* and *Other Consultants* perform the *Design Services* to this standard.
- 3.1.8 The *Design-Builder* shall ensure that the *Consultant* and *Other Consultants* provide documentation required by authorities having jurisdiction in accordance with regulations and by-laws in effect at the *Place of the Work*.
- 3.1.9 The *Design-Builder* is solely responsible for the quality of the *Design Services* and of the *Work* and shall undertake any quality control activities specified in the *Contract Documents* or, if none are specified, as may be reasonably required to ensure such quality.
- 3.1.10 The *Design Builder* shall provide access to the *Work*, including parts being performed at locations other than the *Place of the Work* and to the location where the *Design Services* are performed, that the *Owner*, or the *Payment Certifier* may reasonably require to verify the progress of the *Work* or *Design Services* and their conformity to the requirements of the *Contract Documents*. The *Design-Builder* shall also provide sufficient, safe, and proper facilities at all times for such reviews of the *Design Services* or the *Work* and for inspection of the *Work* by authorized agencies.
- 3.1.11 If work is designated for tests, inspections, or approvals in the *Contract Documents*, or by the instructions of the *Owner*, the *Consultant*, or *Other Consultants*, or the laws or ordinances of the *Place of the Work*, the *Design-Builder* shall give the *Owner* reasonable notice of when the work will be ready for review and inspection.
- 3.1.12 The *Design-Builder* shall arrange for and shall give the *Owner* reasonable notice of the date and time of inspections by other authorities.
- 3.1.13 If the *Design-Builder* covers, or permits to be covered, work that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or, completed, the *Design-Builder* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and restore the covering work at the *Design-Builder's* expense.
- 3.1.14 The *Design-Builder* shall furnish promptly to the *Owner*, on request, a copy of certificates, test reports and inspection reports relating to the *Work*.

GC 3.2 DESIGN-BUILDER'S REVIEW OF OWNER'S STATEMENT OF REQUIREMENTS OR OTHER INFORMATION

- 3.2.1 The *Design-Builder* shall promptly notify the *Owner* of any significant error, inconsistency, or omission discovered in the *Owner's Statement of Requirements* or other information provided by or on behalf of the *Owner*. The *Design-Builder* shall not proceed with the *Design Services* or *Work* affected until the *Design-Builder* and the *Owner* have agreed in writing how the information should be corrected or supplied.
- 3.2.2 The *Design-Builder* shall not be liable for damages or costs resulting from such errors, inconsistencies, or omissions in the *Owner's Statement of Requirements* or other information provided by or on behalf of the *Owner*.

GC 3.3 ROLE OF THE CONSULTANT

- 3.3.1 The *Consultant* or *Other Consultants* will be, in the first instance, the interpreter of the requirements of the *Construction Documents* that they have prepared.
- 3.3.2 The duties, responsibilities and limitations of authority of the *Consultant* shall be in accordance with paragraph 3.1.4 of GC 3.1 – CONTROL OF THE DESIGN SERVICES AND THE WORK and shall be modified only with the written consent of the *Owner*, which consent shall not be unreasonably withheld.
- 3.3.3 If the *Consultant's* engagement is terminated, the *Design-Builder* shall immediately appoint or reappoint a *Consultant* against whom the *Owner* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Consultant*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

GC 3.4 OTHER CONSULTANTS, SUBCONTRACTORS AND SUPPLIERS

- 3.4.1 The *Design-Builder* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
1. enter into contracts or written agreements with *Other Consultants* to require them to perform *Design Services* as provided in the *Contract Documents*;
 2. enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform *Work* as required by the *Contract Documents*;
 3. incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Other Consultants*, *Subcontractors* and *Suppliers* insofar as they are applicable; and
 4. be as fully responsible to the *Owner* for acts and omissions of *Other Consultants*, *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Design-Builder*.
- 3.4.2 The *Design-Builder* shall indicate in writing, at the request of the *Owner*, the names of *Other Consultants*, *Subcontractors*, or *Suppliers* whose proposals or bids have been received by the *Design-Builder* which the *Design-Builder* would be prepared to accept for the performance of a portion of the *Design Services* or of the *Work*. Should the *Owner* not object before signing the subcontract, the *Design-Builder* shall employ *Other Consultants*, *Subcontractors* or *Suppliers* so identified by the *Design-Builder* in writing for the performance of that portion of the *Design Services* or of the *Work* to which their proposal or bid applies.
- 3.4.3 The *Owner* may, for reasonable cause, at any time before the *Design-Builder* has signed the subcontract, object to the use of a proposed *Other Consultant*, *Subcontractor* or *Supplier* and require the *Design-Builder* to employ another proposed *Other Consultant*, *Subcontractor* or *Supplier* bidder.
- 3.4.4 If the *Owner* requires the *Design-Builder* to change a proposed *Other Consultant*, *Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the differences resulting from such required change.
- 3.4.5 The *Design-Builder* shall not be required to employ any *Subcontractor*, *Supplier*, *Other Consultant*, person or firm to whom the *Design-Builder* may reasonably object.

GC 3.5 CONSTRUCTION DOCUMENTS

- 3.5.1 The *Design-Builder* shall submit the proposed *Construction Documents* to the *Owner* to review in orderly sequence and sufficiently in advance so as to cause no delay. The *Owner* and the *Design-Builder* shall jointly prepare a schedule of the dates for submission and return of proposed *Construction Documents*.
- 3.5.2 During the progress of the *Design Services*, the *Design-Builder* shall furnish to the *Owner* documents that describe details of the design required by the *Contract Documents*.
- 3.5.3 At the time of submission the *Design-Builder* shall advise the *Owner* in writing of any significant deviations in the proposed *Construction Documents* from the requirements of the *Contract Documents*. The *Owner* may or may not accept such deviations. Accepted deviations from the *Owner's Statement of Requirements* will be recorded in a *Change Order*.
- 3.5.4 When a change is required to the *Construction Documents* it shall be made in accordance with GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, or GC 6.3 – CHANGE DIRECTIVE.

GC 3.6 DESIGN SERVICES AND WORK SCHEDULE

- 3.6.1 The *Design-Builder* shall:
- .1 promptly after signing the Agreement, prepare and submit to the *Owner* a *Design Services* and *Work* schedule that indicates the timing of the major activities of the *Design Services* and of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Design Services* and the *Work* will be performed in conformity with the schedule;
 - .2 monitor the progress of the *Design Services* and of the *Work* relative to the schedule and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
 - .3 advise the *Owner* of any revisions required to the schedule as a result of extensions to the *Contract Time* as provided in Part 6 of the General Conditions – CHANGES IN THE CONTRACT.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

GC 3.7 SUPERVISION

- 3.7.1 The *Design-Builder* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representative shall not be changed except for valid reason.
- 3.7.2 The appointed representative shall represent the *Design-Builder* at the *Place of the Work*. Information and instructions provided by the *Owner* to the *Design-Builder's* appointed representative shall be deemed to have been received by the *Design-Builder* except that *Notices in Writing* otherwise required under the *Contract* shall be given as indicated in Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 3.8 LABOUR AND PRODUCTS

- 3.8.1 The *Design-Builder* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with the *Contract Documents* and their use acceptable to the *Owner*.
- 3.8.3 The *Design-Builder* shall maintain good order and discipline among the *Design-Builder's* employees involved in the performance of the *Work* and shall not employ anyone not skilled in the tasks assigned.

GC 3.9 DOCUMENTS AT THE SITE

- 3.9.1 The *Design-Builder* shall keep one copy of current *Owner's Statement of Requirements*, *Construction Documents*, *Shop Drawings*, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner*.

GC 3.10 SHOP DRAWINGS

- 3.10.1 The *Design-Builder* shall provide *Shop Drawings* as described in the *Contract Documents* or as the *Owner* may reasonably request.
- 3.10.2 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Design-Builder* for approval.
- 3.10.3 The *Design-Builder* shall review all *Shop Drawings* before providing them to the *Owner*. The *Design-Builder* represents by this review that the *Design-Builder* has:
- .1 determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
 - .2 checked and co-ordinated each *Shop Drawing* with the requirements of the *Contract Documents*.
- 3.10.4 If the *Owner* requests to review shop drawings, the *Design-Builder* shall submit them in an orderly sequence and sufficiently in advance so as to cause no delay in the *Design Services* or the *Work* or in the work of other contractors. The *Owner* and the *Design-Builder* shall jointly prepare a schedule of the dates for submission and return of *Shop Drawings*.
- 3.10.5 The *Owner's* review under paragraph 3.10.4 is for conformity to the intent of the *Contract Documents* and for general arrangement only. The *Owner's* review shall not relieve the *Design-Builder* of the responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Contract Documents* unless the *Owner* expressly accepts a deviation from the *Contract Documents* by *Change Order*.

GC 3.11 NON-CONFORMING DESIGN AND DEFECTIVE WORK

- 3.11.1 Where the *Owner* has advised the *Design-Builder*, by *Notice in Writing*, that designs or *Specifications* fail to comply with the *Owner's Statement of Requirements*, the *Design-Builder* shall ensure that the design documents or proposed *Construction Documents* are promptly corrected or altered.
- 3.11.2 The *Design-Builder* shall promptly correct defective work that has been rejected by *Notice in Writing* by the *Owner* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, design, use of defective products, or damage through carelessness or other act or omission of the *Design-Builder*.
- 3.11.3 The *Design-Builder* shall promptly make good other contractors' work destroyed or damaged by such removals or replacements at the *Design-Builder's* expense.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

299

- 3.11.4 If, in the opinion of the *Owner*, it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Design-Builder* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Design-Builder* does not agree on the difference in value, the *Design-Builder* shall refer the dispute to Part 8 of the General Conditions – DISPUTE RESOLUTION.

PART 4 ALLOWANCES**GC 4.1 CASH ALLOWANCES**

- 4.1.1 The *Contract Price* includes the cash allowances, if any, stated in the *Owner's Statement of Requirements*. The scope of work or costs included in such cash allowances shall be as described in the *Owner's Statement of Requirements*.
- 4.1.2 The *Contract Price*, and not the cash allowances, includes the *Design-Builder's* overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner*.
- 4.1.4 Where the actual cost of the work performed under any cash allowance exceeds the amount of the allowance, the *Design-Builder* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Contract Documents*. Where the actual cost of the work performed under any cash allowance is less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Design-Builder's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between each cash allowance and the actual cost of the work performed under that cash allowance.
- 4.1.6 The value of the work performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Design-Builder* and the *Owner* shall jointly prepare a schedule that shows when the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Design Services* or of the *Work*.

GC 4.2 CONTINGENCY ALLOWANCE

- 4.2.1 The *Contract Price* includes the contingency allowance, if any, stated in the *Owner's Statement of Requirements*.
- 4.2.2 The contingency allowance includes the *Design-Builder's* overhead and profit in connection with such contingency allowance.
- 4.2.3 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.

PART 5 PAYMENT**GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**

- 5.1.1 The *Owner* shall, at the request of the *Design-Builder*, before signing the *Contract*, and promptly from time to time thereafter, furnish to the *Design-Builder* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall give the *Design-Builder Notice in Writing* of any material change in the *Owner's* financial arrangements to fulfill the *Owner's* obligations under the *Contract* during the performance of the *Contract*.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- 5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement – PAYMENT may be made monthly as the *Design Services* and the *Work* progress.
- 5.2.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed to in writing by the parties.
- 5.2.3 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of the *Design Services* and of the *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the payment period.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

300

- 5.2.4 The *Design-Builder* shall submit to the *Payment Certifier*, at least 15 calendar days before the first application for payment, a schedule of values for the parts of the *Design Services* and of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.
- 5.2.5 The schedule of values shall be made out in such form and supported by such evidence as the *Payment Certifier* may reasonably direct, and when accepted by the *Payment Certifier*, shall be used as the basis for applications for payment unless it is found to be in error.
- 5.2.6 The *Design-Builder* shall include a statement based on the schedule of values with each application for payment.
- 5.2.7 A declaration by the *Design-Builder* as to the distribution made of the amounts received using document CCDC 9A – Statutory Declaration of Progress Payment Distribution by Contractor shall be joined to each application for progress payment except the first one.
- 5.2.8 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Payment Certifier* may reasonably require to establish the value and delivery of the *Products*.

GC 5.3 PROGRESS PAYMENT

- 5.3.1 After receipt by the *Payment Certifier* of an application for payment submitted by the *Design-Builder* in accordance with GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT:
- .1 the *Payment Certifier* will promptly inform the *Owner* of the date of receipt and value of the *Design-Builder's* application for payment,
 - .2 the *Payment Certifier* will issue to the *Owner* and copy to the *Design-Builder*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Payment Certifier* determines to be properly due. If the *Payment Certifier* amends the application, the *Payment Certifier* will promptly advise the *Design-Builder* in writing giving reasons for the amendment,
 - .3 the *Owner* shall make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Payment Certifier* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.4.1 When the *Design-Builder* considers that the *Work* is substantially performed or, if permitted by the lien legislation applicable at the *Place of the Work*, a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Design-Builder* shall prepare and submit to the *Payment Certifier* appropriate documents as required by the *Contract Documents* together with a written application for a review by the *Payment Certifier* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*. Failure to include this information does not alter the responsibility of the *Design-Builder* to complete the *Contract*.
- 5.4.2 The *Design-Builder's* application for *Substantial Performance of the Work* shall include a statement from the *Consultant*, and *Other Consultants* in support of the submitted information and the date of *Substantial Performance of the Work* or designated portion of the *Work*.
- 5.4.3 The *Payment Certifier* shall, within 7 calendar days after receipt of the *Design-Builder's* application for *Substantial Performance of the Work*, issue a certificate of the *Substantial Performance of the Work* which shall state the date of *Substantial Performance of the Work* or designated portion thereof or advise the *Design-Builder* in writing of the reasons for which such a certificate is not issued.
- 5.4.4 If the applicable lien legislation requires the *Consultant* to determine whether the *Work* has been substantially performed, the *Consultant* shall issue a certificate of the *Substantial Performance of the Work* which shall state the date of *Substantial Performance of the Work* or designated portion of the *Work* or advise the *Design-Builder* in writing of the reasons for which such a certificate is not issued.
- 5.4.5 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Design-Builder*, in consultation with the *Owner* will establish a reasonable date for completing the *Work*.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Design-Builder* shall:
- .1 submit an application for payment of the holdback amount,
 - .2 submits a CCDC 9A Statutory Declaration of Progress Payment Distribution by Contractor.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

301

- 5.5.2 After the receipt of an application for payment from the *Design-Builder* and the statement as provided in paragraph 5.5.1, the *Payment Certifier* will issue a certificate for payment of the holdback amount.
- 5.5.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate holdback account, the *Owner* shall, 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Design-Builder*.
- 5.5.4 In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.5.5 In the Province of Quebec, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days after the issuance of the certificate. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

- 5.6.1 In the common law jurisdictions, where legislation permits and where, upon application by the *Design-Builder*, the *Payment Certifier* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Design-Builder* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the first calendar day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Work*. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.6.2 In the Province of Quebec, where, upon application by the *Design-Builder*, the *Payment Certifier* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Design-Builder* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, no later than 30 calendar days after such certification by the *Payment Certifier*. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.6.3 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the *Design-Builder* shall ensure that such subcontract work or *Products* are protected pending the issuance of a *Substantial Performance of the Work* certificate and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

GC 5.7 FINAL PAYMENT

- 5.7.1 When the *Design-Builder* considers that the *Design Services* and the *Work* are completed, the *Design-Builder* shall submit an application for final payment.
- 5.7.2 The *Payment Certifier* will, no later than 10 calendar days after the receipt of an application from the *Design-Builder* for final payment, verify the validity of the application and advise the *Design-Builder* in writing that the application is valid or give reasons why it is not valid.
- 5.7.3 When the *Payment Certifier* finds the *Design-Builder's* application for final payment valid, the *Payment Certifier* will promptly issue a final certificate for payment.
- 5.7.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION, and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Design-Builder* as provided in Article A-5 of the Agreement – PAYMENT.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

302

GC 5.8 DEFERRED WORK

- 5.8.1 If because of climatic or other conditions reasonably beyond the control of the *Design-Builder*, there are items of work that cannot be performed, payment in full for that portion of the *Design Services* or *Work* which has been performed as certified by the *Payment Certifier* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portions of the *Design Services* and *Work* are finished, only such amount that the *Payment Certifier* determines is sufficient and reasonable to cover the cost of performing such remaining work.

GC 5.9 NON-CONFORMING DESIGN SERVICES AND WORK

- 5.9.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Design Services* and the *Work* which are not in accordance with the requirements of the *Contract Documents*.

PART 6 CHANGES IN THE CONTRACT**GC 6.1 OWNER'S RIGHT TO MAKE CHANGES**

- 6.1.1 The *Owner* without invalidating the *Contract*, may make:
- .1 changes to the *Work* or to the *Owner's Statement of Requirements* consisting of additions, deletions or revisions to the *Design Services* or to the *Work*, by *Change Order* or *Change Directive*, and
 - .2 changes to the *Contract Time* by *Change Order*.
- 6.1.2 The *Design-Builder* shall not perform a change in the *Design Services*, *Construction Documents* or to the *Work* without a *Change Order* or a *Change Directive*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change is proposed or required, the *Owner* or the *Design-Builder* shall provide a written description of the proposed change to the other party. The *Design-Builder* shall present, in a form acceptable to the *Owner*, a method of adjustment or an amount of adjustment for the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change.
- 6.2.2 When the *Owner* and *Design-Builder* agree to the adjustments in the *Contract Price* and *Contract Time*, or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the *Design Services* or the *Work* performed as the result of a *Change Order* shall be included in applications for progress payment.
- 6.2.3 If the *Owner* requests the *Design-Builder* to submit a proposal for a change and then elects not to proceed with the change, a *Change Order* shall be issued by the *Owner* to reimburse the *Design-Builder* for all costs incurred by the *Design-Builder* in developing the proposal, including the cost of the related *Design Services*.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Design-Builder* to proceed with a change prior to the *Owner* and the *Design-Builder* agreeing upon the corresponding adjustment in *Contract Price* and *Contract Time*, the *Owner* shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Design-Builder* shall proceed promptly with the change.
- 6.3.5 For the purpose of valuing *Change Directives*, changes that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Design-Builder's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with paragraph 6.3.7 and as follows:
- .1 If the change results in a net increase in the *Design-Builder's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Design-Builder's* cost, plus the *Design-Builder's* percentage fee on the net increase.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

303

- .2 If the change results in a net decrease in the *Design-Builder's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Design-Builder's* cost, without adjustment for the *Design-Builder's* percentage fee.
- 6.3.7 The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Design-Builder* under a salary or wage schedule agreed upon by the *Owner* and the *Design-Builder*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Design-Builder*, for personnel:
 - (1) stationed at the *Design-Builder's* field office, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings, coordination drawings, and project record drawings; or
 - (4) engaged in the processing of changes in the *Design Services* or in the *Work*;
 - .2 contributions, assessments, or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the *Design-Builder* and included in the cost of the work as provided in paragraphs 6.3.7.1;
 - .3 travel and subsistence expenses of the *Design-Builder's* personnel described in paragraphs 6.3.7.1;
 - .4 all *Products* including cost of transportation thereof;
 - .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*, and cost less salvage value on such items used but not consumed, which remain the property of the *Design-Builder*;
 - .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work* whether rented from or provided by the *Design-Builder* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
 - .7 all equipment and services required for the *Design-Builder's* field office;
 - .8 deposits lost;
 - .9 the cost of *Design Services* including all fees and disbursements of the *Consultant* and *Other Consultants* engaged to perform such services;
 - .10 the amounts of all subcontracts;
 - .11 quality assurance such as independent inspection and testing services;
 - .12 charges levied by authorities having jurisdiction at the *Place of the Work*;
 - .13 royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefore subject always to the *Design-Builder's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
 - .14 any adjustment in premiums for all bonds and insurance which the *Design-Builder* is required, by the *Contract Documents*, to purchase and maintain;
 - .15 any adjustment in taxes, other than *Value Added Taxes*, and duties for which the *Design-Builder* is liable;
 - .16 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the *Work*;
 - .17 removal and disposal of waste products and debris; and
 - .18 safety measures and requirements.
- 6.3.8 Notwithstanding other provisions contained in the General Conditions of the *Contract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by any failure on the part of the *Design-Builder* to exercise reasonable care and diligence in the *Design-Builder's* attention to the *Design Services* or to the *Work*. Any cost due to failure on the part of the *Design-Builder* to exercise reasonable care and diligence in the *Design-Builder's* attention to the *Design Services* or to the *Work* shall be borne by the *Design-Builder*.
- 6.3.9 The *Design-Builder* shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the work attributable to the *Change Directive* and shall provide the *Owner* with copies thereof when requested.
- 6.3.10 For the purpose of valuing *Change Directives*, the *Owner* shall be afforded reasonable access to all of the *Design-Builder's* pertinent documents related to the cost of performing the work attributable to the *Change Directive*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

304

- 6.3.11 Pending determination of the final amount of a *Change Directive*, the undisputed value of the work performed as the result of a *Change Directive* is to be included in progress payments.
- 6.3.12 If the *Owner* and *Design-Builder* do not agree on the proposed adjustment in the *Contract Time* attributable to the change, or the method of determining it, the adjustment shall be referred to the provisions of PART 8 – DISPUTE RESOLUTION, for determination.
- 6.3.13 When the *Owner* and the *Design-Builder* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Owner* or the *Design-Builder* discovers conditions at the *Place of the Work* which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Contract* and which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
- then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Owner* will promptly investigate such conditions. If the conditions differ materially from the *Contract Documents* and this would cause an increase or decrease in the *Design-Builder's* cost or time to perform the *Design Services* or the *Work*, the *Owner* will issue appropriate instructions for a change in the *Contract* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
- 6.4.3 If the *Owner* is of the opinion that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Owner* will advise the *Design-Builder* in writing of the grounds on which this opinion is based.
- 6.4.4 The *Design-Builder* shall not be entitled to an adjustment in the *Contract Price* or the *Contract Time* if such conditions were reasonably apparent during the request for proposal period or bidding period and prior to proposal closing or bid closing.
- 6.4.5 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

GC 6.5 DELAYS

- 6.5.1 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by an action or omission of the *Owner* or anyone employed or engaged by the *Owner* directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The *Design-Builder* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Design-Builder* as the result of such delay.
- 6.5.2 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Design-Builder* or any person employed or engaged by the *Design Builder* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The *Design-Builder* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Design-Builder* as the result of such delay.
- 6.5.3 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Design-Builder* is a member or to which the *Design-Builder* is otherwise bound), or
 - .2 fire, unusual delay by common carriers or unavoidable casualties, or
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Design-Builder's* control other than one resulting from a default or breach of *Contract* by the *Design-Builder*,
- then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Design-Builder* agrees to a shorter extension. The *Design-Builder* shall not be entitled to payment for costs

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

305

incurred by such delays unless such delays result from actions of the *Owner*, or anyone employed or engaged by the *Owner* directly or indirectly.

- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Owner* no later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 Any adjustment to *Contract Price* and *Contract Time* required as a result of GC 6.5 – DELAYS shall be made as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, and GC 6.3 – CHANGE DIRECTIVE.

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 If the *Design-Builder* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party, to give the other party the opportunity to take actions to mitigate the claim.
- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
- .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
 - .2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the other party a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at regular intervals as agreed between the parties, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 If the *Owner* and *Design-Builder* are in disagreement regarding the basis for the claim or its valuation, the matter shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION.

PART 7 RIGHT TO SUSPEND OR TERMINATE**GC 7.1 OWNER'S RIGHT TO SUSPEND THE DESIGN SERVICES OR TERMINATE THE CONTRACT BEFORE THE WORK COMMENCES**

- 7.1.1 The *Owner* may, at any time before the *Work* commences at the *Place of the Work*, suspend performance of the *Design Services* by giving *Notice in Writing* to the *Design-Builder* indicating the expected length of the suspension. Such suspension shall be effective in the manner as stated in the *Notice in Writing* and shall be without prejudice to any claims which either party may have against the other.
- 7.1.2 Upon receiving a notice of suspension, the *Design-Builder* shall, subject to any directions in the notice of suspension, suspend performance of the *Design Services*.
- 7.1.3 If the *Design Services* are suspended for a period of 20 *Working Days* or less, the *Design-Builder*, upon the expiration of the period of suspension, shall resume the performance of the *Design Services* in accordance with the *Contract Documents*. The *Contract Price* and *Contract Time* shall be adjusted as provided in paragraph 6.5.1 of GC 6.5 – DELAYS.
- 7.1.4 If, after 20 *Working Days* from the date of delivery of the *Notice in Writing* regarding the suspension of the *Design Services*, the *Owner* and the *Design-Builder* agree to continue with and complete the *Design Services* and the *Work*, the *Design-Builder* shall resume the *Design Services* in accordance with any terms and conditions agreed upon by the *Owner* and the *Design-Builder*. Failing such an agreement, the *Owner* shall be deemed to have terminated the *Contract* and the *Design-Builder* shall be entitled to be paid for all *Design Services* performed and for such other damages as the *Design-Builder* may have sustained, including reasonable profit, as a result of the termination of the *Contract*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

306

GC 7.2 OWNER'S RIGHT TO TERMINATE THE DESIGN-BUILDER'S RIGHT TO CONTINUE WITH THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

- 7.2.1 If the *Design-Builder* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Design-Builder's* insolvency, or if a receiver is appointed because of the *Design-Builder's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Design-Builder's* right to continue with the *Design Services* or *Work*, by giving the *Design-Builder* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Design-Builder* neglects to properly perform the *Design Services* or *Work*, or otherwise fails to comply with the requirements of the *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Design-Builder* *Notice in Writing* that the *Design-Builder* is in default of the *Design-Builder's* contractual obligations and instruct the *Design-Builder* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.2.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Design-Builder* shall be in compliance with the *Owner's* instructions if the *Design-Builder*:
- .1 commences the correction of the default within the specified or agreed time, as the case may be, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.2.4 If the *Design-Builder* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Design-Builder* provided the *Payment Certifier* has certified such cost to the *Owner* and the *Design-Builder*, or
 - .2 terminate the *Design-Builder's* right to continue with the *Design Services* or *Work* in whole or in part, or
 - .3 terminate the *Contract*.
- 7.2.5 If the *Owner* terminates the *Design-Builder's* right to continue with the *Design Services* or *Work* as provided in paragraphs 7.2.1 and 7.2.4, or if the *Owner* terminates the *Contract*, the *Owner* shall be entitled to:
- .1 use the plans, sketches, *Drawings*, graphic representations and *Specifications* pursuant to paragraph 1.1.8 of GC 1.1 – CONTRACT DOCUMENTS, as reasonably required for the completion of design and construction of the *Project*, but unless otherwise agreed, the *Consultant* and *Other Consultants* shall not assume any responsibility or liability resulting from use of such documents which may be incomplete;
 - .2 take possession of the *Work* and *Products* at the *Place of the Work*, and subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*, and finish the *Design Services* and *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense;
 - .3 withhold further payment to the *Design-Builder* until final payment is determined in accordance with paragraphs 7.2.5.4 and 7.2.5.5;
 - .4 charge the *Design-Builder* the amount by which:
 - (1) the full cost of finishing the *Design Services* and the *Work*, as certified by the *Payment Certifier*, including compensation to the *Payment Certifier* for the *Payment Certifier's* additional services, plus
 - (2) a reasonable allowance as determined by the *Payment Certifier* to cover the cost of corrections to work performed by the *Design-Builder* that may be required under GC 12.5 – WARRANTY, together exceeds the unpaid balance of the *Contract Price*; however, if such cost of finishing the *Design Services* and the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Design-Builder* the difference; and
 - .5 on expiry of the warranty period, charge the *Design-Builder* the amount by which the cost of corrections to the *Design-Builder's* work under GC 12.5 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Design-Builder* the difference.
- 7.2.6 The *Design-Builder's* obligation under the *Contract* as to quality, correction and warranty of the *Work* performed by the *Design-Builder* up to the time of termination shall continue after such termination of the *Contract*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

307

GC 7.3 DESIGN-BUILDER'S RIGHT TO SUSPEND THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

- 7.3.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.3.2 If the *Design Services* or *Work* are suspended or otherwise delayed for a period of more than 20 *Working Days* under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Design-Builder* or of anyone directly or indirectly employed or engaged by the *Design-Builder*, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, terminate the *Contract* by giving the *Owner Notice in Writing* to that effect.
- 7.3.3 The *Design-Builder* may give *Notice in Writing* to the *Owner* that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Design-Builder*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
 - .2 the *Payment Certifier* fails to issue a certificate as provided in GC 5.3 – PROGRESS PAYMENT, or
 - .3 the *Owner* fails to pay the *Design-Builder* when due the amounts certified by the *Payment Certifier* or awarded by arbitration or court, or
 - .4 the *Owner* violates the requirements of the *Contract* to a substantial degree.
- 7.3.4 The *Design-Builder's Notice in Writing* to the *Owner* provided under paragraph 7.3.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, suspend the *Design Services* or the *Work*, or terminate the *Contract*.
- 7.3.5 If the *Design-Builder* suspends the *Work* pursuant to paragraph 7.3.4, the *Design-Builder* shall:
- .1 at the cost of the *Owner* maintain operations necessary for safety reasons and for care and preservation of the *Work*,
 - .2 make reasonable efforts to delay *Product* deliveries, and
 - .3 not remove from the *Place of the Work* any part of the *Work* or any *Products* not yet incorporated into the *Work*.
- 7.3.6 If the *Design-Builder* terminates the *Contract* under the conditions set out above, the *Design-Builder* shall be entitled to be paid for all *Design Services* and *Work* performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and for such other damages as the *Design-Builder* may have sustained as a result of the termination of the *Contract*.

PART 8 DISPUTE RESOLUTION**GC 8.1 NEGOTIATION, MEDIATION AND ARBITRATION**

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.
- 8.1.2 If a dispute does arise, the parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.1.3 If the parties do not reach an agreement, either party shall send a *Notice in Writing* of dispute to the other party which contains the particulars of the matter in dispute, the relevant provisions of the *Contract Documents* and, if a Project Mediator has not already been appointed, a request that a Project Mediator be appointed. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing*, setting out particulars of the response and any relevant provisions of the *Contract Documents*.
- 8.1.4 If a dispute is not resolved promptly, the *Owner* will issue such instructions as necessary to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Design-Builder* costs incurred by the *Design-Builder* in carrying out such instructions which the *Design-Builder* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Design Services* or the *Work*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

308

- 8.1.5 The parties shall, in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of proposal closing or bid closing, appoint a Project Mediator:
- .1 within 20 *Working Days* after the *Contract* was awarded, or
 - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.1.6 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.1.3, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 Rules for Mediation and Arbitration of Construction Disputes in effect at the time of proposal closing or bid closing.
- 8.1.7 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.1.6 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner* and the *Design-Builder*.
- 8.1.8 By giving a *Notice in Writing* to the other party not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.1.7, either party may refer the dispute to be finally resolved by arbitration conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of proposal closing or bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.1.9 On expiration of the 10 *Working Days* stipulated in paragraph 8.1.8, the arbitration agreement under paragraph 8.1.8 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.1.8 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.1.10 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.1.8, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.1.8 shall be
- .1 held in abeyance until
 - (1) *Substantial Performance of the Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Design-Builder* has abandoned the *Design Services* or the *Work*, whichever is earlier; and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.1.8.

GC 8.2 RETENTION OF RIGHTS

- 8.2.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.4.
- 8.2.2 Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.1.9 of GC 8.1 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.
- 8.2.3 Part 8 of the General Conditions – DISPUTE RESOLUTION shall survive suspension or termination of the *Contract*.

PART 9 PROTECTION OF PERSONS AND PROPERTY**GC 9.1 PROTECTION OF WORK AND PROPERTY**

- 9.1.1 The *Design-Builder* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Design-Builder's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Owner's Statement of Requirements*, or
 - .2 acts or omissions by the *Owner*, the *Owner's* agents and employees.
- 9.1.2 Before commencing any work, the *Design-Builder* shall determine the location of all underground utilities and structures that are reasonably apparent in an inspection of the *Place of the Work*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

309

- 9.1.3 Should the *Design-Builder* in the performance of the *Contract* damage the *Work*, the *Owner's* property, or property adjacent to the *Place of the Work*, the *Design-Builder* shall be responsible for making good such damage at the *Design-Builder's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Design-Builder* is not responsible, as provided in paragraph 9.1.1, the *Design-Builder* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Design-Builder* commencing the *Design Services* or *Work*, the *Owner* shall, subject to legislation applicable to the *Place of the Work*:
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
 - .2 provide the *Design-Builder* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Design-Builder* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Design-Builder* commencing the *Work*.
- 9.2.5 If the *Design-Builder* encounters toxic or hazardous substances at the *Place of the Work* or has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Design-Builder* shall:
- .1 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by legislation applicable to the *Place of the Work*, and
 - .2 immediately report the circumstances to the *Owner* in writing.
- 9.2.6 If the *Owner* and *Design-Builder* do not agree on the existence or significance of the toxic or hazardous substances, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and make a determination on such matters. The expert's report shall be delivered to the *Owner* and the *Design-Builder*.
- 9.2.7 If the *Owner* and *Design-Builder* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the *Place of the Work* by the *Design Builder* or anyone for whom the *Design Builder* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 reimburse the *Design-Builder* for the costs of all steps taken pursuant to paragraph 9.2.5;
 - .3 extend the *Contract Time* for such reasonable time as agreed between the *Design-Builder* and the *Owner* in consultation with the expert referred to in 9.2.6 and reimburse the *Design-Builder* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Design-Builder* as required by GC 12.2 – INDEMNIFICATION.
- 9.2.8 If the *Owner* and *Design-Builder* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substance was brought onto the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible, the *Design-Builder* shall promptly at the *Design-Builder's* own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substances;
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

310

- .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
- .4 indemnify the *Owner* as required by GC 12.2 – INDEMNIFICATION.

9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided in paragraphs 9.2.7 or 9.2.8.

GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Work* shall, as between the *Owner* and the *Design-Builder*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Design-Builder* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Owner* upon discovery of such items.
- 9.3.3 The *Owner* will investigate the impact on the *Design Services* or the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Design-Builder's* cost or time to perform the *Design Services* or the *Work*, the *Owner* will issue appropriate instructions for a change in the *Contract* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 Except as provided for in paragraph 2.6.2.2 of GC 2.6 – WORK BY OWNER OR OTHER CONTRACTORS, the *Design-Builder* shall assume overall responsibility for:
- .1 construction health and safety at the *Place of the Work* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation, and
 - .2 establishing, initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the *Work*.

GC 9.5 MOULD

- 9.5.1 If the *Design-Builder* or *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,
- .1 the observing party shall promptly report the circumstances to the other party in writing, and
 - .2 the *Design-Builder* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould.
- 9.5.2 If the *Owner* and *Design-Builder* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and make a determination on such matters. The expert's report shall be delivered to the *Owner* and *Design-Builder*.
- 9.5.3 If the *Owner* and *Design-Builder* agree, or if the expert referred to in paragraph 9.5.2 determines that the presence of mould was caused by the *Design-Builder's* operations under the *Contract*, the *Design-Builder* shall promptly, at the *Design-Builder's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.2, and
 - .4 indemnify the *Owner* as required by GC 12.2 – INDEMNIFICATION.
- 9.5.4 If the *Owner* and *Design-Builder* agree, or if the expert referred to in paragraph 9.5.2 determines that the presence of mould was not caused by the *Design-Builder's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 reimburse the *Design-Builder* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 extend the *Contract Time* for such reasonable time as agreed between the *Design-Builder* and the *Owner* in consultation with the expert referred to in paragraph 9.5.2 and reimburse the *Design-Builder* for reasonable costs incurred as a result of the delay, and

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

311

.4 indemnify the *Design-Builder* as required by GC 12.2 – INDEMNIFICATION.

- 9.5.5 If either party does not accept the expert's finding under paragraph 9.5.2, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.3 or 9.5.4, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided in paragraphs 9.5.3 or 9.5.4.

PART 10 GOVERNING REGULATIONS

GC 10.1 TAXES AND DUTIES

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the proposal closing or bid closing except for *Value Added Taxes* payable by the *Owner* to the *Design-Builder* as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Design-Builder* due to changes in such included taxes and duties after the time of the proposal closing or bid closing shall increase or decrease the *Contract Price* accordingly, and either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Design Services* and the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for the permanent easements and rights of servitude.
- 10.2.3 Unless otherwise stated, the *Design-Builder* shall obtain and pay for the building permit and other permits, licences, or certificates necessary for the performance of the *Work* at the time of the proposal closing or bid closing. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The *Design-Builder* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the *Design Services* or the performance of the *Work* and which relate to the *Design Services* or the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Design-Builder* shall not be responsible for verifying that the *Owner's Statement of Requirements* is in substantial compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Design Services* or the *Work*. If after the time of the proposal closing or bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Design-Builder* shall advise the *Owner* in writing requesting direction immediately upon such variance or change becoming known. Changes shall be made as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Design-Builder* fails to advise the *Owner* in writing and fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes, the *Design-Builder* shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of proposal closing or bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Design Services* or the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

GC 10.3 PATENT FEES

- 10.3.1 The *Design-Builder* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Design-Builder* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Design-Builder* or anyone for whose acts the *Design-Builder* may be liable.
- 10.3.2 The *Owner* shall hold the *Design-Builder* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, the model, plan or design of which was supplied by the *Owner* to the *Design-Builder* as part of the *Contract Documents*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

312

GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Design Services* or the *Work*, again with the *Design-Builder's* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Design-Builder's* application for final payment, the *Design-Builder* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Design-Builder* shall provide such evidence of compliance by the *Design-Builder* and *Subcontractors*.

PART 11 INSURANCE AND CONTRACT SECURITY

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.2 – INDEMNIFICATION, the *Design-Builder* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS in effect at the time of proposal closing or bid closing except as hereinafter provided:
- .1 Everywhere used in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the term “*Contractor*” shall be replaced with the term “*Design-Builder*”.
 - .2 General liability insurance in the name of the *Design-Builder* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner*, the *Consultant*, *Other Consultants*, the *Owner's Advisor*, and the *Payment Certifier* as insured but only with respect to liability arising out of the operations of the *Design-Builder* with regard to the *Design Services* or *Work*. All liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years.
 - .3 Automobile Liability Insurance from the date of commencement of the *Design Services* or the *Work* until one year after the date of *Substantial Performance of the Work*.
 - .4 If owned or non-owned aircraft and watercraft are used directly or indirectly in the performance of the *Design Services* or *Work*, Aircraft and Watercraft Liability Insurance from the date of commencement of the *Design Services* or *Work* until one year after the date of *Substantial Performance of the Work*.
 - .5 "All risks" property insurance in the joint names of the *Design-Builder*, the *Owner*, the *Consultant*, the *Owner's Advisor*, and the *Payment Certifier*. The policy shall include as Additional Insureds all *Subcontractors*. Where the full insurable value of the *Work* is substantially less than the *Contract Price*, the *Owner* may reduce the amount of insurance required or waive the insurance requirement. The “all risks” property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
 - (1) 10 calendar days after the date of *Substantial Performance of the Work*;
 - (2) on the commencement of use or occupancy of any part or section of *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*; or
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
 - .6 Boiler and machinery insurance in the joint names of the *Design-Builder* and the *Owner*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
 - .7 The “all risks” property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Design-Builder* as their respective interests may appear. In the event of loss or damage:
 - (1) the *Design-Builder* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Design-Builder* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Design-Builder* shall be entitled to such reasonable extension of *Contract Time* as agreed by the *Owner* and *Design-Builder*;
 - (2) the *Design-Builder* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount at which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions of the *Contract*. In addition the *Design-Builder* shall be entitled to receive from the payments made by the insurer the amount of the *Design-Builder's* interest in the restoration of the *Work*; and

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

313

- (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces, or another contractor, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, the *Owner* shall pay the *Design-Builder* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions of the *Contract*.
- .8 *Design-Builder's* Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
- .9 In addition to the insurance requirements specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the *Design-Builder* shall carry professional liability insurance with limits of not less than \$1,000,000 per claim and with an aggregate limit of not less than \$2,000,000 within any policy year, unless specified otherwise in the *Contract Documents*. The policy shall be maintained continuously from the commencement of the *Contract* until 2 years after *Substantial Performance of the Work*.
- 11.1.2 Prior to commencement of the *Design Services* or *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Design-Builder* shall promptly provide the *Owner* with confirmation of coverage and, if required, a true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Design Services* or *Work*.
- 11.1.3 The *Design-Builder* shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the *Design-Builder's* responsibility by the terms of GC 9.1 – PROTECTION OF WORK AND PROPERTY and GC 12.2 – INDEMNIFICATION.
- 11.1.4 If the *Design-Builder* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence of same to the *Design-Builder* and the *Consultant*. The *Design-Builder* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from any amount which is due or may become due to the *Design-Builder*.
- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.6 If a revised version of CCDC 41 – CCDC INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Design-Builder's* insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.7 If a revised version of CCDC 41 – CCDC INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Owner* may require the increased coverage from the *Design-Builder* by way of a *Change Order*.
- 11.1.8 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to any revision of CCDC 41 – CCDC INSURANCE REQUIREMENTS.

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Design-Builder* shall, prior to commencement of the *Design Services* or *Work* or within such other time as may be specified in the *Contract Documents*, provide to the *Owner* any *Contract* security specified in the *Contract Documents*.
- 11.2.2 If the *Contract Documents* require surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY**GC 12.1 DEFINITION AND SURVIVAL**

- 12.1.1 For the purposes of Part 12 – INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY, “claim” or “claims” shall mean claims, demands, losses, costs, damages, actions, suits or proceedings, whether in contract or tort.
- 12.1.2 Part 12 of the General Conditions – INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY shall survive suspension or termination of the *Contract*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

314

GC 12.2 INDEMNIFICATION

- 12.2.1 Without restricting the parties' obligations to indemnify one another as described in paragraph 12.2.4 and the Owner's obligation to indemnify as described in paragraph 12.2.5, the *Owner* and the *Design-Builder* shall each indemnify and hold harmless the other from and against all claims, whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
 - (1) errors, omissions, or negligence of the party from whom indemnification is sought or anyone for whom that party is responsible, or
 - (2) a breach of this *Contract* by the party from whom indemnification is sought; and
 - .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.3 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.
- The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.
- 12.2.2 The obligation of either party to indemnify as set forth in paragraph 12.2.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the general liability insurance limit for one occurrence as referred to in CCDC 41 – CCDC INSURANCE REQUIREMENTS in effect at the time of proposal or bid closing.
 - .2 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 of the Agreement – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
 - .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.2.2.1 and 12.2.2.2 shall apply.
- 12.2.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.2.1 and 12.2.2 shall be inclusive of interest and all legal costs.
- 12.2.4 The *Owner* and the *Design-Builder* shall indemnify and hold harmless the other from and against all claims arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS.
- 12.2.5 The *Owner* shall indemnify and hold harmless the *Design-Builder* from and against all claims:
- .1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and
 - .2 arising out of the *Design-Builder's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.
- 12.2.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Design-Builder*:
- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known; and
 - .2 should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgment or award made against the party entitled by this *Contract* to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.3 LIMITATION OF LIABILITY FOR DESIGN SERVICES

- 12.3.1 Notwithstanding any other provisions of this *Contract*, the *Design-Builder's* liability for claims which the *Owner* may have against the *Design-Builder*, including the *Design-Builder's* officers, directors, employees and representatives, that arise out of, or are related to, the *Design Services*, shall be limited:
- .1 to claims arising from errors, omissions, or negligent performance of the *Design Services* by the *Consultant or Other Consultant* and
 - .2 where claims are covered by insurance the *Design-Builder* is obligated to carry pursuant to GC 11.1 – INSURANCE, to the amount of such insurance.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

GC 12.4 WAIVER OF CLAIMS

- 12.4.1 Subject to any lien legislation applicable at the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Design-Builder* waives and releases the *Owner* from all claims which the *Design-Builder* has or reasonably ought to have knowledge of that could be advanced by the *Design-Builder* against the *Owner* arising from the *Design-Builder's* involvement in the *Design Services* or *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Design-Builder* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Design-Builder* by third parties for which a right of indemnification may be asserted by the *Design-Builder* against the *Owner* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Design-Builder* pursuant to the provisions of paragraphs 12.2.4 or 12.2.5 of GC 12.2 – INDEMNIFICATION; and
 - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.4.2 The *Design-Builder* waives and releases the *Owner* from all claims referenced in paragraph 12.4.1.4 except for those referred in paragraphs 12.4.1.2 and 12.4.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Design-Builder* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.4.3 Subject to any lien legislation applicable at the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Owner* waives and releases the *Design-Builder* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Design-Builder* arising from the *Owner's* involvement in the *Design Services* or *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Design-Builder* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Design-Builder* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Design-Builder* pursuant to the provisions of paragraph 12.2.4 of GC 12.2 – INDEMNIFICATION;
 - .4 damages arising from the *Design-Builder's* actions which result in substantial defects or deficiencies in the *Work*. “Substantial defects or deficiencies” mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
 - .5 claims arising pursuant to GC 12.5 – WARRANTY; and
 - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.4.4 The *Owner* waives and releases the *Design-Builder* from all claims referred to in paragraph 12.4.3.4 except claims for which *Notice in Writing* of claim has been received by the *Design-Builder* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Work*; or
 - .2 if the *Place of the Work* is the Province of Quebec, then Article 2118 of the Civil Code of Quebec.
- 12.4.5 The *Owner* waives and releases the *Design-Builder* from all claims referenced in paragraph 12.4.3.6 except for those referred in paragraph 12.4.3.2, 12.4.3.3 and those arising under GC 12.5 – WARRANTY and claims for which *Notice in Writing* has been received by the *Design-Builder* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.4.6 “*Notice in Writing* of claim” as provided for in GC 12.4 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.4 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

316

- .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
 - .3 a statement of the estimated quantum of the claim.
- 12.4.7 The party giving “*Notice in Writing* of claim” as provided for in GC 12.4 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.4.8 Where the event or series of events giving rise to a claim made under paragraphs 12.4.1 or 12.4.3 has a continuing effect, the detailed account submitted under paragraph 12.4.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.4.9 If a *Notice in Writing* of claim pursuant to paragraph 12.4.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim is received pursuant to paragraph 12.4.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.
- 12.4.10 If a *Notice in Writing* of claim pursuant to paragraph 12.4.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim is received pursuant to paragraph 12.4.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

GC 12.5 WARRANTY

- 12.5.1 Except for extended warranties as described in paragraph 12.5.6, the warranty period under the *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.5.2 The *Design-Builder* warrants that the *Work* is in accordance with the *Contract Documents*.
- 12.5.3 The *Owner* shall promptly give the *Design-Builder* *Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.5.4 The *Design-Builder* shall promptly correct, at the *Design-Builder's* expense, any work which is not in accordance with the *Contract Documents* or defects or deficiencies in the *Work* which appear at any time until the end of the warranty periods specified in the *Contract Documents*.
- 12.5.5 The *Design-Builder* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.5.4.
- 12.5.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.5.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor for the benefit of the *Owner*. The *Design-Builder's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.
- 12.5.7 The *Design-Builder* does not warrant against the effects of corrosion, erosion or wear and tear of any *Product* or failure of any *Product* due to faulty operations or maintenance by the *Owner* or conditions of operation more severe than those specified for the *Product*.
- 12.5.8 The warranties specified in GC 12.5 – WARRANTY or elsewhere in the *Contract Documents* are the only warranties of the *Design-Builder* applicable to the *Work* and no other warranties, statutory or otherwise, are implied.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

317

ITEM 1

318



THE DEMAND POWER GROUP INC

REQUEST FOR PROPOSAL

SAULT AREA HOSPITAL UPS ("SAH UPS")

Attached hereto is a Request for Proposal document pertaining to the ***Installation of a 4.8 MW UPS*** at the Sault Area Hospital, located at 750 Great Northern Road, Sault Ste. Marie, Ontario.

Sealed Proposals for this requirement will be accepted until 5:00 o'clock p.m., local time, Friday, December 11th, 2020.

All RFP responses to be submitted electronically to lmezzomo@nsci.ca.

Questions concerning this Proposal process should be directed to L. Mezzomo at 705-949-1033 x.200 or lmezzomo@nsci.ca. Technical questions should be directed to P. Deshpande, EIT at 705-949-1033 x.211 or pdeshpande@nsci.ca.

The lowest or any Proposal will not necessarily be accepted.

319

Request For Proposal: SAH UPS – 4.8 MW

128-1F

Title Page

Project Number: 128-1F

Project Name: SAH UPS 4.8 MW Supply & Install
750 Great Northern Rd, Sault Ste. Marie, ON P6B 0A8

Owner: The Demand Power Group Inc.
2 Pardee Ave Suite 302, Toronto, ON M6K 3H6

Project Consultant: N-Sci Technologies Inc.
71 Black Road – Unit 5, Sault Ste. Marie, ON P6B 0A3
Phone (705) 949-1033
Project Manager: Robert Reid, P.Eng. MBA

Schedule:

Task	Date
RFP Issued	November 27 th , 2020
Last Date for Questions	December 4 th , 2020
RFP Due	December 11 th 5:00 pm local time
Contract Award	TBD
Substantial Completion	May 30 th , 2021
Final Completion	June 15 th , 2021

320



THE DEMAND POWER GROUP INC

REQUEST FOR PROPOSAL

SAULT AREA HOSPITAL UPS (“SAH UPS”)

Attached hereto is a Request for Proposal document pertaining to the *Installation of a 4.8 MW UPS* at the Sault Area Hospital, located at 750 Great Northern Road, Sault Ste. Marie, Ontario.

Sealed Proposals for this requirement will be accepted until 5:00 o'clock p.m., local time, Friday, December 11th, 2020.

All RFP responses to be submitted electronically to lmezzomo@nsci.ca.

Questions concerning this Proposal process should be directed to L. Mezzomo at 705-949-1033 x.200 or lmezzomo@nsci.ca. Technical questions should be directed to P. Deshpande, EIT at 705-949-1033 x.211 or pdeshpande@nsci.ca.

The lowest or any Proposal will not necessarily be accepted.

321

Request For Proposal: SAH UPS – 4.8 MW

128-1F

Title Page

Project Number: **128-1F**

Project Name: **SAH UPS 4.8 MW Supply & Install**
750 Great Northern Rd, Sault Ste. Marie, ON P6B 0A8

Owner: **The Demand Power Group Inc.**
2 Pardee Ave Suite 302, Toronto, ON M6K 3H6

Project Consultant: **N-Sci Technologies Inc.**
71 Black Road – Unit 5, Sault Ste. Marie, ON P6B 0A3
Phone (705) 949-1033
Project Manager: Robert Reid, P.Eng. MBA

Schedule:

Task	Date
RFP Issued	November 27 th , 2020
Last Date for Questions	December 4 th , 2020
RFP Due	December 11 th 5:00 pm local time
Contract Award	TBD
Substantial Completion	May 30 th , 2021
Final Completion	June 15 th , 2021

322

Request For Proposal: SAH UPS – 4.8 MW

128-1F

Index

- 1. FORM OF PROPOSAL**
- 2. INSTRUCTIONS TO BIDDERS**
- 3. TECHNICAL SPECIFICATIONS**
- 4. SUPPLEMENTARY CONDITIONS**
- 5. CCDC2-2008 STIPULATED PRICE CONTRACT**
- 6. DRAWING PACKAGE**

1. FORM OF PROPOSAL

The Bidder, the undersigned, having carefully examined the specifications provided, and having made an adequate site inspection, and having read the general conditions and instructions to bidders, attached to and forming a part of this request for Proposal, hereby propose and agree to supply, all materials, labour and equipment pertaining to the **Supply & Install of UPS Project** at the Sault Area Hospital, located at 750 Great Northern Rd, Sault Ste. Marie, ON P6B 0A8, as detailed below, at the following Proposal prices in Canadian Dollars:

Materials, Labour & Equipment to Supply & Install the UPS Project - In accordance with Section 3: Specifications	\$
	<hr/>
13% HST	\$
	<hr/>
Total Proposal Price	\$
	<hr/>

The cost of all equipment, including lifts and barricades, required to perform the Scope of Work, as well as the cost for all required permits and inspections, is to be included in the Proposal Amount.

1. The Bidder understands that a Site Inspection accompanied by the Project Manager, or his designate, is not required prior to submitting a Proposal for this requirement.
2. The Bidder has attached a Project Timeline and Installation schedule as requested in the Proposal documents.
3. The Bidder has complied with, or are the process of complying with, the requirements of DPGI's Contractor Pre-Qualification Program.
4. It is further understood and agreed that Proposals submitted without the Form of Proposal (this Section) fully completed; including original signatures will not be considered.
5. It is further understood and agreed that any changes to the original terms outlined in the Form of Proposal, Supplementary Conditions, or the CCDC Contract will result in the Proposal not being accepted.
6. It is further understood and agreed that upon acceptance and execution of this Proposal by the Owner, this Form of Proposal together with the terms and conditions hereto attached, shall constitute a valid and binding contract between the parties hereto.
7. The Bidder declares that this Proposal is made without any connection, knowledge, comparison of figures or arrangements with any other person or persons submitting a Proposal for the same purpose and is in all respects fair and without collusion or fraud.
8. It is further understood and agreed that the lowest or any Proposal will not necessarily be accepted, and that the Owner reserves the right in its absolute discretion to reject any or all proposals or accept that proposal deemed most acceptable to the Owner.

324

Request For Proposal: SAH UPS – 4.8 MW

128-1F

The Bidder hereby acknowledges that this executed Form of Proposal and all additional documents requested in the "Instructions to Bidders" shall form the Proposal Package to be evaluated by the Owner and Consultant.

_____ Name of Company	_____ Seal
_____ Address	
_____ City	_____ Postal Code
_____ Signing Officer Signature	_____ Witness' Signature (must be present if Corporate Seal is not affixed to Form of Proposal)
_____ Signing Officer (Print Name)	_____ Telephone Number
_____ Email Address	_____ Date

2. INSTRUCTIONS TO BIDDERS

Administration of Proposal

This Request for Proposal is being administered by N-Sci Technologies Inc. (“Project Consultant”) on behalf of the Demand Power Group Inc. (“Owner”). The following roles will apply to this process:

1. The Request for Proposal and any Addenda will be prepared and distributed by the Project Consultant.
2. The Request for Proposal responses (“Responses”) will be received by the Owner and the Project Consultant.
3. The Responses will be evaluated by the Project Consultant.
4. A recommendation for Award will be provided by the Project Consultant to the Owner; and
5. Once accepted by the Owner, the Project Consultant will issue the “Contract Package” for execution by the successful bidder.

All potential Bidders to ensure that any communication about the Proposal will be directed to the Project Manager and all such communication will include: Project Number and, Project Name in the subject line.

General Instructions

1. Proposals must be filled out exactly as to form; any riders, alternative proposals etc., must be made on separate sheets and attached to the Proposal. The Proposal must be completed in ink or in typed format to qualify.
2. Each Proposal must be placed in an envelope, clearly marked on the outside, with the following information:
 - i. Name of bidder
 - ii. Project Number, Project Name being Proposed
3. Sealed Proposals plainly marked as to contents will be received electronically by the Project Consultant at jmezzomo@nsci.ca, until 5:00 o'clock p.m., local time, Monday November 30th, 2020.
4. Proposals which are incomplete, unbalanced, conditional or obscure, or which contain erasures or alterations not properly initialed, or irregularities of any kind may be rejected as informal or void.
5. Proposal Prices are in Canadian Funds. Duties and Import Fees (if applicable) **are included in the Proposal Prices. Harmonized Sales Taxes are to be shown as extra.**
6. The Site of Work shall be the Sault Area Hospital located at 750 Great Northern Rd, Sault Ste. Marie, ON P6B 0A8.

7. Any work performed by a supplier must be done according to the Occupational Health and Safety Act and Owner Safety Policies. A supplier performing work at this project property will ensure that any employees working on the project performs work safely including use of Personal Protective Equipment (PPE). **The successful bidder is required to comply with the requirements of DPGI's Contractor Pre-Qualification Program prior to the start of onsite work on this Contract. Preference may be given to Bidders who have complied with, or are the process of complying with, this requirement prior to submitting their bid.**

It is the responsibility of the successful bidder to ensure that ALL subcontractors employed during the commission of work on this contract have also complied with the requirements of the DPGI's Contractor Pre-Qualification Programs prior to starting onsite work.

8. The successful Bidder shall maintain such insurance as will protect them, the Owner and the Project Consultant from all claims for damage or loss, or personal and bodily injury, including death, and from all claims of property damage on an occurrence basis which may arise from his operation under this contract.

The successful Bidder shall indemnify and hold harmless the Owner and Project Consultant from any action arising out of the course of this agreement and will supply a Liability Insurance certifying Public Liability and Property Damage for bodily injury or property damage.

As per the most recent update to CCDC 41, the following amounts of insurance will be required for this project and proof of insurance must be provided prior to commencement of the contract:

- The successful bidder shall maintain Automobile liability insurance in respect of vehicles that are required by law to be insured under a contract by a Motor vehicle Liability Policy, shall have limits of not less than \$2,000,000.00
- The General Liability insurance shall be with limits of not less than \$10,000,000.00 per occurrence for bodily injury and property damage. The policy will cover all premises and operations necessary or incidental to the performance of this contract.
- The successful bidder shall provide proof of Broad Form comprehensive liability insurance with a minimum combined single limit of \$10,000,000.00.
- Where the description of the project provides or contemplates construction of a building or structure, the successful bidder will provide Builders Risk insurance of \$10,000,000 to cover the subject property.

The insurance shall be Comprehensive Liability Insurance, including Product and Completed Operations Liability, Contractual Liability, Owners and/or Contractors Protective Liability, Contingent Employers Liability, and shall contain a Cross Liability Clause protecting the Owner as if separately insured.

The deductible amount or amounts in any insurance policy required by the Owner pursuant to this contract shall be subject to the approval of the Owner. If the Owner does not accept the deductible amount as proposed by the Contractor, the Contractor shall provide insurance coverage with a deductible amount acceptable to the Owner.

9. Any deviation from the specifications shown, shall be explained fully by the Bidder, by letter, with reference to the item not meeting specifications.
10. The Bidder shall keep the Proposal open for acceptance for sixty (60) days after the official closing date. Acceptance or refusal of a Proposal will be made in writing by the Owner/Project Consultant within sixty (60) days of the official closing date.
11. The successful Bidder shall indemnify the Owner and Project Consultant from all damage or expense for actual or alleged trademark, patent, or copyright infringements.
12. The lowest or any Proposal will not necessarily be accepted, and the right to reject any or all Proposals, or to accept the Proposal(s) judged as most satisfactory, is expressly reserved by the Owner.
13. No electronic reproduction or alterations of the original document will be permitted under any circumstances.

Bonding Requirements

The successful Proposal shall be required to furnish the following Bonds/Surety for the execution of the Contract:

1. Bonds

- a. **Performance Bond** - A Performance Bond, not less than **One Hundred percent (100%)** of the Proposal amount.
 - i. The form of the Bond shall be the CCDC form 221 (2002) Performance Bond, and as may be amended by the Supplementary General Conditions.
 - ii. Refer to CCDC Document 2 (Revised 2008) Article GC 11.2
 - iii. The issuing company of the Bond must be approved by the Canadian Construction Association Performance Bond shall remain in place until the date of final certificate of payment.
- b. **Labour Material Payment Bond** - A Labour Material Payment Bond, not less than **Fifty percent (50%)** of the Proposal amount.
 - i. The form of the Bond shall be the CCDC form 222 (2002) Labour Material Payment Bond, and as may be amended by the Supplementary General Conditions.
 - ii. Refer to CCDC Document 2 (Revised 2008) Article GC 11.2
 - iii. The issuing company of the Bond must be approved by the Canadian Construction Association
- c. Include the cost to provide all Bonds in the Proposal Amount.
- d. Official copies of both Performance and Labour and Materials Bonds shall be provided within seven (7) days of Proposal Award, after receiving notification of acceptance of their quotation from the Owner, (Letter of Intent) or forfeit the amount of the Bid Bond enclosed with the Proposal.

2. Consent of Surety or Agreement to Bond

- a. Proposals shall be accompanied by an agreement to provide the required bonding in the form of:
 - i. Consent of Surety or Agreement to Bond, signed and sealed by Proposal's surety, stating that surety is willing to supply Performance and Labour and Materials Payment Bond as described above.

328

Request For Proposal: SAH UPS – 4.8 MW

128-1F

- ii. Include the cost to provide this Consent or Surety in the Proposal Amount.

Additional Information

In addition to the “Form of Proposal”, Bidders must provide the following to support their credentials and competency to complete the work in the timeframe specified:

1. All items outlined in the previous section “Bonding Requirements”
2. A detailed schedule showing major milestones and clearly defining the ability to meet the in-service dates listed in this Request for Proposal.
3. Demonstrated experience with several (at least three) similar projects.
4. Project References for the three example projects described in #3 above.
5. Details of the project team being proposed and any sub-contractors that will be used during the project.
6. Proof of WSIB coverage for all workers and subcontractors.
7. Proof of Insurance coverage as outlined in the previous section “Instructions to Bidders”

3. TECHNICAL SPECIFICATIONS

Existing System

The Sault Area Hospital (SAH) complex is currently supplied by two PUC Distribution feeders at 34.5 kV. The feeders supply an existing customer-owned outdoor substation that includes medium voltage switchgear and two 34.5/4.16 kV transformers. The two 4.16 kV feeders run in concrete encased duct from the outdoor substation to the main electrical room inside the hospital.

The UPS system will be installed between one of the 34.5/4.16 kV transformers and one of the 4.16 kV feeders with all splices and connection to be made outside.

The existing drawings for the electrical distribution systems are provided in **Section 6: Drawing Package**.

Scope of Work - General

Supply the required materials, labour and equipment to install a **4.8 MW UPS system at the Sault Area Hospital**, in accordance with the following specifications:

- Perform site visit to review existing electrical distribution and physical location for the UPS system;
- Provide all equipment, cables, and material not listed in the “Scope of Work – Exclusions” section;
- Provide any/all receiving/unloading services for all components including that listed in the “Scope of Work – Exclusions” section;
- Provide staircase for each UPS stacked container
- Provide electrical wiring services to connect all electrical components including those listed in the “Scope of Work – Exclusions” section;
- Provide electrical grounding system as outlined in the drawing package;
- Provide civil services to install foundations, transformer vaults, cable raceways, cable duct;
- Provide civil services to restore site to preconstruction standards;
- Provide fibre-optic cable, terminal equipment, and terminations of same from the main electrical room metering cabinets to the new external metering cabinet;
- Provide As-Built marked up drawings to Project Consultant;
- Provide operating and maintenance manuals as part of project close out package.
- Scope of work includes removal and responsible off-site disposal of all packaging and debris associated with this installation. Dumpsters and/or garbage disposal areas at the Sault Area Hospital may not be used.

Scope of Work – Exclusions

The following items are excluded from the Bidders scope of work:

- Design engineering provided by N-Sci Technologies Inc.;
- UPS/Battery container certification for use in Ontario;
- UPS / Battery containers to be supplied by Owner;
- Wholesale Revenue Metering, Retail Revenue Metering, SCADA, and Communications equipment to be supplied by Meter Service Provider (N-Sci); and
- UPS System Commissioning to be provided by Others.

4. SUPPLEMENTARY CONDITIONS

The following Supplementary Conditions modify, change, delete from or add to the Articles of Agreement, the Definitions, and the General Conditions of the Stipulated Price Contract, Standard Construction Document CCDC2, 2008

Where any Article, Definition, General Condition, paragraph, subparagraph, or clause thereof is modified or deleted by these Supplementary Conditions, the unaltered provisions of that Article, Definition, General Condition paragraph, subparagraph or clause shall remain in effect.

ARTICLE A-6 – RECEIPT AND ADDRESSES FOR NOTICES IN WRITING

Delete Article A-6.1 and substitute new article 6.1:

“6.1 Notices in Writing between the parties or between them and the Consultant shall be considered to have been received by the addressee on the date of receipt if delivered by hand or by commercial courier or if sent during normal business hours by fax and addressed as set out below. Such Notices in Writing will be deemed to be received by the addressee on the next business day if sent by fax after normal business hours or if sent by overnight commercial courier. Such Notices in Writing will be deemed to be received by the addressee on the fifth Working Day following the date of mailing, if sent by pre-paid registered post, when addressed as set out below. An address for a party may be changed by Notice in Writing to the other party setting out the new address in accordance with this Article.”.

DEFINITIONS

Add the following definition:

“19a. Submittals

Submittals are documents or items required by the Contract Documents to be provided by the Contractor, such as:

- Shop Drawings, samples, models, mock-ups to indicate details or characteristics, before the portion of the Work that they represent can be incorporated into the Work; and
- Record drawings and manuals to provide instructions to the operation and maintenance of the Work.”

GENERAL

Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused

GC 1.1 CONTRACT DOCUMENTS

Add to the end of subparagraph 1.1.2.2

“.....Except where the *Consultant* shall be indemnified as a third-party beneficiary as provided in subparagraphs 9.2.7.4, 9.2.8.4, 9.5.2.4 and 9.5.3.4 and in 12.1.1

Delete 1.1.6 in its entirety and substitute the following:

“1.1.6 The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Owner* or the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* with respect to such divisions. The *Drawings* are, in part, diagrammatic and are intended to convey the scope of the *Work* and indicate general and appropriate locations, arrangements and sizes of fixtures, equipment and outlets. The *Contractor* shall obtain more accurate information about the locations, arrangements and sizes from study and coordination of the *Drawings*, including *Shop Drawings* and shall become familiar with conditions and spaces affecting those matters before proceedings with the *Work*. Where site conditions require reasonable minor changes in indicated locations and arrangements, the *Contractor* shall make such changes at no additional cost to the *Owner*. Similarly, where known conditions or existing conditions interfere with new installation and require relocation, the *Contractor* shall include such relocation in the *Work*. The *Contractor* shall arrange and install fixtures and equipment in such a way as to conserve as much headroom and space as possible. The schedules are those portions of the *Contact Documents*, wherever located and whenever issued, which compile information of similar content and may consist of drawings, tables and/or lists

Add new subparagraph 1.1.7.5 thru 1.1.7.10 as follows:

“1.1.7.5 In case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the *Contract Documents*.

- 1.1.7.6 Finishes in the room finish schedules shall govern over those shown on the *Drawings*
- 1.1.7.7 Schedules of Division 01 – General Requirements of the *Specifications* shall form part of and be read in conjunction with the technical specification section as listed in the table of contents of the *Specifications*
- 1.1.7.8 Architectural drawings shall have precedence over structural, plumbing, mechanical, electrical and landscape drawings insofar as outlining, determining and interpreting conflicts over the required design intent of all architectural layouts and architectural elements of construction, it being understood that the integrity and installation of the systems designed by the *Consultant* or its sub-*Consultants* are to remain with each of the applicable drawing disciplines.
- 1.1.7.9 Should reference standards contained in the *Specifications* conflict with the *Specifications*, the *Specifications* shall govern. Should reference standards and *Specifications* conflict with each other or if certain requirements of the *Specifications* conflict with other requirements of the *Specifications*, the more stringent requirements shall govern.

Delete 1.1.8 in its entirety and substitute the following:

“1.1.8 The *Contractor* shall be responsible to provide all printed copies of the *Contract Documents* that may be necessary and or required to perform the *Work*, submit for permit and provide as built. At the completion of the work the *Contractor* be held responsible to collect and destroy all copies not turned over to the Owner, used for permits or contracts.”

Add following subparagraph to Paragraph 1.1.10

“..... In case of conflict other documents shall govern over the Colour Schedule and Colour Schedule Drawings”

GC 2.2 ROLE OF THE CONSULTANT

Add new paragraph 2.2.0 as follows:

“2.2.0 The *Consultant* is not signatory to, is not party to, “*the Agreement*” between the *Owner* and the *Contractor*, and as such is not bound by any conditions or requirements as stated therein. The *Owner* and the *Contractor* shall indemnify and save harmless the *Consultant* from any claims arising from a disagreement between the two signatory parties.”

Delete paragraph 2.2.4. in its entirety

Add the word “schedules” after the word “techniques” in paragraph 2.2.6.

Add to the end of the second sentence of paragraph 2.2.6. “.....or to adhere to the construction schedule”

Add at the end of paragraph 2.2.9. “The *Owner* and the *Contractor* shall waive any claims against the *Consultant* arising out of the making of such interpretations and findings in accordance with paragraphs 2.2.7., 2.2.8. and 2.2.9”.

Delete the comma after the word “submittals” and add the words “which are provided” before the words “in accordance” in paragraph 2.2.14.

Add new sentence to end of paragraph 2.2.11 “The *Consultant*’s obligation to make findings on a large claim or large number of claims is subject to the terms and conditions of the *Owner/Consultant* agreement.”

Amend paragraph 2.2.13 by the addition of the following to the end of that paragraph:

“.....If, in the opinion of the *Contractor*, the *Supplemental Instruction* involves an adjustment in the *Contract Price* or in the *Contract Time*, it shall, within ten (10) *Working Days* of receipt of a *Supplemental Instruction*, provide the *Consultant* with a notice in writing to that effect. Failure to provide written notification within the time stipulated in this paragraph 2.2.13 shall be deemed an acceptance of the *Supplemental Instruction* by the *Contractor*, without any adjustment in the *Contract Price* or *Contract Time*.”

GC 2.3 REVIEW AND INSPECTION OF THE WORK

Delete paragraph 2.3.3 in its entirety and replace it with the following:

"2.3.3 The *Contractor* shall furnish promptly two (2) copies to the *Consultant* and one (1) copy to the *Owner* of all certificates and inspection reports relating to the *Work*."

Insert the word "review" after the word "inspections" in the first line of paragraph 2.3.4.

Add a new paragraph 2.3.8 as follows:

"2.3.8 The *Consultant* will conduct periodic reviews of the *Work* in progress, to determine general conformance with the requirements of the *Contract Documents*. Such reviews, or lack thereof, shall not give rise to any claims by the *Contractor* in connection with construction means, methods, techniques, sequences and procedures, nor in connection with construction safety at the *Place of Work*, responsibility for which belongs exclusively to the *Contractor*."

GC 2.4 DEFECTIVE WORK

Add new subparagraphs 2.4.1.1 and 2.4.1.2:

"2.4.1.1 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*."

"2.4.1.2 The *Contractor* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the *Owner*."

GC 3.1 CONTROL OF THE WORK

Add the word "schedules" after the word "techniques" in paragraph 3.1.2.

Add new paragraph 3.1.3:

"3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected work."

GC 3.3 TEMPORARY WORK

In paragraph 3.3.2, in the second line after the words "where required by law", insert "or the *Consultant*".

GC 3.4 DOCUMENT REVIEW

Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:

“3.4.1 The Contractor shall review the Contract Documents and shall report promptly to the Consultant any error, inconsistency or omission the Contractor may discover. Such review by the Contractor shall comply with the standard of care described in paragraph

3.14.1 of the Contract. Except for its obligation to make such review and report the result, the Contractor does not assume any responsibility to the Owner or to the Consultant for the accuracy of the Contract Documents. The Contractor shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the Contract Documents, which the Contractor could not reasonably have discovered. If the Contractor does discover any error, inconsistency or omission in the Contract Documents, the Contractor shall not proceed with the work affected until the Contractor has received corrected or missing information from the Consultant.”

GC 3.7 SUBCONTRACTORS AND SUPPLIERS

Add to paragraph 3.7.1.1 add to the end of the second line

“.....including any warranties and service agreements which extend beyond the term of the Contract.”

Add to subparagraph 3.7.1.2 after the words “the *Contract Documents*” insert the words “including any required surety bonding”

Delete the words “through the Consultant” in paragraph 3.7.6.

GC 3.8 LABOUR AND PRODUCTS

Delete paragraph 3.8.2 and substitute with the following:

“3.8.2 *Products* provided shall be new and shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Standards Board or General Standards Board, ASTM, National Building Code, provincial and municipal building codes, fire safety standards, and all governmental authorities and regulatory agencies having jurisdiction at the *Place of the Work*, unless otherwise specified. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*. Specified *Products* shall not be substituted with another product without the express written consent of the Consultant.”

Amend paragraph 3.8.3 by adding the words, “..., agents, *Subcontractors* and *Suppliers*...” after the word “employees” in the first line

Add new paragraph 3.8.4 and 3.8.5 as follows:

“3.8.4 The Contractor is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the Owner and other contractors to be installed under the Contract) in such ways as to avoid dangerous conditions or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner*.”

3.8.5 The cost for overtime required beyond the normal *Working Day* to complete individual construction operations of a continuous nature, such as pouring or finishing of concrete or similar work, or *Work* that the *Contractor* elects to perform at overtime rates without the *Owner* requesting it, shall not be chargeable to the *Owner*”

GC 3.10 SHOP DRAWINGS

Add the words “AND OTHER SUBMITTALS” to the Title after SHOP DRAWINGS

Add “and Submittals” after the words “Shop Drawings” in paragraphs 3.10.1, 3.10.2, 3.10.4, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10, 3.10.11, and 3.10.12.

Delete 3.10.3 in its entirety and substitute new paragraph 3.10.3

“3.10.3 The Contractor shall prepare a schedule of the dates for provision, review and return of Shop Drawings and Submittals and submit it to the Consultant for review.”

Delete paragraph 3.10.9 in its entirety and substitute the following:

“3.10.9 At the time of providing *Shop Drawings*, the *Contractor* shall advise the *Consultant* in writing of any deviations in *Shop Drawings* from the requirements of the *Contract Documents*. The *Consultant* shall indicate the acceptance of such deviation expressly in writing. Where manufacturers’ literature is submitted in lieu of scaled drawings, it shall be clearly marked in ink, to indicate the specific items for which review is requested”

Delete the words “so as to cause no delay in the performance of the Work” in paragraph 3.10.12

Add new paragraphs 3.10.13 as follows

“3.10.13 Reviewed *Shop Drawings* shall not authorize a change in the *Contract Price* and/or the *Contract Time*”

GC 3.13 CLEAN-UP

Add new paragraphs 3.13.4 as follows:

“3.13.4 In the event that the *Contractor* fails to remove waste and debris as provided in this GC 3.13, then the *Owner* or the *Consultant* may give the *Contractor* twenty-four (24) hours written notice to meet its obligations respecting clean up. Should the *Contractor* fail to meet its obligations pursuant to this GC 3.13 within the twenty-four (24) hour period next following delivery of the notice, the *Owner* may remove such waste and debris and deduct from payments otherwise due to the *Contractor*, the *Owner’s* costs for such clean up, including a reasonable mark-up for administration costs.”

GC 3.14 PERFORMANCE BY CONTRACTOR

Add new General Condition 3.14 PERFORMANCE BY CONTRACTOR and new paragraphs 3.14.1 and 3.14.2 as follows

“3.14.1 In performing its services and obligations under the Contract, the Contractor shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The Contractor acknowledges and agrees that throughout the Contract, the Contractor’s obligations, duties, and responsibilities shall be interpreted in accordance with this standard. The Contractor shall exercise the same standard of due care and diligence in respect of any Products, personnel, or procedures which it may recommend to the Owner.”

“3.14.2 The Contractor further represents, covenants and warrants to the Owner that:

The personnel it assigns to the Project are appropriately experienced;

It has a sufficient staff of qualified and competent personnel to replace its designated supervisor and project manager, subject to the Owner’s approval, in the event of death, incapacity, removal or resignation.”

GC 4.1 CASH ALLOWANCES (if applicable to Contract)

Delete the second sentence in paragraph 4.1.1

Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:

“4.1.4 Where the actual cost of the Work under any cash allowance exceeds the amount of the allowance, any unexpended amounts from other cash allowances shall be reallocated, at the Consultant’s direction, to cover the shortfall, and, in that case, there shall be no additional amount added to the Contract Price for overhead and profit. Only where the actual cost of the Work under all cash allowances exceeds the total amount of all cash allowances shall the Contractor be compensated for the excess incurred and substantiated, plus an amount for overhead and profit on the excess only, as set out in the Contract Documents.”

Delete paragraph 4.1.5 in its entirety and substitute new paragraph 4.1.5:

“4.1.5 The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the Contract Price by Change Order without any adjustment for the Contractor’s overhead and profit on such amount.”

Delete paragraph 4.1.7 in its entirety and substitute new paragraph 4.1.7.

“4.1.7. The Contractor shall prepare a schedule that shows when the Owner must authorize ordering of items called for under cash allowances to avoid delaying the progress of the work.”

Add new paragraph 4.1.8:

“4.1.8 The Owner reserves the right to call, or to have the Contractor call, for competitive bids for portions of the Work, to be paid for from cash allowances.”

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

Revise article 5.2.3 to read as follows:

“5.2.3 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of *Work* performed, and *Products* delivered to the *Place of the Work*, that may be incorporated into the work in the following 30days, as of the last day of the payment period. No amount claimed shall include products delivered and incorporated into the work, unless the products are free and clear of all security interests, liens and other claims of third parties.”

Add new article 5.2.8 as follows:

“5.2.8 The second and all subsequent applications for payment shall be accompanied by a Statutory Declaration, executed by the Contractor, in the form prescribed by the Architect, declaring that all Subcontractors, wages for labour, and accounts for products have been paid up to and including the date of the last previously approved application for payment.”

GC 5.3 PROGRESS PAYMENT

Delete sub-paragraph 5.3.1.1 in its entirety.

Revise sub-paragraph 5.3.1.2 as follows: After the words “issue to the *Owner*” delete “and copy to the *Contractor*”. After the words “after the receipt of the” add “complete”:

Revise paragraph 5.3.1.3 as follows:

“5.3.1.3 the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 28 calendar days after the receipt of a proper invoice, as governed by the Construction Act.”

Add new paragraphs 5.3.2 and 5.3.3 as follows

“5.3.2 If the *Contractor* fails to provide all documentation as required by the contract documents, the *Consultant* or *Owner* shall be entitled to return the application for progress payment to the *Contractor* for completion. The review period by the *Consultant* and payment period by the *Owner* will re-commence upon receipt of the complete application for progress payment.”

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

Revise paragraph 5.6.1 to change the work “...the *Owner* shall pay...” to “...the *Owner* may pay...”.

GC 5.7 FINAL PAYMENT

Delete from the first line of paragraph 5.7.2 the words, “calendar days” and substitute the words “*Working Days*”.

Delete from the second line of paragraph 5.7.4 the words, “...5 calendar days after the issuance...” and substitute the words “...30 calendar days after receipt of...”

GC 6.2 CHANGE ORDER

Add new paragraph 6.2.3 as follows:

“6.2.3 The following mark-up shall apply to work added to the Contract

In the case of changes in the Work to be paid for by the Owner under the methods described in paragraph 6.2.2, the Contractor and Subcontractor, respectively, may add to the net cost of additional work, a fee, or markup, inclusive of overhead and profit, limited to the following:

The General Contractor may add to the total net cost of additional work to be carried out by his own forces, a markup of Ten (10%) per cent. General Contractors are not allowed to treat their own forces as Subcontractors.

The General Contractor may add to the net cost of additional work by a Subcontractor, a markup, of Five (5%) per cent of the net sum Proposed by such Subcontractor

Subcontractor may add to the total net cost of additional work to be carried out by his own forces, a markup of Five (5%) per cent.

The Subcontractor may add to the net cost of additional work by a Sub-Subcontractor or Supplier, a markup, of Five (5%) per cent of the net sum Proposed by such Sub-Subcontractor or Supplier

Such markup, by General Contractor and Subcontractor, respectively, shall be based on net additional cost for any one change in the Work, such net cost being derived by deducting credits for labour and materials involved in deleted work from the cost of labour and materials involved in additional work. When quantities of the same product or material are changed in the same Change in the Work, the change in the Contract Price shall be based on the net difference in quantity between the product(s) or material(s) deleted and the product(s) or material(s) added.

‘Overhead’ shall include any additional charges and/or premiums for **Supervision, Permits, Bonds, Insurance, Office Overhead and the like**, which may result from Changes in the Work. The cost for these items shall not be added onto any Cost for Changes prior to applying mark-up.”

Add new paragraph 6.2.4 and 6.2.5 as follows:

“6.2.4 All quotations submitted shall be provide with ta detailed breakdown including, but not limited to the following:

1. quantity of each material
2. unit cost of each material
3. man hours involved
4. cost per hour
5. *Subcontractor* quotations submitted listing items 1 to 4 above and item 6 below.
6. mark-up”

6.2.5 The *Owner* and the *Consultant* will not be responsible for delays to the *Work* resulting from late, incomplete or inadequately broken-down valuations submitted by the *Contractor*.”

GC 6.3 CHANGE DIRECTIVES

Add new paragraph 6.3.14 as follows:

“6.3.14 Limits to Overhead and Profit as listed in paragraph 6.2.3 shall apply to Change Directives.”

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

Add new subparagraph 6.4.5:

“6.4.5 The Contractor confirms that, prior to bidding the Project, it carefully investigated the Place of the Work and applied to that investigation the degree of care and skill described in paragraph 3.14.1, given the amount of time provided between the issue of the bid documents and the actual closing of bids, the degree of access provided to the Contractor prior to submission of bid, and the sufficiency and completeness of the information provided by the Owner. The Contractor is not entitled to compensation or to an extension of the Contract Time for conditions which could reasonably have been ascertained by the Contractor by such careful investigation undertaken prior to the submission of the bid.”

GC 6.5 DELAYS

Delete the period at the end of paragraph 6.5.1 and substitute the following words: “....., but excluding any consequential, indirect or special damages.”

Delete the period at the end of paragraph 6.5.2, and substitute the following words:

“....., but excluding any consequential, indirect or special damages.”

Add new subparagraph 6.5.6.

“6.5.6 If the Contractor is delayed in the performance of the Work by an act or omission of the Contractor or anyone employed or engaged by the Contractor directly or indirectly, or by any cause within the Contractor’s control, then the Contract Time shall be extended for such reasonable time as the Consultant may decide in consultation with the Contractor. The Owner shall be reimbursed by the Contractor for all reasonable costs incurred by the Owner as the result of such delay, including all services required by the Owner from the Consultant as a result of such delay by the Contractor and, in particular, the cost of the Consultant’s services during the period between the date of Substantial Performance of the Work stated in Article A-1 herein as the same may be extended through the provisions of these General Conditions and any later, actual date of *Substantial Performance of the Work* achieved by the Contractor.”

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

Delete paragraph 6.6.5. in its entirety and substitute new paragraph 6.6.5.

“6.6.5. The *Consultant’s* findings, with respect to a claim made by either party will be given by *Notice in Writing* by the *Consultant* to both parties within reasonable time after receipt of the claim information noted in paragraph 6.6.3.”

Add new paragraph 6.6.7

“6.6.7 The *Owner* may make claims arising out of the costs incurred for additional services provided by the *Consultant* resulting from the *Contractor's* failure to reasonably perform the Work in accordance with the terms and conditions of the Contract, including the *Contractor's* issuance of unnecessary Requests for Information. The *Consultant* will notify the *Owner* and *Contractor* where it has been determined that additional services will be required or have been provided in order not to cause a delay. The *Owner* shall make claims based on the *Consultant's* invoices.”

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

Revise the heading, “GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION” to read, “GC 8.2 NEGOTIATION AND MEDIATION”.

Amend paragraph 8.2.1 by changing part of the second line from “...shall appoint a *Project Mediator*...” to “...may appoint a *Project Mediator*, except that such an appointment shall only be made if both the *Owner* and the *Contractor* agree....”

Amend paragraph 8.2.4 by changing part of the second line from “...the parties shall request the *Project Mediator*...” to “...and subject to paragraph 8.2.1 the parties may request the *Project Mediator*...”.

Delete paragraphs 8.2.6, 8.2.7, and 8.2.8 in their entirety.

GC 9.1 PROTECTION OF WORK AND PROPERTY

Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:

“9.1.1.1 errors in the Contract Documents which the Contractor could not have discovered applying the standard of care described in paragraph 3.14.1.”

Delete paragraph 9.1.2 in its entirety and substitute the following new paragraph 9.1.2: “9.1.2 Before commencing any Work, the Contractor shall determine the locations of all underground utilities and structures indicated in or reasonably determinable from the Contract Documents, or that are reasonably determinable from an inspection of the *Place of the Work* exercising the degree of care and skill described in paragraph 3.14.1.”

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

Add to paragraph 9.2.6 after the word “responsible”, the following new words:

“.....or whether any toxic or hazardous substances or materials already at the Place of the Work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Contractor or anyone for whom the Contractor is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others,”

Add “and the Consultant” after the word “Contractor” in subparagraph 9.2.7.4.

Add to paragraph 9.2.8 after the word "responsible", the following new words:

".....or that any toxic or hazardous substances or materials already at the Place of the Work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Contractor or anyone for whom the Contractor is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others,"

Add "and the Consultant" after the word "Owner" in subparagraph 9.2.8.4.

GC 9.4 CONSTRUCTION SAFETY

Add new paragraph 9.4.2. as follows:

"9.4.2 The *Contractor* shall indemnify and save harmless the *Owner*, the *Consultant*, their agents, trustees, officers, directors, employees, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the occupational health and safety legislation in force at the *Place of the Work* including the payment of legal fees and disbursements on a substantial indemnity basis."

GC 9.5 MOULD

Add "and the Consultant" after "Owner" in subparagraph 9.5.2.4.

Add "and the Consultant" after "Contractor" in subparagraph 9.5.3.4.

GC 10.1 TAXES AND DUTIES

Add new paragraph 10.1.3 as follows:

"10.1.3 Where the *Owner* is entitled to an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner*, assist with the application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*."

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

Delete from the first line of paragraph 10.2.5 the word, "The" and substitute the words:

".....Subject to paragraph 3.14.1, the".

342

Request For Proposal: SAH UPS – 4.8 MW

128-1F

GC 10.4 WORKERS' COMPENSATION

Delete paragraph 10.4.1 and replace with the following:

"10.4.1 Prior to commencing the *Work*, and with each and every application for payment thereafter, including the *Contractor's* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Contractor's* application for final payment, the *Contractor* shall provide evidence of compliance with workers' compensation legislation in force at the *Place of the Work*, including payments due thereunder."

GC 12.1 INDEMNIFICATION

Add "...and the Consultant, their agents and Sub-Consultants..." after the words "...hold harmless the other..." in paragraph 12.1.1.

GC 12.3 WARRANTY

Delete from the first line of paragraph 12.3.2 the word, "The" and substitute the words: ".....Subject to paragraph 3.14.1, the...".

343

Request For Proposal: SAH UPS – 4.8 MW

128-1F

5. CCDC2-2008 STIPULATED PRICE CONTRACT

CCDC 2e 2008 to be used

344

Request For Proposal: SAH UPS – 4.8 MW

128-1F

6. DRAWING PACKAGE

1. N-Sci Technologies “For Review” Package (separate file)

345

Sault Area Hospital 4.8 MW UPS Project



N-Sci Project ID: 128.01



PROJECT DRAWINGS AND SPECIFICATIONS PACKAGE

Map of Site

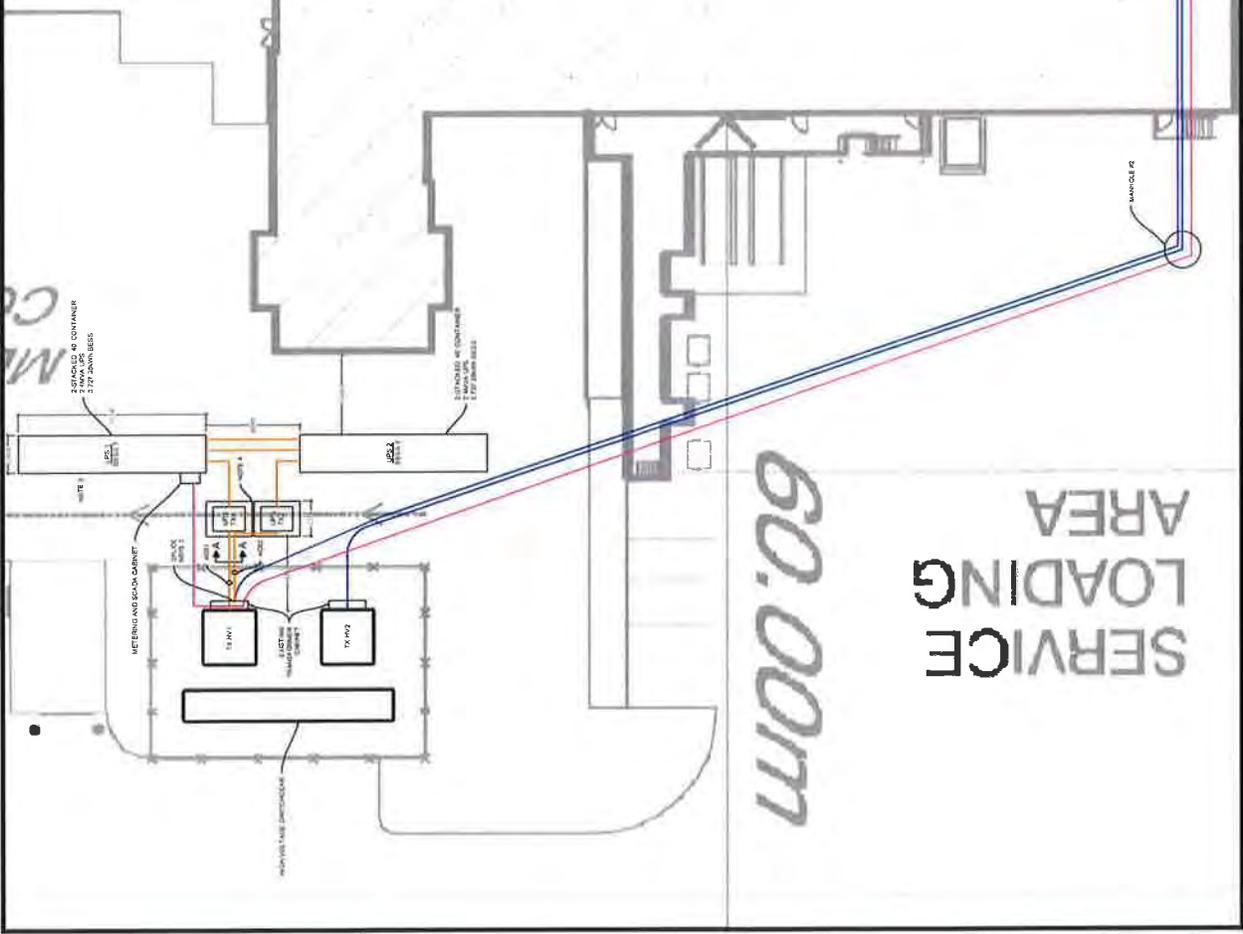
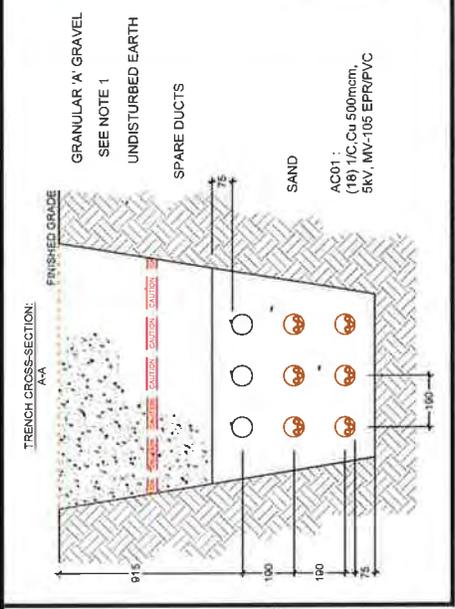


Table of Contents

1. UPS interconnection site plan
2. Single Line Diagram
3. Ground electrode site plan
4. Ducts Overview
5. Section Drawing of ducts
6. Calculations and schedules
7. UPS container general assembly (Vendor Ref: NT-S- 2542G)
8. General arrangement of UPS container (Vendor Ref: NT-S- 2542G)
9. 40' Battery drawing (Vendor Ref:NT-S- 2545G)
10. Transformer vault drawing

347

- LEGEND:**
- 4 18KV CABLE (EXISTING)
 - 4 18KV CABLE (NEW)
 - FIBRE OPTIC CABLE (NEW)



- NOTES:**
- 1 Caution tape to be located halfway from surface to cable
 - 2 AC01, AC02 cable connections and final trench locations TBD
 - 3 Container foundation to be slab-on-grade or helical pile - TBD
 - 4 UPS TX1, UPS TX2 to be placed on vaults

PROJECT:
SAULT AREA HOSPITAL UPS
INTERCONNECTION PLAN

TITLE:
UPS INTERCONNECTION
SITE PLAN



CUSTOMER: Demand Power Group Inc.
2 Fairview Ave. Suite 302, Toronto, ON, M4R 3H4



ELECTRICAL ENGINEER:
ROBERT BEID P. ENG
N-Sci Technologies Inc.
Registered Professional Engineer
Professional No. 14195
2400 Main St. Suite 303
Mississauga, ON L4W 1A3

REV.	DATE	DESCRIPTION
A	06/20/2023	CREATED SHEET
B	06/20/2023	REVISED SHEET
C	06/20/2023	REMOVED EXISTING CABLES
D	06/20/2023	ADDED SCADA CABINET AND FIBER

SCALE: NTS
DATE: E-0128-01-050
NO.: 1 OF 1
DRAWING NO.: D

FOR REVIEW

348

LEGEND:
 BS-01: BYPASS SWITCH
 BS-01: BREAKERS WITH FEATURES OF PROTECTION
 LV-01: COMMUNICATIONS CABLING

NOTES:
 LV-01: BREAKER FEATURES :27, 32R, 49, 50/31, 50N/31N, 68, 81L
 BS-01: to be lark key interlocked and BS-01 is to be closed only during maintenance

PROJECT:
 SAULT AREA HOSPITAL UPS
 INTERCONNECTION PLAN

TITLE:
 UPS INTERCONNECTION
 SINGLE-LINE DIAGRAM



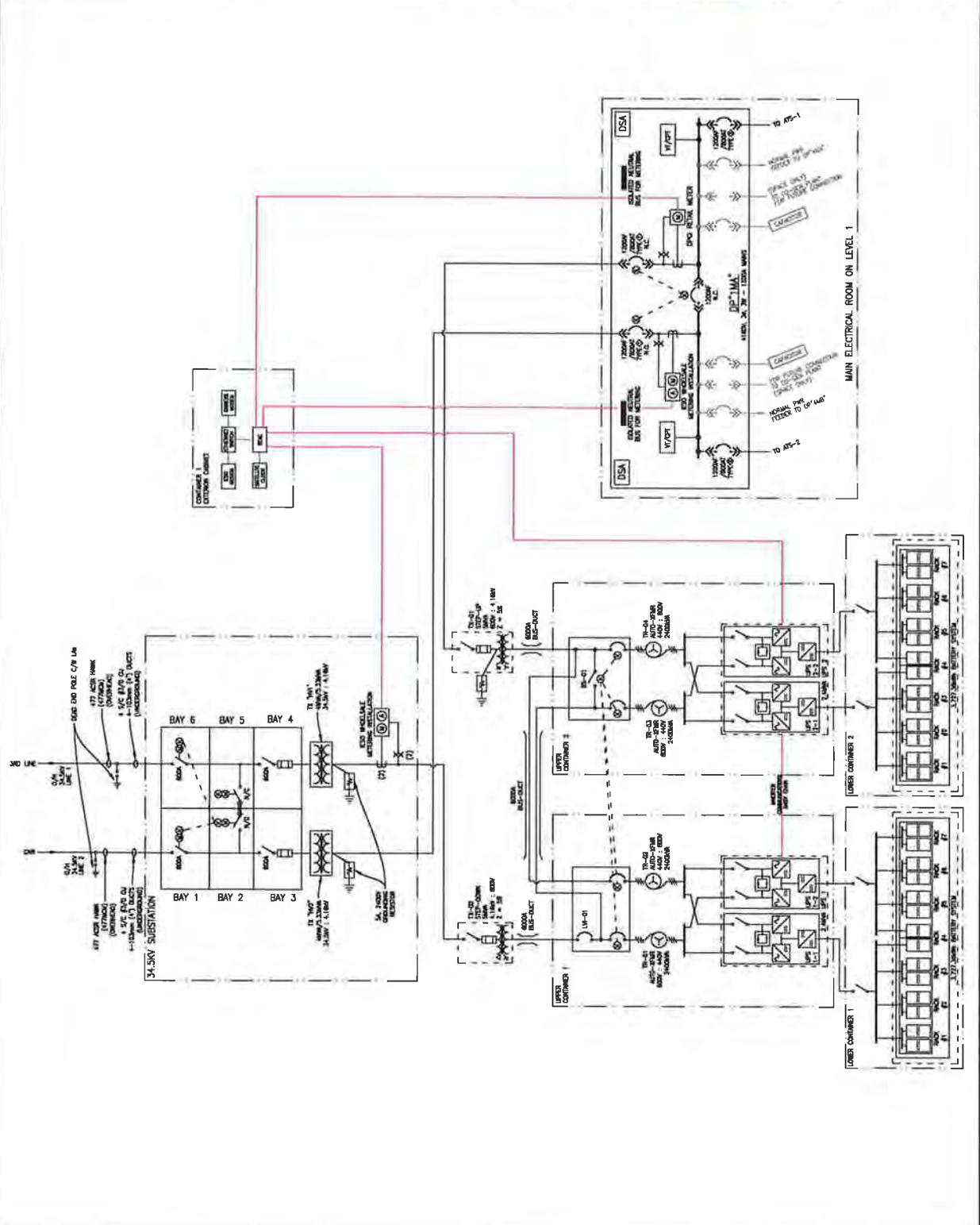
CUSTOMER: Demand Power Group Inc
 37 Parkside Ave., Suite 202, L'Esperance, ON, M1A 2P8
CONFIDENTIAL: THIS DRAWING IS PROPERTY OF N-SCI TECHNOLOGIES INC. THE INFORMATION IN THIS DRAWING CANNOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT THE WRITTEN CONSENT OF N-SCI TECHNOLOGIES INC.



ELECTRICAL ENGINEER:
 N-Sci Technologies Inc
 MSP-1031
 1000 Lakeshore Blvd. West, Suite 1000
 Markham, Ontario, Canada

REV	DATE	DESCRIPTION
1	01/15/2013	ISSUED FOR PERMITTING
2	01/15/2013	ISSUED FOR PERMITTING
3	01/15/2013	ISSUED FOR PERMITTING
4	01/15/2013	ISSUED FOR PERMITTING
5	01/15/2013	ISSUED FOR PERMITTING

FOR REVIEW
 DRAWING: E-0128 01-101
 SHEET: 1 OF 1
 SCALE: C



349

- LEGEND:**
- EXISTING COPPER GROUND ELECTRODE
 - #2/0 BARE STRANDED COPPER (NEW)
 - 3/4" COPPER GROUND ROD

NOTES:

PROJECT:
SAULT AREA HOSPITAL UPS
INTERCONNECTION PLAN

TITLE:
UPS GROUND ELECTRODE
SITE PLAN



CUSTOMER: Demand Power Group Inc.
2 Parade Ave. Suite 302 Toronto, ON M8K 3H8

CONFIDENTIAL: THIS DRAWING IS PROPERTY OF N.S.T. TECHNOLOGIES INC. THE INFORMATION IN THIS DRAWING CANNOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT.



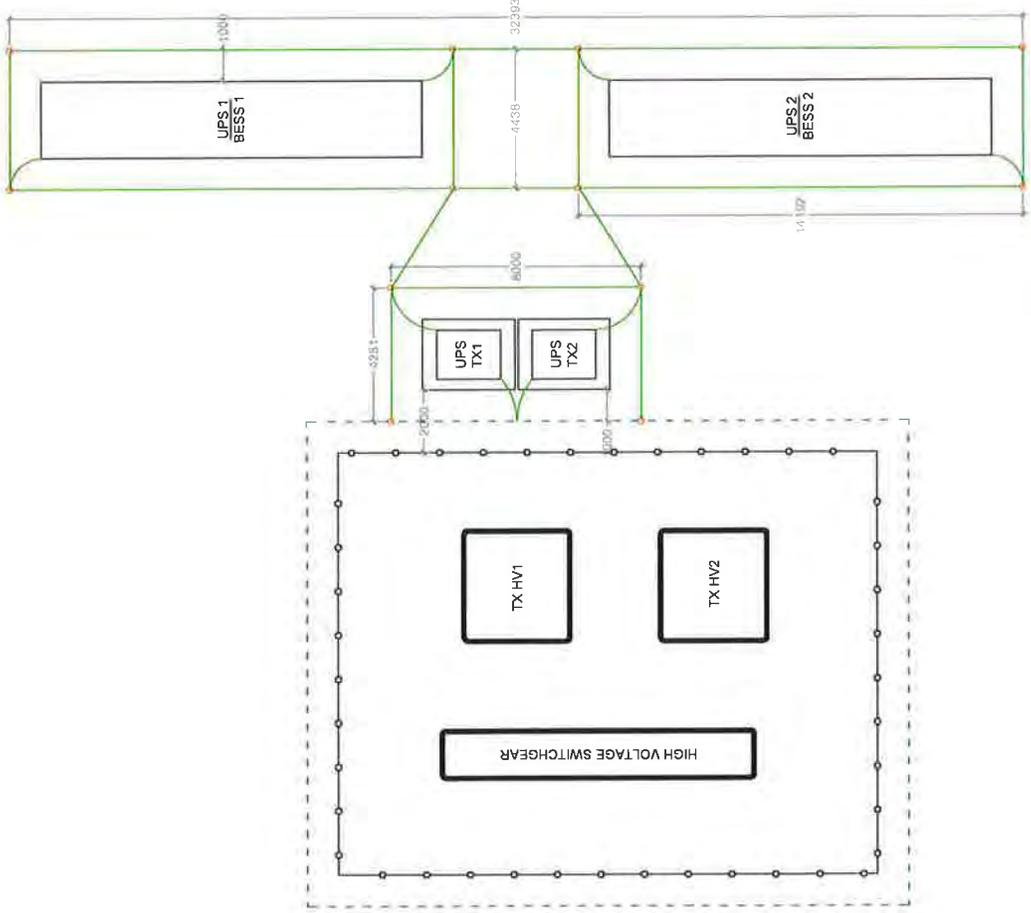
ELECTRICAL ENGINEER:

ROBERT REID P. ENG.
N.S.T. Technologies Inc.
ASP1037
1000 Midland Ave. Unit 15
Scarborough, Ontario M1V 4Y5

REV.	DATE	DESCRIPTION
A	2018-01-20	ISSUED SHEET
B		
C		
D		
E		
F		
G		
H		
I		
J		
K		
L		
M		
N		
O		
P		
Q		
R		
S		
T		
U		
V		
W		
X		
Y		
Z		

SCALE:	DATE:	SHEET:	REV:
NTS	E-0128.01-200	1 OF 1	A

- NOTES**
- PERFORM WORK AS PER LATEST ONTARIO ELECTRICAL CODE STANDARDS, ACTS & REGULATIONS AND INDUSTRY BEST PRACTISES
 - INSTALL ALL EQUIPMENT IN ACCORDANCE WITH MANUFACTURERS INSTALLATION INSTRUCTIONS AND APPLICABLE BUILDING CODES
 - ALL EXPOSED ABOVE GRADE GROUNDING SHALL BE CONNECTED TO GROUNDING GRID WITH #2/0 BARE STRANDED COPPER CONDUCTOR
 - GROUND GRID SHALL BE #2/0 BARE STRANDED COPPER
 - GROUND GRID SHALL BE INSTALLED 450mm BELOW FINISHED GRADE (MINIMUM DEPTH OF 150mm FOR OBSTRUCTIONS)
 - WHERE SAFETY OF PERSONS DEPENDS ON THE INTEGRAL PRESENCE OF A GROUND SURFACE COVERING LAYER SUCH AS STONE OR ASPHALT, THE GROUND SURFACE COVERING LAYER SHALL EXIST THROUGHOUT THE STATION GROUNDING ELECTRODE AREA INCLUDING ALL AREAS IN WHICH METALLIC STRUCTURES ELECTRICALLY CONNECTED TO THE STATION ARE TO BE FOUND AND SHALL EXTEND AT LEAST 100mm BEYOND THE STATION GROUND ELECTRODE AREA ON ALL SIDES. RULE 38-304 (5)
 - RULE 38-304 (4) REQUIRES THE RESISTANCE OF THE STATION GROUND ELECTRODE TO BE MEASURED AFTER COMPLETION OF CONSTRUCTION. A PERMANENT CONNECTION AUTHORIZATION MAY BE ISSUED AS LONG AS THE LOCAL FIELD WIRING INSPECTOR WITH THE FOLLOWING CALCULATED VALUES BASED ON MEASURED RESISTANCE OF THE INSTALLED STATION GROUND ELECTRODE:
 - MEASURED RESISTANCE OF ELECTRODE (R)
 - MEASURED RESISTANCE OF ELECTRODE (R) x TOUCH VOLTAGE (V)
 - TOUCH VOLTAGE (V)
 - STEP VOLTAGE (V)
 PLEASE NOTE: IF THE MEASURED RESISTANCE IS MORE THAN THE DESIGNED RESISTANCE OF 5.928Ω, AN ADDITIONAL GROUNDING STUDY MAY BE REQUIRED.
 - IT SHALL BE THE OWNERS RESPONSIBILITY AND AT THE OWNERS COST TO UPGRADE THE STATION GROUND ELECTRODE IF THE FAULT CURRENT LEVELS IN THE FUTURE EXCEED THE VALUE SPECIFIED IN THE SUBMITTED GROUNDING STUDY
 - FENCE GROUNDING: ALL CORNER AND GATE POSTS SHALL BE CONNECTED TO THE STATION GROUND ELECTRODE. THEN, THE SPACING BETWEEN ELECTRODE CONNECTED POSTS SHALL NOT EXCEED 12m



350

LEGEND:

NOTES:

PROJECT:

SAULT AREA HOSPITAL UPS
INTERCONNECTION PLAN

TITLE:

DUCT OVERVIEW
SAH Drawing



CUSTOMER: Demand Power Group Inc
2 Phoenix Ave., Suite 302, Toronto, ON M6C 2H4

CONFIDENTIAL: THIS DRAWING IS PROPERTY OF N-SCI TECHNOLOGIES INC
IF THE INFORMATION IN THE DRAWING CANNOT BE REPRODUCED IN WHOLE OR
IN PART WITHOUT WRITTEN CONSENT



ELECTRICAL ENGINEER:

ROBERT REID, P. ENG

N-Sci Technologies Inc.

1000
1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

FOR REVIEW

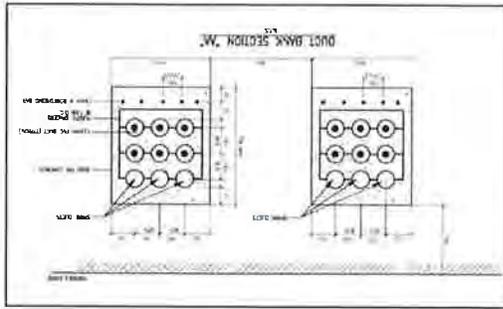
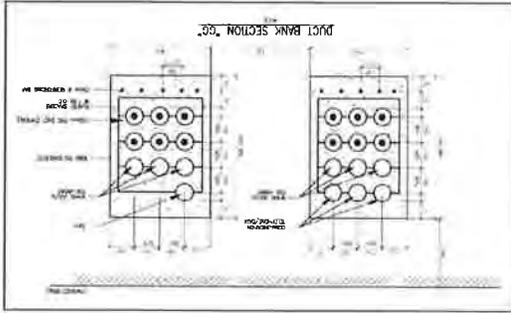
DRAWING:

E-0128 01-103

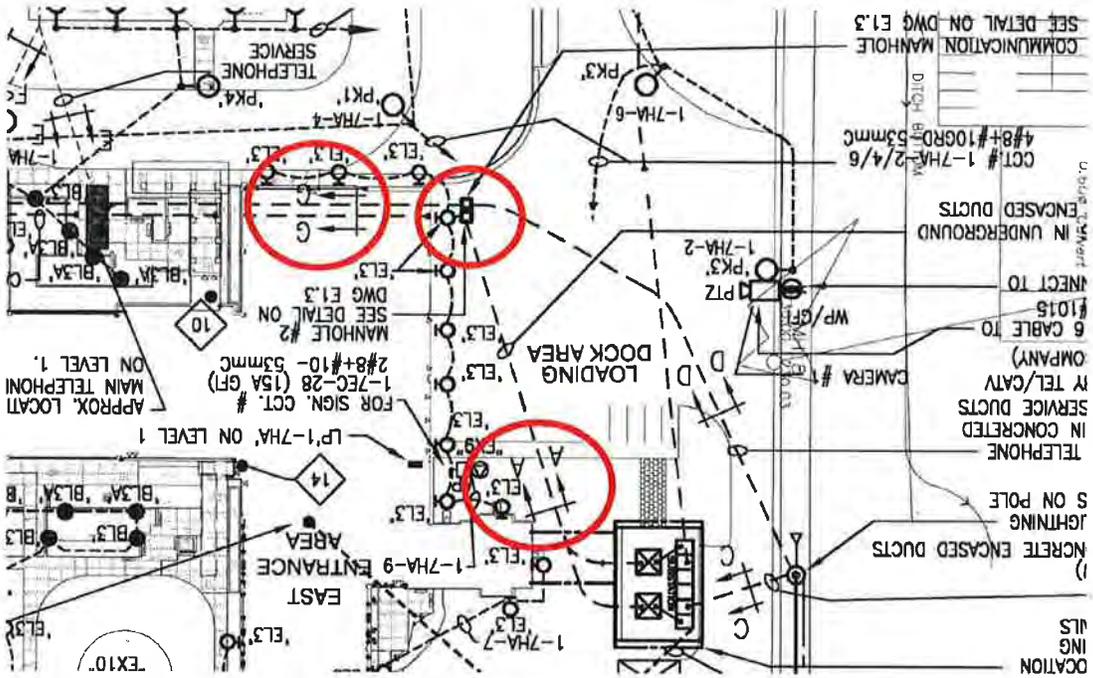
SHEET:

1 OF 1

REV: A



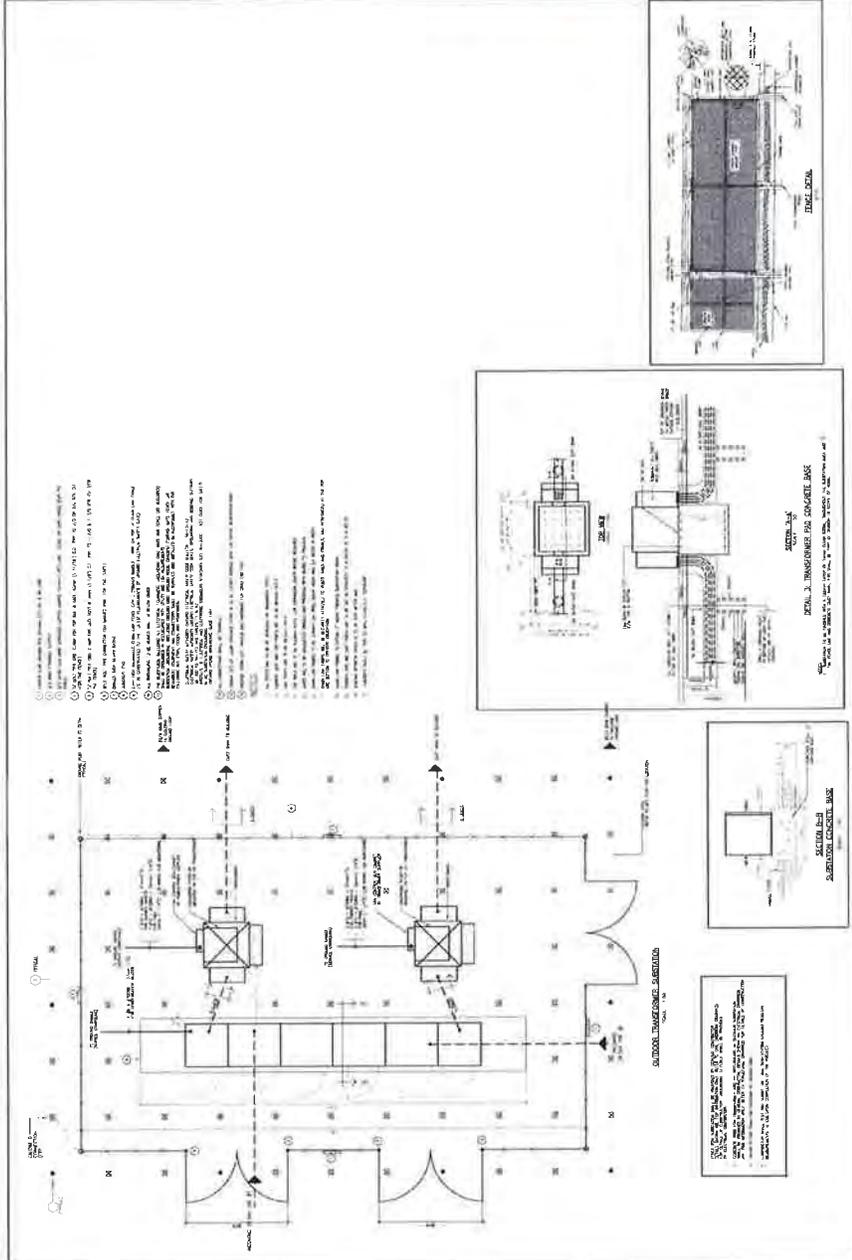
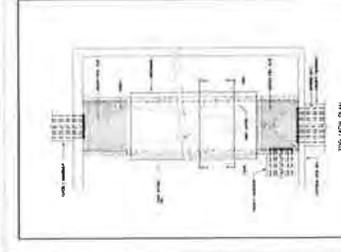
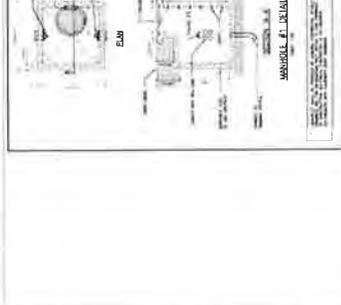
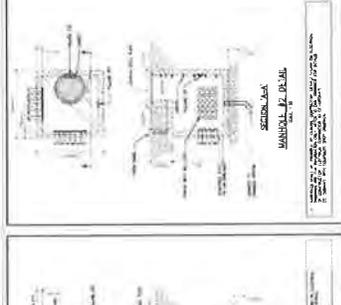
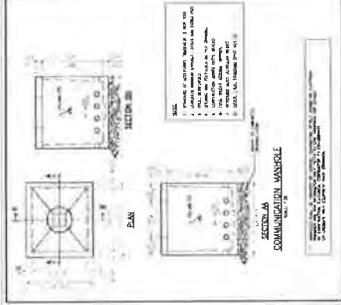
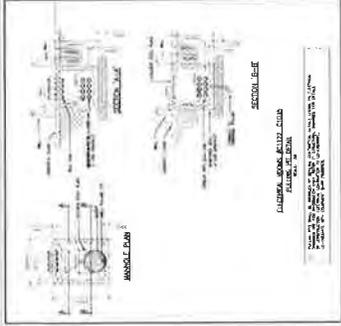
Drawing E1.4: Section AA – three spare ducts per high voltage duct bank.



Drawing E1.1: Section AA is relevant to connection of BSS by picking up spare ducts.

351

LEGEND:



PROJECT: SAULT AREA HOSPITAL UPS INTERCONNECTION PLAN

TITLE: E1.3 SAH Drawing



CUSTOMER: Demand Power Group Inc

2 Parkside Ave., Suite 302, Joliet, IL 61734

CONFIDENTIAL - THIS DRAWING IS PROPERTY OF N-SCI TECHNOLOGIES INC. THE INFORMATION IN THIS DRAWING CANNOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION.



ELECTRICAL ENGINEER: N-Sci Technologies Inc, 1500 N. 1st St., Joliet, IL 61734

NO.	DATE	DESCRIPTION	BY	CHECKED
1	01/10/2011	ISSUED FOR PERMIT	AW	AW
2	01/10/2011	ISSUED FOR PERMIT	AW	AW
3	01/10/2011	ISSUED FOR PERMIT	AW	AW
4	01/10/2011	ISSUED FOR PERMIT	AW	AW
5	01/10/2011	ISSUED FOR PERMIT	AW	AW
6	01/10/2011	ISSUED FOR PERMIT	AW	AW
7	01/10/2011	ISSUED FOR PERMIT	AW	AW
8	01/10/2011	ISSUED FOR PERMIT	AW	AW
9	01/10/2011	ISSUED FOR PERMIT	AW	AW
10	01/10/2011	ISSUED FOR PERMIT	AW	AW

FOR REVIEW: N/A, E-0128-01-102, 1 OF 1, A

353

LEGEND:

NOTES:

PROJECT:
SAULT AREA HOSPITAL UPS
INTERCONNECTION PLAN

TITLE:
STACKED 40' CONTAINERS
DPGI DRAWING



CUSTOMER: Demand Power Group Inc.
2 Purcell Ave. Suite 307 Toluon, ON M8K 3H8

CONFIDENTIAL - THIS DRAWING IS PROPERTY OF N-SCI TECHNOLOGIES INC.
THE INFORMATION IN THE DRAWING CANNOT BE REPRODUCED IN WHOLE OR
IN PART WITHOUT WRITER'S CONSENT

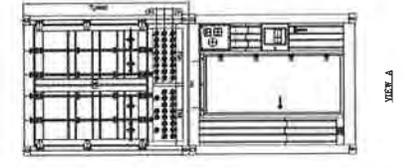
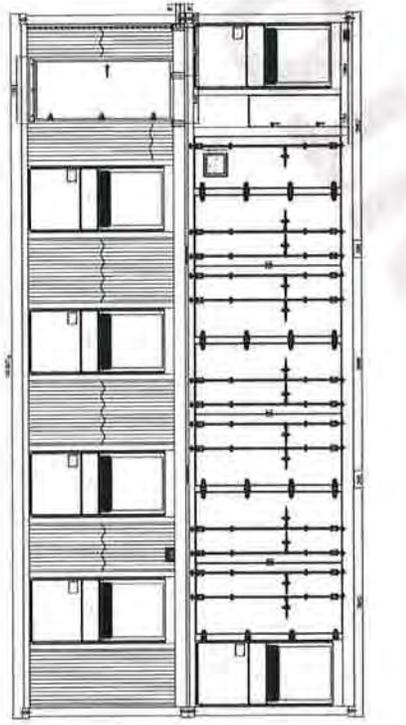
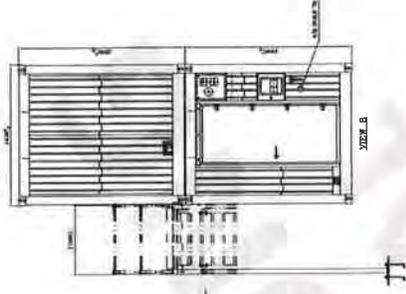


ELECTRICAL ENGINEER:

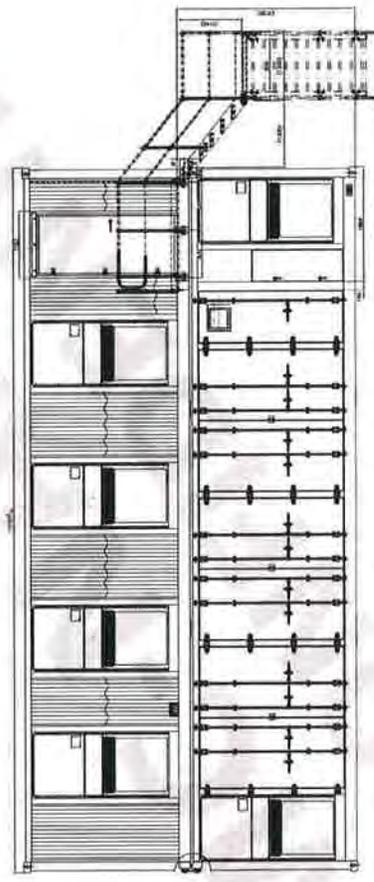
11111 Road 10, Unit 10
N-Sci Technologies Inc.
Mississauga, ON L4V 1R7
71 Glick Rd - Unit 5
Mississauga, ON L4V 1R7

NO.	DATE	DESCRIPTION
1	01/28/2010	FOR REVIEW

SCALE:	N/A	DATE:	E-0128.01-102	NO. OF SHEETS:	1 OF 1	REV. NO.:	A
--------	-----	-------	---------------	----------------	--------	-----------	---



Note: The battery system has been passed the FEA test and the conclusion shows that this structure can support the installation of UPS system



VENDOR DRAWING REFERENCE: NT-S-2542G & NT-S-2545G

354

LEGEND:

NOTES:

PROJECT:
SAULT AREA HOSPITAL UPS
INTERCONNECTION PLAN

TITLE:
40' UPS
DRGI Drawing



CUSTOMER: Demand Power Group Inc.
2 Pavilion Ave. Suite 302, Toronto, ON M8K 3H8

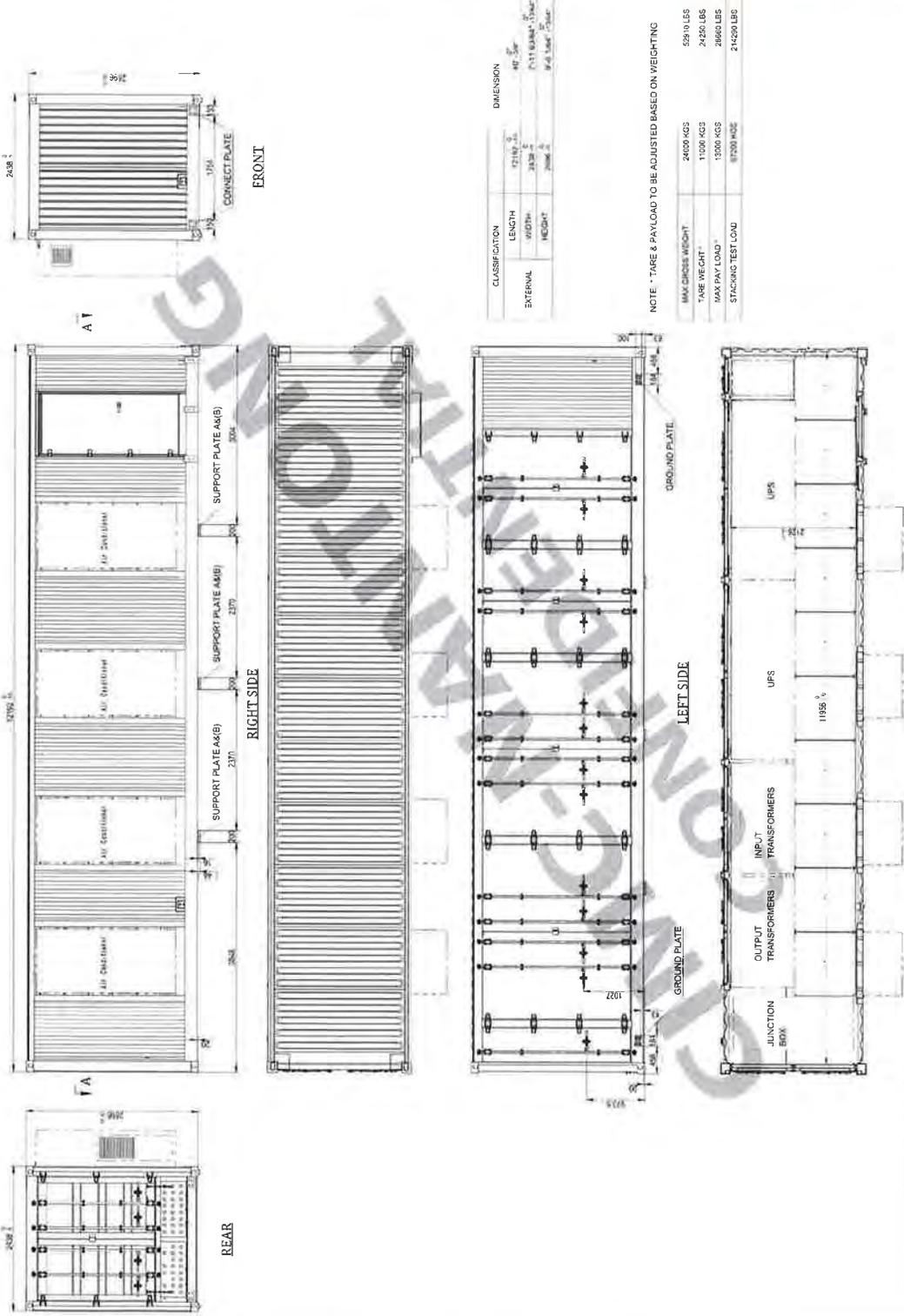
CONFIDENTIAL: THIS DRAWING IS PROPERTY OF N-SCI TECHNOLOGIES INC. THE INFORMATION IN THE DRAWING CANNOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT.



ELECTRICAL ENGINEER:
N-Sci Technologies Inc.
1000 Lakeshore Blvd. West
Suite 200, Markham, ON R3A 2K3

REV.	DATE	DESCRIPTION
1	01/28/2012	FOR REVIEW

DATE: 01/28/2012
DRAWING NO: E-0128-01-103
SHEET: 1 OF 1
REV: A



VENDOR DRAWING REFERENCE: NT-S-2545G

355

LEGEND:

NOTES:

PROJECT:

SAULT AREA HOSPITAL UPS
INTERCONNECTION PLAN

TITLE:

40' BATTERY
DRG# Drawing



CUSTOMER: Demand Power, Chicago, IL

21000 North Ave., Suite 202, Franklin Park, IL 60159
CONFIDENTIAL - THIS DRAWING IS PROPERTY OF N-SCI TECHNOLOGIES, INC. THE INFORMATION IN THIS DRAWING IS NOT TO BE REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT.

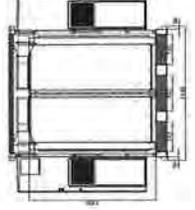
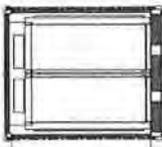
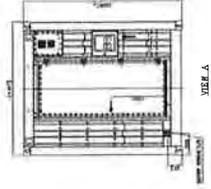
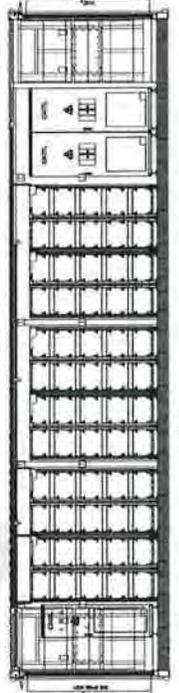
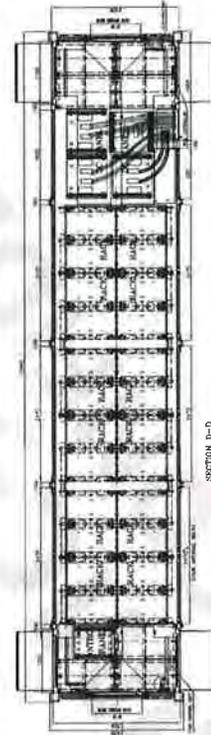
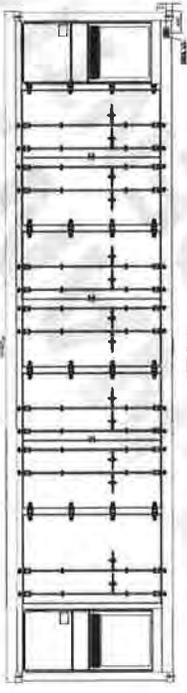
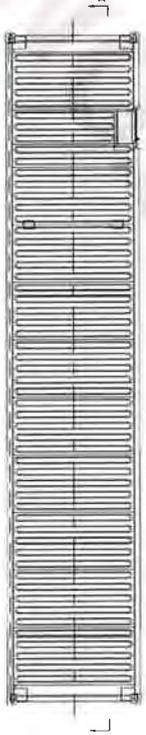
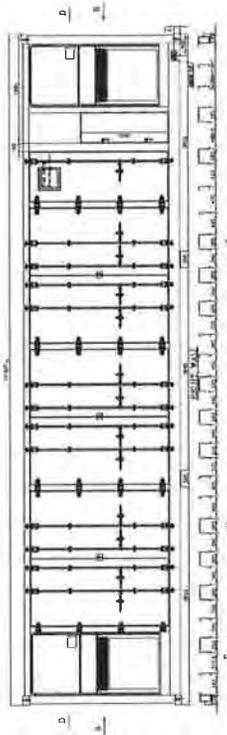
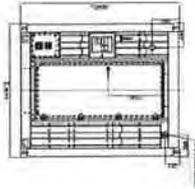


ELECTRICAL ENGINEER:

Michael P. Ford
N-Sci Technologies, Inc.
MSF 0301
21 Black Rd - Unit 5
Franklin Park, IL 60159

NO.	DATE	BY	DESCRIPTION
1	03/17/2020	MSF	CREATED SHEET

NO.	DATE	BY	DESCRIPTION
N/A	E-0128.01-104	1 OF 1	FOR REVIEW



NOTE - TABLE & FIGURES TO BE REVISIONED BASED ON WORKING

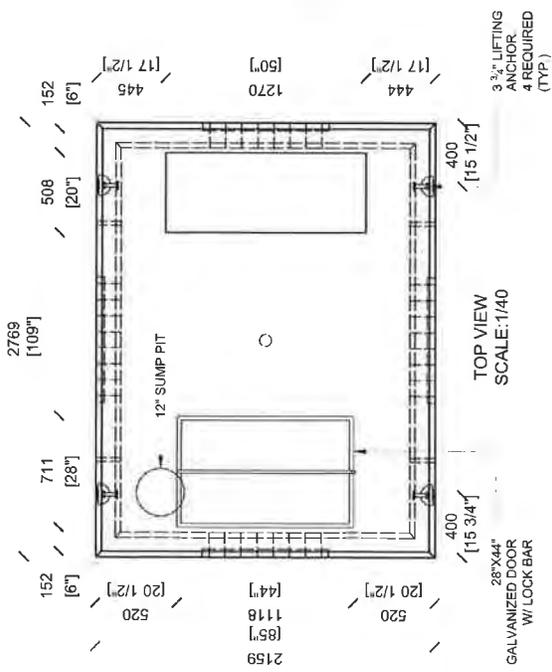
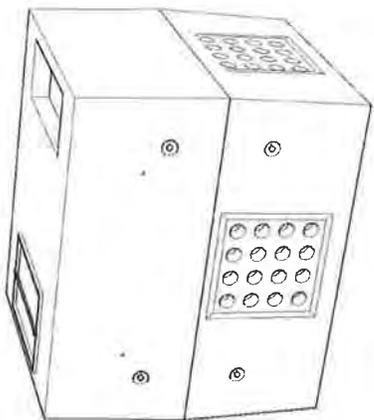
CLASSIFICATION	LENGTH	WIDTH	HEIGHT	MAX GROSS WEIGHT (WITHIN BATTERY)	TABLE HEIGHT *
EXTERNAL	2192	2438	2886	47200 KGS	44000 LBS
INTERNAL	11836	2808	2588	11020 KGS	24350 LBS
DOOR OPENING (ESCAPE DOOR)	2136	2470	2592		
DOOR OPENING (SIDE DOOR A)	1626	2470	2592		
DOOR OPENING (SIDE DOOR B)	1626	2470	2592		
DOOR OPENING (SIDE DOOR C)	1626	2470	2592		

WOOD DRAWING REFERENCE: W-15-2002

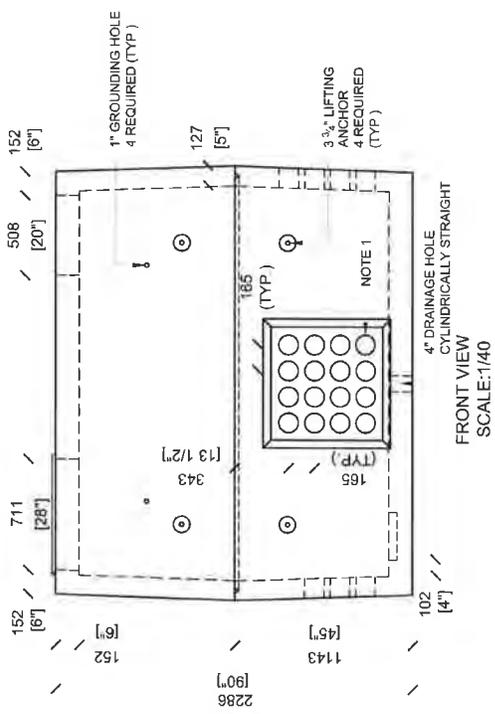
356

LEGEND:

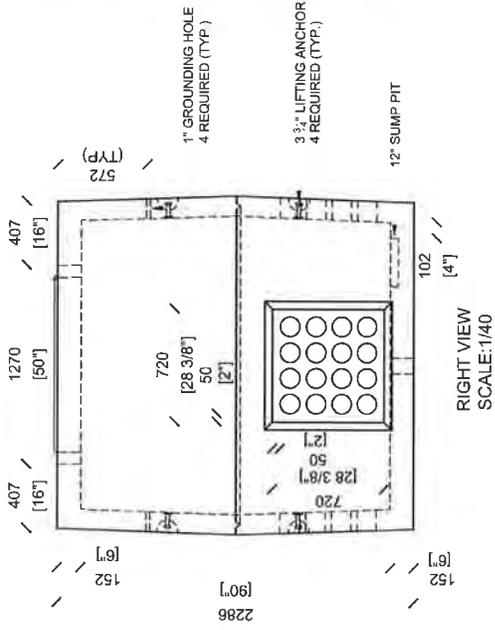
- GENERAL NOTES:**
- 1 CABLE ENTRY OPENINGS - 4 3/4" PVC SEALS
 - 2 DELIVERY IS MADE BY CRANE-EQUIPPED TRUCKS. EXCAVATION MUST BE READY, SAFE AND ACCESSIBLE FOR UNLOADING FROM THE REAR OF THE TRUCK
 - 3 MIN OVERHEAD CLEARANCE OF 16FT (5 METRES) IS REQUIRED
 - 4 ALL UNITS MUST BE HANDLED WITH PROPER LIFTING EQUIPMENT (IE SPREADER BAR)
 - 5 UNITS MUST BE SEALED WITH BUTYL TAPE AT THE JOINTS
 - 6 WATER PRESSURE WAS NOT CONSIDERED IN THE STRUCTURAL DESIGN REPORT WATER TABLE DURING CONSTRUCTION
 - 7 PLACE BACKFILL SIMULTANEOUSLY AROUND THE VAULT TO AVOID UNBALANCE LATERAL EARTH PRESSURES
 - 8 BACKFILL SHOULD BE UNIFORMLY COMPACTED TO A MINIMUM OF 98% MATERIALS SPMBDD
 - 9 SOIL BEARING CAPACITY 75 kPa (SLS)



TOP VIEW
SCALE: 1/40



FRONT VIEW
SCALE: 1/40



RIGHT VIEW
SCALE: 1/40

PROJECT: SAULT AREA HOSPITAL UPS INTERCONNECTION PLAN

TITLE: BCP104SK TRANSFORMER VAULT BROOKLYN CONCRETE PRODUCTS DRAWING

CUSTOMER: Demand Power Group Inc
3 Phoenix Ave., Suite 302, Toronto, ON M6H 3H8

COMPROMISED: THIS DRAWING IS PROPERTY OF N-SCI TECHNOLOGIES INC. THE INFORMATION IN THE DRAWING CANNOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT.

ELECTRICAL ENGINEER:
N-Sci Technologies Inc
1450 St. Lawrence Ave. East
Suite 100, Markham, ON L3R 9V3

NO.	DATE	DESCRIPTION	BY	CHK.	APP.
1	05/11/2017	CREATED SHEET			

FOR REVIEW

DATE: N/A
DRAWING: E-0128.01-105
SHEET: 1 OF 1
REV: A

VENDOR DRAWING REFERENCE: BCP104SK

357

358

Answers to some questions received

1. **Require Concrete foundation drawings for UPS Containers. – note shows slab on grade or Helical piles TBD? We need IFT set for pricing.**

Basic concrete slab foundation or helical piles foundation will be required for the UPS containers of weight 71000 kg each (2* 71000 kg)

2. **Require Concrete Foundation drawings for Stair Cases.**

Basic staircase dimensions are provided in stacking diagram of UPS containers. Staircase fabrication will be in scope of the GC

3. **Civil Detail for Transformer Vault.**

An example of the vault has been attached with the package. Details are yet to be decided.

4. **Who installs the cables between containers and between each upper and lower containers, no cable schedule showing sizes.**

-Cable installation between the UPS and the battery will be within the scope of the GC. The details of cabling is not yet available
-Bus ducts between containers is to be supplied and installed by the GC

5. **Please spec out the fiber cable and what type of ends are needed, LC,ST etc.**

Specification of cable : 12 strand fibre OM4 62.5/125 µm
Type of ends are yet to be determined.

6. **Can you supply detail on how N-Sci was going splice cable AC01 and AC01 inside the existing TX1, is there room for this splice?**

Inside the TX HV 1 connection cabinet, a splice will be made between the existing feeder (shown in blue in SLD) and AC01.

7. **Require lifting weights for Owner supplied Transformers for Crane sizing.**

The transformers are not owner supplied.

8. **Does the containers come separate upper and lower and who connects the cabling between them, need cable list if EC is responsible.**

-Yes, the containers would be separate.
-EC will be responsible for the cabling. Cable list is not yet available

9. **Are we to include commissioning time of the UPS units or is this done by Demand Power.**

No, the commissioning time of the UPS units is not included.

10. **Require Length of the fiber from Container 1 to SAH Level 1 electrical Room.**

359

100-150 m

11. Require list of Fiber Equipment N-Sci is spec.

-Not yet available

12. Does the Stair Cases need to be stamped by Engineer for the shop drawings.

-This would depend on the type of the staircase that is supplied by the GC.
Compliance with Ontario Building code will be required for the staircases

13. What Finish do you want the stair case, Galv. Or Painted.

-Galvanised finish should be good.

14. What is the schedule for the outage, please confirm if this work can be done during the day as SAH is 24/7 operations.

-This work can be done during the day .

15. Can we get pictures inside of TX-HV1, to review the space available for splicing.

-Pictures of inside of TX-HV1 are not currently available

16. Who Supplies the Two Transformers and do they need site testing from third party.

-GC supplies the two transformers
-just manufacturers testing should be fine.

17. It notes fencing, but does not show fence details around the new UPS Site, please confirm if fencing is required and supply details.

-Fencing is not required

18. Add to Item 19, if fencing is needed we need details on fence grounding, signage. N/A

19. Do we need Install Clear Stone inside the new Fencing to maintain the step potential by ESA Code N/A

20. Has this been approved by ESA Plan review and who will cover the cost.

The plan is yet to be approved by ESA, This cost is not included in the scope of the GC. The bidder shall be provided with the ESA review report once received.

21. UPS Containers – are they shipped stacked as one or will they come separate for total of 4 - 40ft containers. Will require weights of each container.

The UPS Containers are shipped separately . The maximum gross weight of each container is 71000 kgs

22. Do we have Geo-Tech report of the site conditions.

-Geo Tech report is not currently available

360

23. Is there any cash allowances or contingency allowance we need to carry as non are shown in RFP.

-The GC may carry anything that they think is appropriate.

24. Do we require any drainage for Transformer vaults.

Yes, a passive drainage system is required.

25. Drawing E-0128.01-050 shows one fiber per the Legend to main SAH elect rm. And drawing E-0128.01-101 shows two fibers. Please confirm.

Only one 12 strand cable is required.

26. Exterior Meter Cabinet, does this need steel stand with foundations or can we mount it to the container.

It can be mounted to the container

27. Trench Duct Detail A-A – does the conduits need to be encased on concrete?

No, the conductors are direct buried

361

ITEM 4

362
DELTR O
ELECTRIC LTD
A DELTRO GROUP COMPANY

30th Anniversary

December 11, 2020
N-Sci Technologies
71 Black Rd, Unit 5
Sault Ste. Marie, ON P6A-2K5
Tel : (705) 949-1033

ATTENTION: LAURA MEZZOMO / PRACHI DESHPANDE

**REGARDING: ELECTRICAL PROPOSAL FOR
SAULT AREA HOSPITAL UPS -4.8MW UPS
750 Great Northern Road, Sault Ste. Marie, Ontario**

We enclose with this email the following.....

1. Deltro detailed scope of work – 2 pages
2. DPGI/N-Sci – FORM OF TENDER – 2 pages
3. Project Schedule
4. WSIB Clearance Certificate
5. Surety's Agreement to Bond
6. Certificate of Insurance

363

DELTR O
ELECTRIC LTD
A DELTRO GROUP COMPANY

30th Anniversary

SCOPE OF WORK:

- 1) Supply & install one TX-01 step up 5MVA transformer complete with concrete vault
- 2) Supply & install one TX-02 step down 5MVA transformer complete with concrete vault
- 3) Existing high voltage substation and high voltage transformers to remain
- 4) Existing underground feeder between TX-HV2 and DP-1MA switchboard to remain
- 5) Re-route existing TX-HV1 feeder to new TX-01 step up 5MVA transformer
- 6) Provide 5A 2400v neutral grounding resistor
- 7) Provide conduit and fiber cable cabling & termination of equipment as per single line diagram
- 8) Provide an external metering cabinet locate outside of container 1
- 9) Assist the installation of IESO Wholesale Metering and communication equipment
- 10) Provide electrical wiring services to connection electrical equipment outside the UPS/BESS containers
- 11) Include electrical services to install transformer vaults, cable raceways
- 12) Provide power feeds between step up TX-01 and Container 2
- 13) Provide power feeds between step down TX-02 and Container 1
- 14) Provide power feeds between two UPS Containers
- 15) Provide power feeds between UPS & BESS containers
- 16) Asphalt cutting & patching if needed.
- 17) Grounding of new equipment to meet code
- 18) Provide as built marked up drawings once project complete
- 19) Include FSA permit & inspection
- 20) Allow electric scissor lifts for electrical installation
- 21) Fire stopping and caulking for electrical work.
- 22) Removal and responsible off-site disposal of all packaging and debris associated with the electrical installation
- 23) One-year warranty work
- 24) Surety bonding as per RFP
- 25)

NOT INCLUDED:

Hydro connection cost

1706 Mattawa Avenue, Mississauga, Ontario L4X 1K1
Toll Free: 1-800-866-1109 | Tel: (905) 566-9816 | Fax: (905) 566-8217
e-mail: hanna@deltro.ca | ECRA/ESA Lic. # 7005510
www.deltro.ca

364

DELTR O ELECTRIC LTD

A DELTRO GROUP COMPANY

Hydro shut down cost

Grounding study

Engineering fees

Exclude electrical work within UPS containers

Electrical work within BESS containers

UPS System commissioning

Wholesale Revenue Metering, Retail Revenue Metering, SCADA, RTAC, communication equipment

Exclude terminations and wires between UPS containers and BESS containers

Exclude temporary power backup generator

HST.

30th Anniversary

Yours truly,

DELTR O ELECTRIC LTD.

365

Request For Proposal: SAH UPS – 4.8 MW

128-1F

1. FORM OF PROPOSAL

The Bidder, the undersigned, having carefully examined the specifications provided, and having made an adequate site inspection, and having read the general conditions and instructions to bidders, attached to and forming a part of this request for Proposal, hereby propose and agree to supply, all materials, labour and equipment pertaining to the **Supply & Install of UPS Project** at the Sault Area Hospital, located at 750 Great Northern Rd, Sault Ste. Marie, ON P6B 0A8, as detailed below, at the following Proposal prices in Canadian Dollars:

Materials, Labour & Equipment to Supply & Install the UPS Project - In accordance with Section 3: Specifications

\$ 1,048,631.00

13% HST

\$ 136,322.03

Total Proposal Price

\$ 1,184,953.03

The cost of all equipment, including lifts and barricades, required to perform the Scope of Work, as well as the cost for all required permits and inspections, is to be included in the Proposal Amount.

1. The Bidder understands that a Site Inspection accompanied by the Project Manager, or his designate, is not required prior to submitting a Proposal for this requirement.
2. The Bidder has attached a Project Timeline and Installation schedule as requested in the Proposal documents.
3. The Bidder has complied with, or are the process of complying with, the requirements of DPGI's Contractor Pre-Qualification Program.
4. It is further understood and agreed that Proposals submitted without the Form of Proposal (this Section) fully completed; including original signatures will not be considered.
5. It is further understood and agreed that any changes to the original terms outlined in the Form of Proposal, Supplementary Conditions, or the CCDC Contract will result in the Proposal not being accepted.
6. It is further understood and agreed that upon acceptance and execution of this Proposal by the Owner, this Form of Proposal together with the terms and conditions hereto attached, shall constitute a valid and binding contract between the parties hereto.
7. The Bidder declares that this Proposal is made without any connection, knowledge, comparison of figures or arrangements with any other person or persons submitting a Proposal for the same purpose and is in all respects fair and without collusion or fraud.
8. It is further understood and agreed that the lowest or any Proposal will not necessarily be accepted, and that the Owner reserves the right in its absolute discretion to reject any or all proposals or accept that proposal deemed most acceptable to the Owner.

366

Request For Proposal: SAH UPS – 4.8 MW

128-1F

The Bidder hereby acknowledges that this executed Form of Proposal and all additional documents requested in the "Instructions to Bidders" shall form the Proposal Package to be evaluated by the Owner and Consultant.

DELTR0 ELECTRIC LTD.

Name of Company

Seal

1706 MATTAWA AVE.

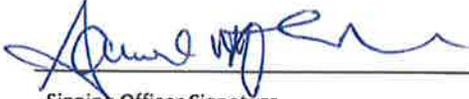
Address

MISSISSAUGA ON

City

R1T 1Y3

Postal Code



Signing Officer Signature



Witness' Signature (must be present if Corporate Seal is not affixed to Form of Proposal)

SAMUEL McFALL

Signing Officer (Print Name)

416-997-5547

Telephone Number

uelm@deltro.ca

Email Address

Dec. 11, 2020

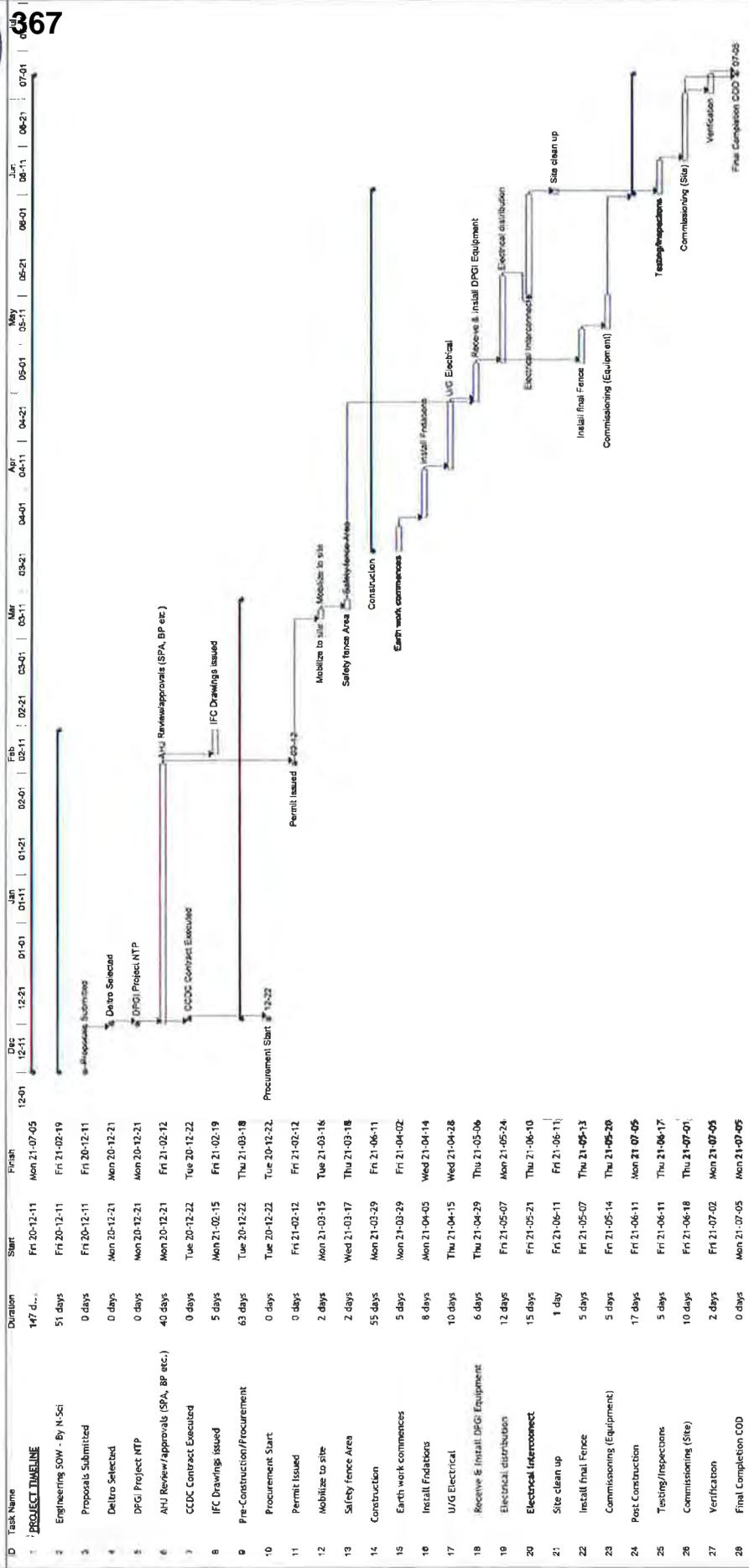
Date

Preliminary Construction Schedule

SAH-NW
UPS System Project



367



ID	Task Name	Start	Finish	Duration
1	PROJECT TIMELINE	Fri 20-12-11	Mon 21-07-05	147 days
2	Engineering SOW - By N-Sci	Fri 20-12-11	Fri 21-02-11	51 days
3	Proposals Submitted	Fri 20-12-11	Fri 20-12-11	0 days
4	Detroit Selected	Mon 20-12-21	Mon 20-12-21	0 days
5	DPCC Project NTP	Mon 20-12-21	Mon 20-12-21	0 days
6	AHJ Review Approvals (SPA, BP etc.)	Mon 20-12-21	Fri 21-02-12	40 days
7	CCDC Contract Executed	Tue 20-12-22	Tue 20-12-22	0 days
8	IFC Drawings issued	Mon 21-02-15	Fri 21-02-19	5 days
9	Pre-Construction/Procurement	Tue 20-12-22	Thu 21-03-18	63 days
10	Procurement Start	Tue 20-12-22	Tue 20-12-22	0 days
11	Permit Issued	Fri 21-02-12	Fri 21-02-12	0 days
12	Mobilize to site	Mon 21-03-15	Tue 21-03-16	2 days
13	Safety fence Area	Wed 21-03-17	Thu 21-03-18	2 days
14	Construction	Mon 21-03-29	Fri 21-06-11	55 days
15	Earth work commences	Mon 21-03-29	Fri 21-04-02	5 days
16	Install Foundations	Mon 21-04-05	Wed 21-04-14	8 days
17	U/G Electrical	Thu 21-04-15	Wed 21-04-28	10 days
18	Receive & Install DPCC Equipment	Thu 21-04-29	Thu 21-05-06	6 days
19	Electrical interconnect	Fri 21-05-07	Mon 21-05-24	12 days
20	Electrical interconnect	Fri 21-05-21	Thu 21-06-10	15 days
21	Site clean up	Fri 21-06-11	Fri 21-06-11	1 day
22	Install final Fence	Fri 21-05-07	Thu 21-05-13	5 days
23	Commissioning (Equipment)	Fri 21-05-14	Thu 21-05-20	5 days
24	Post Construction	Fri 21-06-11	Mon 21-07-05	17 days
25	Testing/Inspections	Fri 21-06-11	Thu 21-06-17	5 days
26	Commissioning (Site)	Fri 21-06-18	Thu 21-07-01	10 days
27	Verification	Fri 21-07-02	Mon 21-07-05	2 days
28	Final Completion COD	Mon 21-07-05	Mon 21-07-05	0 days

368



Your clearance(s) / Vos certificats de décharge

We confirm that the business(es) listed below are active and in good standing with us.

Nous confirmons que la ou les entreprises énumérées ci-dessous sont actives et que leurs comptes sont en règle.

Contractor legal or trade name / Raison sociale ou appellation commerciale de l'entrepreneur	Contractor address / Adresse de l'entrepreneur	Contractor NAIOS Code and Code Description / Code du SCIAN de l'entrepreneur et description	Clearance certificate number / Numéro du certificat de décharge	Validity period (dd-mm-yy) / Période de validité (j- mm-aaaa)
DELTRO ELECTRIC LTD	1706 MATTAWA AVE, MISSISSAUGA, ON, L4X1K1, CA	007010: Non-Exempt Partners and Executive Officers in Construction - G1 238210: Electrical contractors and other wiring installation contractors	A0000H7TL7	20-Nov-2020 to 19-Feb-2021

Under Section 141 of the *Workplace Safety and Insurance Act*, the WSIB waives our right to hold the principal (the business that has entered into a contractual agreement with the contractor/subcontractor) liable for any unpaid premiums and other amounts the contractor may owe us for the validity period specified. Aux termes de l'article 141 de la *Loi sur la sécurité professionnelle et l'assurance contre les accidents du travail*, la WSIB renonce à son droit de tenir l'entrepreneur principal (l'entreprise qui a conclu une entente contractuelle avec l'entrepreneur ou le sous-traitant) responsable de toute prime impayée et autre montant que l'entrepreneur pourrait lui devoir pour la période de validité indiquée.

WSIB Head Office: 200 Front Street West
Toronto, Ontario, Canada M5V 3J1

Siège social : 200, rue Front Ouest
Toronto (Ontario) Canada M5V 3J1

1-800-387-0750 | TTY/ATS 1-800-387-0050
employeraccounts@wsib.on.ca | wsib.ca

369

Northbridge General Insurance Corporation

Bond No: 0295-2020-002

SURETY'S AGREEMENT TO BOND

WHEREAS

Deltro Electric Ltd.

(the "Principal") has submitted a written tender to
The Demand Power Group Inc.

(the "Obligee") dated December 11, 2020 (the "Tender Date") concerning:
SAH UPS 4.8 MW SUPPLY & INSTALL

and the condition of this obligation being such that the Principal shall have the bid accepted within the time period prescribed in the Obligee's bid documents, or if no time period is specified in the Obligee's bid documents, within Sixty (60) days from the closing date of the tender.

We Northbridge General Insurance Corporation (Surety Company), a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in **Canada** as Surety, agree to issue for the Principal if the Principal shall enter into a written contract with the Obligee, the following bond(s):

1. a Contract Performance Bond in favour of the Obligee for
One Hundred Percent (100.00%) of the contract price
conditioned for the performance of the work described herein and the contract between the Contractor and Obligee.

2. a Labour & Material Payment Bond in favour of the Obligee for
Fifty Percent (50.00%) of the contract price
with respect to the above mentioned project.

Provided, however, this consent shall be null and void unless an application for such bond(s) is delivered to the Surety by the Principal within thirty (30) days following the date the contract is awarded to the Principal or executed by the Principal, whichever is earlier.

SIGNED, SEALED AND DATED December 11, 2020



Northbridge General Insurance Corporation
[Signature]
Rajdeep Kahlon, Attorney-in-fact

370

CERTIFICATE OF INSURANCEDATE
(MM/DD/YYYY)
12/12/2020

BROKER
JONES  **Jones DesLauriers Insurance Management Inc.**
2375 Skymark Avenue
Mississauga, Ontario, L4W 4Y6
Tel: (416) 259-4625 Fax: (416) 259-7178

 **NAVACORD**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.

INSURED

Deltro Electric Ltd.
1706 Mattawa Ave.
Mississauga, ON
L4X 1K1

COMPANIES AFFORDING COVERAGE

COMPANY A **Continental Casualty Company**

COMPANY B

COVERAGES

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such. **LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (YYYY/MM/DD)	POLICY EXPIRATION DATE (YYYY/MM/DD)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY	MPR2832485	2020/02/01	2021/02/01		
	<input type="checkbox"/> CLAIMS MADE				BODILY INJURY & PROPERTY DAMAGE INCLUSIVE LIMITS	\$2,000,000
	<input checked="" type="checkbox"/> OCCURRENCE				GENERAL AGGREGATE	\$5,000,000
	<input checked="" type="checkbox"/> PRODUCTS AND/OR COMPLETED OPERATIONS				PRODUCTS / COMPLETED OPERATIONS AGGREGATE	\$2,000,000
	<input checked="" type="checkbox"/> PERSONAL INJURY				PERSONAL INJURY	\$2,000,000
	<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY				EMPLOYERS' LIABILITY	\$2,000,000
	<input checked="" type="checkbox"/> TENANTS LEGAL LIABILITY				TENANTS LEGAL LIABILITY	\$500,000
	<input checked="" type="checkbox"/> NON-OWNED AUTOMOBILE				NON-OWNED AUTOMOBILE	\$2,000,000
A	UMBRELLA LIABILITY	MPR2832485	2020/02/01	2021/02/01		
	<input checked="" type="checkbox"/> UMBRELLA FORM				EACH OCCURRENCE	\$8,000,000
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM				AGGREGATE	\$8,000,000
A	AUTOMOBILE	CAE2832342	2020/02/01	2021/02/01		
	<input type="checkbox"/> DESCRIBED AUTOMOBILES				THIRD PARTY LIABILITY	\$2,000,000
	<input checked="" type="checkbox"/> ALL OWNED AUTOS					
	<input checked="" type="checkbox"/> LEASED AUTOMOBILES (OPCF 5)					
A	BUILDERS RISK	BINDER	2020/02/01	2021/02/01		
	<input type="checkbox"/> UMBRELLA FORM				EACH OCCURRENCE	\$10,000,000
	<input checked="" type="checkbox"/> OTHER THAN UMBRELLA FORM				AGGREGATE	\$10,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL CONDITIONS/OTHER:**Note: Limits are Stated in Canadian Dollars.**

Description of Operations: Electrical Contracting Work

Cross Liability Included**Contractual Liability, Owners and/or Contractors Protective Liability Included. Contingent Employers Liability Included****Project: SAH UPS 4.8 MW Supply Install - 750 Great Northern Rd, Sault Ste. Marie, ON P6B 0A8**

The Demand Power Group Inc.; is/are added as Additional Insured but only with respect to liability arising solely out of the operations of the Named Insured and only with respect to Commercial General Liability, Umbrella/Excess Liability and Builders Risk Policies noted above.

CERTIFICATE HOLDER

Attn:

Fax:

The Demand Power Group Inc.
2 Pardee Ave Suite 302
Toronto, ON M6K 3H6

CANCELLATION

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavour to mail (30) days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

AUTHORIZED REPRESENTATIVE:

Jones DesLauriers Insurance Management Inc.



371

ITEM 5

372

DEMAND POWER - Sauli Arca Hospital Project

Item	Description	Qty	Unit Cost	Total Cost	DELTR PROPOSAL	Comments	
	Eng & Submission costs			\$0		Eng & Submission costs	\$
	Construction & Procurement	1		\$1,048,000	\$1,048,000	Construction & Procurement	\$ 1,048,000.00
1	UPS Unit K9/B331000 /B331200	4	\$134,756	\$539,024	\$125,000	1. Input and output L-L: 400V, 3 ph + N + PE, output PF = 1, parallel model 2. Add a contactor in the UPS automatic bypass 3. UPS uses Kelue standard lithium battery communication protocol to support CATL lithium battery, it needs to communicate with lithium battery BMS through RS485 communication 4. UPS and EMS use Ethernet to communicate 5. UPS complies with Canadian SPE-1000 certification; 6. UPS conforms to IEC 62040-2 (Category C3) certification 7. The connection mode of the UPS is bottom entrance;	\$ 500,000.00
2	UPS Enclosure	2	\$90,955	\$181,910	\$79,000	1. 40ft container, including auxiliary systems such as AC distribution box, socket, camera, emergency exit sign, twist-locks, DC cables, and firePro	\$ 158,000.00
3	Input Autotransformer 2400KVA	3	\$58,130	\$116,260	\$54,130	1. Input Autotransformer capacity 2400KVA; input 600V/350V to output 400/230V 2. Meet the CSA SPE1000 single certification requirements 3. Color is the same as UPS 4. Maximum efficiency meets 98.5% 5. Material is copper	\$ 108,160.00
4	Output Autotransformer 2400KVA	2	\$59,130	\$116,260	\$49,900	1. Output Autotransformer capacity 3600KVA; input 400/230V to output 600V/345V 2. Meet the requirements of CSA-SPE1000 single certification 3. Color is the same as UPS 4. Maximum efficiency meets 98.5% 5. Material is copper	\$ 99,800.00
5	UPS external manual bypass 1	1	\$172,620	\$172,620	\$160,000	1. Meet SPE-1000 certification 2. Including 3Pc 3P 6000A/600V (fixed model) switch and 2Pc 3P 3000A/600V switches (fixed model) 3. Indicator lights on MBS cabinet 4. It can measure voltage, current, frequency, power (P, Q, S), electricity (P, Q, S), power factor, data can be uploaded via Ethernet 5. Ethernet modbus TCP 6. The contact uploads the contact status 2NO+2NC via Ethernet 7. Control opening and closing via Ethernet communication 8. The fixed circuit breaker comes standard with LSI overcurrent protection	\$ 160,000.00
6	UPS external manual bypass 2	1	\$165,000	\$165,000	\$165,000	1. Meet SPE-1000 certification 2. Including 3Pc 3P 6000A/600V (drawer type) switch and 2Pc 3P 3000A/600V switches (fixed type) 3. Indicator lights on MBS cabinet 4. Can measure voltage, current, frequency, power (P, Q, S), electricity (P, Q, S), power factor, data can be uploaded via Ethernet 5. Ethernet modbus TCP 6. The contact uploads the contact status 2NO+2NC via Ethernet 7. Control opening and closing via Ethernet communication 8. Drawer type circuit breakers need LSI protection and reverse power protection	\$ 165,000.00
7	Battery Rack	74	\$67,464	\$1,619,136	\$62,500	1. CATL 286.72kWh UPS LV Battery Rack. 16 Modules, 280Ah 0.5C Cell, Including BMS (CSC & SBMU & MBMU);	\$ 1,500,000.00
8	Battery Enclosure	2	\$99,862	\$199,724	\$79,000	1. 40ft Container, including auxiliary systems such as power distribution, lighting, fire suppression system, racks, modules, BMS, insulation, flooring, DC cables & communication cables; Nema3R Standard;	\$ 158,000.00
9	AC Busduct	1	\$123,633	\$123,633	\$115,000	1. DC cables and communication cables inside the containers, bus duct Aluminum 4000A, 60meters 2. DC cables and communication cables inside the containers, bus duct, Aluminum 2000A, 90meters	\$ 115,000.00
10	Logistics	1	\$118,200	\$118,200	\$58,000	1. Shipping All Containers & materials to Job Site (DDP) 2. FAI 3. Insurances	\$ 58,000.00
11	HVAC System	1	\$165,000	\$165,000	\$154,940	1. Invercol HVAC 2. MC series 3. INTELLIGENT CONTROL - RS485 interface, support modbus protocol 4. High reliability: life time >10 years, with minimum maintenance	\$ 154,940.00
12	Commissioning & Startup	1	\$85,000	\$85,000	\$75,000	1. Site Acceptance Test - with station of buyer witnessing Assumes two (2) technicians 2. 140000 Certification 3. Battery modules will be installed on-site 4. HVAC installation 5. Commissioning	\$ 75,000.00
				Sub-total (CAD)	\$4,669,747		
						DELTR Quote ->	\$ 4,800,000.00
						Insurance & Bonding Included	\$
						Additional Engineering Excluded	\$
							\$ 4,300,000.00

373

374

ITEM 6.

SUPPLEMENTARY CONDITIONS FOR THE STIPULATED PRICE CONTRACT BETWEEN DEMAND POWER GROUP INC. AND DELTRO ELECTRIC LTD. DATED JANUARY 26, 2021, FOR SAULT AREA HOSPITALS PROJECT

The Standard Construction Document CCDC 14 2013 for a Stipulated Price Contract, English version, consisting of the Agreement Between *Owner* and *Design-Builder*, Definitions, and General Conditions of the Stipulated Price Contract, Parts 1 to 12 inclusive, governing same is hereby made part of these Contract Documents, with the following amendments, additions and modifications:

DEFINITIONS

Delete Definition 25 – “Substantial Performance of the *Work* in its entirety and substitute with the following definition:

“*Substantial Performance of the Work*:

Substantial Performance of the Work shall have been reached when the *Work* is commissioned and operational. *Substantial Performance of the Work* is further defined under the Ontario *Construction Lien Act*.”

ARTICLE A-1 – DESIGN SERVICES AND THE WORK

Amend paragraph 1.2 by deleting “Andrew Rabeau, SPM,” and insert “Demand Power Group Inc., or designate”.

Delete paragraph 1.3 in its entirety and substitute new paragraph 1.3: *Design-Builder* will provide full transparency of supplier schedules and a *Substantial Performance of the Work* date in a schedule submitted within fifteen (15) days of NTP. *Substantial Performance of the Work* date will be within fifteen (15) days of commencement operation date (“*COD*”) based on baseline schedule (“*Baseline Schedule*”).

ARTICLE A-2 — AGREEMENTS AND AMENDMENTS

Add a new Article 2.3:

2.3. If any term or provision of this *Contract* shall be found to be invalid or unenforceable to any extent, the remainder of this *Contract* shall not be affected thereby and each term and provision of this *Contract* shall remain valid and enforceable to the fullest extent permitted by law, including the application of this *Contract* to persons or circumstances other than those against whom or which such term or provision may be found invalid or unenforceable.

ARTICLE A-4 – CONTRACT PRICE

375

Add a new Article 4.6:

This Engineering, Procurement and Construction Agreement entered into by the Parties shall contain a fixed price and fixed schedule.

ARTICLE A-6 — RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

Amend paragraph 6.5:

By changing the *Owner's Advisor's* address:

10 King Street East, Suite 1100, Toronto, ON

ARTICLE A-9 — TIME OF THE ESSENCE

Insert new Article A-9:

9.1 It is agreed that one of the reasons why the *Design-Builder* was selected for the *Work* is the *Design-Builder's* representation and warranty that it will attain *Substantial Performance of the Work* by the date set out in Article A-1, paragraph 1.3 and the *Design-Builder* acknowledges that it has been advised by the *Owner* that it is critical to the *Owner* that *Substantial Performance of the Work* be achieved by the prescribed date and that time is of the essence of this *Contract*. Accordingly the Parties agree that should the *Design-Builder* fail to achieve *Substantial Performance of the Work* within the *Contract Time*, *Owner* shall be entitled to assess, as liquidated damages, but not as a penalty, the following amounts until *Substantial Performance* is achieved:

There will be a four-week grace period after the *Substantial Performance of the Work* date noted in Article 1.3

The *Design Builder* will pay to the owner a fixed amount of \$5,000.00/week for the first four weeks past the grace period.

The *Design Builder* will pay to the owner a fixed amount of \$7,500.00/week for the fifth and subsequent weeks past the grace period.

The total for these above costs shall not exceed \$100,000.00

Design-Builder cannot be held responsible for Liquidated Damages due to unforeseen circumstances.

GC 1.1 — CONTRACT DOCUMENTS

Add new paragraph 1.1.11:

- 1.1.11 Where a General Condition or paragraph of the General Conditions of the Design-Build Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

[NOTE TO DRAFT: SEE 3.11]

GC 3.6— DESIGN SERVICES AND WORK SCHEDULE

Amend subparagraph 3.6.1.1:

by deleting the words “promptly after signing the Agreement, prepare and submit to the *Owner* a *Design Services* and *Work* schedule” and replacing with the words “Prepare and submit to the *Owner* a baseline schedule within thirty (30) days from the issuance of the Notice To Proceed”.

by adding the words “in GANTT format based on major milestones supplied by the *Owner*” and agreed to by the design builder after the words “a *Design Services* and *Work* schedule”.

Add new paragraph 3.6.2:

- 3.6.2 If at any time it should appear to the *Owner* or the *Owner's Advisor* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, as a direct result of an act or omission of the *Design-Builder* or anyone employed or engaged by the *Design-Builder* directly or indirectly, or by any cause within the *Design-Builder's* complete control, the *Design-Builder* shall take appropriate steps to cause the actual progress of the *Work* to conform to the schedule and shall produce and present to the *Owner* and the *Owner's Advisor* a recovery plan demonstrating how the *Design-Builder* will achieve the recovery of the schedule. If delay is not caused by DB and additional labour and or equipment is required the costs will be managed as per Part 6. The *Owner*, acting reasonably, may instruct the *Design-Builder*, at the *Design-Builder's* expense, to employ additional labour and equipment or work overtime or employ any other reasonable procedures, at no expense to the *Owner*, to bring the *Work* back to conform with the schedule.

GC 3.8 — LABOUR AND PRODUCTS

Add new paragraph 3.8.4:

3.8.4 The *Design-Builder* is responsible for the safe on-site and off-site storage of *Products* and their protection (including *Products* supplied by the *Owner* or *Products* pre-ordered by the *Design-Builder* or *Owner* and other Contractors to be installed under the *Contract*) in such ways as to avoid dangerous conditions, damage to any *Products* or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Owner's Advisor*.

GC 3.11 — NON-CONFORMING DESIGN AND DEFECTIVE WORK

Amend paragraph 3.11.2 by adding the following to the end of the paragraph:

3.11.2 The *Design-Builder* shall rectify in a manner acceptable to the *Owner* all other defective work and like deficiencies throughout the *Work* whether or not they are specifically identified by the *Owner* or the *Owner's Advisor*.

Add new General Condition 3.12:

GC 3.12 — PERFORMANCE BY DESIGN-BUILDER

Add new General Condition 3.12:

3.12 In performing its services and obligations under the *Contract*, the *Design-Builder* shall exercise a standard of care, skill and diligence that would normally be provided by a Design-Builder supplying similar services for similar projects in Ontario. The *Design-Builder* acknowledges and agrees that throughout the *Contract*, the *Design-Builder's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Design-Builder* shall exercise the same standard of due care and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*.

Add new GC 3.13:

3.13 *Design-Builder* warrants and represents that it is able to source equipment from CATL, including but not limited to 280 Ah batteries. Further, *Design-Builder* agrees to use KaHua for Uninterruptible Power Service equipment or equivalent suppliers and/or electrical designs approved by *Owner*.

378

Add new GC 3.14:

3.14 *Design Builder* will stack containers when stacking is required by space restrictions and any changes to approved container configurations must be approved by *Owner*.

GC 5.2 — APPLICATIONS FOR PROGRESS PAYMENT

Add new paragraph 5.2.9:

5.2.9 The *Design-Builder* shall prepare and maintain current as-built *Drawings* which shall consist of any *Drawings* and *Specifications* which may be revised by the *Design-Builder* during the *Work*, showing mark-ups of the *Drawings* and any changes made to the *Drawings* and *Specifications*.

Add new paragraph 5.2.10:

The *Design-Builder* shall submit, on the second & subsequent applications for progress payment, as a true conditions precedent to the *Design-Builder's* right to payment under this *Contract* , a Statutory Declaration, on an original form of CCDC Document 9A-2018, stating that payments in connection with the *Work*, as noted in the Statutory Declaration, have been made to the end of the period immediately preceding that covered by the current application. The *Design Builder* reserves the right to apply for a milestone payment upon Notice To Proceed for equipment deposits, engineering and other costs, limited to amounts required by third parties plus the *Design-Builder's* management, administration costs & mark-up.

Add new paragraph 5.2.11:

The *Design-Builder* shall submit Workplace Safety & Insurance Board Clearance Certificate with each application for progress payment.

GC 5.3 — PROGRESS PAYMENT

Delete subparagraphs 5.3.1.1, 5.3.1.2 and 5.3.1.3 in their entirety and substitute new subparagraphs 5.3.1.1, 5.3.1.2, 5.3.1.3 and 5.3.1.4:

- .1 the *Payment Certifier* shall promptly inform the *Owner* of the date of receipt and the amount claimed therein for payment by the *Design-Builder* (the “Claimed Amount”);
- .2 the *Payment Certifier* shall issue to the *Owner* and copy to the *Design-Builder*, no later than 10 calendar days after the receipt of such application for payment, a certificate for payment in the Claimed Amount, or in such other amount as the *Payment Certifier* determines to be properly due (the “Certified Amount”);
- .3 if the Certified Amount is less than the Claimed Amount, then in such circumstances the *Payment Certifier* shall prepare and deliver to the *Design-Builder*, on behalf of the *Owner*, no later than 14 calendar days after the receipt of such application for payment, a notice of non-payment as contemplated in, and in compliance with, Section 6.4(2) of the *Construction Act* (Ontario) in respect of the difference (the “Disputed Amount”) between the Claimed Amount and the Certified Amount; and
- .4 the *Owner* shall make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 28 calendar days after the receipt by the *Owner* or *Owner’s Advisor* of the application for payment, in the amount of the Claimed Amount less the Disputed Amount (if any).

GC 5.4 — SUBSTANTIAL PERFORMANCE OF THE WORK

Delete paragraph 5.4.5 in its entirety and substitute new paragraph 5.4.5:

5.4.5 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Design-Builder*, in consultation with the *Owner*, shall establish reasonable dates for finishing the *Work* and correcting any deficient *Work*.

Add new paragraph 5.4.6:

5.4.6 The *Design-Builder* shall publish, in a construction trade newspaper in the area of the location of the *Work*, a copy of the Certificate of *Substantial Performance* of the *Work* within seven (7) days of receiving a copy of the Certificate signed by the *Owner* or *Owner’s Advisor*, and the *Design-Builder* shall provide suitable evidence of the publication to the *Owner*. If the *Design-Builder* fails to publish such notice, the *Owner* shall be at liberty to publish and back charge the *Design-Builder* its costs for doing so.

GC 5.7 — FINAL PAYMENT

380

Delete subparagraphs 5.7.1, 5.7.2, 5.7.3 and 5.7.4 in their entirety and substitute new subparagraphs 5.7.1, 5.7.2, 5.7.3, 5.7.4, 5.7.5 and 5.7.6:

5.7.1 When the *Design-Builder* considers that the *Design Services* and the *Work* is completed, the *Design-Builder* shall apply for final payment.

5.7.2 The Payment Certifier shall, following receipt of the *Design-Builder's* application for final payment, promptly inform the Owner of the date of receipt and the amount claimed therein for payment by the *Design-Builder* (the "Claimed Final Amount").

5.7.3 No later than 10 calendar days after the receipt of such application, the *Payment Certifier* shall:

.1 verify the validity of the application and advise the *Design-Builder* in writing that the application is valid or give reasons why it is not valid; and

.2 issue to the *Owner* and copy to the *Design-Builder*, a certificate for payment in the Claimed Final Amount, or in such other amount as the *Owner* or *Owner's Advisor* determines to be properly due (the "Certified Final Amount").

5.7.4 If the Certified Final Amount is less than the Claimed Final Amount, then in such circumstances the *Payment Certifier* shall prepare and deliver to the *Design-Builder*, on behalf of the Owner, no later than 14 calendar days after the receipt of such application for final payment, a notice of non-payment as contemplated in, and in compliance with, Section 6.4(2) of the Construction Act (Ontario) in respect of the difference (the "Disputed Final Amount") between the Claimed Final Amount and the Certified Final Amount.

5.7.5 Subject to the provisions of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION, and any lien legislation applicable to the Place of the Work, the *Owner* shall, on or before 28 calendar days after the receipt by the *Payment Certifier* of the application for final payment, make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement – PAYMENT, in the amount of the Claimed Final Amount less the Disputed Final Amount (if any).

5.7.6 Prior to the release of the finishing holdback provided for under the Construction Act, the *Design-Builder* shall submit:

.1 *Design-Builder's* written request for release of the finishing holdback, including a statement that no written notices of lien have been received by it;

.2 a Statutory Declaration CCDC 9A-2001; and

.3 a final Workplace Safety & Insurance Board Clearance Certificate.

GC 5.10 — WITHHOLDING OF PAYMENT

381

Add new paragraph GC 5.10:

5.10.1 Notwithstanding the provisions of GC 5.3 PROGRESS PAYMENT, GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK and GC 5.7 FINAL PAYMENT, the *Owner* may withhold payment of any amounts otherwise due under the *Contract* on account of any costs or damages the *Owner* has incurred or is likely to incur by reason of:

- .1 defective or incomplete portions of the Work not rectified in accordance with the *Contract*;
- .2 failure of the *Design-Builder* to indemnify the *Owner* in accordance with the terms of the *Contract*;
- .3 failure of the *Design-Builder* to fulfil its obligations in respect of construction liens in accordance with GC 13.2; and
- .4 evidence of the *Design-Builder's* failure to make payments to *Subcontractors* or *Suppliers*;

in each case, the existence of which failure (and amounts owing as a result thereof) has been fully and finally determined either by mutual agreement of the parties or by a final and binding order of a court of competent jurisdiction or arbitral tribunal that is not subject to rights of appeal.

GC 6.2 — CHANGE ORDER

Delete Paragraph 6.2.1 in its entirety and substitute with the following:

6.2.1 When a change in the *Work* is proposed or required, the *Owner* or the *Design-Builder* will provide a written description of the proposed change in the *Work* to the other party. The *Design-Builder* shall promptly present, in a form acceptable to the *Owner* or *Owner's Advisor*, an estimate for an adjustment in the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change in the *Work*. The *Design-Builder's* estimate for an increase in the *Contract Price*, will be determined based on the *Design-Builder's* estimate for the additional cost of the proposed change in the *Work* plus the *Design-Builder's* mark-up for overhead of 10%. & 5% for profit

Delete Paragraph 6.2.3 in its entirety and substitute with the following:

“6.2.3 The following mark-up shall apply to work added to the *Contract*

In the case of changes in the *Work* to be paid for by the *Owner* under the methods described in paragraph 6.2.2, the *Design-Builder* and *Subcontractor*, respectively, may add to the net cost of additional work, a fee, a mark-up, inclusive of overhead and profit, limited to the following:

The *Design-Builder* may add to the total net cost of additional work to be carried out by his own forces, a mark-up of ten per cent (10% for overhead & 5% for profit). Design-builders are not allowed to treat their own forces as subcontractors.

The *Design-Builder* may add to the net cost of additional work by a *Subcontractor*, a mark-up of five percent (5%) of the net sum proposed by such *Subcontractor*.

Subcontractor may add to the total net cost of additional work to be carried out by his own forces, a mark-up of five percent (5%).

Subcontractor may add to the total net cost of additional work by a sub-subcontractor or *Supplier*, a mark-up of five percent (5%) of the net sum proposed by such sub-subcontractor or *Supplier*.

Such mark-up by *Design-Builder* and *Subcontractor*, respectively, shall be based on net additional cost for any one change in the *Work*, such net cost being derived by deducting credits for labour and materials involved in deleted work from the cost of labour and materials involved in additional work. When quantities of the same product or material are changed in the same change in the *Work*, the change in the *Contract Price* shall be based on the net difference in quantity between the product(s) or material(s) deleted and the product(s) or material(s) added.

“**Overheads**” shall include any additional charges and/or premiums for supervision, permits, insurance (see note GC 11.1), office overhead and the like, which may result from changes in the *Work*. The cost for these items shall not be added onto any cost for changes prior to applying mark-up.”

Add new paragraphs 6.2.4 and 6.2.5 as follows:

“6.2.4 All quotations submitted shall be provided with a detailed breakdown including, but not limited to the following:

1. quantity of each material
2. unit cost of each material
3. man hours involved
4. cost per hour
5. *Subcontractor* quotations submitted listing items 1 to 4 above and item 6 below.
6. mark-up”
7. Labour rates – the following labour rates will apply for the valuation of changes to the Contract
 - a. Electrical Foreman \$85.00/hr
 - b. Electrical Journeyman \$75.00/hr
 - c. Electrical Apprentice \$55.00/hr

383

“6.2.5 The *Owner* and the *Consultant* will not be responsible for delays to the *Work* resulting from late, incomplete or inadequately broken-down valuations submitted by the *Design-Builder*”.

GC 6.3 CHANGE DIRECTIVES

Add new paragraph 6.3.14 as follows:

“6.3.14 Limits to Overhead and Profit as listed in paragraph 6.2.3 shall apply to Change Directives”.

GC 6.5 — DELAYS

Add new subparagraph 6.5.3.5:

6.5.3.5 any order of a court or government authority arising from, or related to, the COVID 19 pandemic or any other virus or disease,

Add new paragraphs 6.5.6 and 6.5.7.

6.5.6 Subject to the other provisions of this GC 6.5, the *Design-Builder* shall at all times:

(a) perform the services required to perform the *Work* in accordance with the *Contract Documents* diligently and expeditiously and to maintain an orderly progress of the *Work* and in accordance with the *Contract Time* and any revisions thereto; and

(b) provide sufficient personnel to accomplish its services within the *Contract Time*.

6.5.7 If the *Design-Builder* is delayed in the performance of the *Work* by an act or omission of the *Design-Builder* or anyone employed or engaged by the *Design-Builder* directly or indirectly, or by any cause within the *Design-Builder's* control, then the *Design-Builder* shall take appropriate steps, in accordance with paragraph 3.6.2, to recover any lost time, and the costs of such recovery efforts shall be to the *Design-Builder's* account. To the extent that the *Design-Builder* caused delay results in the *Owner* incurring additional costs and expenses and/or a change in the *Contract Time*, the *Design-Builder* shall be liable to the *Owner* for the *Owner's* cost and damages arising therefrom.

GC 7.2 — OWNER'S RIGHT TO TERMINATE THE DESIGN-BUILDER'S RIGHT TO CONTINUE WITH THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

Add new paragraphs 7.2.7, 7.2.8 and 7.2.9:

7.2.7 if the *Design-Builder* fails to provide a satisfactory *Substantial Performance of the Work* date by thirty (30) days of NTP, pursuant to Article A-1, paragraph 1.3, then this Agreement

384

shall be null and void and of no further force or effect and *Design-Builder* shall pay back all monies, expenses and costs to the *Owner* in respect of this Agreement.

7.2.8 Notwithstanding anything to the contrary set forth herein, if the *Work* is suspended or otherwise delayed for a period of 90 consecutive *Working Days* or a cumulative total of 180 *Working Days* under an order of the court or other public authority arising from, or directly related to, the COVID-19 pandemic or other virus or disease, the *Owner* may terminate the *Contract* by giving the *Design-Builder Notice in Writing* to that effect.

7.2.9 If the *Owner* terminates the *Contract* under GC 7.2.8 above, the *Design-Builder* shall be entitled to be paid for all *Work* performed up to the date of termination (which shall include the respective *pro rata* portions of the *Design-Builder's* administrative margins and profit mark-ups) and reasonable expenses incurred for demobilization. The *Design-Builder* shall otherwise not be entitled to be compensated for any loss of profit, loss of opportunity, loss of productivity, or for any special indirect or consequential damages incurred as a result of the termination of the *Contract*. The *Owner* and the *Design-Builder* hereby agree that the *Design-Builder's* entitlement under this section is subject to Part 8 – Dispute Resolution.

GC 9.4 — CONSTRUCTION SAFETY

Delete paragraph 9.4.1 in its entirety and substitute new paragraph 9.4.1:

9.4.1 The *Design-Builder* shall be solely responsible for construction safety at the Place of the *Work* and for compliance by it and its Subcontractors and Suppliers with the applicable construction health and safety legislation, orders and directives, including but not limited any directives currently in place or that may be issued in respect of the COVID 19 pandemic or any other virus or disease. The *Design-Builder* shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*. The *Design-Builder* hereby accepts the designation of “constructor” as defined under the Occupational Health and Safety Act for the Project, and responsibility for the obligations and liabilities associated therewith. Prior to the commencement of the *Work*, the *Design-Builder* shall submit to the *Owner* a copy of the Notice of Project filed with the Ministry of Labour in respect of the *Work*.

- 8 -

GC 11.1 — INSURANCE

Delete paragraphs 11.1.5, 11.1.6, and 11.1.7

Add the following as new paragraph 11.1.5:

11.1.5 The cost of “all risks” insurance is excluded from the *Contract*. The *Design-Builder*, in consultation with the *Owner*, shall use its best efforts to obtain coverage for “all risks” in the form and coverage requested by the *Owner*. Should the *Design-Builder* be successful in obtaining this coverage, it will present these details to the *Owner*. Should the *Owner* agree to this coverage, the *Design-Builder* will bind this coverage, and bill the *Owner* at cost (with no markup for overhead and profit). Should the *Owner* decline the coverage, it may, at its option, obtain

385

coverage on its own, or proceed without coverage. Should the cost of “all risks” insurance increase due to Change Orders or Change Directives, this increase (at cost, with no markup for overhead and profit) will be billed to the Owner as an additional cost.

Add the following as new paragraph 11.1.6:

11.1.6 In addition to the insurance requirements specified in CCDC 41– CCDC INSURANCE REQUIREMENTS, the *Design-Builder* shall carry professional liability insurance with limits of not less than \$2,000,000 per claim and with an aggregate limit of not less than \$5,000,000 within any policy year, unless specified in the *Contract Documents*. The policy shall be maintained continuously from the commencement of the Contract until 2 years after *Substantial Performance of the Work*.

Add the following as new paragraph 11.1.1.7:

11.1.7 General liability insurance specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS shall be increased to limits of not less than \$10,000,000 per occurrence with an aggregate limit of not less than \$10,000,000 within any policy year. All other requirements of CCDC-41 INSURANCE REQUIREMENTS remain.

GC 11.2 — CONTRACT SECURITY

Delete paragraphs 11.2.1 and 11.2.2 in their entirety and substitute new paragraphs 11.2.1, 11.2.2 and 11.2.3:

11.2.1 The *Design-Builder* shall provide to the *Owner* pricing for Performance and Labour and Material Payment Bonds at no greater than the cost of the Bond charged by their Surety plus ten percent overhead and a five percent profit. If the *Owner* decides to require bonding, the *Design-Builder* will bill the owner as an additional cost to the *Contract* (at the *Design-Builder's* cost plus ten percent overhead and a five percent profit). If the *Owner* agrees to require bonding, the *Design-Builder* shall provide, in favour of the *Owner*, prior to the commencement of the *Work* or within ten (10) Working Days of Contract award:

- .1 a performance bond in a form and amount acceptable to *Owner*, and
- .2 a labour and material payment bond in a form and amount acceptable to *Owner*.

11.2.2 Such bonds shall be maintained in good standing until the fulfilment of the Contract. The form of each bond must be in accordance with the latest edition of the CCDC approved bond forms. Each bond must be in an amount equal to either fifty percent (50%) or one hundred percent (100%) of the Contract Price, depending on the *Owner* requirement

386

An irrevocable Letter of Credit for 100% of the contract price may be issued in place of the respective bonds.

11.2.3 The *Design-Builder* shall give the *Owner Notice in Writing* of any material change in the bonds or in the surety within 15 days of occurrence.

11.2.4 Should the cost of bonding increase due to Change Orders or Change Directives, this increase (at cost plus ten percent overhead and five percent profit) will be billed to the *Owner* as an additional cost.

GC 12.5 WARRANTY

Amend 12.5.1 by deleting “one year” and replacing with “three (3) years”

Amend 12.5.6. by deleting “one year” and replacing with “three (3) years”

Add 12.5.9 as follows:

12.5.9 The *Design-Builder* shall assign manufacturer warranties and performance guarantees to the *Owner* at the *Design-Builder’s* expense. The *Design-Builder* shall ensure that the warranties specified in the *Contract Documents* are obtained from *Suppliers* or *Manufacturers* and are assigned to *Owner*.

Add 12.5.10 as follows:

12.5.10 The selection of the supplier of major components including batteries, Uninterruptible Power Supply, Transformers, containers and Manual Bypass Systems were done by the *Owner* considering the Performance Guarantees and Warranties offered by the suppliers or manufacturers of these components. Should the *Design-Builder* substitute equipment or material for similar equipment, the *Design-Builder* must ensure that the Warranty or Performance Guarantee is equivalent to or better than the Warranty or Performance Guarantee of the equipment originally selected by the *Owner*, nor should the *Design-Builder* agree to reduce any Performance Guarantee or Warranty without the express written consent of the *Owner*. Should this not be the case, the *Design-Builder* shall be liable for any shortfall in warranty or performance guarantee compared to that originally proposed to *Owner* by the recommended suppliers.

Add new PART 13 as follows:

GC 13.1 — OWNERSHIP OF MATERIALS

13.1.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*. All *Work* and *Products* delivered to the *Place of the Work* by the *Design-Builder* shall be the property of the *Owner* once paid for. The *Design-Builder* shall remove all surplus or rejected materials as its property when notified in writing to do so by the *Owner*.

387

GC 13.2 — CONSTRUCTION LIENS

13.2.1 In the event that a construction lien is registered against the *Project* by or through a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, the *Design-Builder* shall, at its own expense:

.1 within ten (10) calendar days, ensure that any and all construction liens and certificates of action are discharged, released or vacated by the posting of security; and

.2 in the case of written notices of lien, ensure that such notices are withdrawn, in writing.

13.2.2 In the event that the *Design-Builder* fails to conform with the requirements of paragraph 13.2.1, the *Owner* may set off and deduct from any amount owing to the *Design-Builder*, all costs and associated expenses, including the costs of borrowing the appropriate cash, letter of credit or bond as security and legal fees and disbursements. If there is no amount owing by the *Owner* to the *Design-Builder*, then the *Design-Builder* shall promptly reimburse the *Owner* for all of the said costs and associated expenses.

388

ITEM 7

Master Technical Requirement Specifications

UPS + BESS + Containerization Equipment

Demand Power Group Inc

Toronto, Ontario, Canada

01/20/21

389

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

Table of Contents

Content Header	3
Part 1 - BACKGROUND	3
Part 2 - UPS SYSTEM	3
Part 3 - Battery Energy Storage Systems (BESS)	21
Part 4 - Equipment Shelter	24

Specifications indicate general arrangement of the systems and work included in the contract. Misinterpretation of any requirements of the specifications will not relieve the Contractor of responsibility to complete the work.

END OF TABLE

390

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

System Overview

The master technical requirement specification encompasses the technical requirements for the UPS and BESS system, including their respective containerization equipment. This document serves as a guide for major vendors (UPS and Battery and all underlining equipment) as well as general contractors (GC) to follow when drafting a proposed solution. It includes a background section, an overview, product details and execution requirements for the UPS system, the battery, and the containers.

Part 1 - BACKGROUND

1. DEMAND POWER GROUP INC.

1.1. Demand Power Group Inc. is in Toronto, Ontario, providing clients with intelligent power management for improving productivity and profitability. Demand Power Group strives to significantly reduce the commercial and industrial client's overall electricity costs.

2. Sault Area Hospital UPS.

2.1. This proposed 4.8MW UPS plus BESS system is designed for Sault Area Hospital (SAH). and will be installed near their substation located at 750 Great Northern Road, Sault Ste. Marie, Ontario. SAH is serving a catchment population of approximately 115,000. SAH provides primary, secondary, and select tertiary services to residents in Sault Ste. Marie and the District of Algoma. SAH has a team of over 1700 dedicated staff, 365 physicians and 535 volunteers.

2.2. UPS Sizing:

System	Peak demand (kVA)	Min. UPS size	Nameplate UPS size (MVA)
1	3242.70	4632.43	4.8 (1.2*4)

2.3. BESS Sizing:

System	Peak demand (kw)	Min. BESS size	Number of Racks
1	3007	7495.83	24

Part 2 - UPS SYSTEM

3. OVERVIEW

3.1. This specification describes a 3-phase 4-wire transformer-less continuous duty, and on-line, solid-state, uninterruptible power system hereinafter referred to as the UPS. The UPS shall operate

391

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

utilizing the existing power distribution system to provide a high quality, reserve source of power to electronic equipment loads. The system shall also be used to replace utility power during grid peak periods and this function will be initiated by an external signal provided by a third party. This signal will cause the rectifier to cease functioning or reduce the grid consumption, placing the output load on the inverter and battery. Return to the normal functioning of the rectifier will also be initiated by an external signal. The UPS system will operate with a battery consisting of a Lithium-based chemistry battery further described in this document. The system shall consist of a three-level converter, three-level neutral clamped solid-state inverter, automatic static bypass transfer circuit, Manual Wrap-Around Maintenance Bypass, and Transformers as required to accommodate building voltages.

4. SPECIAL NOTES

- 4.1. 3 to 4 hours of Lithium Batteries (e.g., Li-Ion, LFP, etc.) per UPS will be supplied.
- 4.2. System provider is responsible for ensuring and demonstrating UPS Systems and battery system will function properly together.
- 4.3. The UPS provider is also responsible for ensuring the UPS System so that an external signal will control the rectifier function.

5. STANDARDS

- 5.1. The UPS designed in accordance with and complies with the following standards:
 - 5.1.1. UL 1778 Standard for UPS Equipment.
 - 5.1.2. UL9540/A (Standard for Energy Storage Systems and Equipment) (CAN/ANSI/UL 9540-16)
 - 5.1.3. UL9540 Energy Storage System
 - 5.1.4. CSA 22.2 (Canadian Standards Association – cUL Equipment).
 - 5.1.5. Ontario Electrical Safety Code (OESC).
 - 5.1.6. Ontario Building Code (OBC).
 - 5.1.7. CSA Z462, Workplace Electrical Safety.
 - 5.1.8. CAN/CSA-C22.2 No.31, Switchgear Assemblies.
 - 5.1.9. CSA C22.1, Canadian Electrical Code, Part 1, Safety Standard for Electrical Installations.
 - 5.1.10. CAN/CSA-C22.2 NO. 60947, Low-voltage switchgear, and control gear - Part 1:
 - 5.1.11. ANSI/IEEE C37.20.1 - IEEE Standard for Metal Enclosed Low Voltage Switchgear.
 - 5.1.12. ANSI/IEEE C37.13 - IEEE Standard for Low-Voltage AC Power Circuit Breakers Used in Enclosures.
 - 5.1.13. IEC (International Electro-technical Commission) Semiconductor Converter Standards.
 - 5.1.14. EMI compatibility: IEC 62040-2 (category C3)
 - 5.1.15. FCC Part 15 Subpart B Class A (Option)
 - 5.1.16. IEEE 587, ANSI C62.41 1991 Standard for Surge Withstand Ability.
 - 5.1.17. ISO 9001 Quality Assurance program.

392

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

5.1.18. Energy Star Compliant.

6. SUBMITTALS

6.1. General: Submit sufficient information to determine compliance with the Contract Documents. Identify submittal data with the specific equipment tags and/or service descriptions to which they pertain. Submittal data shall be clearly marked to identify the specific model numbers, options, and features of equipment and Work proposed.

6.1.1. All deviations from the Contract Documents shall be indicated within a submittal. Each deviation shall reference the corresponding drawing or specification number, show the contract document requirement text and/or illustration, and shall be accompanied by a detailed written justification for the deviation.

6.2. Product Data: Submit product data specific to each type and rating of equipment proposed to include the following:

6.2.1. Manufacturer, supplier, and proposal specific contact information.

6.2.2. Manufacturer's catalog data indicating equipment specifications and construction features including all furnished options, and accessories.

6.2.3. Switchboard assembly rated operating characteristics, and electrical characteristics.

6.2.4. Enclosure type, NEMA rating, material and finishes.

6.2.5. Certification of UL/CSA conformity

6.2.6. Electronic 2D dimensional drawing and 3D model CAD files for standard units shall be provided upon request if not available from the manufacturer's website.

6.3. Shop Drawings: Submit shop drawings for each product and accessory required. Include information not fully detailed in manufacturer's standard product data. Shop drawings shall include, but not be limited to the following:

6.3.1. Equipment assembly. Indicate dimensions, shipping section dimensions, weights, foundation requirements, required clearances, location, and size of each field connection, and mounting and installation instructions.

6.3.2. Include elementary and interconnection diagrams for power, signal, control, and communications wiring. Diagrams shall provide the detailed information. All field terminals shall be identified and updated later within the O&M data to include actual field connection information.

6.4. Seismic Qualification Certificates: For each equipment assembly provide the following from manufacturer.

6.4.1. Certificate of compliance.

6.4.2. Dimensioned Outline Drawings of Equipment Unit: Identify center of gravity and locate and describe mounting and anchorage provisions.

6.4.3. Detailed description of equipment anchorage devices on which the certification is based, and their installation requirements.

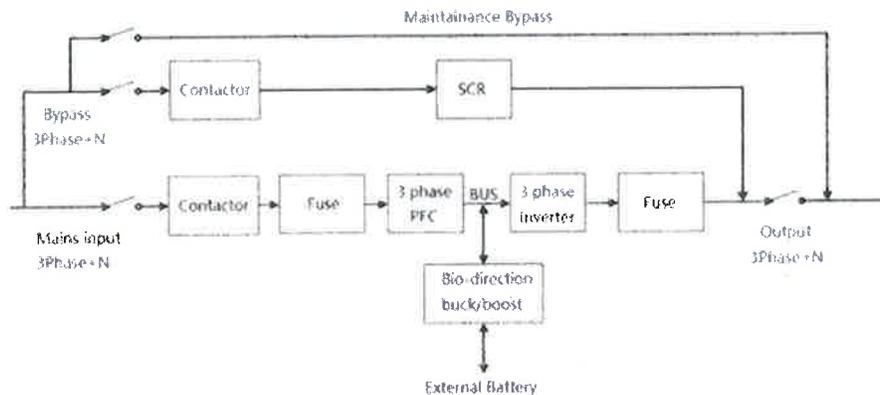
6.5. Equipment arrangement Drawings: Container floor plans drawn to scale, showing dimensioned layout on which, the following items are shown.

393

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

- 6.5.1. Required working clearances and required area above and around Switchgear.
- 6.5.2. Show equipment layout and relationships between electrical components and adjacent structural and mechanical elements.
- 6.5.3. Show support locations, type of support, and weight on each support.
- 6.6. Operation & Maintenance (O&M) Manuals: Submit installation, operation, and maintenance data to be included within operation and maintenance manuals. O&M data shall include but not be limited to the following:
 - 6.6.1. Manufacturer, supplier, support, and repair center specific contact information.
 - 6.6.2. Manufacturer's standard operation and maintenance data assembled for each size and type of equipment furnished.
 - 6.6.3. All construction, installation, schematic, and wiring diagrams updated to an as installed and commissioned state.
 - 6.6.4. All configured settings/parameters for adjustable components updated to an as installed and commissioned stated if different from the factory default. Electronic copies of configuration files shall be provided, on USB stick, where these configurations can be saved as an electronic file for future upload into replaced or repaired components.
 - 6.6.5. List of furnished and recommended spare parts.
 - 6.6.6. Statement of standard Warranty, extended warranty options and costs.

7. UPS SYSTEM DESCRIPTION



- 7.1. Components
 - 7.1.1. The transformer less UPS system shall consist of the following major equipment:
 - 7.1.1.1. UPS Module
 - 7.1.1.1.1. Three-level IGBT based converter.
 - 7.1.1.1.2. Three-level neutral clamped IGBT based Inverter.
 - 7.1.1.1.3. Digital Signal Processor (DSP) using Pulse Width Modulation (PWM) for Direct Digital

394

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

Control (DDC) of all UPS control and monitoring functions.

- 7.1.1.1.4. Static bypass switch sized to provide continuous duty and fault clearing.
- 7.1.1.1.5. Semiconductor fuses for overcurrent protection and disconnecting device for isolation.
- 7.1.1.1.6. Contactors in both double conversion and static bypass line for back feed protection.
- 7.1.1.1.7. Battery protective and disconnect device.
- 7.1.1.1.8. External Maintenance bypass switch.
- 7.1.1.1.9. Local control panel with local/remote lockout option.

8. Mode of Operation

8.1. The UPS shall be designed to operate continuously at rated capacity as an on-line, automatic reverse transfer system in the following modes:

8.1.1. Main Mode - When the mains supply is normal, the rectifier will convert the AC power into DC power to charge battery and supply power for the inverter. The input power from the grid shall be controllable (0-100%) and the battery shall be able to adjust dynamically to deliver remaining power to loads.

8.1.2. Battery Mode - In the event of a utility AC power failure, the inverter shall derive its input from the system battery, therefore providing uninterrupted power to the critical load. This transition shall be accomplished without any switching or coupling, and with no interruption of power to the critical load from either a failure or restoration of the utility AC power.

8.1.3. Controlled On-Battery – Each UPS must permit remote control to isolate the UPS from grid power and place the load on the battery. This transition shall be accomplished without any switching or coupling, and with no interruption of power to the critical load from either the isolation from or reconnection to the utility AC power.

8.1.4. Bypass Mode: When the inverter output becomes abnormal (such as over-temperature, short circuit, output voltage abnormal or overload and exceed the range that the inverter can withstand), the inverter will shut down automatically to avoid damage. If the mains is still normal at this moment, power will flow through the static bypass to supply the load.

8.1.5. Maintenance Bypass Mode: During extended downtime or maintenance, the UPS can be shut down and power can be routed through the maintenance bypass switch for supplying the loads. During switchover to maintenance bypass, the power supply to loads will not be interrupted.

9. Expandability

9.1. The UPS System shall have provisions to expand its power rating as required by the project.

10. ENVIRONMENTAL CONDITIONS

10.1. The UPS shall be capable of withstanding any combination of the following external environment conditions without mechanical damage, electrical failure, or degradation of operating characteristics.

10.1.1. Operating ambient temperature: - 5°C to 40°C (23°F to 104°F) no derating required.

395

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

- 10.1.2. Non-operating and storage ambient temperature: -20°C to +70°C (- 4°F to 158°F).
- 10.1.3. Operating relative humidity: 0% to 95%, non-condensing.
- 10.1.4. Operating altitude: Sea level to 2000 meters (6500ft).
- 10.1.5. There should be no inflammable/explosive gas.
- 10.1.6. Dust in the room where the UPS is installed must not exceed normal atmospheric dust levels. In particular, that dust should not include iron particles, oils or fats, or organic materials such as silicone.
- 10.2. Audible acoustical noise: Provide noise generated by the UPS, when operating under full rated load, at a distance of one meter from any UPS operator surface for each UPS, as measured on the A scale of a standard sound level meter at slow response.
- 10.3. Input surge withstands capability: The UPS shall comply with IEEE C62.41, Category B.

11. WARRANTY

11.1. The UPS manufacturer shall warrant to the original end-user that the Uninterruptible Power Supply System (the "Product") shall be free from defects in material and workmanship under normal use and service for a period of twelve (12) months from the date of installation or eighteen (18) months from the date of shipment of the Product, whichever comes first, at the premises of the original end-user. Unless otherwise stated in the contract service agreement documentation.

12. QUALITY ASSURANCE**12.1. Maintainability**

12.1.1. MTTR: UPS component replacement should not exceed 1.5 hours/failure.

12.2. Factory Test

12.2.1. The manufacturer shall fully and completely test the system to assure compliance with the specifications before shipment.

12.2.2. All UPS units shall be delivered with one (1) standard factory test report included in the UPS enclosure. The factory test report shall include the following:

- 12.2.2.1. Series / kVA
- 12.2.2.2. Serial number
- 12.2.2.3. Date of test
- 12.2.2.4. Approved by / Inspected by / Tested by
- 12.2.2.5. Inspection of construction
- 12.2.2.6. Checking of wiring (Black/Red marking on each connection point)
- 12.2.2.7. Grounding continuity
- 12.2.2.8. Insulation strength test
- 12.2.2.9. Control circuit operation
- 12.2.2.10. Measurement of steady state characteristics (Voltage/ current/ efficiencies)

396

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

- 12.2.2.11. Transient characteristics (0-100% step load, AC input failure)
- 12.2.2.12. Overload testing
- 12.2.2.13. Static transfer switch operation
- 12.2.2.14. Maintenance bypass switch operation

12.2.3. At least one UPS system shall be delivered with a special factory test report to demonstrate the proper operation of the UPS with the 4-hour Lithium Battery and the remote control of the rectifier (0-100%) from an external third-party signal.

13. ELECTRIC CHARACTERISTICS OF UPS SYSTEM

13.1. The UPS shall have the following electrical characteristics:

13.1.1. UPS Output Capacity

- 13.1.1.1. UPS nominal capacities shall be a minimum of 30% over Projected Peak.
- 13.1.1.2. 4.8MVA system shall be configured connecting 4, 1.2MVA units in parallel.

13.1.2. Main switchboard with Manual Maintenance Bypass

- 13.1.2.1. Switchboard Rated Voltage shall be 635Vac with Operating Voltage of 600Vac.
- 13.1.2.2. All bus shall be rated to the full ampacity of the system.
- 13.1.2.3. The short circuit current rating of the system shall be determined by the available fault current at the Low Voltage Switchgear. All circuit interruption shall be accomplished by the circuit breaker and without the aid of limiter fuses.
- 13.1.2.4. The switchboard will be equipped with 100% rated breakers.
- 13.1.2.5. The air circuit breaker trip system shall be an electronic trip unit and LSIG type.
- 13.1.2.6. All the circuit breakers shall be able to operate(open/close) using remote control signal.
- 13.1.2.7. All customer secondary control and communications connections shall be made from the front of the switchgear lineup.
- 13.1.2.8. A dedicated wiring area accessible from the front shall allow easy access to all control or communications terminations.
- 13.1.2.9. Each breaker shall have lockout provision to implement LOTO.
- 13.1.2.10. The switchboard shall be equipped with interlocks, wiring, components etc. to ensure the ground fault systems operates without nuisance tripping on the main bus of the switchboard.
- 13.1.2.11. Manual bypass and output breakers shall be 4 pole breakers. The transition operation must be make-before-break.
- 13.1.2.12. Switchboard shall have metering CT/PT compartments for utility revenue meter at the main service line and GLB meter at the UPS output feeder.
- 13.1.2.13. The termination cabinet dimension shall be evaluated based on the capacity of the system (number of cable or dimension of the bus).
- 13.1.2.14. Copper ground bus minimum 50 x 6 mm extending full width of switchgear and situated at bottom.

397

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

- 13.1.2.15. The control voltage for protection and control functions shall be 120 V DC.
- 13.1.2.16. Equipment shall be suitable for use as service entrance equipment and labeled according to CSA requirements.

13.1.3. AC Input

- 13.1.3.1. Nominal input voltage: 600V.
- 13.1.3.2. Number of phases: 3 phase, 4 wire, plus ground.
- 13.1.3.3. Voltage range: +25%, -40%.
- 13.1.3.4. Frequency and range: 60Hz \pm 10%.
- 13.1.3.5. Power walk-in time: 1-30 Seconds Variable, set_{default} at 10 seconds (0%to 100% load).
- 13.1.3.6. Power factor:
- 13.1.3.6.1. 0.99 typical at 100% load.
- 13.1.3.6.2. 0.99 typical at 50% load.
- 13.1.3.7. Reflected input current total harmonic distortion (THD):
- 13.1.3.7.1. 3% typical at 100% load.
- 13.1.3.7.2. 5% typical at 50% load.

13.1.4. Bypass Input

- 13.1.4.1. Nominal input voltage: 600V.
- 13.1.4.2. Number of phases: 3 phase, 4 wire, plus ground.
- 13.1.4.3. Synchronization voltage range: \pm 10% of nominal.
- 13.1.4.4. Frequency tracking range: 60Hz \pm 5% Maximum.

(Bypass synchronous range shall be selectable from 1% to 5% in 0.1% increments)

13.1.5. AC Output

- 13.1.5.1. Nominal output voltage: 600V.
- 13.1.5.2. Number of phases: 3 phase, 4 wire, plus ground.
- 13.1.5.3. Nominal dynamic Voltage regulation:
- 13.1.5.4. \pm 1% for a balanced load.
- 13.1.5.5. \pm 2% for the unbalanced load.
- 13.1.5.6. Voltage balance: 1%
- 13.1.5.7. Manually adjustable output voltage: \pm 3% range.
- 13.1.5.8. Voltage transient response:
- 13.1.5.8.1. 100% step load: \pm 3%.
- 13.1.5.8.2. Loss or return of AC input: \pm 1%.
- 13.1.5.8.3. Retransfer from bypass to inverter: \pm 5%
- 13.1.5.9. (Voltage transient response shall not exceed the above and shall recover to within nominal voltage regulation tolerance within 20 msec.)

398

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

- 13.1.5.10. Frequency (inverter synchronous): 60 Hz (tracks frequency of static bypass source).
- 13.1.5.11. Free running output frequency (asynchronous): 60 Hz \pm 0.01%.
- 13.1.5.12. Frequency slew rate (inverter synchronized to static bypass): 1 to 5Hz/second (selectable).
- 13.1.5.13. Output voltage harmonic distortion:
 - 13.1.5.13.1. 2% maximum at 100% linear load.
 - 13.1.5.13.2. 5% maximum at 100% non-linear load. (Load power factor 0.95. Crest factor 2.3)
- 13.1.6. Voltage phase angle displacement:
 - 13.1.6.1. \pm 1 degree for 100% balanced load.
 - 13.1.6.2. \pm 3 degrees for 100% unbalanced load. L. Overload capability:
 - 13.1.6.2.1. 105% to 125% for 10 minute(s) (Voltage regulation maintained).
 - 13.1.6.2.2. 126% to 150% for 1 minute(s) (Voltage regulation maintained). M. Fault clearing: Typically, 500% for 1 cycle (utilizing bypass source).
- 13.1.7. DC Input and Battery
 - 13.1.7.1. Current ripple (normal operation): less than 10% of the battery AH at DC/DC chopper circuit switching frequency.
- 13.1.8. On-Line, Double Conversion Efficiency.
 - 13.1.8.1. Any Type of ECO or ECO Mode Type Systems Not Allowed
 - 13.1.8.2. Provide AC to AC and DC to AC Efficiency figures for loads at 25%, 50%, 75%, 85%, and 100% of Nominal Loads as provided in section 2.1.1

14. UPS MODULE

- 14.1. UPS module shall be comprised of the following:
 - 14.1.1. Converter Section:
 - 14.1.1.1. AC input, converter input contactor, fuse and 3 level IGBT based PWM controlled Converter/rectifier.
 - 14.1.2. General
 - 14.1.2.1. The Converter shall convert the incoming AC power into regulated DC power to supply the inverter input and system battery. The Converter shall utilize the following technologies:
 - 14.1.2.1.1. Input Power: Rated kVA at 1:1 ratio.
 - 14.1.2.1.2. DSP based control logic.
 - 14.1.2.1.3. Fault contribution for any grid fault is zero.
 - 14.1.2.2. Reflected Harmonic Content
 - 14.1.2.2.1. The IGBT converter shall typically not introduce more than 3% reflected input current total harmonic distortion (THD) into the utility AC input source at nominal voltage and rated load. The reflected input current shall typically not exceed 5% THD at 50 % load.

399

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

14.1.2.2.2. Automatic Input Power Walk-in

14.1.2.2.2.1. The converter logic and control circuit power walk-in function enable delayed and timed ramping of input current. After energizing the converter input, initiation of the power walk-in function and current ramping shall be delayed by a maximum of 3600 seconds. Upon initiation of the power walk-in function, the ramping of current shall be timed to gradually increase the load within 10 seconds. This function is included as standard in the converter control circuitry.

14.1.2.3. Input Overcurrent Protection

14.1.2.3.1. Converter input contactor and the input current limit control shall provide converter protection against excessive input overload conditions.

14.1.2.4. Step Load Change Operation (0-100%)

14.1.2.4.1. In the occurrence of a 100% step load change, the UPS Module inverter shall draw power only from the converter to provide the required load demand. The system batteries will not be cycled at any time during a step load change.

14.1.2.5. Input Current Limit

14.1.2.5.1. The Converter logic shall provide input current limiting by limiting the AC input current. Three (3) line-side current transformers shall be employed as a means of sensing the current amplitude. The DC output current limit values are as follows:

14.1.2.5.1.1. Input current limit setting: 110% of nominal rated current.

14.1.2.5.1.2. The AC input current limit shall be set up so that the converter can provide sufficient capacity to the inverter at rated load and have the capability to recharge a discharged battery.

14.1.2.5.1.3. The input current limit protects converter components from damage due to excessive input current.

14.1.2.6. Input Power Demand

14.1.2.7. The Converter logic and control shall also be capable of providing auxiliary current limiting when initiated by an external dry contact closure (e.g., in the event power demand is required when the UPS is fed from a generator).

14.1.2.8. Power Demand: Adjustable, maximum 110% of nominal rated current.

14.2. Charger/Booster

14.2.1. General

14.2.1.1. The charger/booster utilizes solid-state Pulse Width Modulation (PWM) controlled Insulated Gate Bipolar Transistors (IGBT).

14.2.2. Battery Charge Current Limit

14.2.2.1. The converter logic and control circuit DC battery current limiting function enable controlled battery charging. The battery charge current limit will control the recharge current by reducing the converter output when the set limit is reached. The following battery current limit shall be provided as a minimum:

14.2.2.1.1. Battery charge current limit: 10% of battery Ah rate.

14.2.2.1.2. Maximum charge current: 20% ampere of UPS rated kVA.

400

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

14.2.3. Equalize Charge Timer

14.2.3.1. UPS Module logic and control shall provide an electronic equalize charge timer function (0 to 100hour selectable - default twenty-four (24) hour). Once activated the timer circuit shall provide a high-rate equalizing charge voltage to the system battery for the selected time. The function can be manually activated and deactivated via the UPS Module LCD. The level of equalizing voltage shall be equal to that stated by the battery manufacturer. Upon completion of the timer count, the converter output voltage shall return to the specified float voltage. An Auto Equalize charge operation is also provided following AC input restoration and subsequent to the power walk in function. This equalizing charge will occur until the battery target voltage is reached (condition is met to end equalizing charge), in which float voltage will be applied.

14.2.4. Temperature Control Battery Charging

14.2.4.1. The UPS shall have as standard a battery temperature compensation function allowing the converter voltage to fold-back to a safe value in the event the battery system temperature reaches a predetermined (dangerous) level. Initiation will be by dry contact input from thermocouple sensor (User supplied).

14.2.5. DC Input Protection

14.2.5.1. The DC input fuse/contact arrangement shall be provided by the battery supplier and shall provide DC input protection against excessive input overload conditions.

14.2.6. Ripple Current

14.2.6.1. The DC (battery) bus RMS ripple current shall be less than 10% of the battery AH at DC/DC chopper circuit switching frequency at 100% load.

14.2.7. Battery Self-Test

14.2.7.1. For a short duration, a small power discharge from the battery is automatically performed. The UPS module, from this small power discharge, evaluates the degradation of the system battery. The following advantages are achieved:

14.2.7.1.1. The Battery Self-Test function can be performed even when the load is on the inverter.

14.2.7.1.2. Due to the short duration of small power discharge, there is no effect on battery life expectancy.

14.2.7.1.3. The small power discharge has a negligible effect on the overall battery backup time. The small power that is discharged by the battery will quickly be replenished.

14.2.7.2. The Battery Self-Test will automatically occur every 720-hour interval. An event alarm will occur and be displayed if battery abnormalities are detected.

14.3. Inverter

14.3.1. General

14.3.1.1. The inverter shall generate AC power derived from DC power supplied from the converter or system battery. The inverter shall be capable of providing rated output as specified while operating from any DC voltage within the battery operating range. The inverter shall utilize the following technology:

14.3.1.2. Solid-state PWM controlled three-level IGBT power transistor modules.

401

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

14.3.1.3. UPS Module Full Direct Digital Control (DDC) Adoption:

14.3.1.3.1. Field Programmable Gate Array (FPGA) Control

14.3.1.3.2. DSP based Control.

14.3.2. Voltage Regulation

14.3.2.1. The inverter output voltage shall not deviate by more than $\pm 1\%$ RMS with the following steady-state conditions:

14.3.2.1.1. 0 to 100% loading.

14.3.2.1.2. Inverter DC input varies from maximum to minimum.

14.3.2.1.3. Environmental condition variations within the specifications defined herein.

14.3.3. Voltage Adjustments

14.3.3.1. The inverter shall have the ability to manually control and adjust the output voltage to within $\pm 3\%$ of the nominal value.

14.3.4. Voltage Transient Response

14.3.4.1. The dynamic regulation and transient response shall not exceed $\pm 2\%$ for 100% step load (applied or removed), $\pm 1\%$ for loss or return of AC input, and $\pm 5\%$ for the inverter to bypass and vice versa transfer.

14.3.5. Transient Recovery

14.3.5.1. Voltage transient response shall not exceed the above specification and shall recover to within nominal voltage regulation tolerance within 20ms.

14.3.6. Frequency Control

14.3.6.1. The Inverter output frequency shall be controlled by an oscillator internal to the UPS module logic. It shall be capable of synchronizing to an external reference (e.g., the bypass source) or operating asynchronously. A message located on the touch screen shall identify the loss of synchronization. Synchronization shall be maintained at 60 Hz $\pm 0.01\%$ continuously for the duration of loss of the external reference. The Inverter output frequency shall not vary during steady-state or transient operation due to the following conditions:

14.3.6.2. 0 to 100% loading.

14.3.6.3. Inverter DC input varies from maximum to minimum.

14.3.6.4. Environmental condition variations within the specifications defined herein.

14.3.7. Output Voltage Harmonic Distortion

14.3.7.1. The inverter output shall limit the amount of harmonic content to 2% maximum at 100% linear load, and 5% maximum at 100% non-linear load. The need for additional filtering to limit the harmonic content shall not be required. Therefore, high efficiency, reliability, and original equipment footprint are maintained.

14.3.8. Output Overload Capability

14.3.8.1. The inverter output shall be capable of providing an overload current while maintaining rated output voltage (and voltage regulation) to:

402

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

14.3.8.1.1. 105% to 125% for 10-minute duration.

14.3.8.1.2. 126% to 150% for 1-minute duration.

14.3.8.2. The UPS Module Operation/Display panel LED indicator will illuminate to identify an overload condition. If the time limit associated with the overload condition expires or the overload is more than the set current, the load power shall be transferred to the bypass source without interruption.

14.3.9. Inverter Current Limit

14.3.9.1. The inverter output current shall be limited to 230% of the rated load current. Two current transformers in separate locations on the output (and operating separately offering redundancy) shall be employed as means of current sensing. The inverter current limit shall protect inverter components from damage due to excessive over-current (Excessive load, faults, and reverse current).

14.3.10. Inverter Output Isolate

14.3.10.1. The inverter shall be equipped with an output contactor to enable isolation of the inverter from the load and bypass source.

14.4. UPS Module Control and Monitoring

14.4.1. UPS Module Control and Monitoring operates and controls the converter, inverter, and independent automatic bypass static switch circuit.

14.4.2. The UPS Module control circuitry shall utilize Digital Signal Processor (DSP) and Application Specified IC (ASIC) which create advanced controllability and simplify the control circuit. Direct Digital Control (DDC) utilizing DSP and ASIC will be employed to ensure high reliability, as well as functionality and performance as specified.

14.4.3. All UPS Module Control and Monitoring printed circuit boards shall be effectively sealed to protect against corrosive vapors.

14.4.4. The UPS Module Control power supply shall employ a redundant design configuration, utilizing the UPS AC input (utility), Bypass input, and the UPS Module inverter output, therefore, enhancing reliability.

14.5. Bypass and Static Switch

14.5.1. UPS module shall contain an automatic bypass static switch circuit and associated bypass static switch transfer control circuitry.

14.5.1.1. General

14.5.1.1.1. A bypass circuit shall be provided as an alternate source of power other than the inverter. A high-speed Thyristor switch and wrap-around contactor shall be used to assume the critical load during automatic transfers to the bypass circuit. The static switch and wrap-around contactor shall derive power from an upstream bypass feed contactor internal to the UPS module. The bypass circuit shall be capable of supplying the UPS rated load current and provide fault clearing current capabilities. The UPS system logic shall employ sensing which shall cause the static switch to energize within 150 microseconds, therefore, providing an uninterrupted transfer to the bypass source when any of the following limitations are exceeded:

14.5.1.1.1.1. Inverter output under-voltage or overvoltage.

403

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

- 14.5.1.1.1.2. Overloads beyond the capability of the inverter.
- 14.5.1.1.1.3. DC circuit under voltage or overvoltage.
- 14.5.1.1.1.4. Final voltage of the system battery is reached (bypass source present and available).
- 14.5.1.1.1.5. Major fault.
- 14.5.1.2. Automatic Re-transfers
 - 14.5.1.2.1. If the critical load must be transferred to the bypass source due to an overload, the UPS system logic shall monitor the overload condition and, upon the overload being cleared, perform an automatic re-transfer back to the inverter output. The UPS system logic shall only allow a re-transfer to occur three times within five minutes. Re-transfers shall be inhibited on the fourth transfer due to the likelihood of a recurring problem at the UPS load distribution. All re-transfers will be inhibited if the inverter and static bypass line are not synchronized.
- 14.5.1.3. Manual Transfers
 - 14.5.1.3.1. The UPS shall be capable of transferring the critical load to/from the bypass source via the front control panel. If performing manual retransfers to the inverter or automatic retransfers, the UPS system logic shall force the inverter output voltage to match the bypass input voltage and then parallel the inverter and bypass sources providing a make-before-break transition allowing a controlled walk-in of load current to the inverter. Manual transfers will be inhibited if the inverter and static bypass line are not synchronized.
- 14.5.1.4. Static Switch
 - 14.5.1.4.1. The static switch shall be a high-speed transfer device comprised of naturally commutated Thyristors. The static switch will have overcurrent protection and a contactor for back feed protection.
- 14.6. Operation/Display Panel
 - 14.6.1. The control panel shall employ the use of a 5.7" touch screen interface which allows lock-out of all UPS control functions for security (The Emergency Power Off function shall not be locked out). The operator interface shall provide the following:
 - 14.6.1.1. UPS start-up procedure
 - 14.6.1.2. UPS shutdown procedure
 - 14.6.1.3. Emergency Power Off (EPO)
 - 14.6.1.4. Audible alarm silence
 - 14.6.1.5. System status levels
 - 14.6.2. The UPS module shall be provided with a control/indicator panel. The panel shall be on the front of the UPS module. Controls, meters, alarms, and indicators for the operation of the UPS module shall be on this panel.
 - 14.6.3. Graphic Operator Terminal 10.4" Liquid Crystal Color Display (LCD):
 - 14.6.3.1. The LCD touch screen interfaces with the UPS Module Control and main processor board to provide menu-driven operator instructions and UPS Module operation details. The LCD indicates system operation, operational guidance, measurement data, set up data, and alarm messages and logs. All metering shall be digitally displayed on the LCD having an accuracy of 1% or

404

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

better.

14.6.3.2. The touch screen area is composed of four MENU sheets: MAIN, MEASUREMENT, OPERATION, and STATUS. Each MENU sheet has a name tab at the top and the four name tabs form an overlap index at the top of the screen area. Touching the name tab of any of the MENU sheets at this index will make that specific MENU be displayed. Each MENU sheet displays specific information and includes touch icons that perform MENU related functions.

14.6.3.2.1. MAIN MENU Sheet: The MAIN MENU indicates power flow and measured values. The LCD panel allows the user to verify the status and operation of the UPS Module components by the mimic display. The following information is available on the MAIN MENU Sheet:

14.6.3.2.1.1. Converter operation

14.6.3.2.1.2. Battery operation

14.6.3.2.1.3. Load on inverter

14.6.3.2.1.4. Load on bypass

14.6.3.2.1.5. Typical measurement values of Input, Bypass, Battery, and Output

14.6.3.2.1.6. Alarm/Fault messages

14.6.3.2.2. MEASUREMENT MENU Sheet: The MEASUREMENT MENU indicates measured values. The following information is available on the MEASUREMENT MENU Sheet:

14.6.3.2.2.1. Display information:

14.6.3.2.2.1.1. Input Voltage and Frequency

14.6.3.2.2.1.2. Bypass Voltage and Frequency

14.6.3.2.2.1.3. Battery Voltage and Charging/Discharging Current

14.6.3.2.2.1.4. Output Voltage, Frequency, and Current

14.6.3.2.2.1.5. Output active power.

14.6.3.2.2.1.6. Output power factor

14.6.3.2.3. OPERATION MENU Sheet: The OPERATION MENU Sheet prompts the user to select specific performance and UPS setting data. (remote or local start & stop operation, date & time adjustment, battery test, etc.)

14.6.3.2.4. STATUS MENU Sheet: The STATUS MENU Sheet indicates event and alarm/fault information and battery discharge records. A maximum of 50 events can be displayed. The following alarm/status information shall be available as a minimum:

14.6.3.2.4.1. Load on Inverter

14.6.3.2.4.2. Battery Low Voltage

14.6.3.2.4.3. Battery Operation

14.6.3.2.4.4. Output Overload

14.6.3.2.4.5. Converter Operation

14.6.3.2.4.6. Static Bypass Input Out of Range

14.6.3.2.4.7. Minor Fault Data

405

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

14.6.3.2.4.8. Major Fault Data

14.6.4. LED indication

14.6.4.1. The Operation/Display Panel contains the following LED indication:

14.6.4.1.1. Load on Inverter (Green)

14.6.4.1.2. Battery operation (Orange)

14.6.4.1.3. Load on Bypass (Orange)

14.6.4.1.4. Overload (Orange)

14.6.4.1.5. LCD Fault (Red)

14.6.4.1.6. UPS Fault (Red)

14.6.5. Emergency Power Off (EPO) button

14.6.5.1. The UPS shall be provided with a set of terminals which may connect to a remote EPO contact signal. Remote contact shall be non-powered normally open. UPS shall also have a unit mounted EPO button

14.6.5.2. When the UPS Module EPO button is activated, the EPO function shuts down the UPS module. The EPO function can be performed both locally and remotely. When EPO is performed, all system UPS Modules will be shut down and the critical load dropped.

14.7. Microprocessor Interface/Diagnostics

14.7.1. Microprocessor Controlled Operator Guidance

14.7.1.1. The UPS microprocessor logic shall, as standard equipment, provide menu-driven operator instructions detailing the operation of the UPS system. The instruction menu shall be accessible via an LCD touch screen display located at the control panel. The microprocessor shall monitor each step, thus prompting itself to the next step of the instructions. The following instructions shall be available as a minimum:

14.7.1.1.1. Inverters stop.

14.7.1.2. Inverters start.

14.7.1.3. Transfer of critical load to static bypass source.

14.7.1.4. Equalize charge to system battery.

14.8. Microprocessor Controlled Diagnostics

14.8.1. The UPS shall provide microprocessor-controlled diagnostics capable of retaining fault alarms along with metering parameters in the event of a UPS failure. The microprocessor memory data shall be viewed via an LCD or LED located at the control panel. The following alarm/status information shall be provided as a minimum:

14.8.1.1. Load on Inverter

14.8.1.2. Inverter Operation

14.8.1.3. Battery Operation

14.8.1.4. Battery Low Voltage

14.8.1.5. Output Overload

406

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

- 14.8.1.6. Remote Operation
- 14.8.1.7. Battery Depleted
- 14.8.1.8. Battery Temperature Abnormal
- 14.8.1.9. Converter Operation
- 14.8.1.10. DC breaker Open
- 14.8.1.11. Converter Input Out of Range
- 14.8.1.12. Equalize Charge Activated
- 14.8.1.13. Inverter Running Asynchronously
- 14.8.1.14. Load on Bypass
- 14.8.1.15. Static Bypass Input out of Range
- 14.8.1.16. Minor Fault
- 14.8.1.17. Major Fault

14.9. UPS Status and Function Interfacing

14.9.1. Output Contact

14.9.1.1. The internal UPS logic shall provide, as standard equipment, a programmable set of eight (8) normally open, A-type dry contact outputs to allow user interfacing of the UPS operating status. The available parameters are identical to the alarm and status information schedule itemized in the following.

- 14.9.1.1.1. Total Alarm
- 14.9.1.1.2. Minor Fault
- 14.9.1.1.3. Alarm
- 14.9.1.1.4. AC Input Abnormal
- 14.9.1.1.5. Bypass Abnormal
- 14.9.1.1.6. Battery Abnormal
- 14.9.1.1.7. Battery Low Voltage
- 14.9.1.1.8. Battery Depletion
- 14.9.1.1.9. Overload
- 14.9.1.1.10. Overload Pre-alarm
- 14.9.1.1.11. Fault Group 1
- 14.9.1.1.12. Fault Group 2
- 14.9.1.1.13. Synchronous
- 14.9.1.1.14. Asynchronous
- 14.9.1.1.15. Remote Operation Enable
- 14.9.1.1.16. Load on Inverter
- 14.9.1.1.17. Load on Bypass

407

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

- 14.9.1.1.18. Load On AC
- 14.9.1.1.19. Battery Operation
- 14.9.1.1.20. Converter Operation
- 14.9.1.1.21. Inverter Operation
- 14.9.1.1.22. Input breaker Close/Open
- 14.9.1.1.23. Output breaker Close/Open
- 14.9.1.1.24. Maintenance bypass Close/Open
- 14.9.1.1.25. Static bypass ON/OFF
- 14.9.1.1.26. Power Demand
- 14.9.1.1.27. Equalizing Charge aa. Another Bus Synch OK

14.9.2. Integrated UPS Communications Protocols

14.9.2.1. The UPS shall have a factory-installed integral communications system capable of communicating real-time UPS data to a Battery Management Systems (BMS) or other information/analytical systems. These communication protocols shall be user selectable and comprised of MODBUS TCP/IP (Ethernet); Simple Network Management Protocol (SNMP) Simple Mail Transfer Protocol (SMTP); and Web Browser.

14.9.3. Input Ports

14.9.3.1. The UPS shall have, as standard equipment, EPO (Emergency Power Off) and selectable four (4) input ports. The selectable input ports are the following parameters:

- 14.9.3.2. Remote Start
 - 14.9.3.3. Remote Stop
 - 14.9.3.4. Power Demand
 - 14.9.3.5. Power Demand 2
 - 14.9.3.6. Battery Liquid Low
 - 14.9.3.7. Battery Temperature Abnormal
 - 14.9.3.8. Generator Operation
 - 14.9.3.9. Asynchronous Operation
 - 14.9.3.10. Another Bus Synch
 - 14.9.3.11. Remote Inverter Supply (MMS)
 - 14.9.3.12. Remote Bypass Supply (MMS)
 - 14.9.3.13. Ext Byp dV Str
 - 14.9.3.14. Battery Charger Limit 2
 - 14.9.3.15. Charger Stop
 - 14.9.3.16. External Alarm
 - 14.9.3.17. CB2 Ex
- 14.9.4. Remote Control ON/OFF (including control over Modbus)

408

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

14.9.4.1. The UPS manufacturer shall offer a Remote Status Alarm Panel (RSAP), which shall not allow any control over the UPS. The RSAP shall have, as standard equipment, a battery backup feature allowing it to continue monitoring UPS status conditions during power outage situations. Ride through shall be for a minimum of 8 hours. The RSAP shall act only as an annunciation panel providing the following alarms/indications as a minimum:

- 14.9.4.1.1. Converter on
- 14.9.4.1.2. Load on Inverter
- 14.9.4.1.3. Load on Bypass
- 14.9.4.1.4. UPS Failure
- 14.9.4.1.5. Output Overload
- 14.9.4.1.6. UPS in battery back-up mode
- 14.9.4.1.7. Low battery while in back-up mode

14.9.5. Parallel Synch Circuit operation

14.9.5.1. The UPS manufacturer shall offer a Sync circuit which shall allow any two or more different UPS modules to sync into a master Sync source. The circuit allows both UPS modules to operate into a common output transfer cabinet and allows the load to continue to operate without any degradation to the load.

14.9.5.2. The UPS manufacturer shall offer a Kirk Key-based interlock system between the UPS inverter and manual bypass breaker. The interlocking panel shall have a status LED and a dry contactor to provide the status to the local control system.

15. MECHANICAL DESIGN

15.1. Cabinet Structure (Enclosure)

15.1.1. Each equipment bay shall be a separately constructed cubicle assembled to form a rigid freestanding unit. Minimum sheet metal thickness shall be 11-gauge steel on all exterior surfaces. Adjacent bays shall be securely bolted together to form an integrated rigid structure.

15.1.2. All steel parts, except galvanized (if used,), shall be cleaned and a zinc-phosphate (outdoor equipment) or iron phosphate (indoor equipment) pre-treatment applied before paint application.

15.1.3. The paint color shall be ANSI-49 or ANSI-61. TGIC polyester powder is applied electrostatically through the air. Following paint application, parts shall be baked to produce a hard and durable finish. The average thickness of the paint film shall be 2.0 mils. Paint film shall be uniform in color and free from blisters, sags, flaking, and peeling.

15.1.4. The UPS shall be installed in cabinets of heavy-duty structure meeting the NEMA standard for floor mounting. The UPS shall be equipped with standard forklift provisions to allow ease of installation using conventional lifting/moving equipment. The UPS module cabinet shall have hinged and lockable doors on the front only.

15.1.5. Operating controls shall be located outside the locked doors. Input, output, and battery cables shall be installed through the top, bottom, or left side of the cabinet.

15.2. Serviceability

409

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

15.2.1. The UPS shall have accessibility for all servicing adjustments and connections for maintenance or service. Side access or rear access shall be required. The UPS shall be designed such that its rear can be accessed for termination.

15.3. Ventilation

15.3.1. Forced air cooling shall be provided to allow all components to operate within their rated temperature window. Forced air shall be provided with high-quality fans. Thermal relay, using a latched contact that is capable of being reset, shall be used as overload protection to the cooling fan. All air inlets use air filters that shall be removable from the front of the UPS without exposure to any electrical hazard. Air filters shall be door mounted to prevent floor dust from being sucked into the unit. Bottom mount air filters shall not be accepted.

15.4. Eyebolts

15.4.1. Eyebolts shall be installed for lifting UPS. Four (4) heavy-duty eyebolts will be installed on each corner on top of UPS. Eyebolts are detachable (unscrew manually) once UPS is set in the installation area.

16. EXECUTION

16.1. SITE PREPARATION

16.1.1. Perform site visit to review existing electrical distribution and location for the UPS system.

16.1.2. Provide staircase for each UPS stacked container.

16.1.3. Provide electrical wiring services to connect all electrical components.

16.1.4. Provide electrical grounding system.

16.1.5. Provide civil services to install foundations, transformer vaults, cable raceways, cable duct.

16.1.6. Provide civil services to restore site to preconstruction standards.

16.1.7. Provide fiber-optic cable, terminal equipment, and terminations of same from the main electrical room metering cabinets to the new external metering cabinet.

16.1.8. Scope of work includes removal and responsible off-site disposal of all packaging and debris associated with this installation. Dumpsters and/or garbage disposal areas at the Sault Area Hospital may not be used.

16.2. INSTALLATION

16.2.1. The UPS shall be set in place, wired, and connected in accordance with the approved installation drawings and owners / technical manual delivered with equipment.

16.2.2. The equipment shall be installed in accordance with local codes and manufacturer's recommendation.

16.2.3. Complete all field wiring and bus connections identified by the manufacturer. All connections to be torqued as per manufacturer's recommendations. Check factory made connections for mechanical security and electrical continuity.

16.2.4. The manufacturer shall provide installation and start-up supervision.

410

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

16.3. FIELD QUALITY CONTROL

16.3.1. The equipment shall be checked out and started by a customer support representative from the equipment manufacturer. Visual and mechanical inspection of electrical installation, initial UPS start-up, and operational training shall be performed. A signed service report shall be submitted after equipment is operational.

16.3.2. The following inspection and test procedures shall be performed by field service personnel during the UPS start-up:

16.3.2.1. Visual Inspection

16.3.2.2. Ensure that shipping members have been removed.

16.3.2.3. Ensure that interiors are free of foreign materials, tools, and dirt.

16.3.2.4. Check for damage (dents, scratches, frame misalignment, damage to panel devices, etc.).

16.3.2.5. Check doors for proper alignment and operation.

16.3.3. Mechanical Inspection

16.3.3.1. Check all the power wiring connections for tightness.

16.3.3.2. Check all the control wiring connections for tightness.

16.3.4. Electrical Inspection

16.3.4.1. Check input and bypass for proper voltage and phase rotation.

16.3.4.2. Check battery for proper voltage and polarity.

16.3.5. Start-up

16.3.5.1. Energize the UPS.

16.3.5.2. Check the DC output voltage and inverter output voltage.

16.3.5.3. Check the inverter output voltage on battery operation with the 3-hour Lithium battery.

16.3.5.4. Check for proper synchronization.

16.3.5.5. Perform manual transfers and returns.

16.3.5.6. Check for proper operation of the external control for the rectifier to ensure remote control capability for turning the rectifier on and off from a remote location.

Part 3 - Battery Energy Storage Systems (BESS)

17. Overview

17.1. The BESS systems are to be located at the Client's premises for exterior applications within equipment shelters/structures.

17.2. The BESS system is to be connected to a UPS System, which could be in the same equipment shelter, adjacent equipment shelters/containers, or another location within the facility.

411

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

18. References:

18.1. All BESS systems adhere to industry standards for the fabrication, storage, and performance of the BESS systems and components. As a minimum, systems will comply with standards UL 1642, UL 1973, UL 9540A standards, and Canadian equivalents (CSA). The equipment must have these ratings listed or the ability to obtain UL/CSA certification.

19. PRODUCTS

19.1. General Specifications

19.1.1. The following information is a guideline overview of the type and performance of the BESS that is being contemplated for this deployment. The information is to be used as a general overview and specification and products proposed shall meet the minimum requirements, but not to limit product offerings/recommendations if performance can be improved in a cost-effective manner.

19.2. Battery

19.2.1. Batteries to be based on Lithium chemistry.

19.2.2. One full charge/discharge cycle per day

19.2.3. Batteries must have charge rate (max in C): 0.5.

19.2.4. Batteries must have discharge rate (max in C): 0.5.

19.2.5. Batteries must be capable of daily discharge to min SOC no greater than 5%

19.2.6. Batteries must be capable to have 100% discharge time for 0.5C rate.

19.2.7. Batteries must be capable of recharging every day and stay at a high rate of charge for up to 22 hours/day.

19.2.8. Battery degradation over the 10-year term should not exceed 15% (daily throughput not expected to exceed 25% of useable capacity).

19.2.9. Average SOC (if required for battery warranty) should not exceed 60%.

19.2.9.1. Provide evidence/calculations to meet the performance.

19.2.10. Provide battery discharge curves for each type of battery offering in the proposal. Graphs of voltage decay to be over the course of one cycle to be included.

19.2.11. Provide guaranteed energy degradation curves for a 95% SOC, 90% SOC, 85% SOC, 80% SOC, 75% SOC, 70% SOC, 65% SOC and a 60% SOC.

19.2.12. Provide details on chemistry, specification, thermal properties, and storage information.

19.2.13. Battery modules shall be rack mounted or cabinet mounted in a modular configuration, capable of being installed in parallel assembly, to be configured in systems ranging in ratings from 1 MWh to 20 MWh, in pre-assembled strings at rated voltage of approximately 500 VDC.

19.2.13.1. Configurations planned for deployment range according to specific site requirements.

19.2.13.2. Provide schematics for configurations and details calculation for SOC.

19.2.13.3. Provide configuration of BMS, alarming, faults, monitoring and general communication inputs/outputs (I/O), contacts etc.

412

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

19.2.13.4. Provide details on isolation switches, common disconnects, fuses, peripheral devices and identify components required for the system(s), and which components are included/excluded from the overall pricing schemes. Pre-assembled sub-assemblies are mandatory with connections at rack/cabinet.

19.2.13.5. Provide all physical and electrical attributes of the battery and ancillary equipment, temperature and environmental requirements, optimum operating conditions, HVAC and heat rejection requirements, emergency, and safety aspects, etc. Where possible, provide data in terms of a 24 hour period, with minimum two (2) completed discharges.

19.2.13.6. Provide protection required for ingress/egress of contaminants, dust control, filtering, static and physical guards etc.

19.2.13.7. Provide assurance through the offerings that the systems and equipment will be packaged and shipped to facilitate simple installations by external contracted resources and describe how this is achieved. Use of shock sensors (IoT), air ride suspension vehicles and other devices to ensure safe delivery to be included. Drop shipments to Greater Toronto Area address to be included. Assemblies (cabinets) shall be capable of loading by forklift, with bottom lift.

19.3. Racks

19.3.1. Racks and/or Cabinets shall be offered as available for options for Battery configurations to utilize a more compact footprint and/or at a cost-effective pricing scheme.

19.3.2. Provide specifications of racks and cabinets submitted with the proposal, including footprint/dimensions, weights, wire management etc.

19.3.3. Racks or Cabinets shall be constructed of high-quality materials suitable to carry loads of the Battery, with ease of access to install, connect, replace, and maintain Batteries.

19.3.4. If two or more of the following reference standards are utilized, be cautious of any contradictory requirements between selected references.

19.4. CONTROL

19.4.1. All BESS systems to provide BMS and String Protection Systems.

19.4.2. BMS systems to be capable of communication through a Remote Monitoring port and provide adequate ports for signaling and monitoring of multiple inputs, including state of charge and alarming protocols.

19.4.3. Provide BMS and String Protection System product information, installation, and any pertinent information with proposal.

19.4.4. Provide Battery System connection to UPS systems including signaling configurations for voltage and current monitoring and corrections to supply and discharge power to and from UPS System.

19.4.4.1. UPS systems will not necessarily be of the same manufacturer and/or model across the network deployment. Battery System connections to allow for connections to any UPS installed on the specific site.

19.4.4.2. UPS voltage window is planned to operate between 400V and 540V DC.

19.4.4.3. The output of the UPS (1000KWh) is measured at the output of the UPS inverter.

413

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

Assume 97% efficiency of the inverter over the voltage window for calculation system performance, unless the system offerings are designed to hold voltage at a specific voltage as means to optimize efficiency.

19.4.5. Provide data inputs required from UPS systems to Battery System.

19.4.6. Provide output data points from Battery System for Management Reporting and Analysis.

19.5. Installation

19.5.1. Information and costing pertaining to the availability for site installation by the supplier is to be included in the proposal.

19.5.2. Where such availability does not exist, the cost details of and arrangements for one-time training of local trades selected by Demand Power is to be included in the proposal.

19.6. Warranty

19.6.1. Batteries and System components to state the standard warranty in years, to a degradation curve, including round trip efficiency of the batteries.

19.6.2. Provide details on all warranty policies, and options to extend standard warranty(ies)

19.6.3. Provide timelines, inclusions and exclusion details for the system and components.

19.6.4. Provide warranty claim process, resolution and escalation, normal timelines for claims.

19.7. Service

19.7.1. Where servicing of batteries and ancillary devices is already available locally, pricing for service contracts to be included in proposal.

19.7.2. Where servicing of batteries or ancillary devices is not already available locally, training shall be provided as part of installation with costs included in proposal.

Part 4 - Equipment Shelter/Container

20. GENERAL SCOPE OF WORK

20.1. Supply Labor and Materials, Complete Fabrication of Equipment Shelter(s)/container for the purpose of housing UPS and Battery Systems, Ancillary Equipment as described in this Specification.

20.2. Complete the Work in accordance with the Standards and Codes applicable, including but not limited to the following:

20.2.1. National Building Code 2015 (where applicable)

20.2.2. Ontario Building Code 2012 (where applicable)

20.2.3. Electrical Standards CSA C22 or equivalent

20.2.4. Steel Building Standards CSA A660-10 (Certified Plant/Procedures)

20.2.5. Welding Standards CSA W59 or equivalent

20.2.6. Personnel Welding Certifications to CSA W479 or equivalent

20.2.7. All drawings to be sealed by qualified, licensed Professional Engineer.

414

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

20.2.8. All lift plan drawings to be sealed by qualified, licensed Professional Engineer.

20.3. Nominal sizing of shelters/container is planned to be 40' x 8' x 8'. Supplier standard sizing can be submitted if cost effective and meet minimum requirements. Provide as many models/types as required.

20.4. The deployments are presently planned for the Ontario Region, and Equipment Shelters/Containers should be designed to meet the conditions present in all regions of Ontario.

21. Auxiliary System Design**21.1. Fire Suppression Systems**

21.1.1. Supply and Install complete Fire Suppression System sized to extinguish fire event within the Equipment Shelter/Container. The fire suppression and alarm system for the BESS container shall be designed based on the NFPA72, NFPA70, NFPA2001, and NEPA855 standards, and takes into consideration both electrical safety and fire protection safety to supply reliable protection.

21.1.2. The fire protection system mainly consists of an automatic alarm system and a fire extinguishing system. The automatic alarm system consists of a control unit, heat detector, smoke detector, action pull station, abort station, sound and light detector, alarm ring, and emission indicator light. The fire extinguishing system consists of a Novec 1230 fire-extinguishing device including steel bottle, pressure switch, electric control head, and electric head valve. The different components of the fire suppression system are listed below,

- 21.1.2.1. Automatic Alarm System
 - 21.1.2.1.1. Control Unit
 - 21.1.2.1.2. Smoke Detector
 - 21.1.2.1.3. Heat Detector
 - 21.1.2.1.4. Action Pull Station
 - 21.1.2.1.5. Abort Station
 - 21.1.2.1.6. Maintenance Switch
 - 21.1.2.1.7. Sound-light Alarm
 - 21.1.2.1.8. Motor Bell
 - 21.1.2.1.9. Gas Release Indicator
 - 21.1.2.1.10. Backup Battery
 - 21.1.2.1.11. Cylinder(s) and wall mounting hardware.
- 21.1.2.2. Fire Extinguishing System
 - 21.1.2.2.1. Novec 1230 Cylinder
 - 21.1.2.2.2. Pressure Switch
 - 21.1.2.2.3. Electric Control Head
 - 21.1.2.2.4. Nozzles

415

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

21.1.2.3. Gas Detection System

21.1.2.3.1. Gas detector is designed to detect and measure the presence and level of flammable gases in industrial applications. It has an H₂ detector that will detect the H₂ density in the container environment. Two pieces will be installed and mounted on the wall, one on each of the long sides of the containers. The gas detection system is designed to activate the exhaust ventilation system when the level of H₂ detected in the container exceeds 25% of the Lower Flammability Limit (LFL). The exhaust ventilation system shall remain on until the H₂ detected is less than 25% of the LFL. The H₂ detectors shall be provided with a minimum of 2 hours of standby power. Failure of the H₂ detection system will annunciate a trouble signal at an approved central station.

21.1.2.4. Water Sprinkler System

21.1.2.4.1. The water sprinkler system shall be designed to discharge water to the whole battery container. The application density shall be no less than 0.3gpm/ft². The application area shall be the whole battery container. Sidewall sprinklers shall be placed at the two sides just under the ceiling. Water distribution must be designed to cover the full area. The sprinkler system shall be dry pipe type with open-type sprinkler. Water supply tie-in shall be at the containers' outer wall with a fire department connection. The user shall make sure to provide the water supply at sufficient flow and head to meet the total water consumption demand.

21.1.2.5. Copy of System Flow Calculations for Review by engineer or sealed.

21.1.2.6. Copy of Design/Engineered Drawing Package, sealed by P. Eng.

21.1.2.7. Integrity tests and results report

21.1.2.8. Final test and commissioning report.

21.1.2.9. All work to be completed at plant.

21.2. The fire extinguishing system shall be equipped with three starting modes: automatic control, manual control, and mechanical emergency operation. The fire extinguishing system can automatically detect the fire, automatically alarm, automatically start the fire extinguishing system, and release the fire extinguishing agent.

21.2.1. The fire extinguishing system shall be Novec 1230 gas fire extinguishing system, and the spraying time of fire extinguishing agent shall not be more than 10 seconds. The agent quantity of the fire extinguishing system will be designed and verified in accordance with the relevant standards. The design amount shall be calculated according to the sum of the fire extinguishing amount and the agent residual amount in the protection area, and the design concentration shall be greater than 7.6%. The number, type, and layout of the nozzles in the protection area shall be considered to make the gas distribution in the protection area uniform, and the spraying of the fire extinguishing agent shall not damage the equipment and staff and shall not make the fire spread. The number, type and layout of smoke and heat sensors in each protection area shall be based on the accuracy of detection. It is necessary to consider that the smoke and temperature monitoring points in the protection area are evenly distributed.

21.2.2. It is strictly prohibited to fail to report or misreport. The fire extinguishing system must have an external communication interface, such as a dry contact. The fire extinguishing system must output at least three groups of dry contact signals, such as fire alarm signal, fault signal, pre spray signal, etc.

416

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

21.3. Transportation of Equipment Shelters/Container

21.3.1. Provide general transportation rates on a per km or zoned map for locations from plant to locations within Ontario.

21.3.2. Provide general estimates for permitting for transport,

21.3.3. All loading at Plant to be included.

21.3.4. Off-loading to be by others

21.4. Installation Services

21.4.1. Provide details on capacity, resources, and skills available to provide installation services for the installation of the UPS system and the Battery System, at the plant (Loose Batteries to be installed at site to reduce transportation weights)

21.4.2. Installation guidance, specifications, and general support to be provided by the Suppliers of the Equipment and personnel of Demand Power Group Inc, and/or the Consultant.

21.4.3. Provide examples of recent work to demonstrate experience with installations.

22. PRODUCT**22.1. STRUCTURAL CONSIDERATIONS FOR EQUIPMENT SHELTERS**

22.1.1. As the equipment shelters are planned to be deployed in all regions of Ontario, the structural loading for the equipment shelters shall be built to comply with Roof Snow Load, Wind and Seismic Classes for the majority of Ontario.

22.1.2. In Compliance with local building codes

22.1.3. If a concentrated load vs uniform load has advantages in final pricing, alternate pricing and details should be included in the pricing, as an optional line item.

22.1.4. The equipment shelters/container shall be constructed to allow lifting from top of shelter, or by other means, to be detailed in proposal.

22.1.5. Equipment shelters/container to be an all-weld construction of post and beam on a heavy-duty base of beams and cross members (joists), or of concrete/concrete composite construction.

22.2. FLOOR, WALL, AND ROOF/CEILING ASSEMBLIES**22.2.1. Floor Assembly**

22.2.1.1. Floor Assembly (Structural Steel) to be constructed in general conformance to the following:

22.2.1.1.1. Structural Steel, Heavy Duty Beams along perimeter of Base

22.2.1.1.2. Structural Steel Floor Joists spaced as required for loading.

22.2.1.1.3. Layer of galvanized steel pan, for rodent control, minimum 29-gauge material

22.2.1.1.4. Insulation in cavity, ROXUL MB Plus, R-14; or equivalent

22.2.1.1.5. VCT tile installed with associated cove base (anti-static)

22.2.1.1.6. Exterior exposed structural steel to be sand blasted and Epoxy Primer, finished with Epoxy Paint (10-year life expectancy minimum)

22.2.1.1.7. Optional ¼" thick steel plate in lieu of VCT, stitch welded underside, full weld topside,

417

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

painted with anti-slip epoxy-based paint and rubber cove base.

22.2.1.2. Floor Assembly (Concrete) to be constructed in general conformance to the following:

22.2.1.2.1. Concrete floors to be fabricated in one piece reinforced to meet minimum structural requirements, with ability to receive underground services and to receive wall panels if penalization methods are used, and maintain protection from environment (water, weather, rodent etc.) Floor assembly details to accompany proposal.

22.2.2. Wall Assembly

22.2.2.1. Walls to be non-combustible, 2-hour Fire Rated assemblies (NFPA 885 requirements)

22.2.2.1.1. Structural Steel/Cold-Rolled Steel

22.2.2.1.1.1. Metal clad exterior finish, minimum 26-gauge material with standard profile cladding, in white/off white color (factory finished).

22.2.2.1.1.2. Air Barrier, Tyvek or equivalent

22.2.2.1.1.3. Structural Steel/Cold-rolled Steel Framing

22.2.2.1.1.4. Insulation in cavity, Roxul MB Plus, R-14 Minimum or equivalent

22.2.2.1.1.5. Vapor Barrier, minimum Super 6 mil or equivalent

22.2.2.1.1.6. Required layers, Type 'X' Gypsum Board, Fire Rated, Square Edged Board

22.2.2.1.1.7. PVC 'Batten' trims to cover joints in Board

22.2.2.1.1.8. Paint, Off White Color, Semi-gloss/Velvet finish, hard wearing.

22.2.2.1.1.9. Allow for one (1) location for mounting of antenna on exterior for communications (SCADA)

22.2.2.1.2. Concrete, or Concrete Composite Wall

22.2.2.1.2.1. Walls to be constructed with minimal joints, and in accordance to fire rating and insulation requirements above.

22.2.2.1.2.2. Wall assembly details to accompany proposal.

22.2.2.1.3. Optional: show capacity and methodology to 'stack' units to 2 stories as way of conserving footprint.

22.2.3. Roof/Ceiling Assemblies

22.2.3.1. Roof Assemblies to be non-combustible, ¾ hour Fire Rated assemblies

22.2.3.2. Seamless Steel Roofing Panels, Factory finished White/Off White, with minimum 24-gauge thickness.

22.2.3.3. Flashing and trims to be Factory finished White/Off White, with minimum 24 gauge thickness

22.2.3.4. Steel roof deck minimum 22 gauge, Galvanized.

22.2.3.5. Insulation in cavity, Roxul MB R-14 Minimum

22.2.3.6. Vapor Barrier, minimum Super 6 mil or equivalent

22.2.3.7. One layer, Type 'X' Gypsum Board, Fire Rated, Square Edged Board

418

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

- 22.2.3.8. PVC 'Batten' trims to cover joints in Board.
- 22.2.3.9. Paint, Off White Color, Semi-gloss/Velvet finish, hard wearing.
- 22.2.4. Doors, Hardware and accessories
 - 22.2.4.1. Single or Double Door openings as space dictates for ease of equipment installation(s)
 - 22.2.4.2. Doors to be Hollow Metal, Insulated, minimum 18-gauge construction, Fire Rated to 45min/ 1 ½ hour as required
 - 22.2.4.3. Frames to be Hollow Metal, minimum 18-gauge welded construction, Fire Rated to 45 min/1 ½ hour as required.
 - 22.2.4.4. Minimum one (1) door to have Panic Bar c/w Thumb piece and 'D' Handle (Exit), Auto Closer c/w hold open device.
 - 22.2.4.5. All doors to have Stainless Steel, Non-removable Hinge Pins, Metal/rubber door sweeps, Aluminum weather strips, Aluminum Threshold Plates.
 - 22.2.4.6. Main Door entrance to have rubber matting.
 - 22.2.4.7. Lockset to be high quality, key in lever type, with exterior grade nickel finish by Schlage, Best, or equivalent, with minimum 4 keys. Guards to be installed over latch location to prevent prying of door for out swinging doors
 - 22.2.4.8. All Entrance door frames to have rough in for future card access/FOB systems, pre-drilled, pre-wired.
 - 22.2.4.9. All doors and Frames to be painted in matching color to interior/exterior finishes, in high quality Alkyd or Epoxy Paints
- 22.2.5. Cable Entrance and Cable/Wiring Management
 - 22.2.5.1. Allow for two (2) PVC wall sleeves for electrical ground to exterior.
 - 22.2.5.2. Allow for cable entrances through floor assembly for incoming and outgoing wiring from UPS to facility.
 - 22.2.5.3. Allow for cable entrances through floor or wall for incoming and outgoing cabling between UPS and Battery Systems, power and data.
 - 22.2.5.4. Allow for small PVC wall sleeve for wiring to exterior mounted communication (antenna) for SCADA/wireless communications.
 - 22.2.5.5. Allow for small PVC floor sleeve for wiring for communication wiring to facility for SCADA/wireless communications (fiber, CATV or other)
 - 22.2.5.6. Locations of all sleeves to be confirmed prior to fabrication.
 - 22.2.5.7. Cable Tray to be class D, Ladder Type, Aluminum. Minimum dimensions of 12" width, 6" depth and 12" c/c rung spacing, secured to roof assembly to carry imposed loads.
 - 22.2.5.8. Cable tray installed in two (2) rows with minimum four (4) crossover points, spaced evenly. Final configuration of cable tray to be confirmed prior to fabrication/procurement of materials.

23. HVAC SYSTEMS

- 23.1. Equipment shelter/container shall have enough HVAC units to keep the BESS container's indoor temperature within 15C to 25C.

419

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

- 23.2. Units to be sized to meet requirements of heating and cooling loads based on equipment specifications.
- 23.3. Dust and Debris control measures to be provided and described in detail.
- 23.4. Units to be Bard or equivalent.
- 23.5. Minimum Cooling Capacity of a unit 57500BTU/hr.
- 23.6. Minimum Heating Capacity of a unit 5 KW
- 23.7. All units to be single phase 240 VAC.
- 23.8. Units to utilize Economizer packages for energy efficiency.
- 23.9. Units to offer a winter operation control package.
- 23.10. Controllers to be matched to the unit supplied. When two (or more) units are installed, controllers to provide Lead/Lag and Change-over options.
- 23.11. System to have ability to be connected to SCADA and/or monitoring systems for High Temperature Alarm, Low Temperature Alarms, HVAC Fail Alarms
- 23.12. All wiring and testing to factory Specifications to be performed at plant, and all documentation delivered with Equipment Shelter (see Documentation)

24. CONTAINER ELECTRICAL SERVICES

- 24.1. Service Entrance
 - 24.1.1. Provide interlocked breakers to feed the power either from input or output of the UPS.
 - 24.1.2. Provide one (1) Distribution Panel, with minimum 24 circuits/breaker positions.
 - 24.1.3. Provide all conduit (EMT) and wiring between disconnect switch and Panel above.
- 24.2. Lighting and Standard Circuits
 - 24.2.1. Provide enough LED light fixtures 1'x4' w/lamps or LED strips, and electronic ballasts (if applicable), wire guard.
 - 24.2.2. Lights to be controlled by single commercial duty switch located at main entrance doorway.
 - 24.2.3. Provide minimum five (5) convenience receptacles spaced evenly throughout Equipment Shelter/container, 15 Amp rating.
 - 24.2.4. Provide a 5000VA UPS with 20min run time at full load to power the communication and control equipment.
 - 24.2.5. A standard, 24 inch (610 mm) wide, 36 inch (914 mm) deep, 42U high equipment racks.
 - 24.2.6. Provide one (2) exterior mounted GFI receptacle, on separate breaker.
 - 24.2.7. Provide one (2) exterior mounted, exterior grade outdoor fixture, LED minimum 10W light, w/motion sensor and dual heads for maximum coverage of area.
 - 24.2.8. Over the main entrance door, install one (1) combination twin head emergency backup battery light fixture, c/w illuminated Exit sign, 'running man' or approved graphic.
 - 24.2.9. All devices wired to main panel with EMT conduits, surface mounted acceptable.
- 24.3. **Alarm and Security Systems**

420

MASTER TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

- 24.3.1. Rough in for Door Alarm security from door to Communications Board
- 24.3.2. Supply and Install one (1) Smoke Detector, hard wired with 120 VAC (NC) c/w HVAC shut down and customer signaling to Communications Board.
- 24.3.3. Supply and Install one (1) Heat detector c/w NC contact wired to Communications Board.

24.4. **Communications Board**

- 24.4.1. Supply and Install, where space permits, 4'x4'x3/4" Plywood backboard fastened to wall assembly, painted w/grey intumescent paint according to manufacturer's instructions.
- 24.4.2. Provide one (1) of the receptacles supplied above on the board.
- 24.5. Grounding
 - 24.5.1. Supply and install <grounding spec> for UPS.
 - 24.5.2. Supply and install <grounding spec> for Battery System.
 - 24.5.3. Supply and install <grounding spec> for general electrical grounding.

25. **FIRE SUPPRESSION (PORTABLE)**

- 25.1. Supply and Install one (1) Ten Pound CO2 Fire Extinguisher, c/w wall bracket.

26. **MISCELLANEOUS ITEMS**

- 26.1. Supply and Install one (1) First Aid Kit
- 26.2. Supply and Install one (1) Bookshelf to hold manuals and documents (binders)

421

ITEM 8

422

SUBMISSION LIST

Major Equipment Documentation to be Provided	
Exhibit	Document
A	DPGI Acceptance Criteria
B	FAT Files List
	Battery information traceability table
	Battery Cell Test
	Battery Module Test
	Battery Rack test report
	UPS Test Report
	MBS test report
	UPS Container test report
	BESS Container test report
	Fire Suppression System Test Report
	HVAC test report
	UL Compliance Certificate for cable and Auxiliary Components
	CIMC products Rhos and REACH statement
	Kehua products Rhos and REACH statement
	BESS SAT
UPS SAT	
MBS SAT	
Fire Suppression System SAT	
HVAC SAT	
Container Shop drawings	
P.Eng Drawing Set 40ft battery Container	
P.Eng Drawing Set 40ft UPS Container	
Junction box shop drawings	
MBS shop drawings	
Detailed Electrical Drawing inside container	
Control wiring diagram	

01/20/21

			CATL_ ESS_ModbusTCP_Communication_Protocol_Between_BMS_and_PMS
			UPS-KRB331000(V2.0) Upper computer Modbus- Monitoring Protocol
			UPS Modbus Monitoring Protocol_20200701 RTU_rev003
			Battery CB Test certificate IEC 62619
			IEC-62619 Test Report_CATL280Ah
			Certificate of Compliance of battery cells UI 1973
			Letter of Attestation of battery cells UL 9540A
			Letter of Attestation of battery modules UL 9540A
			UN38.3 Test Report_CATL_001CB310_280Ah
			Letter of Attestation of battery modules UL 9540A
			Transport Certification
			Letter of Attestation of battery racks UL 9540A
			Battery test report RZUN2019-1442
			Report for Safe Transport of Goods UN2019-1442-1 (by air)
			Report for Safe Transport of Goods UN2019-1442-2 (by sea)
			BESS UN38.3 Certification
			BESS UL 1973 Certification
			BESS UL9540 Certification
			BESS UL9540A Certification
			BESS IEC62619 Certification
			UPS CSA SPE-1000 certification
			UPS ISO9001:2008 Certification
			UPS ISO14001:2004 Certification
			UPS IEC 62040-2 Certification
			Constructional Data Form for Electrical Appliances (DC combiner) AN 50434670 0001
			Constructional Data Form for Electrical Appliances (Control cabinet) AN 50434671 0001
			Short Circuit, Protective Device Coordination and Arc Flash Hazard Analysis
		D	Equipment Certifications

			Service Agreement
			3 Year Spare Parts List
			Product Warranty Agreement and Performance Guarantee DRAFT
			Efficiency Curves/Tables
			DC combiner user manual
			Control cabinet user manual
			Battery Rack User Manual
			UPS User Manual
			MBS User Manual
			Fire suppression system user manual
			HVAC User Manual
			O&M Manuals
			HVAC Instalational Manual
			Container Installation Instruction
			Container Guide Plate 1
			Container Guide Plate 2
			Container Lifting Assembly
			Battery rack assembly instruction
			Battery module package description
			Installation Drawings
			Installation Checklist
			Commissioning Procedures
			Commissioning Checklist
			List of Special Tools for Installation / Maintenance
E	Form of Operation Services Agreement (3 Year)		
F	Equipment Warranty Package		
G	Operation and Maintenance Manuals		
H	Installation Manual and Commissioning Manual		

427

428

This is Exhibit "H" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Zev Smith

4F6A7FBBE6C441

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

Exhibit CBILL OF SALE AND ASSIGNMENT AGREEMENT

THIS BILL OF SALE AND ASSIGNMENT AGREEMENT (this "*Bill of Sale and Assignment Agreement*") is dated as of February 17, 2021, by and between Demand Power Group Inc., an Ontario corporation ("*Developer*"), and Narrows Green, LP, a limited partnership formed under the laws of the Province of Manitoba ("*NARROWS*"). Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Investment Agreement (as defined below).

RECITALS

WHEREAS, this Bill of Sale and Assignment Agreement is made and delivered pursuant to that certain Investment Agreement, dated February 28, 2020, by and between Developer and NARROWS (the "*Investment Agreement*"), pursuant to which Developer agreed to transfer, assign, convey and deliver to NARROWS, and NARROWS agreed to acquire, all of Developer's right, title and interest in and to each Accepted Project, including all supporting Documentation and Property related thereto;

WHEREAS, Developer submitted to NARROWS an Investment Proposal to NARROWS with respect to the Sault Area Hospital Project (the "*Accepted Project*") on February 8, 2021;

WHEREAS, NARROWS delivered an Acceptance Notice to Developer with respect to the Accepted Project on February 9, 2021;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Assignment. Effective as of the date hereof, Developer does hereby irrevocably grant, sell, transfer, convey and assign to NARROWS all of the Developer's right, title and interest in and to the Accepted Project, including, but not limited to, all supporting Documentation and Property in respect of the Accepted Project, free and clear of all Liens, including the following:

- (a) all Documentation forth on Schedule 1 attached hereto;
- (b) all other contracts and agreements related to the Accepted Project, including those set forth on Schedule 2 attached hereto;
- (c) all equipment, inverters, batteries, power electronics, communications equipment and switchgear related to the Accepted Project, including those set forth on Schedule 3 attached hereto;
- (d) all Applicable Permits related to such Accepted Project, including those set forth on Schedule 4 attached hereto;
- (e) all Governmental Incentives related to such Accepted Project, including those set forth on Schedule 5 attached hereto; and
- (f) all other tangible, intangible and other properties, assets and rights of Developer related to the Accepted Project, including those set forth on Schedule 6 attached hereto.

2. Non-Assignable Rights. Developer hereby confirms that there are no Non-Assignable Rights in respect to the Accepted Project.

430

3. Assumption. Effective as of the date hereof, NARROWS hereby assumes and agrees to perform or otherwise discharge, in accordance with their respective terms and conditions, as and when the same shall become due and owing, the Assumed Liabilities with respect to the Accepted Project. For the avoidance of doubt, other than the Assumed Liabilities with respect to the Accepted Project, neither NARROWS nor any of its Affiliates shall assume or be liable for any Liabilities of Developer or any of its Affiliates whatsoever, regardless of whether the same are contingent or fixed, or accrued prior to, on, or after the date hereof (all other Liabilities of Developer not assumed by NARROWS hereunder, the "*Retained Liabilities*"). Developer shall remain responsible for and shall pay, discharge and perform when due all of the Retained Liabilities and shall indemnify and hold NARROWS and its Affiliates harmless with respect thereto

4. Further Undertaking. Developer and NARROWS will from time to time, at the reasonable request of the other, execute and deliver such other instruments of conveyance, transfer, assignment or assumption and take such other actions as the other may reasonably request, in order to more effectively consummate the intent and purposes of this Agreement.

5. Governing Law. This Bill of Sale and Assignment Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario without reference to the Province's choice of law principles.

6. Counterparts; Facsimile and E-Mail Signatures. This Bill of Sale and Assignment Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be executed and delivered by facsimile, or by e-mail in portable document format (.pdf) and delivery of the signature page by such method will be deemed to have the same effect as if the original signature had been delivered to any other signatory hereof,

[SIGNATURE PAGE FOLLOWS]



431

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Bill of Sale and Assignment Agreement as of the date first set forth above.

DEVELOPER:

DEMAND POWER GROUP INC.

By: 

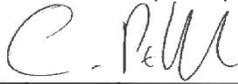
Name: Doug Brown

Title: Chief Financial Officer

NARROWS:

NARROWS GREEN, LP

By: SAIF DP OPCO GP, INC., its General Partner

By: 

Name: Christophe Petit

Title: President



432

This is Exhibit "I" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Zev Smith

4F6A7FBBFE6C441...

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

CCDC 14

**Design-Build
Stipulated Price Contract**

2 0 1 3

**JEBCO MANUFACTURING FACILITY
BESS/UPS System Project**

This agreement is protected by copyright and is intended by the parties to be an unaltered version of CCDC 14 - 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.



CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE,
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

The Canadian Construction Documents Committee (CCDC) is a national joint committee responsible for the development, production and review of standard Canadian construction contracts, forms and guides. Formed in 1974 the CCDC is made up of volunteer representatives from:

Public-Sector Owners

Private-Sector Owners

- *The Association of Consulting Engineering Companies-Canada
- *The Canadian Construction Association
- *Construction Specifications Canada
- *The Royal Architectural Institute of Canada

*Committee policy and procedures are directed and approved by the four constituent national organizations.

This document has also been endorsed by the Canadian Design-Build Institute.



Comments and inquiries should be directed to:
Canadian Construction Documents Committee
1900-275 Slater Street
Ottawa, ON
K1P 5H9
613 236-9455
info@ccdc.org
ccdc.org

CCDC guides are products of a consensus-building process aimed at balancing the interests of all parties on the construction project. They reflect recommended industry practices. Readers are cautioned that CCDC guides do not deal with any specific fact situation or circumstance. CCDC guides do not constitute legal or other professional advice. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use and interpretation of these guides.

CCDC Copyright 2013

Must not be copied in whole or in part without the written permission of the CCDC.



TABLE OF CONTENTS

AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

- A-1 Design Services and the Work
- A-2 Agreements and Amendments
- A-3 Contract Documents
- A-4 Contract Price
- A-5 Payment
- A-6 Receipt of and Addresses for Notices in Writing
- A-7 Language of the Contract
- A-8 Succession

DEFINITIONS

- Change Directive
- Change Order
- Construction Documents
- Construction Equipment
- Consultant
- Contract
- Contract Documents
- Contract Price
- Contract Time
- Design-Builder
- Design Services
- Drawings
- Notice in Writing
- Other Consultant
- Owner
- Owner's Advisor
- Owner's Statement of Requirements
- Payment Certifier
- Place of the Work
- Product
- Project
- Shop Drawings
- Specifications
- Subcontractor
- Substantial Performance of the Work
- Supplemental Instruction
- Supplier
- Temporary Work
- Value Added Taxes
- Work
- Working Day

GENERAL CONDITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT**PART 1 GENERAL PROVISIONS**

- GC 1.1 Contract Documents
- GC 1.2 Law of the Contract
- GC 1.3 Rights and Remedies
- GC 1.4 Assignment
- GC 1.5 Confidentiality

PART 2 OWNER'S RESPONSIBILITIES

- GC 2.1 Owner's Information
- GC 2.2 Role of the Owner
- GC 2.3 Owner's Advisor
- GC 2.4 Role of the Payment Certifier
- GC 2.5 Owner's Review of the Design and the Work
- GC 2.6 Work by Owner or Other Contractors

PART 3 DESIGN-BUILDER'S RESPONSIBILITIES

- GC 3.1 Control of the Design Services and the Work
- GC 3.2 Design-Builder's Review of Owner's Information
- GC 3.3 Role of the Consultant
- GC 3.4 Other Consultants, Subcontractors, and Suppliers
- GC 3.5 Construction Documents
- GC 3.6 Design Services and Work Schedule
- GC 3.7 Supervision
- GC 3.8 Labour and Products
- GC 3.9 Documents at the Site
- GC 3.10 Shop Drawings
- GC 3.11 Non-Conforming Design and Defective Work

PART 4 ALLOWANCES

- GC 4.1 Cash Allowances
- GC 4.2 Contingency Allowance

PART 5 PAYMENT

- GC 5.1 Financing Information Required of the Owner
- GC 5.2 Applications for Progress Payment
- GC 5.3 Progress Payment
- GC 5.4 Substantial Performance of the Work
- GC 5.5 Payment of Holdback upon Substantial Performance of the Work
- GC 5.6 Progressive Release of Holdback
- GC 5.7 Final Payment
- GC 5.8 Deferred Work
- GC 5.9 Non-conforming Design Services and Work

PART 6 CHANGES IN THE CONTRACT

- GC 6.1 Owner's Right to Make Changes
- GC 6.2 Change Order
- GC 6.3 Change Directive
- GC 6.4 Concealed or Unknown Conditions
- GC 6.5 Delays
- GC 6.6 Claims for a Change in Contract Price

PART 7 RIGHT TO SUSPEND OR TERMINATE

- GC 7.1 Owner's Right to Suspend the Design Services or Terminate the Contract Before the Work Commences
- GC 7.2 Owner's Right to Perform the Design Services or Work, Terminate the Design-Builder's Right to Continue with the Design Services or Work, or Terminate the Contract
- GC 7.3 Design-Builder's Right to Suspend the Design Services or Work, or Terminate the Contract

PART 8 DISPUTE RESOLUTION

- GC 8.1 Negotiation, Mediation and Arbitration
- GC 8.2 Retention of Rights

PART 9 PROTECTION OF PERSONS AND PROPERTY

- GC 9.1 Protection of Work and Property
- GC 9.2 Toxic and Hazardous Substances and Materials
- GC 9.3 Artifacts and Fossils
- GC 9.4 Construction Safety
- GC 9.5 Mould

PART 10 GOVERNING REGULATIONS

- GC 10.1 Taxes and Duties
- GC 10.2 Laws, Notices, Permits, and Fees
- GC 10.3 Patent Fees
- GC 10.4 Workers' Compensation

PART 11 INSURANCE AND CONTRACT SECURITY

- GC 11.1 Insurance
- GC 11.2 Contract Security

PART 12 INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY

- GC 12.1 Definition and Survival
- GC 12.2 Indemnification
- GC 12.3 Limitation of Liability for Design Services
- GC 12.4 Waiver of Claims
- GC 12.5 Warranty

CCDC 14 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 14 can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 14.

CCDC Copyright 2013

Must not be copied in whole or in part without the written permission of the CCDC.

436

AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

For use when a stipulated price is the basis of payment.

This Agreement made on the 28th day of January in the year 2021

by and between the parties:

Demand Power Group Inc.

hereinafter called the "Owner"
and

Deltro Electric Ltd.

hereinafter called the "Design-Builder"

The Owner and the Design-Builder agree as follows:

ARTICLE A-1 DESIGN SERVICES AND THE WORK

The Design-Builder shall:

- 1.1 provide the Design Services, and
- 1.2 perform the Work for

JEBCO MANUFACTURING FACILITY
BESS/UPS System Project

insert above the name of the Work

located at

188 King Street East, Colborne, ON

insert above the Place of the Work

for which the Agreement has been signed by the parties, and for which

MCW Consultants Ltd.

insert above the name of the Consultant

is acting as, and is hereinafter called, the "Consultant", and for which

insert above the name of the Payment Certifier

is acting as, and is hereinafter called the Payment Certifier, and for which

insert above the name of the Owner's Advisor

is acting as, and is hereinafter called the Owner's Advisor^[*]
(*Strike out if none appointed)

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

437

1.3 subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work* by the TBD day of TBD in the year 2021.

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 This *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, including bidding documents that are not expressly listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS.
- 2.2 This *Contract* may be amended only as provided for in the *Contract Documents*.

ARTICLE A-3 CONTRACT DOCUMENTS

- 3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – DESIGN SERVICES AND THE WORK:
 - Agreement Between *Owner* and *Design-Builder*
 - Definitions in this *Contract*
 - General Conditions of this *Contract*
 - *Owner's Statement of Requirements*, consisting of the following (*list those written requirements and information constituting those documents intended to comprise the Owner's Statement of Requirements*):

ITEM (Attached to this contract)

1. DPGI - RFP Document , October 20, 2020 - 13 pages
2. DPGI - Addendum 1 to RFP , Nov. 2, 2020 - 3 pages
3. JEBCO Site Plan Drawing Rev 4, dated Oct 21, 2020 - 1 page
4. JEBCO SLD Rev 4 , Dated Oct 21, 2020 - 1 page
5. ZNTECH ESS specification - 1 page
6. CIMC - stacked elevation drawing - 1 page
7. DPGI Master Technical Requirement Specifications - Dated 01/20/21 - 33 pages
11. DPGI Submission List, Dated 01/21/21 - 5 pages

- *Construction Documents*

* ITEM (Attached to this contract)

8. Deltro Electric Proposal breakdown for full scope award. - 1 page
9. Supplementary Conditions - Dated January 21, 2021 - 11 pages
- 10 Deltro Proposal - Engineering & Construction scope with appendices - 56 pages

IFC Drawings once completed and accepted by the owner.

* (Insert here, attaching additional pages if required, a list identifying all other *Contract Documents*, e.g. *Supplementary Conditions*; *Proposals*; *Specifications* (giving a list of contents with section numbers and titles, number of pages, date and revision date(s), if any); *Drawings* (giving drawing number, title, date, revision date or mark); *Addenda* (giving title, number, date).

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

438

ARTICLE A-4 CONTRACT PRICE

4.1 The Contract Price, which excludes Value Added Taxes, is:

One Million, Seven Hundred & Fifty Thousand and -----00 /100 dollars \$ 1,750,000.00

4.2 Value Added Taxes (of 13 %) payable by the Owner to the Design-Builder are:

Two Hundred & Twenty Seven Thousand, Five Hundred &-----00 /100 dollars \$ 227,500.00

4.3 Total amount payable by the Owner to the Design-Builder is:

One Million, Nine Hundred & Seventy Seven Thousand /100 dollars \$ 1,977,500.00

4.4 These amounts shall be subject to adjustments as provided in the Contract Documents.

4.5 Amounts are in Canadian funds.

ARTICLE A-5 PAYMENT

5.1 Subject to provisions of the Contract Documents, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of -----Ten----- percent (10 %), the Owner shall:

- .1 make progress payments to the Design-Builder on account of the Contract Price when due in the amount certified by the Payment Certifier, together with such Value Added Taxes as may be applicable to such payment, and
.2 upon Substantial Performance of the Work, pay to the Design-Builder the unpaid balance of the holdback amount when due, together with such Value Added Taxes as may be applicable to such payment, and
.3 upon the issuance of the final certificate for payment, pay to the Design-Builder the unpaid balance of the Contract Price when due, together with such Value Added Taxes as may be applicable to such payment.

5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler and machinery insurance policies, payments shall be made to the Design-Builder in accordance with the provisions of GC 11.1 – INSURANCE.

5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the Contract or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
(1) 2% per annum above the prime rate for the first 60 days.
(2) 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

The Royal Bank of Canada

(Insert name of chartered lending institution whose prime rate is to be used)

for prime business loans as it may change from time to time.

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of claims in dispute that are resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date on which the amount would have been due and payable under the Contract, had it not been in dispute, until the date it is paid.

ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

6.1 Notices in Writing will be addressed to the recipient at the address set out below.

6.2 The delivery of a Notice in Writing will be by hand, by courier, by prepaid first class mail, by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

439

- 6.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 6.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission.
- 6.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

Owner

Demand Power Group Inc.

*name of Owner**

2 Pardee Ave., Suite 302, Toronto ON, M6K 3H5

Address

(855) 336-2368
facsimile number

dbrown@demandpower.ca
email address

Design-Builder

Deltro Electric Ltd.

*name of Design-Builder**

1706 Mattawa Avenue, Mississauga, ON L4X 1K1

Address

(905) 566-8217
facsimile number

samuel.mcfall@deltro.ca
email address

Owner's Advisor**

*name of Owner's Advisor**

Address

facsimile number

email address

* If it is intended that the notice must be received by a specific individual, indicate that individual's name.
** Strike out this entry if no Owner's Advisor is designated as per GC 2.3 – OWNER'S ADVISOR.

ARTICLE A-7 LANGUAGE OF THE CONTRACT

7.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English/~~French~~*** language shall prevail.

*** Complete this statement by striking out the inapplicable term.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

440

7.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

ARTICLE A-8 SUCCESSION

8.1 This Contract shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and permitted assigns.

In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED

in the presence of:

WITNESS

OWNER

Demand Power Group Inc.

DocuSigned by: Robert Carillo
78944D53F395434...
signature
Robert Carillo GC
name of person signing

DocuSigned by: Douglas Brown
signature
Douglas Brown CFO
name and title of person signing

signature
name of person signing

WITNESS

DESIGN-BUILDER

Deltro Electric Ltd.

DocuSigned by: Shan Kumar
5141C9641FB2444...
signature
Shan Kumar Senior Controller
name of person signing

DocuSigned by: Samuel McFall
signature
Samuel McFall Director, Construction Services
name and title of person signing

signature
name of person signing

N.B. Where legal jurisdiction, local practice, or Owner or Design-Builder requirement calls for:
(a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
(b) the affixing of a corporate seal, this Agreement should be properly sealed.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 - 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

441

DEFINITIONS

The following Definitions shall apply to all *Contract Documents*.

Change Directive

A *Change Directive* is a written instruction signed by the *Owner* directing a change in the *Work* or in the *Design Services* within the general scope of the *Contract Documents*.

Change Order

A *Change Order* is a written amendment to the *Contract* signed by the *Owner* and the *Design-Builder* stating their agreement upon:

- a change in the *Work* or in the *Design Services*;
- an amendment to the *Owner's Statement of Requirements*, if any;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.

Construction Documents

The *Construction Documents* consist of *Drawings*, *Specifications*, and other documents prepared by or on behalf of the *Design-Builder*, based on the *Contract Documents*, and accepted in writing by the *Owner* and the *Design-Builder* as meeting the *Owner's Statement of Requirements* and the general intent of the *Contract Documents*.

Construction Equipment

Construction Equipment means machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

Consultant

The *Consultant* is the person or entity identified as such in the Agreement. The *Consultant* is the architect, the engineer, or entity licensed to practise in the province or territory of the *Place of the Work* and engaged by the *Design-Builder* to provide all or part of the *Design Services*.

Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities, and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

Contract Documents

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments thereto agreed upon between the parties.

Contract Price

The *Contract Price* is the amount stipulated in Article A-4 of the Agreement – CONTRACT PRICE.

Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – DESIGN SERVICES AND THE WORK from the date of the Agreement to the date of *Substantial Performance of the Work*.

Design-Builder

The *Design-Builder* is the person or entity identified as such in the Agreement.

Design Services

Design Services are the professional design and related services required by the *Contract Documents*.

Drawings

The *Drawings* are the graphic and pictorial portions of the *Construction Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

Notice in Writing

A *Notice in Writing* is a written communication between the parties that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Other Consultant

Other Consultant is a person or entity, other than the *Consultant*, that may be engaged by the *Design-Builder* to perform part of the *Design Services*.

Owner

The *Owner* is the person or entity identified as such in the Agreement.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

442

Owner's Advisor

The *Owner's Advisor*, if any, is the person or entity appointed by the *Owner* and identified as such in the Agreement.

Owner's Statement of Requirements

The *Owner's Statement of Requirements* consists of written requirements and information provided by the *Owner* and as listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments thereto agreed upon between the parties.

Payment Certifier

The *Payment Certifier* is the person or entity identified as such in the Agreement responsible for the issuance of certificates for payment.

Place of the Work

The *Place of the Work* is the designated site or location of the *Work* identified in the *Contract Documents*.

Product

Product or Products means material, machinery, equipment, and fixtures incorporated into the *Work*, but does not include *Construction Equipment*.

Project

The *Project* means the *Owner's* entire undertaking of which the *Work* may be the whole or a part thereof.

Shop Drawings

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Design-Builder* provides to illustrate details of portions of the *Work*.

Specifications

The *Specifications* are that portion of the *Construction Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the necessary services for the *Work*.

Subcontractor

A *Subcontractor* is a person or entity having a direct contract with the *Design-Builder* to perform a part or parts of the *Work* at the *Place of the Work*.

Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

Supplemental Instruction

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Owner* to supplement the *Contract Documents* as required for the performance of the *Work*.

Supplier

A *Supplier* is a person or entity having a direct contract with the *Design-Builder* to supply *Products*.

Temporary Work

Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the *Work* but not incorporated into the *Work*.

Value Added Taxes

Value Added Taxes means such sum as shall be levied upon the *Contract Price* by the federal or any provincial or territorial government and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Design-Builder* by tax legislation.

Work

The *Work* means the total construction and related services required by the *Contract Documents*, but does not include *Design Services*.

Working Day

Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

443**GENERAL CONDITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT****PART 1 GENERAL PROVISIONS****GC 1.1 CONTRACT DOCUMENTS**

- 1.1.1 The intent of the *Contract Documents* is to include the design, the labour, the *Products* and other services necessary for the design and performance of the *Work* by the *Design-Builder* in accordance with these documents. It is not intended, however, that the *Design-Builder* shall supply products or perform services or work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between the *Owner* and the *Consultant*, an *Other Consultant*, a *Subcontractor*, a *Supplier*, or their agent, employee, or any other person performing any portion of the *Design Services* or the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.6 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and the *Design-Builder*,
 - the Definitions,
 - Supplementary Conditions,
 - the General Conditions,
 - the *Owner's Statement of Requirements*,
 - the *Construction Documents*,
 - .2 later dated documents shall govern over earlier documents of the same type, and
 - .3 amendments to documents shall govern over documents so amended.
- 1.1.7 Copyright for the design and *Drawings* and electronic media, prepared on behalf of the *Design-Builder* belongs to the *Consultant* or *Other Consultants* who prepared them. Plans, sketches, *Drawings*, graphic representations, and *Specifications*, including, but not limited to computer generated designs, are instruments of the *Consultant's* or *Other Consultant's* services and shall remain their property, whether or not the *Work* for which they are made is executed and whether or not the *Design-Builder* has paid for the *Design Services*. Their alteration by the *Owner* is prohibited.
- 1.1.8 The *Owner* may retain copies, including reproducible copies, of plans, sketches, *Drawings*, graphic representations, and *Specifications* for information and reference in connection with the *Owner's* use and occupancy of the *Work*. Copies may only be used for the purpose intended and for a one time use, on the same site, and for the same *Project*. Except for reference purposes, the plans, sketches, *Drawings*, electronic files, graphic representations, and *Specifications* shall not be used for additions or alterations to the *Work* or on any other project without a written license from the *Consultant* or *Other Consultants* who prepared the documents, for their limited or repeat use.
- 1.1.9 The *Owner* shall be entitled to keep original models or renderings specifically commissioned and paid for.
- 1.1.10 Should the *Owner* alter a *Consultant's* or *Other Consultant's* instrument of service, or use or provide them to third parties other than in connection with the *Work* without informing the *Consultant* and without the *Consultant's* or *Other Consultant's* prior written consent, the *Owner* shall indemnify the *Design-Builder* against claims and costs (including legal costs) associated with such improper alteration or use.

GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

444

- 1.3.2 No action or failure to act by the *Owner*, *Design-Builder*, *Consultant*, *Other Consultant*, *Payment Certifier*, or *Owner's Advisor* shall constitute a waiver of any right or duty afforded to either the *Owner* or the *Design-Builder* under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed to in writing.

GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the prior written consent of the other, which consent shall not be unreasonably withheld.

GC 1.5 CONFIDENTIALITY

- 1.5.1 Where a confidentiality agreement exists or as the *Owner* otherwise expressly identifies and requires, the *Owner* and the *Design-Builder* shall keep confidential all matters respecting technical and commercial issues relating to or arising from the performance of the *Contract* and shall not, without the prior written consent of the other party, disclose any such matters, except in strict confidence, to their respective professional advisors.

PART 2 OWNER'S RESPONSIBILITIES**GC 2.1 OWNER'S INFORMATION**

- 2.1.1 The *Owner* shall furnish the information required to complete the *Contract* promptly to avoid delay in the performance of the *Contract*.
- 2.1.2 Unless the *Contract Documents* specifically state otherwise, the *Design-Builder* is entitled to rely on the accuracy of all information provided by or on behalf of the *Owner* without regard for the source of such information.
- 2.1.3 Notwithstanding any other provision of the *Contract*, the *Design-Builder* is not responsible for any design errors or omissions in any designs or *Specifications* provided by or on behalf of the *Owner* unless the *Design-Builder* has been specifically requested to review and has accepted in writing those designs and *Specifications* under the *Contract*.

GC 2.2 ROLE OF THE OWNER

- 2.2.1 The *Owner* will render any necessary decisions or provide instructions promptly to avoid delay in the performance of the *Contract*.
- 2.2.2 All communications between the *Owner* and the *Consultant*, an *Other Consultant*, a *Subcontractor*, or a *Supplier* shall be forwarded through the *Design-Builder*.
- 2.2.3 The *Owner* will be, in the first instance, the interpreter of the requirements of the *Owner's Statement of Requirements*.
- 2.2.4 The *Owner* will have authority to reject by *Notice in Writing* design or work which in the *Owner's* opinion does not conform to the requirements of the *Owner's Statement of Requirements*.
- 2.2.5 Whenever the *Owner* considers it necessary or advisable, the *Owner* will have authority to require a review of the *Design Services* and inspection or testing of the *Work*, whether or not such work is fabricated, installed or completed, in accordance with paragraph 2.5.5 of GC 2.5 – OWNER'S REVIEW OF THE DESIGN AND THE WORK.
- 2.2.6 During the progress of the *Design Services* or of the *Work* the *Owner* will furnish *Supplemental Instructions* related to the *Owner's Statement of Requirements* to the *Design-Builder* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Owner* and the *Design-Builder*.

GC 2.3 OWNER'S ADVISOR

- 2.3.1 When the *Owner* appoints an *Owner's Advisor*, the duties, responsibilities and limitations of authority of the *Owner's Advisor* shall be as set forth in the *Contract Documents*.
- 2.3.2 The duties, responsibilities and limitations of authority of the *Owner's Advisor* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Design-Builder*.
- 2.3.3 Subject to any notified limitations in authority, the *Design-Builder* may rely upon any written instructions or directions provided by the *Owner's Advisor*. Neither the authority of the *Owner's Advisor* to act, nor any decision to exercise or not exercise such authority, shall give rise to any duty or responsibility of the *Owner's Advisor* to the *Design-Builder*, the *Consultant*, *Other Consultants*, *Subcontractors*, *Suppliers*, or their agents, employees or other persons performing any portion of the *Design Services* or the *Work*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

445

- 2.4.4 If the employment of the *Owner's Advisor* is terminated, the *Owner* may appoint or reappoint an *Owner's Advisor* against whom the *Design-Builder* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Owner's Advisor*.

GC 2.4 ROLE OF THE PAYMENT CERTIFIER

- 2.4.1 The *Owner* shall designate a *Payment Certifier* who will review the *Design-Builder's* applications for payment and certify the value of the *Design Services* and of *Work* performed and *Products* delivered to the *Place of the Work*.
- 2.4.2 The duties, responsibilities and limitations of authority of the *Payment Certifier* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Design-Builder*.
- 2.4.3 Neither the authority of the *Payment Certifier* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Payment Certifier* to the *Design-Builder*, the *Consultant*, *Other Consultants*, *Subcontractors*, *Suppliers*, or their agents, employees or other persons performing any of the *Design Services* or the *Work*.
- 2.4.4 The *Payment Certifier* will take all reasonable steps to be accessible to the *Design-Builder* during performance of the *Contract* and shall render any necessary decisions or instructions promptly as provided in GC 5.3 – PROGRESS PAYMENT to avoid delay in the processing of payment claims.
- 2.4.5 Based on the *Payment Certifier's* observations and evaluation of the *Design-Builder's* applications for payment, the *Payment Certifier* will determine the amounts owing to the *Design-Builder* under the *Contract* and will issue certificates for payment as provided in Article A-5 of the Agreement – PAYMENT, GC 5.3 – PROGRESS PAYMENT and GC 5.7 – FINAL PAYMENT.
- 2.4.6 All communications between the *Payment Certifier* and the *Consultant*, an *Other Consultant*, a *Subcontractor*, or a *Supplier* shall be forwarded through the *Design-Builder*.
- 2.4.7 The *Payment Certifier* will promptly inform the *Owner* of the date of receipt of the *Design-Builder's* applications for payment as provided in paragraph 5.3.1.1 of GC 5.3 – PROGRESS PAYMENT.
- 2.4.8 If the *Payment Certifier's* services are terminated, the *Owner* shall immediately designate a new *Payment Certifier* against whom the *Design-Builder* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Payment Certifier*.
- 2.4.9 The *Owner* may provide to the *Consultant*, *Other Consultants*, *Subcontractors* or *Suppliers*, through the *Payment Certifier*, information as to the percentage of the *Design Services* and *Work* that has been certified for payment.

GC 2.5 OWNER'S REVIEW OF THE DESIGN AND THE WORK

- 2.5.1 The *Owner* shall review the design as set out in the design development documents and proposed *Construction Documents* as the *Design Services* proceed, to confirm that the design is in compliance with the *Owner's Statement of Requirements* and the *Contract Documents*.
- 2.5.2 The *Owner* shall complete the reviews in accordance with the schedule agreed upon, or in the absence of an agreed schedule, with reasonable promptness so as to cause no delay.
- 2.5.3 The *Owner's* review shall not relieve the *Design-Builder* of responsibility for errors or omissions in the *Construction Documents* or for meeting all requirements of the *Contract Documents* unless the *Owner* accepts in writing a deviation from the *Contract Documents*.
- 2.5.4 No later than 10 days after completing the review, the *Owner* shall advise the *Design-Builder* in writing that the *Owner* has accepted or rejected the proposed *Construction Documents*. If rejected, the *Owner* shall inform the *Design-Builder* of the reasons of non-conformance and the *Design-Builder* shall revise the proposed *Construction Documents* to address such non-conformance. The *Design-Builder* shall inform the *Owner* in writing of any revisions other than those requested by the *Owner*.
- 2.5.5 The *Owner* may order any portion or portions of the *Work* to be examined to confirm that the *Work* performed is in accordance with the requirements of the *Contract Documents*. If the *Work* is not in accordance with the requirements of the *Contract Documents*, the *Design-Builder* shall correct the *Work* and pay the cost of examination and correction. If the *Work* is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay all costs incurred by the *Design-Builder* as a result of such examination and restoration.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

446

GC 2.6 WORK BY OWNER OR OTHER CONTRACTORS

- 2.6.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform other design or other work with its own forces.
- 2.6.2 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall:
- .1 provide for the co-ordination of the activities and work of other contractors and *Owner's* own forces with the *Design Services* and the *Work*;
 - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
 - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*;
 - .4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the *Design-Builder* as it affects the *Design Services* and the *Work*; and
 - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors or the *Owner's* own forces.
- 2.6.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Design-Builder* shall:
- .1 afford the *Owner* and other contractors reasonable opportunity to store their products and execute their work;
 - .2 cooperate with other contractors and the *Owner* in reviewing their construction schedules; and
 - .3 promptly report to the *Owner* in writing any apparent deficiencies in the work of other contractors or of the *Owner's* own forces, where such work affects the proper execution of any portion of the *Design Services* or of the *Work*, prior to proceeding with that portion of the *Design Services* or of the *Work*.
- 2.6.4 Where the *Contract Documents* identify work to be performed by other contractors or the *Owner's* own forces, the *Design-Builder* shall co-ordinate and schedule the *Design Services* and the *Work* with the work of other contractors and the *Owner's* own forces as specified in the *Contract Documents*.
- 2.6.5 Where a change in the *Design Services* or in the *Work* is required as a result of the co-ordination and integration of the work of other contractors or *Owner's* own forces with the *Design Services* or with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 2.6.6 Disputes and other matters in question between the *Design-Builder* and the *Owner's* other contractors shall be dealt with as provided in Part 8 of the General Conditions – DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Design-Builder* shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the *Owners* contains a similar agreement to arbitrate.

PART 3 DESIGN-BUILDER'S RESPONSIBILITIES

GC 3.1 CONTROL OF THE DESIGN SERVICES AND THE WORK

- 3.1.1 The *Design-Builder* shall have total control of the *Design Services* and of the *Work* and shall direct and supervise the *Design Services* and the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Design-Builder* shall be solely responsible for the *Design Services* and construction means, methods, techniques, sequences, and procedures with respect to the *Work*.
- 3.1.3 The *Design-Builder* shall preserve and protect the rights of the parties under the *Contract* with respect to the *Design Services* to be performed by the *Consultant* and *Other Consultants*, and shall enter into a contract with the *Consultant* and *Other Consultants* to perform *Design Services* as provided in the *Contract*, in accordance with laws applicable at the *Place of the Work*.
- 3.1.4 The *Design-Builder's* contract with the *Consultant* shall:
- .1 be based on the version of CCDC 15 – Design Services Contract between Design-Builder and Consultant in effect as at the date of this *Contract* or incorporate terms and conditions consistent with this version of CCDC 15, and
 - .2 incorporate terms and conditions of the *Contract Documents*, insofar as they are applicable.
- 3.1.5 Upon the *Owner's* request, the *Design-Builder* shall promptly provide the *Owner* with proof of compliance with paragraph 3.1.4.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

447

- 3.1.6 The *Design-Builder* shall be as fully responsible to the *Owner* for acts and omissions of the *Consultant* and *Other Consultants*, and of persons directly or indirectly employed by the *Consultant* and *Other Consultants*, as for acts and omissions of persons directly employed by the *Design-Builder*.
- 3.1.7 The *Design-Builder's* responsibility for *Design Services* performed by the *Consultant* and *Other Consultants* shall be limited to the degree of care, skill and diligence normally provided by consultants in the performance of comparable services in respect of projects of a similar nature to that contemplated by this *Contract*. The *Design-Builder* shall ensure that the *Consultant* and *Other Consultants* perform the *Design Services* to this standard.
- 3.1.8 The *Design-Builder* shall ensure that the *Consultant* and *Other Consultants* provide documentation required by authorities having jurisdiction in accordance with regulations and by-laws in effect at the *Place of the Work*.
- 3.1.9 The *Design-Builder* is solely responsible for the quality of the *Design Services* and of the *Work* and shall undertake any quality control activities specified in the *Contract Documents* or, if none are specified, as may be reasonably required to ensure such quality.
- 3.1.10 The *Design Builder* shall provide access to the *Work*, including parts being performed at locations other than the *Place of the Work* and to the location where the *Design Services* are performed, that the *Owner*, or the *Payment Certifier* may reasonably require to verify the progress of the *Work* or *Design Services* and their conformity to the requirements of the *Contract Documents*. The *Design-Builder* shall also provide sufficient, safe, and proper facilities at all times for such reviews of the *Design Services* or the *Work* and for inspection of the *Work* by authorized agencies.
- 3.1.11 If work is designated for tests, inspections, or approvals in the *Contract Documents*, or by the instructions of the *Owner*, the *Consultant*, or *Other Consultants*, or the laws or ordinances of the *Place of the Work*, the *Design-Builder* shall give the *Owner* reasonable notice of when the work will be ready for review and inspection.
- 3.1.12 The *Design-Builder* shall arrange for and shall give the *Owner* reasonable notice of the date and time of inspections by other authorities.
- 3.1.13 If the *Design-Builder* covers, or permits to be covered, work that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or, completed, the *Design-Builder* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and restore the covering work at the *Design-Builder's* expense.
- 3.1.14 The *Design-Builder* shall furnish promptly to the *Owner*, on request, a copy of certificates, test reports and inspection reports relating to the *Work*.

GC 3.2 DESIGN-BUILDER'S REVIEW OF OWNER'S STATEMENT OF REQUIREMENTS OR OTHER INFORMATION

- 3.2.1 The *Design-Builder* shall promptly notify the *Owner* of any significant error, inconsistency, or omission discovered in the *Owner's Statement of Requirements* or other information provided by or on behalf of the *Owner*. The *Design-Builder* shall not proceed with the *Design Services* or *Work* affected until the *Design-Builder* and the *Owner* have agreed in writing how the information should be corrected or supplied.
- 3.2.2 The *Design-Builder* shall not be liable for damages or costs resulting from such errors, inconsistencies, or omissions in the *Owner's Statement of Requirements* or other information provided by or on behalf of the *Owner*.

GC 3.3 ROLE OF THE CONSULTANT

- 3.3.1 The *Consultant* or *Other Consultants* will be, in the first instance, the interpreter of the requirements of the *Construction Documents* that they have prepared.
- 3.3.2 The duties, responsibilities and limitations of authority of the *Consultant* shall be in accordance with paragraph 3.1.4 of GC 3.1 – CONTROL OF THE DESIGN SERVICES AND THE WORK and shall be modified only with the written consent of the *Owner*, which consent shall not be unreasonably withheld.
- 3.3.3 If the *Consultant's* engagement is terminated, the *Design-Builder* shall immediately appoint or reappoint a *Consultant* against whom the *Owner* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Consultant*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

448

GC 3.4 OTHER CONSULTANTS, SUBCONTRACTORS AND SUPPLIERS

- 3.4.1 The *Design-Builder* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
1. enter into contracts or written agreements with *Other Consultants* to require them to perform *Design Services* as provided in the *Contract Documents*;
 2. enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform *Work* as required by the *Contract Documents*;
 3. incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Other Consultants*, *Subcontractors* and *Suppliers* insofar as they are applicable; and
 4. be as fully responsible to the *Owner* for acts and omissions of *Other Consultants*, *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Design-Builder*.
- 3.4.2 The *Design-Builder* shall indicate in writing, at the request of the *Owner*, the names of *Other Consultants*, *Subcontractors*, or *Suppliers* whose proposals or bids have been received by the *Design-Builder* which the *Design-Builder* would be prepared to accept for the performance of a portion of the *Design Services* or of the *Work*. Should the *Owner* not object before signing the subcontract, the *Design-Builder* shall employ *Other Consultants*, *Subcontractors* or *Suppliers* so identified by the *Design-Builder* in writing for the performance of that portion of the *Design Services* or of the *Work* to which their proposal or bid applies.
- 3.4.3 The *Owner* may, for reasonable cause, at any time before the *Design-Builder* has signed the subcontract, object to the use of a proposed *Other Consultant*, *Subcontractor* or *Supplier* and require the *Design-Builder* to employ another proposed *Other Consultant*, *Subcontractor* or *Supplier* bidder.
- 3.4.4 If the *Owner* requires the *Design-Builder* to change a proposed *Other Consultant*, *Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the differences resulting from such required change.
- 3.4.5 The *Design-Builder* shall not be required to employ any *Subcontractor*, *Supplier*, *Other Consultant*, person or firm to whom the *Design-Builder* may reasonably object.

GC 3.5 CONSTRUCTION DOCUMENTS

- 3.5.1 The *Design-Builder* shall submit the proposed *Construction Documents* to the *Owner* to review in orderly sequence and sufficiently in advance so as to cause no delay. The *Owner* and the *Design-Builder* shall jointly prepare a schedule of the dates for submission and return of proposed *Construction Documents*.
- 3.5.2 During the progress of the *Design Services*, the *Design-Builder* shall furnish to the *Owner* documents that describe details of the design required by the *Contract Documents*.
- 3.5.3 At the time of submission the *Design-Builder* shall advise the *Owner* in writing of any significant deviations in the proposed *Construction Documents* from the requirements of the *Contract Documents*. The *Owner* may or may not accept such deviations. Accepted deviations from the *Owner's Statement of Requirements* will be recorded in a *Change Order*.
- 3.5.4 When a change is required to the *Construction Documents* it shall be made in accordance with GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, or GC 6.3 – CHANGE DIRECTIVE.

GC 3.6 DESIGN SERVICES AND WORK SCHEDULE

- 3.6.1 The *Design-Builder* shall:
- .1 promptly after signing the Agreement, prepare and submit to the *Owner* a *Design Services* and *Work* schedule that indicates the timing of the major activities of the *Design Services* and of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Design Services* and the *Work* will be performed in conformity with the schedule;
 - .2 monitor the progress of the *Design Services* and of the *Work* relative to the schedule and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
 - .3 advise the *Owner* of any revisions required to the schedule as a result of extensions to the *Contract Time* as provided in Part 6 of the General Conditions – CHANGES IN THE CONTRACT.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

449**GC 3.7 SUPERVISION**

- 3.7.1 The *Design-Builder* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representative shall not be changed except for valid reason.
- 3.7.2 The appointed representative shall represent the *Design-Builder* at the *Place of the Work*. Information and instructions provided by the *Owner* to the *Design-Builder's* appointed representative shall be deemed to have been received by the *Design-Builder* except that *Notices in Writing* otherwise required under the *Contract* shall be given as indicated in Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 3.8 LABOUR AND PRODUCTS

- 3.8.1 The *Design-Builder* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with the *Contract Documents* and their use acceptable to the *Owner*.
- 3.8.3 The *Design-Builder* shall maintain good order and discipline among the *Design-Builder's* employees involved in the performance of the *Work* and shall not employ anyone not skilled in the tasks assigned.

GC 3.9 DOCUMENTS AT THE SITE

- 3.9.1 The *Design-Builder* shall keep one copy of current *Owner's Statement of Requirements*, *Construction Documents*, *Shop Drawings*, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner*.

GC 3.10 SHOP DRAWINGS

- 3.10.1 The *Design-Builder* shall provide *Shop Drawings* as described in the *Contract Documents* or as the *Owner* may reasonably request.
- 3.10.2 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Design-Builder* for approval.
- 3.10.3 The *Design-Builder* shall review all *Shop Drawings* before providing them to the *Owner*. The *Design-Builder* represents by this review that the *Design-Builder* has:
- .1 determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
 - .2 checked and co-ordinated each *Shop Drawing* with the requirements of the *Contract Documents*.
- 3.10.4 If the *Owner* requests to review shop drawings, the *Design-Builder* shall submit them in an orderly sequence and sufficiently in advance so as to cause no delay in the *Design Services* or the *Work* or in the work of other contractors. The *Owner* and the *Design-Builder* shall jointly prepare a schedule of the dates for submission and return of *Shop Drawings*.
- 3.10.5 The *Owner's* review under paragraph 3.10.4 is for conformity to the intent of the *Contract Documents* and for general arrangement only. The *Owner's* review shall not relieve the *Design-Builder* of the responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Contract Documents* unless the *Owner* expressly accepts a deviation from the *Contract Documents* by *Change Order*.

GC 3.11 NON-CONFORMING DESIGN AND DEFECTIVE WORK

- 3.11.1 Where the *Owner* has advised the *Design-Builder*, by *Notice in Writing*, that designs or *Specifications* fail to comply with the *Owner's Statement of Requirements*, the *Design-Builder* shall ensure that the design documents or proposed *Construction Documents* are promptly corrected or altered.
- 3.11.2 The *Design-Builder* shall promptly correct defective work that has been rejected by *Notice in Writing* by the *Owner* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, design, use of defective products, or damage through carelessness or other act or omission of the *Design-Builder*.
- 3.11.3 The *Design-Builder* shall promptly make good other contractors' work destroyed or damaged by such removals or replacements at the *Design-Builder's* expense.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

450

- 3.11.4 If, in the opinion of the *Owner*, it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Design-Builder* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Design-Builder* does not agree on the difference in value, the *Design-Builder* shall refer the dispute to Part 8 of the General Conditions – DISPUTE RESOLUTION.

PART 4 ALLOWANCES**GC 4.1 CASH ALLOWANCES**

- 4.1.1 The *Contract Price* includes the cash allowances, if any, stated in the *Owner's Statement of Requirements*. The scope of work or costs included in such cash allowances shall be as described in the *Owner's Statement of Requirements*.
- 4.1.2 The *Contract Price*, and not the cash allowances, includes the *Design-Builder's* overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner*.
- 4.1.4 Where the actual cost of the work performed under any cash allowance exceeds the amount of the allowance, the *Design-Builder* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Contract Documents*. Where the actual cost of the work performed under any cash allowance is less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Design-Builder's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between each cash allowance and the actual cost of the work performed under that cash allowance.
- 4.1.6 The value of the work performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Design-Builder* and the *Owner* shall jointly prepare a schedule that shows when the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Design Services* or of the *Work*.

GC 4.2 CONTINGENCY ALLOWANCE

- 4.2.1 The *Contract Price* includes the contingency allowance, if any, stated in the *Owner's Statement of Requirements*.
- 4.2.2 The contingency allowance includes the *Design-Builder's* overhead and profit in connection with such contingency allowance.
- 4.2.3 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.

PART 5 PAYMENT**GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**

- 5.1.1 The *Owner* shall, at the request of the *Design-Builder*, before signing the *Contract*, and promptly from time to time thereafter, furnish to the *Design-Builder* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall give the *Design-Builder Notice in Writing* of any material change in the *Owner's* financial arrangements to fulfill the *Owner's* obligations under the *Contract* during the performance of the *Contract*.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- 5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement – PAYMENT may be made monthly as the *Design Services* and the *Work* progress.
- 5.2.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed to in writing by the parties.
- 5.2.3 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of the *Design Services* and of the *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the payment period.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

451

- 5.2.4 The *Design-Builder* shall submit to the *Payment Certifier*, at least 15 calendar days before the first application for payment, a schedule of values for the parts of the *Design Services* and of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.
- 5.2.5 The schedule of values shall be made out in such form and supported by such evidence as the *Payment Certifier* may reasonably direct, and when accepted by the *Payment Certifier*, shall be used as the basis for applications for payment unless it is found to be in error.
- 5.2.6 The *Design-Builder* shall include a statement based on the schedule of values with each application for payment.
- 5.2.7 A declaration by the *Design-Builder* as to the distribution made of the amounts received using document CCDC 9A – Statutory Declaration of Progress Payment Distribution by Contractor shall be joined to each application for progress payment except the first one.
- 5.2.8 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Payment Certifier* may reasonably require to establish the value and delivery of the *Products*.

GC 5.3 PROGRESS PAYMENT

- 5.3.1 After receipt by the *Payment Certifier* of an application for payment submitted by the *Design-Builder* in accordance with GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT:
- .1 the *Payment Certifier* will promptly inform the *Owner* of the date of receipt and value of the *Design-Builder's* application for payment,
 - .2 the *Payment Certifier* will issue to the *Owner* and copy to the *Design-Builder*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Payment Certifier* determines to be properly due. If the *Payment Certifier* amends the application, the *Payment Certifier* will promptly advise the *Design-Builder* in writing giving reasons for the amendment,
 - .3 the *Owner* shall make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Payment Certifier* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.4.1 When the *Design-Builder* considers that the *Work* is substantially performed or, if permitted by the lien legislation applicable at the *Place of the Work*, a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Design-Builder* shall prepare and submit to the *Payment Certifier* appropriate documents as required by the *Contract Documents* together with a written application for a review by the *Payment Certifier* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*. Failure to include this information does not alter the responsibility of the *Design-Builder* to complete the *Contract*.
- 5.4.2 The *Design-Builder's* application for *Substantial Performance of the Work* shall include a statement from the *Consultant*, and *Other Consultants* in support of the submitted information and the date of *Substantial Performance of the Work* or designated portion of the *Work*.
- 5.4.3 The *Payment Certifier* shall, within 7 calendar days after receipt of the *Design-Builder's* application for *Substantial Performance of the Work*, issue a certificate of the *Substantial Performance of the Work* which shall state the date of *Substantial Performance of the Work* or designated portion thereof or advise the *Design-Builder* in writing of the reasons for which such a certificate is not issued.
- 5.4.4 If the applicable lien legislation requires the *Consultant* to determine whether the *Work* has been substantially performed, the *Consultant* shall issue a certificate of the *Substantial Performance of the Work* which shall state the date of *Substantial Performance of the Work* or designated portion of the *Work* or advise the *Design-Builder* in writing of the reasons for which such a certificate is not issued.
- 5.4.5 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Design-Builder*, in consultation with the *Owner* will establish a reasonable date for completing the *Work*.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Design-Builder* shall:
- .1 submit an application for payment of the holdback amount,
 - .2 submits a CCDC 9A Statutory Declaration of Progress Payment Distribution by Contractor.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

452

- 5.5.2 After the receipt of an application for payment from the *Design-Builder* and the statement as provided in paragraph 5.5.1, the *Payment Certifier* will issue a certificate for payment of the holdback amount.
- 5.5.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate holdback account, the *Owner* shall, 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Design-Builder*.
- 5.5.4 In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.5.5 In the Province of Quebec, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days after the issuance of the certificate. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

- 5.6.1 In the common law jurisdictions, where legislation permits and where, upon application by the *Design-Builder*, the *Payment Certifier* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Design-Builder* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the first calendar day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Work*. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.6.2 In the Province of Quebec, where, upon application by the *Design-Builder*, the *Payment Certifier* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Design-Builder* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, no later than 30 calendar days after such certification by the *Payment Certifier*. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.6.3 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the *Design-Builder* shall ensure that such subcontract work or *Products* are protected pending the issuance of a *Substantial Performance of the Work* certificate and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

GC 5.7 FINAL PAYMENT

- 5.7.1 When the *Design-Builder* considers that the *Design Services* and the *Work* are completed, the *Design-Builder* shall submit an application for final payment.
- 5.7.2 The *Payment Certifier* will, no later than 10 calendar days after the receipt of an application from the *Design-Builder* for final payment, verify the validity of the application and advise the *Design-Builder* in writing that the application is valid or give reasons why it is not valid.
- 5.7.3 When the *Payment Certifier* finds the *Design-Builder's* application for final payment valid, the *Payment Certifier* will promptly issue a final certificate for payment.
- 5.7.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION, and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Design-Builder* as provided in Article A-5 of the Agreement – PAYMENT.

453

GC 5.8 DEFERRED WORK

- 5.8.1 If because of climatic or other conditions reasonably beyond the control of the *Design-Builder*, there are items of work that cannot be performed, payment in full for that portion of the *Design Services* or *Work* which has been performed as certified by the *Payment Certifier* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portions of the *Design Services* and *Work* are finished, only such amount that the *Payment Certifier* determines is sufficient and reasonable to cover the cost of performing such remaining work.

GC 5.9 NON-CONFORMING DESIGN SERVICES AND WORK

- 5.9.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Design Services* and the *Work* which are not in accordance with the requirements of the *Contract Documents*.

PART 6 CHANGES IN THE CONTRACT

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

- 6.1.1 The *Owner* without invalidating the *Contract*, may make:
- .1 changes to the *Work* or to the *Owner's Statement of Requirements* consisting of additions, deletions or revisions to the *Design Services* or to the *Work*, by *Change Order* or *Change Directive*, and
 - .2 changes to the *Contract Time* by *Change Order*.
- 6.1.2 The *Design-Builder* shall not perform a change in the *Design Services*, *Construction Documents* or to the *Work* without a *Change Order* or a *Change Directive*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change is proposed or required, the *Owner* or the *Design-Builder* shall provide a written description of the proposed change to the other party. The *Design-Builder* shall present, in a form acceptable to the *Owner*, a method of adjustment or an amount of adjustment for the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change.
- 6.2.2 When the *Owner* and *Design-Builder* agree to the adjustments in the *Contract Price* and *Contract Time*, or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the *Design Services* or the *Work* performed as the result of a *Change Order* shall be included in applications for progress payment.
- 6.2.3 If the *Owner* requests the *Design-Builder* to submit a proposal for a change and then elects not to proceed with the change, a *Change Order* shall be issued by the *Owner* to reimburse the *Design-Builder* for all costs incurred by the *Design-Builder* in developing the proposal, including the cost of the related *Design Services*.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Design-Builder* to proceed with a change prior to the *Owner* and the *Design-Builder* agreeing upon the corresponding adjustment in *Contract Price* and *Contract Time*, the *Owner* shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Design-Builder* shall proceed promptly with the change.
- 6.3.5 For the purpose of valuing *Change Directives*, changes that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Design-Builder's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with paragraph 6.3.7 and as follows:
- .1 If the change results in a net increase in the *Design-Builder's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Design-Builder's* cost, plus the *Design-Builder's* percentage fee on the net increase.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

454

- .2 If the change results in a net decrease in the *Design-Builder's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Design-Builder's* cost, without adjustment for the *Design-Builder's* percentage fee.
- 6.3.7 The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Design-Builder* under a salary or wage schedule agreed upon by the *Owner* and the *Design-Builder*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Design-Builder*, for personnel:
 - (1) stationed at the *Design-Builder's* field office, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings, coordination drawings, and project record drawings; or
 - (4) engaged in the processing of changes in the *Design Services* or in the *Work*;
 - .2 contributions, assessments, or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the *Design-Builder* and included in the cost of the work as provided in paragraphs 6.3.7.1;
 - .3 travel and subsistence expenses of the *Design-Builder's* personnel described in paragraphs 6.3.7.1;
 - .4 all *Products* including cost of transportation thereof;
 - .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*, and cost less salvage value on such items used but not consumed, which remain the property of the *Design-Builder*;
 - .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work* whether rented from or provided by the *Design-Builder* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
 - .7 all equipment and services required for the *Design-Builder's* field office;
 - .8 deposits lost;
 - .9 the cost of *Design Services* including all fees and disbursements of the *Consultant* and *Other Consultants* engaged to perform such services;
 - .10 the amounts of all subcontracts;
 - .11 quality assurance such as independent inspection and testing services;
 - .12 charges levied by authorities having jurisdiction at the *Place of the Work*;
 - .13 royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefore subject always to the *Design-Builder's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
 - .14 any adjustment in premiums for all bonds and insurance which the *Design-Builder* is required, by the *Contract Documents*, to purchase and maintain;
 - .15 any adjustment in taxes, other than *Value Added Taxes*, and duties for which the *Design-Builder* is liable;
 - .16 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the *Work*;
 - .17 removal and disposal of waste products and debris; and
 - .18 safety measures and requirements.
- 6.3.8 Notwithstanding other provisions contained in the General Conditions of the *Contract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by any failure on the part of the *Design-Builder* to exercise reasonable care and diligence in the *Design-Builder's* attention to the *Design Services* or to the *Work*. Any cost due to failure on the part of the *Design-Builder* to exercise reasonable care and diligence in the *Design-Builder's* attention to the *Design Services* or to the *Work* shall be borne by the *Design-Builder*.
- 6.3.9 The *Design-Builder* shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the work attributable to the *Change Directive* and shall provide the *Owner* with copies thereof when requested.
- 6.3.10 For the purpose of valuing *Change Directives*, the *Owner* shall be afforded reasonable access to all of the *Design-Builder's* pertinent documents related to the cost of performing the work attributable to the *Change Directive*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CCDC 14 – 2013

455

- 6.3.11 Pending determination of the final amount of a *Change Directive*, the undisputed value of the work performed as the result of a *Change Directive* is to be included in progress payments.
- 6.3.12 If the *Owner* and *Design-Builder* do not agree on the proposed adjustment in the *Contract Time* attributable to the change, or the method of determining it, the adjustment shall be referred to the provisions of PART 8 – DISPUTE RESOLUTION, for determination.
- 6.3.13 When the *Owner* and the *Design-Builder* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Owner* or the *Design-Builder* discovers conditions at the *Place of the Work* which are:
 - .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Contract* and which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
 then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Owner* will promptly investigate such conditions. If the conditions differ materially from the *Contract Documents* and this would cause an increase or decrease in the *Design-Builder's* cost or time to perform the *Design Services* or the *Work*, the *Owner* will issue appropriate instructions for a change in the *Contract* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
- 6.4.3 If the *Owner* is of the opinion that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Owner* will advise the *Design-Builder* in writing of the grounds on which this opinion is based.
- 6.4.4 The *Design-Builder* shall not be entitled to an adjustment in the *Contract Price* or the *Contract Time* if such conditions were reasonably apparent during the request for proposal period or bidding period and prior to proposal closing or bid closing.
- 6.4.5 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

GC 6.5 DELAYS

- 6.5.1 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by an action or omission of the *Owner* or anyone employed or engaged by the *Owner* directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The *Design-Builder* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Design-Builder* as the result of such delay.
- 6.5.2 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Design-Builder* or any person employed or engaged by the *Design Builder* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The *Design-Builder* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Design-Builder* as the result of such delay.
- 6.5.3 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by:
 - .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Design-Builder* is a member or to which the *Design-Builder* is otherwise bound), or
 - .2 fire, unusual delay by common carriers or unavoidable casualties, or
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Design-Builder's* control other than one resulting from a default or breach of *Contract* by the *Design-Builder*,
 then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Design-Builder* agrees to a shorter extension. The *Design-Builder* shall not be entitled to payment for costs

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

456

incurred by such delays unless such delays result from actions of the *Owner*, or anyone employed or engaged by the *Owner* directly or indirectly.

- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Owner* no later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 Any adjustment to *Contract Price* and *Contract Time* required as a result of GC 6.5 – DELAYS shall be made as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, and GC 6.3 – CHANGE DIRECTIVE.

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 If the *Design-Builder* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party, to give the other party the opportunity to take actions to mitigate the claim.
- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
- .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
 - .2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the other party a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at regular intervals as agreed between the parties, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 If the *Owner* and *Design-Builder* are in disagreement regarding the basis for the claim or its valuation, the matter shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION.

PART 7 RIGHT TO SUSPEND OR TERMINATE**GC 7.1 OWNER'S RIGHT TO SUSPEND THE DESIGN SERVICES OR TERMINATE THE CONTRACT BEFORE THE WORK COMMENCES**

- 7.1.1 The *Owner* may, at any time before the *Work* commences at the *Place of the Work*, suspend performance of the *Design Services* by giving *Notice in Writing* to the *Design-Builder* indicating the expected length of the suspension. Such suspension shall be effective in the manner as stated in the *Notice in Writing* and shall be without prejudice to any claims which either party may have against the other.
- 7.1.2 Upon receiving a notice of suspension, the *Design-Builder* shall, subject to any directions in the notice of suspension, suspend performance of the *Design Services*.
- 7.1.3 If the *Design Services* are suspended for a period of 20 *Working Days* or less, the *Design-Builder*, upon the expiration of the period of suspension, shall resume the performance of the *Design Services* in accordance with the *Contract Documents*. The *Contract Price* and *Contract Time* shall be adjusted as provided in paragraph 6.5.1 of GC 6.5 – DELAYS.
- 7.1.4 If, after 20 *Working Days* from the date of delivery of the *Notice in Writing* regarding the suspension of the *Design Services*, the *Owner* and the *Design-Builder* agree to continue with and complete the *Design Services* and the *Work*, the *Design-Builder* shall resume the *Design Services* in accordance with any terms and conditions agreed upon by the *Owner* and the *Design-Builder*. Failing such an agreement, the *Owner* shall be deemed to have terminated the *Contract* and the *Design-Builder* shall be entitled to be paid for all *Design Services* performed and for such other damages as the *Design-Builder* may have sustained, including reasonable profit, as a result of the termination of the *Contract*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

457

GC 7.2 OWNER'S RIGHT TO TERMINATE THE DESIGN-BUILDER'S RIGHT TO CONTINUE WITH THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

- 7.2.1 If the *Design-Builder* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Design-Builder's* insolvency, or if a receiver is appointed because of the *Design-Builder's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Design-Builder's* right to continue with the *Design Services* or *Work*, by giving the *Design-Builder* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Design-Builder* neglects to properly perform the *Design Services* or *Work*, or otherwise fails to comply with the requirements of the *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Design-Builder* *Notice in Writing* that the *Design-Builder* is in default of the *Design-Builder's* contractual obligations and instruct the *Design-Builder* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.2.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Design-Builder* shall be in compliance with the *Owner's* instructions if the *Design-Builder*:
- .1 commences the correction of the default within the specified or agreed time, as the case may be, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.2.4 If the *Design-Builder* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Design-Builder* provided the *Payment Certifier* has certified such cost to the *Owner* and the *Design-Builder*, or
 - .2 terminate the *Design-Builder's* right to continue with the *Design Services* or *Work* in whole or in part, or
 - .3 terminate the *Contract*.
- 7.2.5 If the *Owner* terminates the *Design-Builder's* right to continue with the *Design Services* or *Work* as provided in paragraphs 7.2.1 and 7.2.4, or if the *Owner* terminates the *Contract*, the *Owner* shall be entitled to:
- .1 use the plans, sketches, *Drawings*, graphic representations and *Specifications* pursuant to paragraph 1.1.8 of GC 1.1 – CONTRACT DOCUMENTS, as reasonably required for the completion of design and construction of the *Project*, but unless otherwise agreed, the *Consultant* and *Other Consultants* shall not assume any responsibility or liability resulting from use of such documents which may be incomplete;
 - .2 take possession of the *Work* and *Products* at the *Place of the Work*, and subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*, and finish the *Design Services* and *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense;
 - .3 withhold further payment to the *Design-Builder* until final payment is determined in accordance with paragraphs 7.2.5.4 and 7.2.5.5;
 - .4 charge the *Design-Builder* the amount by which:
 - (1) the full cost of finishing the *Design Services* and the *Work*, as certified by the *Payment Certifier*, including compensation to the *Payment Certifier* for the *Payment Certifier's* additional services, plus
 - (2) a reasonable allowance as determined by the *Payment Certifier* to cover the cost of corrections to work performed by the *Design-Builder* that may be required under GC 12.5 – WARRANTY, together exceeds the unpaid balance of the *Contract Price*; however, if such cost of finishing the *Design Services* and the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Design-Builder* the difference; and
 - .5 on expiry of the warranty period, charge the *Design-Builder* the amount by which the cost of corrections to the *Design-Builder's* work under GC 12.5 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Design-Builder* the difference.
- 7.2.6 The *Design-Builder's* obligation under the *Contract* as to quality, correction and warranty of the *Work* performed by the *Design-Builder* up to the time of termination shall continue after such termination of the *Contract*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

458

GC 7.3 DESIGN-BUILDER'S RIGHT TO SUSPEND THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

- 7.3.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.3.2 If the *Design Services* or *Work* are suspended or otherwise delayed for a period of more than 20 *Working Days* under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Design-Builder* or of anyone directly or indirectly employed or engaged by the *Design-Builder*, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.
- 7.3.3 The *Design-Builder* may give *Notice in Writing* to the *Owner* that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Design-Builder*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
 - .2 the *Payment Certifier* fails to issue a certificate as provided in GC 5.3 – PROGRESS PAYMENT, or
 - .3 the *Owner* fails to pay the *Design-Builder* when due the amounts certified by the *Payment Certifier* or awarded by arbitration or court, or
 - .4 the *Owner* violates the requirements of the *Contract* to a substantial degree.
- 7.3.4 The *Design-Builder's* *Notice in Writing* to the *Owner* provided under paragraph 7.3.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, suspend the *Design Services* or the *Work*, or terminate the *Contract*.
- 7.3.5 If the *Design-Builder* suspends the *Work* pursuant to paragraph 7.3.4, the *Design-Builder* shall:
- .1 at the cost of the *Owner* maintain operations necessary for safety reasons and for care and preservation of the *Work*,
 - .2 make reasonable efforts to delay *Product* deliveries, and
 - .3 not remove from the *Place of the Work* any part of the *Work* or any *Products* not yet incorporated into the *Work*.
- 7.3.6 If the *Design-Builder* terminates the *Contract* under the conditions set out above, the *Design-Builder* shall be entitled to be paid for all *Design Services* and *Work* performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and for such other damages as the *Design-Builder* may have sustained as a result of the termination of the *Contract*.

PART 8 DISPUTE RESOLUTION**GC 8.1 NEGOTIATION, MEDIATION AND ARBITRATION**

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.
- 8.1.2 If a dispute does arise, the parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.1.3 If the parties do not reach an agreement, either party shall send a *Notice in Writing* of dispute to the other party which contains the particulars of the matter in dispute, the relevant provisions of the *Contract Documents* and, if a Project Mediator has not already been appointed, a request that a Project Mediator be appointed. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing*, setting out particulars of the response and any relevant provisions of the *Contract Documents*.
- 8.1.4 If a dispute is not resolved promptly, the *Owner* will issue such instructions as necessary to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Design-Builder* costs incurred by the *Design-Builder* in carrying out such instructions which the *Design-Builder* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Design Services* or the *Work*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

459

- 8.1.5 The parties shall, in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of proposal closing or bid closing, appoint a Project Mediator:
- .1 within 20 *Working Days* after the *Contract* was awarded, or
 - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.1.6 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.1.3, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 Rules for Mediation and Arbitration of Construction Disputes in effect at the time of proposal closing or bid closing.
- 8.1.7 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.1.6 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner* and the *Design-Builder*.
- 8.1.8 By giving a *Notice in Writing* to the other party not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.1.7, either party may refer the dispute to be finally resolved by arbitration conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of proposal closing or bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.1.9 On expiration of the 10 *Working Days* stipulated in paragraph 8.1.8, the arbitration agreement under paragraph 8.1.8 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.1.8 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.1.10 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.1.8, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.1.8 shall be
- .1 held in abeyance until
 - (1) *Substantial Performance of the Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Design-Builder* has abandoned the *Design Services* or the *Work*, whichever is earlier; and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.1.8.

GC 8.2 RETENTION OF RIGHTS

- 8.2.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.4.
- 8.2.2 Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.1.9 of GC 8.1 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.
- 8.2.3 Part 8 of the General Conditions – DISPUTE RESOLUTION shall survive suspension or termination of the *Contract*.

PART 9 PROTECTION OF PERSONS AND PROPERTY**GC 9.1 PROTECTION OF WORK AND PROPERTY**

- 9.1.1 The *Design-Builder* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Design-Builder's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Owner's Statement of Requirements*, or
 - .2 acts or omissions by the *Owner*, the *Owner's* agents and employees.
- 9.1.2 Before commencing any work, the *Design-Builder* shall determine the location of all underground utilities and structures that are reasonably apparent in an inspection of the *Place of the Work*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

460

- 9.1.3 Should the *Design-Builder* in the performance of the *Contract* damage the *Work*, the *Owner's* property, or property adjacent to the *Place of the Work*, the *Design-Builder* shall be responsible for making good such damage at the *Design-Builder's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Design-Builder* is not responsible, as provided in paragraph 9.1.1, the *Design-Builder* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Design-Builder* commencing the *Design Services* or *Work*, the *Owner* shall, subject to legislation applicable to the *Place of the Work*:
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
 - .2 provide the *Design-Builder* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Design-Builder* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Design-Builder* commencing the *Work*.
- 9.2.5 If the *Design-Builder* encounters toxic or hazardous substances at the *Place of the Work* or has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Design-Builder* shall:
- .1 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by legislation applicable to the *Place of the Work*, and
 - .2 immediately report the circumstances to the *Owner* in writing.
- 9.2.6 If the *Owner* and *Design-Builder* do not agree on the existence or significance of the toxic or hazardous substances, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and make a determination on such matters. The expert's report shall be delivered to the *Owner* and the *Design-Builder*.
- 9.2.7 If the *Owner* and *Design-Builder* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the *Place of the Work* by the *Design Builder* or anyone for whom the *Design Builder* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 reimburse the *Design-Builder* for the costs of all steps taken pursuant to paragraph 9.2.5;
 - .3 extend the *Contract Time* for such reasonable time as agreed between the *Design-Builder* and the *Owner* in consultation with the expert referred to in 9.2.6 and reimburse the *Design-Builder* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Design-Builder* as required by GC 12.2 – INDEMNIFICATION.
- 9.2.8 If the *Owner* and *Design-Builder* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substance was brought onto the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible, the *Design-Builder* shall promptly at the *Design-Builder's* own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substances;
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

461

- .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
- .4 indemnify the *Owner* as required by GC 12.2 – INDEMNIFICATION.

9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided in paragraphs 9.2.7 or 9.2.8.

GC 9.3 ARTIFACTS AND FOSSILS

9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Work* shall, as between the *Owner* and the *Design-Builder*, be deemed to be the absolute property of the *Owner*.

9.3.2 The *Design-Builder* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Owner* upon discovery of such items.

9.3.3 The *Owner* will investigate the impact on the *Design Services* or the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Design-Builder's* cost or time to perform the *Design Services* or the *Work*, the *Owner* will issue appropriate instructions for a change in the *Contract* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

GC 9.4 CONSTRUCTION SAFETY

9.4.1 Except as provided for in paragraph 2.6.2.2 of GC 2.6 – WORK BY OWNER OR OTHER CONTRACTORS, the *Design-Builder* shall assume overall responsibility for:

- .1 construction health and safety at the *Place of the Work* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation, and
- .2 establishing, initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the *Work*.

GC 9.5 MOULD

9.5.1 If the *Design-Builder* or *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,

- .1 the observing party shall promptly report the circumstances to the other party in writing, and
- .2 the *Design-Builder* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould.

9.5.2 If the *Owner* and *Design-Builder* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and make a determination on such matters. The expert's report shall be delivered to the *Owner* and *Design-Builder*.

9.5.3 If the *Owner* and *Design-Builder* agree, or if the expert referred to in paragraph 9.5.2 determines that the presence of mould was caused by the *Design-Builder's* operations under the *Contract*, the *Design-Builder* shall promptly, at the *Design-Builder's* own expense:

- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
- .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
- .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.2, and
- .4 indemnify the *Owner* as required by GC 12.2 – INDEMNIFICATION.

9.5.4 If the *Owner* and *Design-Builder* agree, or if the expert referred to in paragraph 9.5.2 determines that the presence of mould was not caused by the *Design-Builder's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:

- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
- .2 reimburse the *Design-Builder* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
- .3 extend the *Contract Time* for such reasonable time as agreed between the *Design-Builder* and the *Owner* in consultation with the expert referred to in paragraph 9.5.2 and reimburse the *Design-Builder* for reasonable costs incurred as a result of the delay, and

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

462

.4 indemnify the *Design-Builder* as required by GC 12.2 – INDEMNIFICATION.

- 9.5.5 If either party does not accept the expert's finding under paragraph 9.5.2, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.3 or 9.5.4, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided in paragraphs 9.5.3 or 9.5.4.

PART 10 GOVERNING REGULATIONS**GC 10.1 TAXES AND DUTIES**

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the proposal closing or bid closing except for *Value Added Taxes* payable by the *Owner* to the *Design-Builder* as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Design-Builder* due to changes in such included taxes and duties after the time of the proposal closing or bid closing shall increase or decrease the *Contract Price* accordingly, and either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANCE IN CONTRACT PRICE.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Design Services* and the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for the permanent easements and rights of servitude.
- 10.2.3 Unless otherwise stated, the *Design-Builder* shall obtain and pay for the building permit and other permits, licences, or certificates necessary for the performance of the *Work* at the time of the proposal closing or bid closing. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The *Design-Builder* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the *Design Services* or the performance of the *Work* and which relate to the *Design Services* or the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Design-Builder* shall not be responsible for verifying that the *Owner's Statement of Requirements* is in substantial compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Design Services* or the *Work*. If after the time of the proposal closing or bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Design-Builder* shall advise the *Owner* in writing requesting direction immediately upon such variance or change becoming known. Changes shall be made as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Design-Builder* fails to advise the *Owner* in writing and fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes, the *Design-Builder* shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of proposal closing or bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Design Services* or the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

GC 10.3 PATENT FEES

- 10.3.1 The *Design-Builder* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Design-Builder* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Design-Builder* or anyone for whose acts the *Design-Builder* may be liable.
- 10.3.2 The *Owner* shall hold the *Design-Builder* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, the model, plan or design of which was supplied by the *Owner* to the *Design-Builder* as part of the *Contract Documents*.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

463

GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Design Services* or the *Work*, again with the *Design-Builder's* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Design-Builder's* application for final payment, the *Design-Builder* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Design-Builder* shall provide such evidence of compliance by the *Design-Builder* and *Subcontractors*.

PART 11 INSURANCE AND CONTRACT SECURITY

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.2 – INDEMNIFICATION, the *Design-Builder* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS in effect at the time of proposal closing or bid closing except as hereinafter provided:
- .1 Everywhere used in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the term “*Contractor*” shall be replaced with the term “*Design-Builder*”.
 - .2 General liability insurance in the name of the *Design-Builder* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner*, the *Consultant*, *Other Consultants*, the *Owner's Advisor*, and the *Payment Certifier* as insured but only with respect to liability arising out of the operations of the *Design-Builder* with regard to the *Design Services* or *Work*. All liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years.
 - .3 Automobile Liability Insurance from the date of commencement of the *Design Services* or the *Work* until one year after the date of *Substantial Performance of the Work*.
 - .4 If owned or non-owned aircraft and watercraft are used directly or indirectly in the performance of the *Design Services* or *Work*, Aircraft and Watercraft Liability Insurance from the date of commencement of the *Design Services* or *Work* until one year after the date of *Substantial Performance of the Work*.
 - .5 "All risks" property insurance in the joint names of the *Design-Builder*, the *Owner*, the *Consultant*, the *Owner's Advisor*, and the *Payment Certifier*. The policy shall include as Additional Insureds all *Subcontractors*. Where the full insurable value of the *Work* is substantially less than the *Contract Price*, the *Owner* may reduce the amount of insurance required or waive the insurance requirement. The “all risks” property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
 - (1) 10 calendar days after the date of *Substantial Performance of the Work*;
 - (2) on the commencement of use or occupancy of any part or section of *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*; or
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
 - .6 Boiler and machinery insurance in the joint names of the *Design-Builder* and the *Owner*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
 - .7 The “all risks” property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Design-Builder* as their respective interests may appear. In the event of loss or damage:
 - (1) the *Design-Builder* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Design-Builder* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Design-Builder* shall be entitled to such reasonable extension of *Contract Time* as agreed by the *Owner* and *Design-Builder*;
 - (2) the *Design-Builder* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount at which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions of the *Contract*. In addition the *Design-Builder* shall be entitled to receive from the payments made by the insurer the amount of the *Design-Builder's* interest in the restoration of the *Work*; and

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

464

- (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces, or another contractor, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, the *Owner* shall pay the *Design-Builder* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions of the *Contract*.
- .8 *Design-Builder's* Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
- .9 In addition to the insurance requirements specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the *Design-Builder* shall carry professional liability insurance with limits of not less than \$1,000,000 per claim and with an aggregate limit of not less than \$2,000,000 within any policy year, unless specified otherwise in the *Contract Documents*. The policy shall be maintained continuously from the commencement of the *Contract* until 2 years after *Substantial Performance of the Work*.
- 11.1.2 Prior to commencement of the *Design Services* or *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Design-Builder* shall promptly provide the *Owner* with confirmation of coverage and, if required, a true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Design Services* or *Work*.
- 11.1.3 The *Design-Builder* shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the *Design-Builder's* responsibility by the terms of GC 9.1 – PROTECTION OF WORK AND PROPERTY and GC 12.2 – INDEMNIFICATION.
- 11.1.4 If the *Design-Builder* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence of same to the *Design-Builder* and the *Consultant*. The *Design-Builder* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from any amount which is due or may become due to the *Design-Builder*.
- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.6 If a revised version of CCDC 41 – CCDC INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Design-Builder's* insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.7 If a revised version of CCDC 41 – CCDC INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Owner* may require the increased coverage from the *Design-Builder* by way of a *Change Order*.
- 11.1.8 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to any revision of CCDC 41 – CCDC INSURANCE REQUIREMENTS.

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Design-Builder* shall, prior to commencement of the *Design Services* or *Work* or within such other time as may be specified in the *Contract Documents*, provide to the *Owner* any *Contract* security specified in the *Contract Documents*.
- 11.2.2 If the *Contract Documents* require surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY**GC 12.1 DEFINITION AND SURVIVAL**

- 12.1.1 For the purposes of Part 12 – INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY, “claim” or “claims” shall mean claims, demands, losses, costs, damages, actions, suits or proceedings, whether in contract or tort.
- 12.1.2 Part 12 of the General Conditions – INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY shall survive suspension or termination of the *Contract*.

465

GC 12.2 INDEMNIFICATION

12.2.1 Without restricting the parties' obligations to indemnify one another as described in paragraph 12.2.4 and the Owner's obligation to indemnify as described in paragraph 12.2.5, the *Owner* and the *Design-Builder* shall each indemnify and hold harmless the other from and against all claims, whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:

- .1 caused by:
 - (1) errors, omissions, or negligence of the party from whom indemnification is sought or anyone for whom that party is responsible, or
 - (2) a breach of this *Contract* by the party from whom indemnification is sought; and
- .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.3 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.

12.2.2 The obligation of either party to indemnify as set forth in paragraph 12.2.1 shall be limited as follows:

- .1 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the general liability insurance limit for one occurrence as referred to in CCDC 41 – CCDC INSURANCE REQUIREMENTS in effect at the time of proposal or bid closing.
- .2 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 of the Agreement – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.2.2.1 and 12.2.2.2 shall apply.

12.2.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.2.1 and 12.2.2 shall be inclusive of interest and all legal costs.

12.2.4 The *Owner* and the *Design-Builder* shall indemnify and hold harmless the other from and against all claims arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS.

12.2.5 The *Owner* shall indemnify and hold harmless the *Design-Builder* from and against all claims:

- .1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and
- .2 arising out of the *Design-Builder's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.

12.2.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Design-Builder*:

- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known; and
- .2 should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgment or award made against the party entitled by this *Contract* to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.3 LIMITATION OF LIABILITY FOR DESIGN SERVICES

12.3.1 Notwithstanding any other provisions of this *Contract*, the *Design-Builder's* liability for claims which the *Owner* may have against the *Design-Builder*, including the *Design-Builder's* officers, directors, employees and representatives, that arise out of, or are related to, the *Design Services*, shall be limited:

- .1 to claims arising from errors, omissions, or negligent performance of the *Design Services* by the *Consultant or Other Consultant* and
- .2 where claims are covered by insurance the *Design-Builder* is obligated to carry pursuant to GC 11.1 – INSURANCE, to the amount of such insurance.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

GC 12.4 WAIVER OF CLAIMS

- 12.4.1 Subject to any lien legislation applicable at the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Design-Builder* waives and releases the *Owner* from all claims which the *Design-Builder* has or reasonably ought to have knowledge of that could be advanced by the *Design-Builder* against the *Owner* arising from the *Design-Builder's* involvement in the *Design Services* or *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Design-Builder* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Design-Builder* by third parties for which a right of indemnification may be asserted by the *Design-Builder* against the *Owner* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Design-Builder* pursuant to the provisions of paragraphs 12.2.4 or 12.2.5 of GC 12.2 – INDEMNIFICATION; and
 - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.4.2 The *Design-Builder* waives and releases the *Owner* from all claims referenced in paragraph 12.4.1.4 except for those referred in paragraphs 12.4.1.2 and 12.4.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Design-Builder* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.4.3 Subject to any lien legislation applicable at the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Owner* waives and releases the *Design-Builder* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Design-Builder* arising from the *Owner's* involvement in the *Design Services* or *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Design-Builder* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Design-Builder* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Design-Builder* pursuant to the provisions of paragraph 12.2.4 of GC 12.2 – INDEMNIFICATION;
 - .4 damages arising from the *Design-Builder's* actions which result in substantial defects or deficiencies in the *Work*. “Substantial defects or deficiencies” mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
 - .5 claims arising pursuant to GC 12.5 – WARRANTY; and
 - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.4.4 The *Owner* waives and releases the *Design-Builder* from all claims referred to in paragraph 12.4.3.4 except claims for which *Notice in Writing* of claim has been received by the *Design-Builder* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Work*; or
 - .2 if the *Place of the Work* is the Province of Quebec, then Article 2118 of the Civil Code of Quebec.
- 12.4.5 The *Owner* waives and releases the *Design-Builder* from all claims referenced in paragraph 12.4.3.6 except for those referred in paragraph 12.4.3.2, 12.4.3.3 and those arising under GC 12.5 – WARRANTY and claims for which *Notice in Writing* has been received by the *Design-Builder* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.4.6 “*Notice in Writing* of claim” as provided for in GC 12.4 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.4 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

467

- .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
- .3 a statement of the estimated quantum of the claim.

- 12.4.7 The party giving “*Notice in Writing* of claim” as provided for in GC 12.4 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.4.8 Where the event or series of events giving rise to a claim made under paragraphs 12.4.1 or 12.4.3 has a continuing effect, the detailed account submitted under paragraph 12.4.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.4.9 If a *Notice in Writing* of claim pursuant to paragraph 12.4.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim is received pursuant to paragraph 12.4.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.
- 12.4.10 If a *Notice in Writing* of claim pursuant to paragraph 12.4.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim is received pursuant to paragraph 12.4.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

GC 12.5 WARRANTY

- 12.5.1 Except for extended warranties as described in paragraph 12.5.6, the warranty period under the *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.5.2 The *Design-Builder* warrants that the *Work* is in accordance with the *Contract Documents*.
- 12.5.3 The *Owner* shall promptly give the *Design-Builder Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.5.4 The *Design-Builder* shall promptly correct, at the *Design-Builder's* expense, any work which is not in accordance with the *Contract Documents* or defects or deficiencies in the *Work* which appear at any time until the end of the warranty periods specified in the *Contract Documents*.
- 12.5.5 The *Design-Builder* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.5.4.
- 12.5.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.5.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor for the benefit of the *Owner*. The *Design-Builder's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.
- 12.5.7 The *Design-Builder* does not warrant against the effects of corrosion, erosion or wear and tear of any *Product* or failure of any *Product* due to faulty operations or maintenance by the *Owner* or conditions of operation more severe than those specified for the *Product*.
- 12.5.8 The warranties specified in GC 12.5 – WARRANTY or elsewhere in the *Contract Documents* are the only warranties of the *Design-Builder* applicable to the *Work* and no other warranties, statutory or otherwise, are implied.

Note: This contract is protected by copyright. Use of a CCDC 14 document not containing a CCDC 14 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 14 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 14 – 2013 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

468

469

REQUEST FOR PROPOSAL

Design Build Services

Jebco Manufacturing Facility UPS System

[Demand Power Group Inc](#)

Toronto, Ontario



470

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO MANUFACTURING

TABLE OF CONTENTS

INTRODUCTION	3
PROJECT DESCRIPTION	4
DEFINITIONS	4
PREPARATION OF PROPOSALS	5
QUALIFICATION OF PROPONENT	5
EXAMINATION OF THE RFP DOCUMENT AND SITE	6
SCOPE OF WORK	6
Proponent Engineering Scope of work	6
Proponent Construction & Procurement Scope of Work	9
PROJECT SCHEDULE	10
PROPOSAL FORM	11
OPENING OF PROPOSAL AND EVALUATION	12
OWNERS ACCEPTANCE OR REJECTION OF PROPOSALS	12
ADDITIONAL INFORMATION	13

471

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO MANUFACTURING

1. INTRODUCTION

- a) Demand Power Group Inc. (“DPGI”) located at 2 Pardee Avenue, Suite 302, Toronto Ontario, M6K 3H6, is soliciting bids/proposals from Design Build firms (the “Proponent”) to finalize the design of a new behind the meter Uninterruptible Power Supply (“UPS”) and Battery Energy Storage System (“BESS”) for DPGI’s Customer (the “Customer”) located at 188 King street East , Colborne, ON K0K 1S0 (the “Site”).
- b) DPGI is in the business of selling electricity to large commercial and industrial businesses in Ontario at reduced rates by utilizing various market structures and state of the art power quality and battery technology. Demand Power plans on deploying more than \$50M for the supply and installation of UPS and BESS on various customer sites in 2021. Demand Power has exclusive relationships with vendors for proprietary UPS and BESS to achieve its goals. Demand Power expects that the Proponents of this Request for Proposal (“RFP”), utilize their expertise to deliver best in class budgeting, scheduling and project management to help with these goals.
- c) DPGI Equipment to be delivered to Proponents designated site. The Proponent is responsible for the DPGI Equipment upon delivery. DPGI has completed a Preliminary Design Package and will conduct the Connection Impact Assessment (“CIA”) with the local utility. The DPGI Equipment, as per DPGI preliminary package, includes:
 - a. UPS and BESS Containers (Containers come separate to site and will require to be stacked as shown in example package)
- d) The Balance of Plant (“BOP”) together with the DPGI Equipment will make up the UPS and BESS. The Proponent is responsible for completing the Engineering of the UPS and BESS and procurement of BOP and all works required to install and commission the UPS and BESS (“Full System”).
- e) The purpose of the Design-Build Proposal process is to enable DPGI to select a qualified Design-Builder responding to these RFP requirements and achieving the highest overall evaluation score.
- f) The proposal will be regarded as confidential. Any information provided by the Proponents that is of a proprietary, commercial, or financial nature will be deemed to be privileged information and treated accordingly subject to previously executed non-disclosure agreement.
- g) DPGI reserves the right to accept, reject or negotiate the details of preferred proposals at their sole discretion. By submitting a proposal, a Proponent acknowledges that the Owner reserves the right to verify any submitted information.

472

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO MANUFACTURING

- h) DPGI may terminate the Agreement with the Contractor at any time prior to Notice to Proceed (“NTP”) without any liability to the Contractor other than costs approved by DPGI to complete Design Package and NTP Package.
- i) Proposals with email signatures are to be **received before 14:00:00 Local time on the 3rd day of November, 2020**
- j) The lowest cost proposal will not necessarily be accepted. All proposals will be reviewed by DPGI, before a final decision of acceptance is made.

2. PROJECT DESCRIPTION

- a) The DPGI Preliminary Design Package is comprised of the following attached documents:
 - a. E-001: Title Sheet and Site Plan, Jebco Manufacturing Facility UPS System 2 MVA / 2.3 MWH, 2020-10-21, Issued for client review
 - b. E-101: Single Line Diagram, Jebco Manufacturing Facility UPS System, 2 MVA / 2.3 MWH, 2020-10-21, Issued for Client Review
 - c. DPGI Equipment Examples:
 - i. Example stacked UPS and BESS containerized system stacked system. (UPS container and BESS container delivered separately)
 - ii. UPS manufacturer Kehua Brochure technical details
 - iii. DPGI system example data sheet, system characteristics
 - iv. Example staircase (to be provided by Proponent)
- b) The Project Goals are:
 - a. **Maintain or improve from original sales budget**
 - b. **Deliver Full System in a timely manner**
 - c. **Minimize impact on Customers operations**

3. DEFINITIONS

Terms used in this Request for Proposal defined in the **CCDC 2 -2008** Stipulated Price Contract and enclosed and applicable Owner’s Supplementary General Conditions have the meanings assigned to them there. Certain additional terms used in the Request for Proposal have the meanings indicated below.

“Balance of Plant” means all equipment required to complete the installation and commissioning of the UPS and BESS.

473

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO MANUFACTURING

“Connection Impact Assessment” means an assessment conducted by a Local Distribution Utility to determine the impact on the Utility’s electricity distribution system of connection installation of the UPS and BESS at the Site.

“Financial NTP” means a milestone in the schedule at which DPGI approves project construction “Start”.

“Preliminary Design Package” has the meaning given to it in Section 2.a). of this document.

“Proposal Documents” means Request for Proposal, Proposal Form, Performance Specifications, Design Illustration Concept Drawings and Site Plan, any supporting documents.

“Proponent” means the legal entity that submits a proposal directly to the Owner

“Successful Proponent” means the entity to whom the Owner, on the basis of the Owner’s evaluation as hereinafter provided, makes an award.

Language of the proposal and contract document: the contract documents to be signed by the successful Proponent shall be in English.

4. PREPARATION OF PROPOSALS

Submit to:
Demand Power Group Inc
Attention: Andrew Rabeau
2 Pardee Ave., Suite 302, Toronto Ontario, M6K 3H6
Ph: 1.855.336.2638
Email: arabeau@demandpower.ca

Via e-mail only.

DPGI, as the hiring company, has full discretion for the final acceptance decision of Proponents proposals.

All questions and/or clarifications must be submitted via email no later than October 29, 2020 at 4:00 pm local time to Andrew Rabeau at arabeau@demandpower.ca

5. QUALIFICATION OF PROPONENT

1. To be considered as eligible to submit a Proposal, the Proponent must be legally licensed under applicable laws in the Province of Ontario.

474

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO MANUFACTURING

2. The Proponent must have demonstrated prior experience in designing and building BESS and UPS systems in accordance with applicable codes, standards, rules and regulations, or equivalent.
3. The Proponent must have experience in large BESS (>1 MWh), and preferably, experience with UPS systems, as well as Building Codes for Ontario, and Hydro One Technical Requirements.
4. The Proponent must be able to submit Issue for Construction (“IFC”) drawings, professional engineer of Ontario sealed, for the purpose of permitting and construction. Submissions for building permit, and ESAs which are to be reviewed and approved by DPGI prior to submission.

6. EXAMINATION OF THE RFP DOCUMENT AND SITE

1. Proponent’s Responsibilities
 - a. It is the responsibility of each Proponent before submitting a Proposal to:
 - i. Examine thoroughly the RFP documents;
 - ii. Consider federal, provincial and local laws and regulations that may affect cost progress, performance or furnishing of the Work;
 - iii. Notify the Owner of all conflicts, errors, ambiguities, or discrepancies, which the Proponent has discovered in the RFP
2. Owner Provided Information
 - a. Refer to the attached document for the preliminary Owner provided Preliminary Design Package.

7. SCOPE OF WORK

1. Proponent Engineering Scope of work

1.1. Review of Preliminary Design Package.

Site visit required to the Owner's host facility to survey existing electrical equipment, assess the proposed Preliminary Design Package installation locations and points of interconnection.

This scope phase must include the following deliverables on a per-project basis:

- 1.1.1. One or more site visit coordinated by Owner
- 1.1.2. Summative report of observations, findings, and recommendations
- 1.1.3. Photo dataroom sent to Owner

Power quality issues at the facility should also be listed and considered in the later solution. RFI submission to the Owner on the current design package and any questions on the major

475

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO MANUFACTURING

equipment vendor system.

1.2.60% Design Package

This scope phase includes any revision and updates of the package provided by the Owner as well as a site visit by the Proponent to review existing conditions. A locate is required prior to commencing design work, to locate any underground utilities/services, as well as perform a review of the zoning by laws and/or other site plan agreements in place for the facility. A structural assessment is to be done reviewing soil reports/relevant information as it pertains to the proposed foundations.

Once the relevant Authorities Having Jurisdictions (AHJ) have been identified, the Proponent will lead technical discussions with each agency in order to accelerate the approval process. The Owner will coordinate with the clients to provide clarifications/answers or enhance supplemental technical documentation as required, and can assist with obtaining information from equipment manufacturers. This scope phase may include discussions with Local Distribution Company (LDC) to ensure the details of their specific interconnection process have not changed and the local building department to understand the need for a building permit and the requirements for submission.

Final deliverable is a 60% design package for submission to the owner for review as well as the Proponent updated project pricing if required.

1.3. Issue for Construction (IFC) Package

Provide a stamped electrical and civil IFC plan set based on updating the 60% package with final design details. These drawings need to provide the right amount of detail for installers, eg. meet Ontario's requirements for UPS systems (include protection relays, revenue metering, SCADA, power system elements and communications).

1.3.1. Electrical Design and Engineering

Electrical drawings for general supply wiring/panels requirements for the connection of the UPS system to the existing or new electrical equipment, existing transformers (exterior) or within the facility from the equipment structures; connections to/from new transformers associated with the installation.

Empty conduit runs for communication purposes (copper, fiber, CAT) to demarcation point

Submit ESA Plan Review. Each submittal must contain a completed Plan Review Submittal Form which provides the minimum basic information on the submitting customer and planned electrical design. Provide a Grounding Study Submittal Form if applicable (high voltage projects).

1.3.2. Structural Design and Reinforcing Plans

Preparation of structural/civil drawings for slab on grade foundations for the battery and UPS containers and any other pad-mounted equipment being proposed for the project,

476

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO MANUFACTURING

and connections details as required, for building permit and construction.

All drawings to be designed to meet the intent of the Ontario Building Code.

This scope phase currently includes the following:

- 1.3.3. Incorporate IFT-level comments from all relevant parties into the drawings
- 1.3.4. One IFC-level site plan
- 1.3.5. One IFC-level equipment layout
- 1.3.6. One IFC-level single line diagram (including high-level SCADA)
- 1.3.7. One IFC-level grounding diagram (if necessary)
- 1.3.8. One IFC-level wire schedule (AC and communications)
- 1.3.9. One IFC-level wiring details drawing
- 1.3.10. One IFC-level label drawing
- 1.3.11. One IFC-level civil

1.3.12. Submittal of Building Permit and ESA permits

The Proponent is to prepare permit applications (zoning, planning and building), participating and communicating with the local AHJ in support of the project. The Zoning and Site plan approval process is to be commenced early on in the project to identify any deviations in the proposed layout.

Submission of ESA plan review.

1.4. Commissioning Services

During and after substantial completion, the Proponent Engineer(s) is to perform site inspections to ensure design compliance and to address any construction issues as required. The Engineer should also witness commissioning activities by equipment manufacturers and commissioning agents to ensure these adhere to DPGI's acceptance requirements. Furthermore, the Engineer(s) should review and comment on commissioning/checklist documentation for completeness (to NETA standards) and accuracy in order to promote the performance and safety of each BESS project.

Finally, the Engineer(s) can complete and stamp LDC commissioning requirements including transfer trip testing (see Section 3.1) with coordination from the SCADA integrator.

This scope phase currently includes the following on a per-project basis:

- 1.4.1. Review of electrical and civil commissioning documentation
- 1.4.2. Creation of an inspection punch-list addressing concerns and providing

477

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
 DEMAND POWER GROUP INC
 JEBCO MANUFACTURING

corrective actions

- 1.4.3. Review of LDC commissioning requirements
- 1.4.4. LDC commissioning site visit
- 1.4.5. Completion of LDC required reports and templates
- 1.4.6. Witness commissioning activities by equipment manufacturers and commissioning agents to ensure these adhere to DPGL's acceptance requirements.
- 1.4.7. Complete protection and control coordination study, arc flash study, grounding study.

2. Proponent Construction & Procurement Scope of Work

2.1. Procurement Scope of Work

The purpose of the Quote is to ascertain the final costs to construct, which will allow DPGL to assess the financial viability of the Project. The Proponent will then have an opportunity to finalize the costs and enter into a CCDC contract for the work. The permit and construction drawings will be finalized prior to final pricing.

Upon DPGL's approval and the necessary level of engineering the following items are to be procured by the selected contractor:

- BOP as determined by Engineer of Record (EoR)
- Required conduits, mounting hardware, cables and terminations kits as per the approved construction drawings
- Required rebar and concrete mix as per the approved construction drawings
- All consumable construction materials and PPE
- Permanent fencing and bollards

2.2. Construction Scope of Work

The purpose of the proposal is to ascertain the costs to finalize the design and to construct the project, which will allow DPGL to assess the Proponent. The permit and construction drawings will be finalized prior to final pricing. The following is to be included:

1. Coordinate and schedule with DPGL equipment supplier for preparation to receive equipment
2. Coordinate all cabling demarcation points with supplier w/confirmation of connection types and sizing
3. Coordinate timing with supplier for off-loading of containers onto foundations
4. Manage with EoR for reviews and inspections as required
5. Proponent to follow all local rules and regulations
6. Construction management including on-site supervision, construction coordination and weekly reporting with DPGL
7. Mobilization and site preparation including safety fence around work area.
8. Install UPS and BESS as per approved engineering drawings

9

478

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO MANUFACTURING

9. Proponent to provide staircase
10. Proponent to conduct all integration work with existing substation as per preliminary design package
11. Proponent to accept all DPGI equipment delivery, and coordinate with Vendor on these
12. Install conduits, pull and terminate cables per approved construction drawings
13. All foundations work
14. Install and commission breaker(s), switch(s) or switchgear as per the construction drawings as required
15. Mount metering cabinets and associated CTs and PTs where required
16. Where applicable, coring through the wall to route appropriately sized conduits
17. Testing and commissioning of installed BESS in collaboration with the DPGI equipment vendor.
18. System energization including support entire system commissioning, including commissioning coordination, and issuing compliance letter to the LDC
19. Issuing commissioning report to DPGI
20. Ensure coordination with DPGI and the Facility during construction for work hours, scheduled shutdowns etc.
21. Daily removal of debris, garbage and secure site

8. PROJECT SCHEDULE

Proposals must consist of the following information in the order indicated below:

Milestone	Completion Date
Proponent Proposal Submissions	November 3, 2020
Proponent Selection	November 06, 2020
Owner Purchase Order and Deposit for Proponent Engineering Services including ESA and Building Permitting	November 09, 2020
Proponent 60% design package and Procurement and Construction pricing update	November 20, 2020
Proponent 90% Design package, ESA submission, Building Permit Submission, Construction & Procurement pricing final	December 8, 2020
DPGI Project NTP	December 15, 2020

479

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
 DEMAND POWER GROUP INC
 JEBCO MANUFACTURING

Engineering IFC package final	January 15, 2021
Owner and Proponent CCDC2 Contract Signed and Owner Purchase Order for Construction & Procurement. (CCDC 2 -2008 Stipulated Price Contract is a standard prime contract between Owner and prime Contractor that establishes a single, pre-determined fixed price)	December 22, 2020
Proponent construction Schedule and Procurement Start	January18, 2021
Proponent Construction Phase and Commissioning	April 1, 2021
Commercial Operation Date, Proponent Substantial completion achieved.	June 1, 2021

9. PROPOSAL FORM

Proposals must consist of the following information.

All submissions must be properly signed and sealed by the authorized signing officer.

Submit a proposal in an organized, straight forward manner identifying pricing per components, separate or alternate pricing, exclusions and inclusions.

- Cover letter stating interest in project with signature of duly authorized principal.
- Proponent to name the site for the project
- Technical qualifications.
- Experience with similar projects involving BESS and UPS systems.
- Experience of key staff personnel assigned to the project.
- Description of Scope of work and any Exclusions
- Cost of services breakdown (labour, material, management) including fixed and variable costs (on hourly or km travelled basis), including payment milestones
- Expected payment terms and conditions
- Please outline if HST is not applicable to certain cost items.
- Liability Insurance Statement
- Statement of ability to provide Bonding, included pricing
- Project Execution Plan and Schedule
- Breakdown of engineering schedule and milestone payments, including DPGI NTP date for 90% Design package
- Project QA/QC Plan
- Site Safety Plan

480

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
 DEMAND POWER GROUP INC
 JEBCO MANUFACTURING

- List of exclusions

10. OPENING OF PROPOSAL AND EVALUATION

Proposals will be opened privately at the place where proposals are to be submitted. Information regarding the amounts of the base proposals and alternatives (if any) will not be made available to Proponents after the opening of proposals.

Evaluation of Proposals

- The Owner will perform the proposal evaluation
- All proposals shall be opened with owner's Senior Project Manager
- The evaluation will be based on a Best-Value selection for both price and qualitative components.
- The Owner will hold the proposal document in confidence
- The successful Proponent will be notified and a Limited Notice to Proceed will be submitted for the Engineering services. The Owner will submit a Purchase Order for this work.
- Unsuccessful Proponents will be advised of the selection.
- All submitted proposals shall become the property of the Owner but shall not be used for the purposes of the Project unless the Proponent is the successful Proponent.

11. OWNERS ACCEPTANCE OR REJECTION OF PROPOSALS

- Only designated officers or employees of the Owner have authority to make or accept an offer or to enter into a contract on behalf of the Owner or to create any rights against or to impose any obligations on the Owner.
- The Owner shall not be responsible for any liabilities, costs, expenses, loss or damage incurred, sustained or suffered by any Proponents prior or subsequent to or by reason of the acceptance or the non-acceptance by the Owner of any proposal or by reason of any delay in the acceptance of a proposal save as provided in the contract.
- Proposals are subject to a formal contract being prepared and executed.
- The Owner reserves the right to reject any or all proposals. The lowest or any proposal will not necessarily be accepted. Without limiting the generality of the foregoing, the Owner shall have the right to:
 - reject a proposal which does not meet the formal requirements of the RFP
 - accept a cost proposal which is not the lowest
 - reject a proposal if it is the only one received by the Owner
- Under no circumstances will proposals be considered which:
 - are received by the Owner after the closing date and time
 - have not been properly signed

12

481

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO MANUFACTURING

- do not include the completed pricing

12. ADDITIONAL INFORMATION

- The successful Proponent's proposal will be further discussed to determine the type of agreement and payment terms
- Alternate materials will be reviewed and considered, only if submitted as a separate price or pre-approved before proposal closing.
- A proposal may be rejected if it is received after the closing date and time.
- The Successful Proponent will have the opportunity to negotiate a CCDC 2 contract with the Owner at Financial NTP. The Owner reserves the right to select another proponent upon completion of the engineering scope of work for the remaining construction phase.
- The Owner guarantees Proponent full scope of work if the proposal lump sum price is maintained at final pricing stage, and CCDC 2 contracting. Assuming all other terms and project requirements are met.

482

ITEM 2

483

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO PROJECT

**RFP ADDENDUM #1
DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO ENERGY PROJECT
November 02,
2020**

NOTICE TO ALL POTENTIAL PROPONENTS

The Request for Proposals (RFP) is modified as set forth in this Addendum. The original RFP Documents and any previously issued addenda remain in full force and effect, except as modified by this Addendum, which is hereby made part of the RFP. Proponent shall take this Addendum into consideration when preparing and submitting its Proposal.

PROPOSAL SUBMITTAL DEADLINE

The Proposal submittal deadline has been changed as noted herein, and modifies the deadline stated in the RFP. The new Proposal submittal deadline is 5:00 pm on Tuesday November 10, 2020.

QUESTIONS AND ANSWERS

The following questions and answers are provided as a matter of information to clarify issues raised about the RFP. To the extent that changes to the RFP are required based on the questions received, the RFP has been modified as noted above in the RFP section of this Addendum.

Question	DPGI Response
UPS container	DPGI will procure
TX-01 & TX-02	GC will supply
UPS-SWGR-01	Manual Switch on 4.16kV SWGR-01 will be provided by GC based on drawing E-101 Rev 04
3200A 480V BUS DUCT	GC will supply
Please clarify if DPGI is looking for bid bonding or performance, material and labour bonds	Ability to provide construction bond and price for this addition
Is DPGI willing to accept aluminum conductors in lieu of copper?	Yes
Is there any mechanical fastening required between the two stacked containers? And between the bottom container and concrete pad?	Twistlocks and twist lock pins are used for fastening

484

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
DEMAND POWER GROUP INC
JEBCO PROJECT

Please confirm whether proponents are responsible for supplying conductors lugs for terminations on DPGI supplied equipment.	If at 4.16kV then lugs for termination should be provided by GC
The ZNTECH ESS specifications show the containers to be 12.192m which equal 40 feet. There are comments that state the containers to be 53 feet. We are wondering if this is accurate and the containers do vary in size? Or do we run with the ZNTECH Specification.	Please refer to the drawings site plan included for each project. Zntech specifications are as examples in some cases.
Are there Geotech reports and site surveys available?	No. Not at this time.
Do you have any preference for TX foundation type?	No preference
Looks like the design uses only one staircase per container. Can you confirm that the container designer will ensure their system complies with OESC Rule 2-310?	Yes confirmed
Can the you confirm that the Equipment being supplied will meet Ontario standards?	Yes
Looks like the two 2MVA transformers (with different primary and secondary winding configs) are by Proponent, remainder is in the skid Correct?	Need further clarification. The isolation transformer (Delta-Wye) is outside the container
Does their insurance company require secondary containment for the TXs?	No. We are expecting a pad mounted transformer where required
Have there been any Noise studies completed? Are they required?	Yes a noise study needs to be performed where applicable with TXs
SCADA, telecom and control scheme by others. Proponent to identify equipment needs.	Breaker coordination and protection needs to be performed by GC excluding that all the SCADA and telecomm scope will be provided by DPGI
Underground locates and zoning bylaws by Proponent	Yes
Building permit support to structures part of our design. Containers and stairs by others.	Stairs will also be provided by GC
a. They list various items (protection relays, revenue metering, SCADA, etc.) that those requirements would be identified in the Utility's SIA requirements. To be confirmed.	Yes
c. No grounding study for 5kV connected systems.	Don't need grounding study but need to make sure the contact touch voltage, step voltage and the resistance of ground electrode compliance with the OESC
d. Foundations would be some type of pile (likely concrete peers with footings).	Yes. Where applicable.
e. Common foundation design for the transformers, and precast vault for the manual bypass switch.	Yes this works
1.4 Commissioning	

485

REQUEST FOR PROPOSAL – DESIGN BUILD SERVICES
 DEMAND POWER GROUP INC
 JEBCO PROJECT

a. Can you advise what is to be witnessed and how long the equipment supplier intends to take to complete their commissioning?	Proponent must witness all site acceptance tests. Timeline is 1 week
b. Confirming you agree that the Protection and control coordination study: limited from LDC to HV side of PM3-64-1 and PM3-64-2.	The Protection and control coordination study needs to cover from LDC to input output breaker of the UPS (That includes primary and secondary of the transformer protection.)
c. Arc flash study: Owner will provide current report and model. Addition limited to changes from LDC to HV side of PM3-64-1 and PM3-64-2.	Arc flash study needs to performed up to the input side of the UPS
a. What are the items to be commissioned by the proponent?	All the equipemt from the LDC to the input side of the UPS needs to be commissioned by the GC
b. The Addendum already issued identified a 3 meter separation around the containers. Is this going to be required going forward on all projects?	Yes
The CCDC 2 contract does not allow for design provisions. Will you switch to the CCDC 14 Design Build Contract?	Please review the RFP. We will work on final design and then sign ccdc 2, not right at Proponent selection on these projects.

END OF ADDENDUM

486

PROJECT DETAILS

CLIENT: DEMAND POWER GROUP INC.
 CLIENT PROJECT NAME: JEBCO MANUFACTURING FACILITY UPS SYSTEM
 PROJECT ADDRESS: 188 KING STREET EAST, COLBORNE, ON, K0K 1S0
 POINT OF COMMON COUPLING (LAT/LONG): 44.0087, -77.8694
 PROJECT SIZE (AC POWER): 2 MVA
 PROJECT SIZE (NOMINAL BATTERY CAPACITY): 2.3 MWH
 PROJECT TYPE: LITHIUM-ION BASED FACILITY UPS SYSTEM

DRAWING INDEX

E-001 TITLE SHEET AND SITE PLAN
 E-101 SINGLE LINE DIAGRAM

PROJECT TEAM

ELECTRICAL CONSULTANT:
 POWERHAUS CONSULTING INC.,
 503-11 SOHO STREET
 TORONTO, ON, M5T 3L7
 CONTACT: DAVID CROCKETT, P. ENG.
 TEL: 647-501-2157
 EMAIL: DAVE@POWERHAUS.TECH

PROJECT DEVELOPER:
 DEMAND POWER GROUP INC.,
 302-2 PARDEE AVENUE
 TORONTO, ON, M6K 3H6
 CONTACT: ANDREW RABEAU
 TEL: 647-616-9416
 EMAIL: ARABEAU@DEMANDPOWER.CA

HOST FACILITY:
 JEBCO MANUFACTURING INC.,
 188 KING STREET EAST
 COLBORNE, ON, K0K 1S0
 CONTACT: TBD
 TEL: TBD
 EMAIL: TBD

NOTES

1. THIS SYSTEM IS SUBJECT TO INSPECTION BY THE ELECTRICAL SAFETY AUTHORITY (ESA), THE LOCAL UTILITY, BUILDING OFFICIALS, POWERHAUS CONSULTING INC. AND OTHER STAKEHOLDERS IN THIS PROJECT.
 2. THIS PROJECT SHALL CONFORM TO THE FOLLOWING CODE AND DOCUMENTATION VERSIONS:
 2.1. ONTARIO ELECTRICAL SAFETY CODE, 27TH EDITION, (2016)
 3. ALL ELECTRICAL EQUIPMENT LOCATIONS ARE SUBJECT TO LOCAL DISTRIBUTION COMPANY APPROVAL.
 4. BESS INSTALLATION WIRING SHALL BE INACCESSIBLE TO THE PUBLIC BY ENCLOSING THE EQUIPMENT FACILITY WITH A FENCED BOUNDARY. FENCE CONSTRUCTION SHALL CONFORM TO OPSD-872.01, OPSD-872.02 AND OPSD-872.130.
 5. ALL MECHANICAL DESIGNS ARE SUBJECT TO APPROVAL BY A LICENSED ENGINEER IN THE PROVINCE OF ONTARIO.
 6. PHYSICAL LOCATIONS AND POSITIONS ARE APPROXIMATE AND ARE SUBJECT TO SITE CONDITIONS.
 7. PROJECT CONTRACTOR TO REVIEW ALL SPECIFIED LOCATIONS PRIOR TO INSTALLATION.
 8. PROJECT CONTRACTOR IS RESPONSIBLE FOR NOTIFYING THE ELECTRICAL CONSULTANT FOR ANY CONDITIONS FROM THE APPROVED DESIGN.
- POWERHAUS CONSULTING INC. ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS BASED ON THIRD-PARTY INFORMATION.

SITE PLAN



<p>DEMAND POWER GROUP INC. 188 KING STREET EAST COLBORNE, ON, K0K 1S0 TEL: 647-501-2157 WWW.DEMANDPOWER.CA</p>	<p>POWERHAUS CONSULTING INC. 503-11 SOHO STREET TORONTO, ON, M5T 3L7 TEL: 647-501-2157 WWW.POWERHAUS.TECH</p>	PRELIMINARY DESIGN NOT FOR CONSTRUCTION OR EQUIPMENT PROCUREMENT
		PROJECT NO: 188-KING-UPS SHEET NO: E-001

PROJECT NAME: JEBCO MANUFACTURING FACILITY UPS SYSTEM	DRAWING NO: E-001
PROJECT NO: 188-KING-UPS	DRAWING TITLE: TITLE SHEET AND SITE PLAN

488

ITEM 4



4899 Design Power
 CHANDLER POWER GROUP INC.
 10000 W. WILLOW AVE. SUITE 100
 CHANDLER, AZ 85226



powerhaus
 POWERHAUS CONSULTING INC.
 10000 W. WILLOW AVE. SUITE 100
 CHANDLER, AZ 85226

PRELIMINARY DESIGN
 NOT FOR CONSTRUCTION OR
 EQUIPMENT PROCUREMENT

NO.	DATE	DESCRIPTION
1	08/14/2018	ISSUED FOR CLIENT REVIEW
2	08/14/2018	REVISIONS FOR CLIENT REVIEW
3	08/14/2018	REVISIONS FOR CLIENT REVIEW
4	08/14/2018	REVISIONS FOR CLIENT REVIEW

SINGLE LINE DIAGRAM

PROJECT: JEBCO MANUFACTURING FACILITY UPS SYSTEM

2 MVA / 2.3 MWH

188 KING STREET EAST COLBORNE, ON

CLIENT: JEBCO CORP.

CHECKED BY: DRC

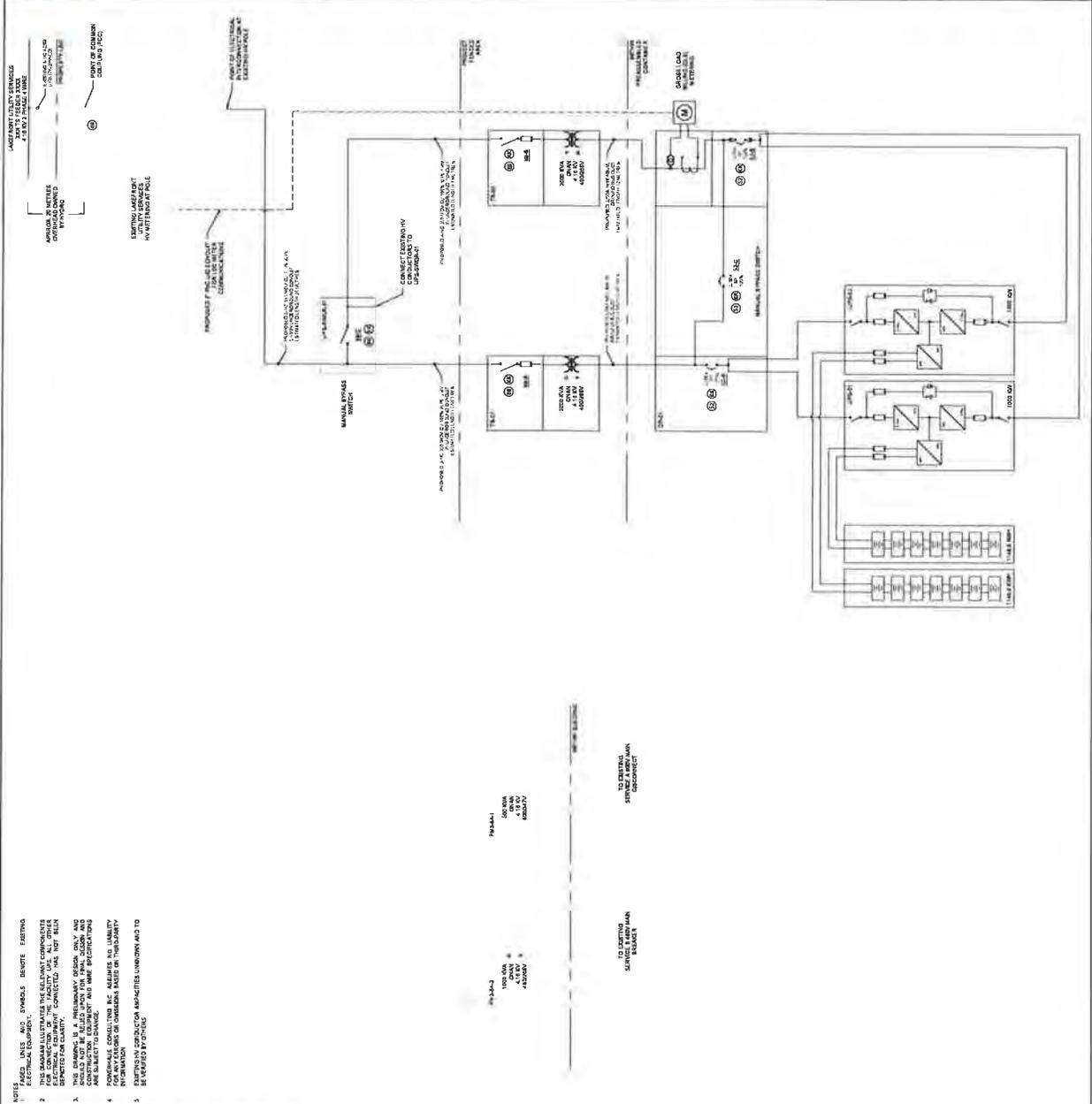
PROJECT NAME: PCI01204_DPG_JEBCO

SCALE: NTS

DRAWN BY: DRC

DATE: 08/14/2018

SCALE: E-101



PROJECT SUMMARY

PROJECT NO.	PCI01204
CLIENT	JEBCO CORP.
PROJECT NAME	JEBCO MANUFACTURING FACILITY UPS SYSTEM
PROJECT ADDRESS	188 KING STREET EAST COLBORNE, ON
PROJECT DATE	08/14/2018
PROJECT STATUS	PRELIMINARY DESIGN
PROJECT TYPE	UPS SYSTEM
PROJECT VALUE	\$4,177,000.00
PROJECT LOCATION	188 KING STREET EAST COLBORNE, ON

SCOPE OF WORK

DESIGN AND CONSTRUCTION OF A 2.3 MVA UPS SYSTEM FOR THE JEBCO MANUFACTURING FACILITY. THE SYSTEM SHALL BE A 480V UPS SYSTEM WITH TWO 1000KW UPS UNITS. THE SYSTEM SHALL BE DESIGNED TO PROVIDE 99.999% AVAILABILITY. THE SYSTEM SHALL BE DESIGNED TO PROVIDE 15 MINUTES OF RUN TIME. THE SYSTEM SHALL BE DESIGNED TO PROVIDE 15 MINUTES OF RUN TIME. THE SYSTEM SHALL BE DESIGNED TO PROVIDE 15 MINUTES OF RUN TIME.

DEVICE LEGEND

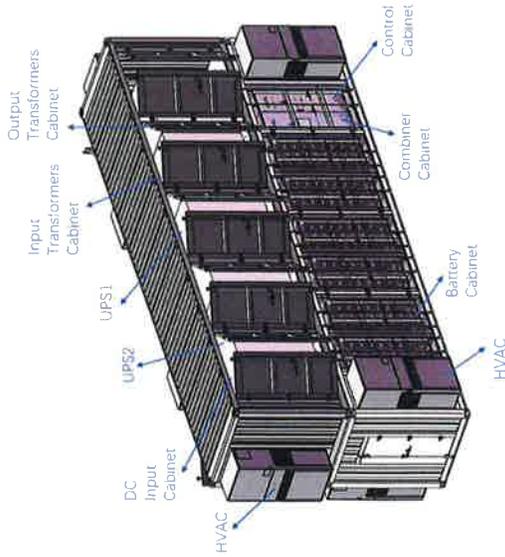
NO.	DESCRIPTION
001	NORMAL DAVANT
002	3000A A 13.8KV 4000A
003	UNINTERRUPTIBLE POWER SUPPLY
004	SYNCHRONISM CHECK
005	UNDERVOLTAGE PROTECTION
006	THREE-PHASE EQUIPMENT
007	REVERSE POWER PROTECTION
008	DIFFERENTIAL OVERCURRENT PROTECTION
009	GROUNDING AND NEUTRAL DISCONNECT PROTECTION
010	GROUNDING AND NEUTRAL DISCONNECT PROTECTION
011	CIRCUIT BREAKER
012	SYNCHRONISM CHECK
013	UNDERVOLTAGE PROTECTION
014	THREE-PHASE EQUIPMENT
015	REVERSE POWER PROTECTION
016	DIFFERENTIAL OVERCURRENT PROTECTION
017	GROUNDING AND NEUTRAL DISCONNECT PROTECTION
018	GROUNDING AND NEUTRAL DISCONNECT PROTECTION

- NOTES**
- ALL SYMBOLS DENOTE EXISTING ELECTRICAL EQUIPMENT.
 - THIS DIAGRAM ILLUSTRATES THE FOLLOWING COMPONENTS: ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE. ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE. ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE.
 - THIS DIAGRAM ILLUSTRATES THE FOLLOWING COMPONENTS: ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE. ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE. ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE.
 - THIS DIAGRAM ILLUSTRATES THE FOLLOWING COMPONENTS: ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE. ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE. ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE.
 - THIS DIAGRAM ILLUSTRATES THE FOLLOWING COMPONENTS: ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE. ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE. ELECTRICAL EQUIPMENT CONNECTED TO THE MAINLINE SERVICE.

490



ZNTECH ESS



AC Side Parameters

Max Continuous AC Power 2400 KVA
 Input Voltage Range 450~750Vac
 Input Frequency Range 60 ± 10%Hz
 Power Factor 0.99
 THDI 2% (full load)
 AC Output Voltage 600 ± 1% Vac
 Phase 3Ph+N+PE
 Output Frequency 60±0.1Hz
 THDV <3%
 Overload 125%, 10min; 150%, 1min

DC Side Parameters

Battery Configuration Module 64V 280Ah
 Cabinet 512V 560Ah(286kWh)
 System 3432kWh
 C Rating Nominal 0.5
 Batt. Voltage Range 448-576Vdc
 UPS Voltage Range 400-672Vdc

Efficiency

Max. System Efficiency 94%(Mains mode)
 90%(Battery mode)

Accessories

Air Conditioning HVAC
 Fire Suppression Yes
 Auxiliary Power Supply Yes
 Space for future capacity Yes

Protection

DC over/under voltage protection
 DC short-circuit protection
 AC over/under voltage protection
 AC output overload protection
 Insulation monitoring
 Module temp. protection

General Data

Dimensions 12192(L)*2438(W)*2896(H)(BESS)
 12192(L)*2438(W)*2896(H)(UPS)
 Weight ~42tons (BESS)
 ~20tons(UPS)
 Operating temp. range -20~50°C
 Noise level <75dB
 Ingress protection rating NEMA 3R
 Display Touch screen with LED Indicators
 BMS Communication Modbus RTU, Modbus TCP/IP
 UPS Communication Modbus RTU, Modbus TCP/IP
 Compliance UL1642, UL1973, IEC62619, UL9540A

Feature

Battery, BMS, UPS, Transformer--Fully Integrated
 Complete Modular Design
 Easy Deployment and fully removable
 Direct paralleling capability
 Ground lightning protection

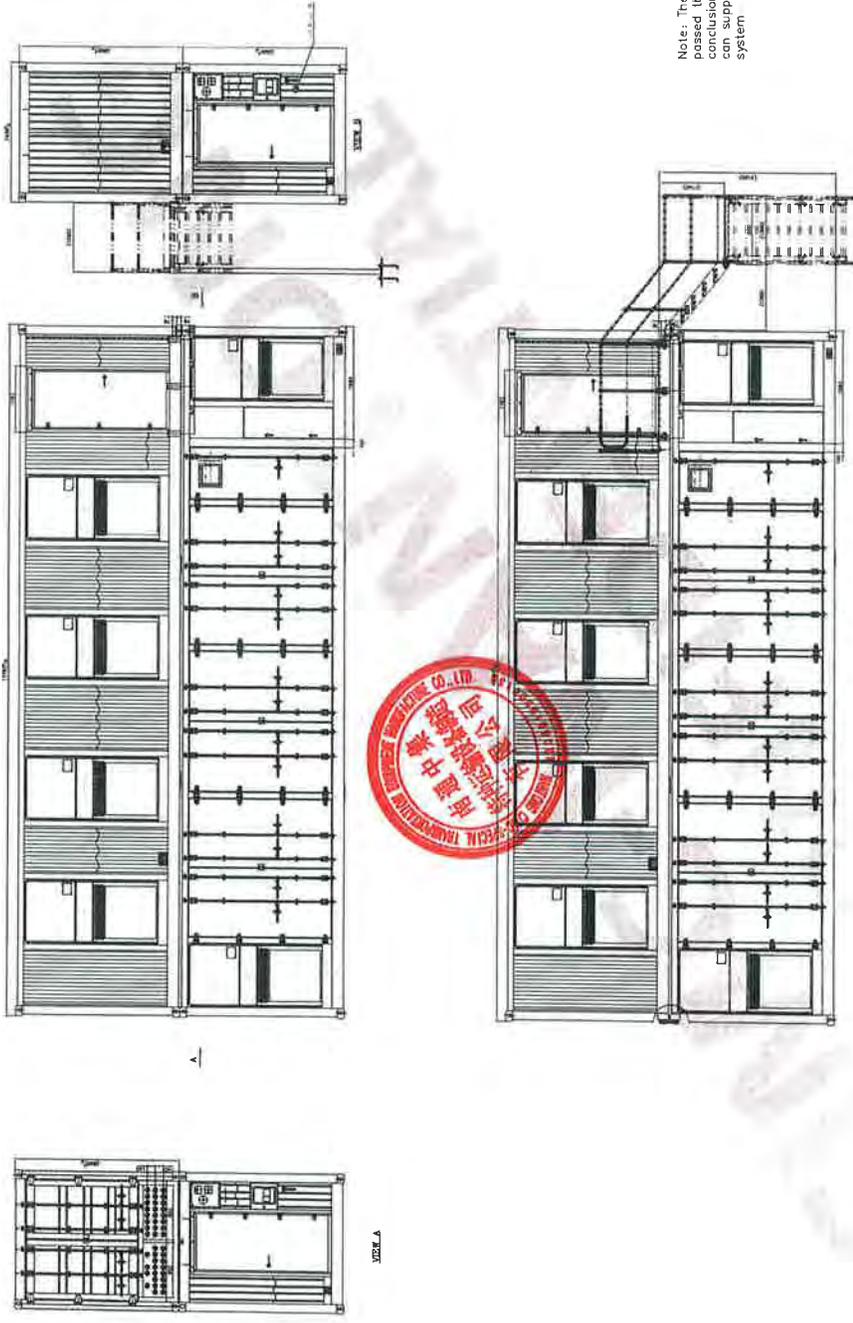
ITEM 5

492

ITEM 6

493

DWG No.:



Note: The battery system has been passed the FCA test and the conclusion shows that this structure can support the installation of UPS system



CIMC 中集		40'x8'x9'6" GENERATOR CONTAINER	
TITLE: 40'HC CONTAINER	SCALE: 1:50	DATE: 2020.09.24	WEIGHT: KG
DRAWN BY: Chen BL	2020.09.24	CHECKED BY: Song DR	2020.09.24
APPROVED BY: Zhai JX	2020.09.24	SHEET OF	ISSUE: D20-00
		NT-S-2542C&	NT-S-2545G
THE DRAWING AND ALL COPIES THEREOF ARE CONFIDENTIAL AND THE PROPERTY OF CIMC-NANTONG. ANY PART DRAWING SHALL NOT BE COPIED, REPRODUCED, DISCLOSED OR DISTRIBUTED TO A PARTY WITHOUT WRITTEN APPROVAL FROM CIMC-NANTONG.			

494

495

Master Technical Requirement Specifications

UPS + BESS + Containerization Equipment

Demand Power Group Inc

Toronto, Ontario, Canada

496 TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

Table of Contents

Content Header	3
Part 1 - BACKGROUND	3
Part 2 - UPS SYSTEM	3
Part 3 - Battery Energy Storage Systems (BESS)	21
Part 4 - Equipment Shelter	24

Specifications indicate general arrangement of the systems and work included in the contract. Misinterpretation of any requirements of the specifications will not relieve the Contractor of responsibility to complete the work.

END OF TABLE

System Overview

The master technical requirement specification encompasses the technical requirements for the UPS and BESS system, including their respective containerization equipment. This document serves as a guide for major vendors (UPS and Battery and all underlining equipment) as well as general contractors (GC) to follow when drafting a proposed solution. It includes a background section, an overview, product details and execution requirements for the UPS system, the battery, and the containers.

Part 1 - BACKGROUND

1. DEMAND POWER GROUP INC.

1.1. Demand Power Group Inc. is in Toronto, Ontario, providing clients with intelligent power management for improving productivity and profitability. Demand Power Group strives to significantly reduce the commercial and industrial client's overall electricity costs.

2. Jebco Manufacturing UPS.

2.1. This proposed 2.3MW UPS plus BESS system is designed for Jebco Manufacturing Facility, and will be installed near their substation located at 188 King Street East in Colborne ON. Jebco Manufacturing specializes in medium to high volume precision machining of OEM non ferrous components. Their facility includes the most technologically advanced equipment for high and medium volume machining that is available today.

2.2. UPS Sizing:

System	Peak demand (kVA)	Min. UPS size	Nameplate UPS size (MVA)
1	926.28	1116.4	2 (1.0*2)

2.3. BESS Sizing:

System	Peak demand (kw)	Min. BESS size	Number of Racks
1	799.73	2098.47	8

Part 2 - UPS SYSTEM

3. OVERVIEW

3.1. This specification describes a 3-phase 4-wire transformer-less continuous duty, and on-line, solid-state, uninterruptible power system hereinafter referred to as the UPS. The UPS shall operate

utilizing the existing power distribution system to provide a high quality, reserve source of power to electronic equipment loads. The system shall also be used to replace utility power during grid peak periods and this function will be initiated by an external signal provided by a third party. This signal will cause the rectifier to cease functioning or reduce the grid consumption, placing the output load on the inverter and battery. Return to the normal functioning of the rectifier will also be initiated by an external signal. The UPS system will operate with a battery consisting of a Lithium-based chemistry battery further described in this document. The system shall consist of a three-level converter, three-level neutral clamped solid-state inverter, automatic static bypass transfer circuit, Manual Wrap-Around Maintenance Bypass, and Transformers as required to accommodate building voltages.

4. SPECIAL NOTES

- 4.1. 3 to 4 hours of Lithium Batteries (e.g., Li-Ion, LFP, etc.) per UPS will be supplied.
- 4.2. System provider is responsible for ensuring and demonstrating UPS Systems and battery system will function properly together.
- 4.3. The UPS provider is also responsible for ensuring the UPS System so that an external signal will control the rectifier function.

5. STANDARDS

- 5.1. The UPS designed in accordance with and complies with the following standards:
 - 5.1.1. UL 1778 Standard for UPS Equipment.
 - 5.1.2. UL9540/A (Standard for Energy Storage Systems and Equipment) (CAN/ANSI/UL 9540-16)
 - 5.1.3. UL9540 Energy Storage System
 - 5.1.4. CSA 22.2 (Canadian Standards Association – cUL Equipment).
 - 5.1.5. Ontario Electrical Safety Code (OESC).
 - 5.1.6. Ontario Building Code (OBC).
 - 5.1.7. CSA Z462, Workplace Electrical Safety.
 - 5.1.8. CAN/CSA-C22.2 No.31, Switchgear Assemblies.
 - 5.1.9. CSA C22.1, Canadian Electrical Code, Part 1, Safety Standard for Electrical Installations.
 - 5.1.10. CAN/CSA-C22.2 NO. 60947, Low-voltage switchgear, and control gear - Part 1:
 - 5.1.11. ANSI/IEEE C37.20.1 - IEEE Standard for Metal Enclosed Low Voltage Switchgear.
 - 5.1.12. ANSI/IEEE C37.13 - IEEE Standard for Low-Voltage AC Power Circuit Breakers Used in Enclosures.
 - 5.1.13. IEC (International Electro-technical Commission) Semiconductor Converter Standards.
 - 5.1.14. EMI compatibility: IEC 62040-2 (category C3)
 - 5.1.15. FCC Part 15 Subpart B Class A (Option)
 - 5.1.16. IEEE 587, ANSI C62.41 1991 Standard for Surge Withstand Ability.
 - 5.1.17. ISO 9001 Quality Assurance program.

5.1.18. Energy Star Compliant.

6. SUBMITTALS

6.1. General: Submit sufficient information to determine compliance with the Contract Documents. Identify submittal data with the specific equipment tags and/or service descriptions to which they pertain. Submittal data shall be clearly marked to identify the specific model numbers, options, and features of equipment and Work proposed.

6.1.1. All deviations from the Contract Documents shall be indicated within a submittal. Each deviation shall reference the corresponding drawing or specification number, show the contract document requirement text and/or illustration, and shall be accompanied by a detailed written justification for the deviation.

6.2. Product Data: Submit product data specific to each type and rating of equipment proposed to include the following:

6.2.1. Manufacturer, supplier, and proposal specific contact information.

6.2.2. Manufacturer's catalog data indicating equipment specifications and construction features including all furnished options, and accessories.

6.2.3. Switchboard assembly rated operating characteristics, and electrical characteristics.

6.2.4. Enclosure type, NEMA rating, material and finishes.

6.2.5. Certification of UL/CSA conformity

6.2.6. Electronic 2D dimensional drawing and 3D model CAD files for standard units shall be provided upon request if not available from the manufacturer's website.

6.3. Shop Drawings: Submit shop drawings for each product and accessory required. Include information not fully detailed in manufacturer's standard product data. Shop drawings shall include, but not be limited to the following:

6.3.1. Equipment assembly. Indicate dimensions, shipping section dimensions, weights, foundation requirements, required clearances, location, and size of each field connection, and mounting and installation instructions.

6.3.2. Include elementary and interconnection diagrams for power, signal, control, and communications wiring. Diagrams shall provide the detailed information. All field terminals shall be identified and updated later within the O&M data to include actual field connection information.

6.4. Seismic Qualification Certificates: For each equipment assembly provide the following from the manufacturer.

6.4.1. Certificate of compliance.

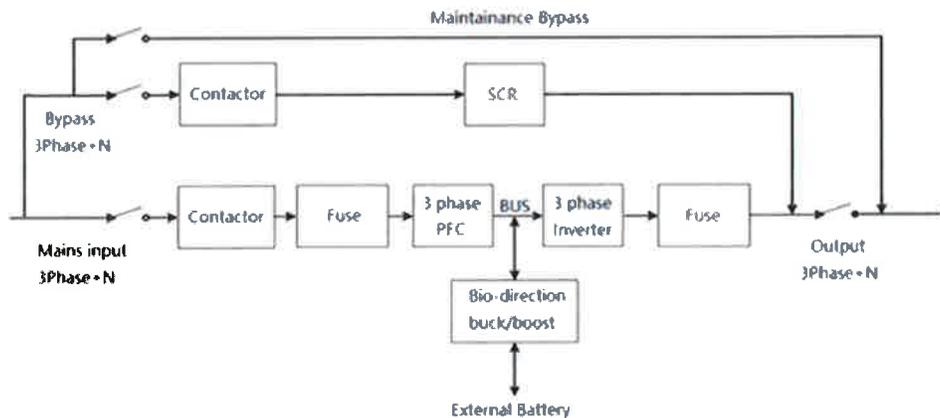
6.4.2. Dimensioned Outline Drawings of Equipment Unit: Identify center of gravity and locate and describe mounting and anchorage provisions.

6.4.3. Detailed description of equipment anchorage devices on which the certification is based, and their installation requirements.

6.5. Equipment arrangement Drawings: Container floor plans drawn to scale, showing dimensioned layout on which the following items are shown.

- 6.5.1. Required working clearances and required area above and around Switchgear.
- 6.5.2. Show equipment layout and relationships between electrical components and adjacent structural and mechanical elements.
- 6.5.3. Show support locations, type of support, and weight on each support.
- 6.6. Operation & Maintenance (O&M) Manuals: Submit installation, operation, and maintenance data to be included within operation and maintenance manuals. O&M data shall include but not be limited to the following:
- 6.6.1. Manufacturer, supplier, support, and repair center specific contact information.
- 6.6.2. Manufacturer's standard operation and maintenance data assembled for each size and type of equipment furnished.
- 6.6.3. All construction, installation, schematic, and wiring diagrams updated to an as installed and commissioned state.
- 6.6.4. All configured settings/parameters for adjustable components updated to an as installed and commissioned stated if different from the factory default. Electronic copies of configuration files shall be provided, on USB stick, where these configurations can be saved as an electronic file for future upload into replaced or repaired components.
- 6.6.5. List of furnished and recommended spare parts.
- 6.6.6. Statement of standard Warranty, extended warranty options and costs.

7. UPS SYSTEM DESCRIPTION



7.1. Components

7.1.1. The transformer less UPS system shall consist of the following major equipment:

7.1.1.1. UPS Module

- 7.1.1.1.1. Three-level IGBT based converter.
- 7.1.1.1.2. Three-level neutral clamped IGBT based Inverter.
- 7.1.1.1.3. Digital Signal Processor (DSP) using Pulse Width Modulation (PWM) for Direct Digital

Control (DDC) of all UPS control and monitoring functions.

- 7.1.1.1.4. Static bypass switch sized to provide continuous duty and fault clearing.
- 7.1.1.1.5. Semiconductor fuses for overcurrent protection and disconnecting device for isolation.
- 7.1.1.1.6. Contactors in both double conversion and static bypass line for back feed protection.
- 7.1.1.1.7. Battery protective and disconnect device.
- 7.1.1.1.8. External Maintenance bypass switch.
- 7.1.1.1.9. Local control panel with local/remote lockout option.

8. Mode of Operation

8.1. The UPS shall be designed to operate continuously at rated capacity as an on-line, automatic reverse transfer system in the following modes:

8.1.1. Main Mode - When the mains supply is normal, the rectifier will convert the AC power into DC power to charge the battery and supply power for the inverter. The input power from the grid shall be controllable (0-100%) and the battery shall be able to adjust dynamically to deliver remaining power to loads.

8.1.2. Battery Mode - In the event of a utility AC power failure, the inverter shall derive its input from the system battery, therefore providing uninterrupted power to the critical load. This transition shall be accomplished without any switching or coupling, and with no interruption of power to the critical load from either a failure or restoration of the utility AC power.

8.1.3. Controlled On-Battery – Each UPS must permit remote control to isolate the UPS from grid power and place the load on the battery. This transition shall be accomplished without any switching or coupling, and with no interruption of power to the critical load from either the isolation from or reconnection to the utility AC power.

8.1.4. Bypass Mode: When the inverter output becomes abnormal (such as over-temperature, short circuit, output voltage abnormal or overload and exceed the range that the inverter can withstand), the inverter will shut down automatically to avoid damage. If the mains is still normal at this moment, power will flow through the static bypass to supply the load.

8.1.5. Maintenance Bypass Mode: During extended downtime or maintenance, the UPS can be shut down and power can be routed through the maintenance bypass switch for supplying the loads. During switchover to maintenance bypass, the power supply to loads will not be interrupted.

9. Expandability

9.1. The UPS System shall have provisions to expand its power rating as required by the project.

10. ENVIRONMENTAL CONDITIONS

10.1. The UPS shall be capable of withstanding any combination of the following external environment conditions without mechanical damage, electrical failure, or degradation of operating characteristics.

10.1.1. Operating ambient temperature: - 5°C to 40°C (23°F to 104°F) no derating required.

- 10.1.2. Non-operating and storage ambient temperature: -20°C to +70°C (- 4°F to 158°F).
- 10.1.3. Operating relative humidity: 0% to 95%, non-condensing.
- 10.1.4. Operating altitude: Sea level to 2000 meters (6500ft).
- 10.1.5. There should be no inflammable/explosive gas.
- 10.1.6. Dust in the room where the UPS is installed must not exceed normal atmospheric dust levels. In particular, that dust should not include iron particles, oils or fats, or organic materials such as silicone.
- 10.2. Audible acoustical noise: Provide noise generated by the UPS, when operating under full rated load, at a distance of one meter from any UPS operator surface for each UPS, as measured on the A scale of a standard sound level meter at slow response.
- 10.3. Input surge withstands capability: The UPS shall comply with IEEE C62.41, Category B.

11. WARRANTY

11.1. The UPS manufacturer shall warrant to the original end-user that the Uninterruptible Power Supply System (the "Product") shall be free from defects in material and workmanship under normal use and service for a period of twelve (12) months from the date of installation or eighteen (18) months from the date of shipment of the Product, whichever comes first, at the premises of the original end-user. Unless otherwise stated in the contract service agreement documentation.

12. QUALITY ASSURANCE

12.1. Maintainability

12.1.1. MTTR: UPS component replacement should not exceed 1.5 hours/failure.

12.2. Factory Test

12.2.1. The manufacturer shall fully and completely test the system to assure compliance with the specifications before shipment.

12.2.2. All UPS units shall be delivered with one (1) standard factory test report included in the UPS enclosure. The factory test report shall include the following:

- 12.2.2.1. Series / kVA
- 12.2.2.2. Serial number
- 12.2.2.3. Date of test
- 12.2.2.4. Approved by / Inspected by / Tested by
- 12.2.2.5. Inspection of construction
- 12.2.2.6. Checking of wiring (Black/Red marking on each connection point)
- 12.2.2.7. Grounding continuity
- 12.2.2.8. Insulation strength test
- 12.2.2.9. Control circuit operation
- 12.2.2.10. Measurement of steady state characteristics (Voltage/ current/ efficiencies)

- 12.2.2.11. Transient characteristics (0-100% step load, AC input failure)
- 12.2.2.12. Overload testing
- 12.2.2.13. Static transfer switch operation
- 12.2.2.14. Maintenance bypass switch operation

12.2.3. At least one UPS system shall be delivered with a special factory test report to demonstrate the proper operation of the UPS with the 4-hour Lithium Battery and the remote control of the rectifier (0-100%) from an external third-party signal.

13. ELECTRIC CHARACTERISTICS OF UPS SYSTEM

13.1. The UPS shall have the following electrical characteristics:

13.1.1. UPS Output Capacity

- 13.1.1.1. UPS nominal capacities shall be a minimum of 30% over Projected Peak.
 - 13.1.1.2. 2MVA system shall be configured connecting 2, 1.0MVA units in parallel.
- #### 13.1.2. Main switchboard with Manual Maintenance Bypass
- 13.1.2.1. Switchboard Rated Voltage shall be 435Vac with Operating Voltage of 400Vac.
 - 13.1.2.2. All bus shall be rated to the full ampacity of the system.
 - 13.1.2.3. The short circuit current rating of the system shall be determined by the available fault current at the Low Voltage Switchgear. All circuit interruption shall be accomplished by the circuit breaker and without the aid of limiter fuses.
 - 13.1.2.4. The switchboard will be equipped with 100% rated breakers.
 - 13.1.2.5. The air circuit breaker trip system shall be an electronic trip unit and LSIG type.
 - 13.1.2.6. All the circuit breakers shall be able to operate(open/close) using remote control signal.
 - 13.1.2.7. All customer secondary control and communications connections shall be made from the front of the switchgear lineup.
 - 13.1.2.8. A dedicated wiring area accessible from the front shall allow easy access to all control or communications terminations.
 - 13.1.2.9. Each breaker shall have lockout provision to implement LOTO.
 - 13.1.2.10. The switchboard shall be equipped with interlocks, wiring, components etc. to ensure the ground fault systems operates without nuisance tripping on the main bus of the switchboard.
 - 13.1.2.11. Manual bypass and output breakers shall be 4 pole breakers. The transition operation must be make-before-break.
 - 13.1.2.12. Switchboard shall have metering CT/PT compartments for utility revenue meter at the main service line and GLB meter at the UPS output feeder.
 - 13.1.2.13. The termination cabinet dimension shall be evaluated based on the capacity of the system (number of cable or dimension of the bus).
 - 13.1.2.14. Copper ground bus minimum 50 x 6 mm extending full width of switchgear and situated at bottom.

504 TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS + BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

- 13.1.2.15. The control voltage for protection and control functions shall be 120 V DC.
- 13.1.2.16. Equipment shall be suitable for use as service entrance equipment and labeled according to CSA requirements.

13.1.3. AC Input

- 13.1.3.1. Nominal input voltage: 400V.
- 13.1.3.2. Number of phases: 3 phase, 4 wire, plus ground.
- 13.1.3.3. Voltage range: +25%, -40%.
- 13.1.3.4. Frequency and range: 60Hz \pm 10%.
- 13.1.3.5. Power walk-in time: 1-30 Seconds Variable, set_{default} at 10 seconds (0%to 100% load).
- 13.1.3.6. Power factor:
 - 13.1.3.6.1. 0.99 typical at 100% load.
 - 13.1.3.6.2. 0.99 typical at 50% load.
- 13.1.3.7. Reflected input current total harmonic distortion (THD):
 - 13.1.3.7.1. 3% typical at 100% load.
 - 13.1.3.7.2. 5% typical at 50% load.

13.1.4. Bypass Input

- 13.1.4.1. Nominal input voltage: 400V.
- 13.1.4.2. Number of phases: 3 phase, 4 wire, plus ground.
- 13.1.4.3. Synchronization voltage range: \pm 10% of nominal.
- 13.1.4.4. Frequency tracking range: 60Hz \pm 5% Maximum.
(Bypass synchronous range shall be selectable from 1% to 5% in 0.1% increments)

13.1.5. AC Output

- 13.1.5.1. Nominal output voltage: 400V.
- 13.1.5.2. Number of phases: 3 phase, 4 wire, plus ground.
- 13.1.5.3. Nominal dynamic Voltage regulation:
 - 13.1.5.4. \pm 1% for a balanced load.
 - 13.1.5.5. \pm 2% for the unbalanced load.
- 13.1.5.6. Voltage balance: 1%
- 13.1.5.7. Manually adjustable output voltage: \pm 3% range.
- 13.1.5.8. Voltage transient response:
 - 13.1.5.8.1. 100% step load: \pm 3%.
 - 13.1.5.8.2. Loss or return of AC input: \pm 1%.
 - 13.1.5.8.3. Retransfer from bypass to inverter: \pm 5%
- 13.1.5.9. (Voltage transient response shall not exceed the above and shall recover to within nominal voltage regulation tolerance within 20 msec.)

505
 MS-11 TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

- 13.1.5.10. Frequency (inverter synchronous): 60 Hz (tracks frequency of static bypass source).
- 13.1.5.11. Free running output frequency (asynchronous): 60 Hz \pm 0.01%.
- 13.1.5.12. Frequency slew rate (inverter synchronized to static bypass): 1 to 5Hz/second (selectable).
- 13.1.5.13. Output voltage harmonic distortion:
 - 13.1.5.13.1. 2% maximum at 100% linear load.
 - 13.1.5.13.2. 5% maximum at 100% non-linear load. (Load power factor 0.95. Crest factor 2.3)
- 13.1.6. Voltage phase angle displacement:
 - 13.1.6.1. \pm 1 degree for 100% balanced load.
 - 13.1.6.2. \pm 3 degrees for 100% unbalanced load. L. Overload capability:
 - 13.1.6.2.1. 105% to 125% for 10 minute(s) (Voltage regulation maintained).
 - 13.1.6.2.2. 126% to 150% for 1 minute(s) (Voltage regulation maintained). M. Fault clearing: Typically, 500% for 1 cycle (utilizing bypass source).
- 13.1.7. DC Input and Battery
 - 13.1.7.1. Current ripple (normal operation): less than 10% of the battery AH at DC/DC chopper circuit switching frequency.
- 13.1.8. On-Line, Double Conversion Efficiency.
 - 13.1.8.1. Any Type of ECO or ECO Mode Type Systems Not Allowed
 - 13.1.8.2. Provide AC to AC and DC to AC Efficiency figures for loads at 25%, 50%, 75%, 85%, and 100% of Nominal Loads as provided in section 2.1.1

14. UPS MODULE

- 14.1. UPS module shall be comprised of the following:
 - 14.1.1. Converter Section:
 - 14.1.1.1. AC input, converter input contactor, fuse and 3 level IGBT based PWM controlled Converter/rectifier.
 - 14.1.2. General
 - 14.1.2.1. The Converter shall convert the incoming AC power into regulated DC power to supply the inverter input and system battery. The Converter shall utilize the following technologies:
 - 14.1.2.1.1. Input Power: Rated kVA at 1:1 ratio.
 - 14.1.2.1.2. DSP based control logic.
 - 14.1.2.1.3. Fault contribution for any grid fault is zero.
 - 14.1.2.2. Reflected Harmonic Content
 - 14.1.2.2.1. The IGBT converter shall typically not introduce more than 3% reflected input current total harmonic distortion (THD) into the utility AC input source at nominal voltage and rated load. The reflected input current shall typically not exceed 5% THD at 50 % load.

14.1.2.2.2. Automatic Input Power Walk-in

14.1.2.2.2.1. The converter logic and control circuit power walk-in function enable delayed and timed ramping of input current. After energizing the converter input, initiation of the power walk-in function and current ramping shall be delayed by a maximum of 3600 seconds. Upon initiation of the power walk-in function, the ramping of current shall be timed to gradually increase the load within 10 seconds. This function is included as standard in the converter control circuitry.

14.1.2.3. Input Overcurrent Protection

14.1.2.3.1. Converter input contactor and the input current limit control shall provide converter protection against excessive input overload conditions.

14.1.2.4. Step Load Change Operation (0-100%)

14.1.2.4.1. In the occurrence of a 100% step load change, the UPS Module inverter shall draw power only from the converter to provide the required load demand. The system batteries will not be cycled at any time during a step load change.

14.1.2.5. Input Current Limit

14.1.2.5.1. The Converter logic shall provide input current limiting by limiting the AC input current. Three (3) line-side current transformers shall be employed as a means of sensing the current amplitude. The DC output current limit values are as follows:

14.1.2.5.1.1. Input current limit setting: 110% of nominal rated current.

14.1.2.5.1.2. The AC input current limit shall be set up so that the converter can provide sufficient capacity to the inverter at rated load and have the capability to recharge a discharged battery.

14.1.2.5.1.3. The input current limit protects converter components from damage due to excessive input current.

14.1.2.6. Input Power Demand

14.1.2.7. The Converter logic and control shall also be capable of providing auxiliary current limiting when initiated by an external dry contact closure (e.g., in the event power demand is required when the UPS is fed from a generator).

14.1.2.8. Power Demand: Adjustable, maximum 110% of nominal rated current.

14.2. Charger/Booster

14.2.1. General

14.2.1.1. The charger/booster utilizes solid-state Pulse Width Modulation (PWM) controlled Insulated Gate Bipolar Transistors (IGBT).

14.2.2. Battery Charge Current Limit

14.2.2.1. The converter logic and control circuit DC battery current limiting function enable controlled battery charging. The battery charge current limit will control the recharge current by reducing the converter output when the set limit is reached. The following battery current limit shall be provided as a minimum:

14.2.2.1.1. Battery charge current limit: 10% of battery Ah rate.

14.2.2.1.2. Maximum charge current: 20% ampere of UPS rated kVA.

14.2.3. Equalize Charge Timer

14.2.3.1. UPS Module logic and control shall provide an electronic equalize charge timer function (0 to 100hour selectable - default twenty- four (24) hour). Once activated the timer circuit shall provide a high-rate equalizing charge voltage to the system battery for the selected time. The function can be manually activated and deactivated via the UPS Module LCD. The level of equalizing voltage shall be equal to that stated by the battery manufacturer. Upon completion of the timer count, the converter output voltage shall return to the specified float voltage. An Auto Equalize charge operation is also provided following AC input restoration and subsequent to the power walk in function. This equalizing charge will occur until the battery target voltage is reached (condition is met to end equalizing charge), in which float voltage will be applied.

14.2.4. Temperature Control Battery Charging

14.2.4.1. The UPS shall have as standard a battery temperature compensation function allowing the converter voltage to fold-back to a safe value in the event the battery system temperature reaches a predetermined (dangerous) level. Initiation will be by dry contact input from thermocouple sensor (User supplied).

14.2.5. DC Input Protection

14.2.5.1. The DC input fuse/contact arrangement shall be provided by the battery supplier and shall provide DC input protection against excessive input overload conditions.

14.2.6. Ripple Current

14.2.6.1. The DC (battery) bus RMS ripple current shall be less than 10% of the battery AH at DC/DC chopper circuit switching frequency at 100% load.

14.2.7. Battery Self-Test

14.2.7.1. For a short duration, a small power discharge from the battery is automatically performed. The UPS module, from this small power discharge, evaluates the degradation of the system battery. The following advantages are achieved:

14.2.7.1.1. The Battery Self-Test function can be performed even when the load is on the inverter.

14.2.7.1.2. Due to the short duration of small power discharge, there is no effect on battery life expectancy.

14.2.7.1.3. The small power discharge has a negligible effect on the overall battery backup time. The small power that is discharged by the battery will quickly be replenished.

14.2.7.2. The Battery Self-Test will automatically occur every 720-hour interval. An event alarm will occur and be displayed if battery abnormalities are detected.

14.3. Inverter

14.3.1. General

14.3.1.1. The inverter shall generate AC power derived from DC power supplied from the converter or system battery. The inverter shall be capable of providing rated output as specified while operating from any DC voltage within the battery operating range. The inverter shall utilize the following technology:

14.3.1.2. Solid-state PWM controlled three-level IGBT power transistor modules.

14.3.1.3. UPS Module Full Direct Digital Control (DDC) Adoption:

14.3.1.3.1. Field Programmable Gate Array (FPGA) Control

14.3.1.3.2. DSP based Control.

14.3.2. Voltage Regulation

14.3.2.1. The inverter output voltage shall not deviate by more than $\pm 1\%$ RMS with the following steady-state conditions:

14.3.2.1.1. 0 to 100% loading.

14.3.2.1.2. Inverter DC input varies from maximum to minimum.

14.3.2.1.3. Environmental condition variations within the specifications defined herein.

14.3.3. Voltage Adjustments

14.3.3.1. The inverter shall have the ability to manually control and adjust the output voltage to within $\pm 3\%$ of the nominal value.

14.3.4. Voltage Transient Response

14.3.4.1. The dynamic regulation and transient response shall not exceed $\pm 2\%$ for 100% step load (applied or removed), $\pm 1\%$ for loss or return of AC input, and $\pm 5\%$ for the inverter to bypass and vice versa transfer.

14.3.5. Transient Recovery

14.3.5.1. Voltage transient response shall not exceed the above specification and shall recover to within nominal voltage regulation tolerance within 20ms.

14.3.6. Frequency Control

14.3.6.1. The Inverter output frequency shall be controlled by an oscillator internal to the UPS module logic. It shall be capable of synchronizing to an external reference (e.g., the bypass source) or operating asynchronously. A message located on the touch screen shall identify the loss of synchronization. Synchronization shall be maintained at 60 Hz $\pm 0.01\%$ continuously for the duration of loss of the external reference. The Inverter output frequency shall not vary during steady-state or transient operation due to the following conditions:

14.3.6.2. 0 to 100% loading.

14.3.6.3. Inverter DC input varies from maximum to minimum.

14.3.6.4. Environmental condition variations within the specifications defined herein.

14.3.7. Output Voltage Harmonic Distortion

14.3.7.1. The inverter output shall limit the amount of harmonic content to 2% maximum at 100% linear load, and 5% maximum at 100% non-linear load. The need for additional filtering to limit the harmonic content shall not be required. Therefore, high efficiency, reliability, and original equipment footprint are maintained.

14.3.8. Output Overload Capability

14.3.8.1. The inverter output shall be capable of providing an overload current while maintaining rated output voltage (and voltage regulation) to:

14.3.8.1.1. 105% to 125% for 10-minute duration.

14.3.8.1.2. 126% to 150% for 1-minute duration.

14.3.8.2. The UPS Module Operation/Display panel LED indicator will illuminate to identify an overload condition. If the time limit associated with the overload condition expires or the overload is more than the set current, the load power shall be transferred to the bypass source without interruption.

14.3.9. Inverter Current Limit

14.3.9.1. The inverter output current shall be limited to 230% of the rated load current. Two current transformers in separate locations on the output (and operating separately offering redundancy) shall be employed as means of current sensing. The inverter current limit shall protect inverter components from damage due to excessive over-current (Excessive load, faults, and reverse current).

14.3.10. Inverter Output Isolate

14.3.10.1. The inverter shall be equipped with an output contactor to enable isolation of the inverter from the load and bypass source.

14.4. UPS Module Control and Monitoring

14.4.1. UPS Module Control and Monitoring operates and controls the converter, inverter, and independent automatic bypass static switch circuit.

14.4.2. The UPS Module control circuitry shall utilize Digital Signal Processor (DSP) and Application Specified IC (ASIC) which create advanced controllability and simplify the control circuit. Direct Digital Control (DDC) utilizing DSP and ASIC will be employed to ensure high reliability, as well as functionality and performance as specified.

14.4.3. All UPS Module Control and Monitoring printed circuit boards shall be effectively sealed to protect against corrosive vapors.

14.4.4. The UPS Module Control power supply shall employ a redundant design configuration, utilizing the UPS AC input (utility), Bypass input, and the UPS Module inverter output, therefore, enhancing reliability.

14.5. Bypass and Static Switch

14.5.1. UPS module shall contain an automatic bypass static switch circuit and associated bypass static switch transfer control circuitry.

14.5.1.1. General

14.5.1.1.1. A bypass circuit shall be provided as an alternate source of power other than the inverter. A high-speed Thyristor switch and wrap-around contactor shall be used to assume the critical load during automatic transfers to the bypass circuit. The static switch and wrap-around contactor shall derive power from an upstream bypass feed contactor internal to the UPS module. The bypass circuit shall be capable of supplying the UPS rated load current and provide fault clearing current capabilities. The UPS system logic shall employ sensing which shall cause the static switch to energize within 150 microseconds, therefore, providing an uninterrupted transfer to the bypass source when any of the following limitations are exceeded:

14.5.1.1.1.1. Inverter output under-voltage or overvoltage.

14.5.1.1.1.2. Overloads beyond the capability of the inverter.

14.5.1.1.1.3. DC circuit under voltage or overvoltage.

14.5.1.1.1.4. Final voltage of the system battery is reached (bypass source present and available).

14.5.1.1.1.5. Major fault.

14.5.1.2. Automatic Re-transfers

14.5.1.2.1. If the critical load must be transferred to the bypass source due to an overload, the UPS system logic shall monitor the overload condition and, upon the overload being cleared, perform an automatic re-transfer back to the inverter output. The UPS system logic shall only allow a re-transfer to occur three times within five minutes. Re-transfers shall be inhibited on the fourth transfer due to the likelihood of a recurring problem at the UPS load distribution. All re-transfers will be inhibited if the inverter and static bypass line are not synchronized.

14.5.1.3. Manual Transfers

14.5.1.3.1. The UPS shall be capable of transferring the critical load to/from the bypass source via the front control panel. If performing manual retransfers to the inverter or automatic retransfers, the UPS system logic shall force the inverter output voltage to match the bypass input voltage and then parallel the inverter and bypass sources providing a make-before-break transition allowing a controlled walk-in of load current to the inverter. Manual transfers will be inhibited if the inverter and static bypass line are not synchronized.

14.5.1.4. Static Switch

14.5.1.4.1. The static switch shall be a high-speed transfer device comprised of naturally commutated Thyristors. The static switch will have overcurrent protection and a contactor for back feed protection.

14.6. Operation/Display Panel

14.6.1. The control panel shall employ the use of a 5.7" touch screen interface which allows lock-out of all UPS control functions for security (The Emergency Power Off function shall not be locked out). The operator interface shall provide the following:

14.6.1.1. UPS start-up procedure

14.6.1.2. UPS shutdown procedure

14.6.1.3. Emergency Power Off (EPO)

14.6.1.4. Audible alarm silence

14.6.1.5. System status levels

14.6.2. The UPS module shall be provided with a control/indicator panel. The panel shall be on the front of the UPS module. Controls, meters, alarms, and indicators for the operation of the UPS module shall be on this panel.

14.6.3. Graphic Operator Terminal 10.4" Liquid Crystal Color Display (LCD):

14.6.3.1. The LCD touch screen interfaces with the UPS Module Control and main processor board to provide menu-driven operator instructions and UPS Module operation details. The LCD indicates system operation, operational guidance, measurement data, set up data, and alarm messages and logs. All metering shall be digitally displayed on the LCD having an accuracy of 1% or

better.

14.6.3.2. The touch screen area is composed of four MENU sheets: MAIN, MEASUREMENT, OPERATION, and STATUS. Each MENU sheet has a name tab at the top and the four name tabs form an overlap index at the top of the screen area. Touching the name tab of any of the MENU sheets at this index will make that specific MENU be displayed. Each MENU sheet displays specific information and includes touch icons that perform MENU related functions.

14.6.3.2.1. MAIN MENU Sheet: The MAIN MENU indicates power flow and measured values. The LCD panel allows the user to verify the status and operation of the UPS Module components by the mimic display. The following information is available on the MAIN MENU Sheet:

14.6.3.2.1.1. Converter operation

14.6.3.2.1.2. Battery operation

14.6.3.2.1.3. Load on inverter

14.6.3.2.1.4. Load on bypass

14.6.3.2.1.5. Typical measurement values of Input, Bypass, Battery, and Output

14.6.3.2.1.6. Alarm/Fault messages

14.6.3.2.2. MEASUREMENT MENU Sheet: The MEASUREMENT MENU indicates measured values. The following information is available on the MEASUREMENT MENU Sheet:

14.6.3.2.2.1. Display information:

14.6.3.2.2.1.1. Input Voltage and Frequency

14.6.3.2.2.1.2. Bypass Voltage and Frequency

14.6.3.2.2.1.3. Battery Voltage and Charging/Discharging Current

14.6.3.2.2.1.4. Output Voltage, Frequency, and Current

14.6.3.2.2.1.5. Output active power.

14.6.3.2.2.1.6. Output power factor

14.6.3.2.3. OPERATION MENU Sheet: The OPERATION MENU Sheet prompts the user to select specific performance and UPS setting data. (remote or local start & stop operation, date & time adjustment, battery test, etc.)

14.6.3.2.4. STATUS MENU Sheet: The STATUS MENU Sheet indicates event and alarm/fault information and battery discharge records. A maximum of 50 events can be displayed. The following alarm/status information shall be available as a minimum:

14.6.3.2.4.1. Load on Inverter

14.6.3.2.4.2. Battery Low Voltage

14.6.3.2.4.3. Battery Operation

14.6.3.2.4.4. Output Overload

14.6.3.2.4.5. Converter Operation

14.6.3.2.4.6. Static Bypass Input Out of Range

14.6.3.2.4.7. Minor Fault Data

14.6.3.2.4.8. Major Fault Data

14.6.4. LED indication

14.6.4.1. The Operation/Display Panel contains the following LED indication:

- 14.6.4.1.1. Load on Inverter (Green)
- 14.6.4.1.2. Battery operation (Orange)
- 14.6.4.1.3. Load on Bypass (Orange)
- 14.6.4.1.4. Overload (Orange)
- 14.6.4.1.5. LCD Fault (Red)
- 14.6.4.1.6. UPS Fault (Red)

14.6.5. Emergency Power Off (EPO) button

14.6.5.1. The UPS shall be provided with a set of terminals which may connect to a remote EPO contact signal. Remote contact shall be non-powered normally open. UPS shall also have a unit mounted EPO button

14.6.5.2. When the UPS Module EPO button is activated, the EPO function shuts down the UPS module. The EPO function can be performed both locally and remotely. When EPO is performed, all system UPS Modules will be shut down and the critical load dropped.

14.7. Microprocessor Interface/Diagnostics

14.7.1. Microprocessor Controlled Operator Guidance

14.7.1.1. The UPS microprocessor logic shall, as standard equipment, provide menu-driven operator instructions detailing the operation of the UPS system. The instruction menu shall be accessible via an LCD touch screen display located at the control panel. The microprocessor shall monitor each step, thus prompting itself to the next step of the instructions. The following instructions shall be available as a minimum:

- 14.7.1.1.1. Inverters stop.
- 14.7.1.2. Inverters start.
- 14.7.1.3. Transfer of critical load to static bypass source.
- 14.7.1.4. Equalize charge to system battery.

14.8. Microprocessor Controlled Diagnostics

14.8.1. The UPS shall provide microprocessor-controlled diagnostics capable of retaining fault alarms along with metering parameters in the event of a UPS failure. The microprocessor memory data shall be viewed via an LCD or LED located at the control panel. The following alarm/status information shall be provided as a minimum:

- 14.8.1.1. Load on Inverter
- 14.8.1.2. Inverter Operation
- 14.8.1.3. Battery Operation
- 14.8.1.4. Battery Low Voltage
- 14.8.1.5. Output Overload

- 14.8.1.6. Remote Operation
- 14.8.1.7. Battery Depleted
- 14.8.1.8. Battery Temperature Abnormal
- 14.8.1.9. Converter Operation
- 14.8.1.10. DC breaker Open
- 14.8.1.11. Converter Input Out of Range
- 14.8.1.12. Equalize Charge Activated
- 14.8.1.13. Inverter Running Asynchronously
- 14.8.1.14. Load on Bypass
- 14.8.1.15. Static Bypass Input out of Range
- 14.8.1.16. Minor Fault
- 14.8.1.17. Major Fault

14.9. UPS Status and Function Interfacing

14.9.1. Output Contact

14.9.1.1. The internal UPS logic shall provide, as standard equipment, a programmable set of eight (8) normally open, A-type dry contact outputs to allow user interfacing of the UPS operating status. The available parameters are identical to the alarm and status information schedule itemized in the following.

- 14.9.1.1.1. Total Alarm
- 14.9.1.1.2. Minor Fault
- 14.9.1.1.3. Alarm
- 14.9.1.1.4. AC Input Abnormal
- 14.9.1.1.5. Bypass Abnormal
- 14.9.1.1.6. Battery Abnormal
- 14.9.1.1.7. Battery Low Voltage
- 14.9.1.1.8. Battery Depletion
- 14.9.1.1.9. Overload
- 14.9.1.1.10. Overload Pre-alarm
- 14.9.1.1.11. Fault Group 1
- 14.9.1.1.12. Fault Group 2
- 14.9.1.1.13. Synchronous
- 14.9.1.1.14. Asynchronous
- 14.9.1.1.15. Remote Operation Enable
- 14.9.1.1.16. Load on Inverter
- 14.9.1.1.17. Load on Bypass

514 TECHNICAL REQUIREMENTS SPECIFICATIONS
 UPS + BESS + CONTAINERIZATION EQUIPMENT
 DEMAND POWER GROUP INC

- 14.9.1.1.18. Load On AC
- 14.9.1.1.19. Battery Operation
- 14.9.1.1.20. Converter Operation
- 14.9.1.1.21. Inverter Operation
- 14.9.1.1.22. Input breaker Close/Open
- 14.9.1.1.23. Output breaker Close/Open
- 14.9.1.1.24. Maintenance bypass Close/Open
- 14.9.1.1.25. Static bypass ON/OFF
- 14.9.1.1.26. Power Demand
- 14.9.1.1.27. Equalizing Charge aa. Another Bus Synch OK

14.9.2. Integrated UPS Communications Protocols

14.9.2.1. The UPS shall have a factory-installed integral communications system capable of communicating real-time UPS data to a Battery Management Systems (BMS) or other information/analytical systems. These communication protocols shall be user selectable and comprised of MODBUS TCP/IP (Ethernet); Simple Network Management Protocol (SNMP) Simple Mail Transfer Protocol (SMTP); and Web Browser.

14.9.3. Input Ports

14.9.3.1. The UPS shall have, as standard equipment, EPO (Emergency Power Off) and selectable four (4) input ports. The selectable input ports are the following parameters:

- 14.9.3.2. Remote Start
- 14.9.3.3. Remote Stop
- 14.9.3.4. Power Demand
- 14.9.3.5. Power Demand 2
- 14.9.3.6. Battery Liquid Low
- 14.9.3.7. Battery Temperature Abnormal
- 14.9.3.8. Generator Operation
- 14.9.3.9. Asynchronous Operation
- 14.9.3.10. Another Bus Synch
- 14.9.3.11. Remote Inverter Supply (MMS)
- 14.9.3.12. Remote Bypass Supply (MMS)
- 14.9.3.13. Ext Byp dV Str
- 14.9.3.14. Battery Charger Limit 2
- 14.9.3.15. Charger Stop
- 14.9.3.16. External Alarm
- 14.9.3.17. CB2 Ex

14.9.4. Remote Control ON/OFF (including control over Modbus)

14.9.4.1. The UPS manufacturer shall offer a Remote Status Alarm Panel (RSAP), which shall not allow any control over the UPS. The RSAP shall have, as standard equipment, a battery backup feature allowing it to continue monitoring UPS status conditions during power outage situations. Ride through shall be for a minimum of 8 hours. The RSAP shall act only as an annunciation panel providing the following alarms/indications as a minimum:

- 14.9.4.1.1. Converter on
- 14.9.4.1.2. Load on Inverter
- 14.9.4.1.3. Load on Bypass
- 14.9.4.1.4. UPS Failure
- 14.9.4.1.5. Output Overload
- 14.9.4.1.6. UPS in battery back-up mode
- 14.9.4.1.7. Low battery while in back-up mode

14.9.5. Parallel Synch Circuit operation

14.9.5.1. The UPS manufacturer shall offer a Sync circuit which shall allow any two or more different UPS modules to sync into a master Sync source. The circuit allows both UPS modules to operate into a common output transfer cabinet and allows the load to continue to operate without any degradation to the load.

14.9.5.2. The UPS manufacturer shall offer a Kirk Key-based interlock system between the UPS inverter and manual bypass breaker. The interlocking panel shall have a status LED and a dry contactor to provide the status to the local control system.

15. MECHANICAL DESIGN

15.1. Cabinet Structure (Enclosure)

15.1.1. Each equipment bay shall be a separately constructed cubicle assembled to form a rigid freestanding unit. Minimum sheet metal thickness shall be 11-gauge steel on all exterior surfaces. Adjacent bays shall be securely bolted together to form an integrated rigid structure.

15.1.2. All steel parts, except galvanized (if used,), shall be cleaned and a zinc-phosphate (outdoor equipment) or iron phosphate (indoor equipment) pre-treatment applied before paint application.

15.1.3. The paint color shall be ANSI-49 or ANSI-61. TGIC polyester powder is applied electrostatically through the air. Following paint application, parts shall be baked to produce a hard and durable finish. The average thickness of the paint film shall be 2.0 mils. Paint film shall be uniform in color and free from blisters, sags, flaking, and peeling.

15.1.4. The UPS shall be installed in cabinets of heavy-duty structure meeting the NEMA standard for floor mounting. The UPS shall be equipped with standard forklift provisions to allow ease of installation using conventional lifting/moving equipment. The UPS module cabinet shall have hinged and lockable doors on the front only.

15.1.5. Operating controls shall be located outside the locked doors. Input, output, and battery cables shall be installed through the top, bottom, or left side of the cabinet.

15.2. Serviceability

15.2.1. The UPS shall have accessibility for all servicing adjustments and connections for maintenance or service. Side access or rear access shall be required. The UPS shall be designed such that its rear can be accessed for termination.

15.3. Ventilation

15.3.1. Forced air cooling shall be provided to allow all components to operate within their rated temperature window. Forced air shall be provided with high-quality fans. Thermal relay, using a latched contact that is capable of being reset, shall be used as overload protection to the cooling fan. All air inlets use air filters that shall be removable from the front of the UPS without exposure to any electrical hazard. Air filters shall be door mounted to prevent floor dust from being sucked into the unit. Bottom mount air filters shall not be accepted.

15.4. Eyebolts

15.4.1. Eyebolts shall be installed for lifting UPS. Four (4) heavy-duty eyebolts will be installed on each corner on top of UPS. Eyebolts are detachable (unscrew manually) once UPS is set in the installation area.

16. EXECUTION

16.1. SITE PREPARATION

16.1.1. Perform site visit to review existing electrical distribution and location for the UPS system.

16.1.2. Provide staircase for each UPS stacked container.

16.1.3. Provide electrical wiring services to connect all electrical components.

16.1.4. Provide electrical grounding system.

16.1.5. Provide civil services to install foundations, transformer vaults, cable raceways, cable duct.

16.1.6. Provide civil services to restore site to preconstruction standards.

16.1.7. Provide fiber-optic cable, terminal equipment, and terminations of same from the main electrical room metering cabinets to the new external metering cabinet.

16.1.8. Scope of work includes removal and responsible off-site disposal of all packaging and debris associated with this installation. Dumpsters and/or garbage disposal areas at the Jebco Manufacturing Facility may not be used.

16.2. INSTALLATION

16.2.1. The UPS shall be set in place, wired, and connected in accordance with the approved installation drawings and owners / technical manual delivered with equipment.

16.2.2. The equipment shall be installed in accordance with local codes and manufacturer's recommendation.

16.2.3. Complete all field wiring and bus connections identified by the manufacturer. All connections to be torqued as per manufacturer's recommendations. Check factory made connections for mechanical security and electrical continuity.

16.2.4. The manufacturer shall provide installation and start-up supervision.

16.3. FIELD QUALITY CONTROL

16.3.1. The equipment shall be checked out and started by a customer support representative from the equipment manufacturer. Visual and mechanical inspection of electrical installation, initial UPS start-up, and operational training shall be performed. A signed service report shall be submitted after equipment is operational.

16.3.2. The following inspection and test procedures shall be performed by field service personnel during the UPS start-up:

16.3.2.1. Visual Inspection

16.3.2.2. Ensure that shipping members have been removed.

16.3.2.3. Ensure that interiors are free of foreign materials, tools, and dirt.

16.3.2.4. Check for damage (dents, scratches, frame misalignment, damage to panel devices, etc.).

16.3.2.5. Check doors for proper alignment and operation.

16.3.3. Mechanical Inspection

16.3.3.1. Check all the power wiring connections for tightness.

16.3.3.2. Check all the control wiring connections for tightness.

16.3.4. Electrical Inspection

16.3.4.1. Check input and bypass for proper voltage and phase rotation.

16.3.4.2. Check battery for proper voltage and polarity.

16.3.5. Start-up

16.3.5.1. Energize the UPS.

16.3.5.2. Check the DC output voltage and inverter output voltage.

16.3.5.3. Check the inverter output voltage on battery operation with the 3-hour Lithium battery.

16.3.5.4. Check for proper synchronization.

16.3.5.5. Perform manual transfers and returns.

16.3.5.6. Check for proper operation of the external control for the rectifier to ensure remote control capability for turning the rectifier on and off from a remote location.

Part 3 - Battery Energy Storage Systems (BESS)

17. Overview

17.1. The BESS systems are to be located at the Client's premises for exterior applications within equipment shelters/structures.

17.2. The BESS system is to be connected to a UPS System, which could be in the same equipment shelter, adjacent equipment shelters/containers, or another location within the facility.

18. References:

18.1. All BESS systems adhere to industry standards for the fabrication, storage, and performance of the BESS systems and components. As a minimum, systems will comply with standards UL 1642, UL 1973, UL 9540A standards, and Canadian equivalents (CSA). The equipment must have these ratings listed or the ability to obtain UL/CSA certification.

19. PRODUCTS

19.1. General Specifications

19.1.1. The following information is a guideline overview of the type and performance of the BESS that is being contemplated for this deployment. The information is to be used as a general overview and specification and products proposed shall meet the minimum requirements, but not to limit product offerings/recommendations if performance can be improved in a cost-effective manner.

19.2. Battery

19.2.1. Batteries to be based on Lithium chemistry.

19.2.2. One full charge/discharge cycle per day

19.2.3. Batteries must have charge rate (max in C): 0.5.

19.2.4. Batteries must have discharge rate (max in C): 0.5.

19.2.5. Batteries must be capable of daily discharge to min SOC no greater than 5%

19.2.6. Batteries must be capable to have 100% discharge time for 0.5C rate.

19.2.7. Batteries must be capable of recharging every day and stay at a high rate of charge for up to 22 hours/day.

19.2.8. Battery degradation over the 10-year term should not exceed 15% (daily throughput not expected to exceed 25% of useable capacity).

19.2.9. Average SOC (if required for battery warranty) should not exceed 60%.

19.2.9.1. Provide evidence/calculations to meet the performance.

19.2.10. Provide battery discharge curves for each type of battery offering in the proposal. Graphs of voltage decay to be over the course of one cycle to be included.

19.2.11. Provide guaranteed energy degradation curves for a 95% SOC, 90% SOC, 85% SOC, 80% SOC, 75% SOC, 70% SOC, 65% SOC and a 60% SOC.

19.2.12. Provide details on chemistry, specification, thermal properties, and storage information.

19.2.13. Battery modules shall be rack mounted or cabinet mounted in a modular configuration, capable of being installed in parallel assembly, to be configured in systems ranging in ratings from 1 MWh to 20 MWh, in pre-assembled strings at rated voltage of approximately 500 VDC.

19.2.13.1. Configurations planned for deployment range according to specific site requirements.

19.2.13.2. Provide schematics for configurations and details calculation for SOC.

19.2.13.3. Provide configuration of BMS, alarming, faults, monitoring and general communication inputs/outputs (I/O), contacts etc.

19.2.13.4. Provide details on isolation switches, common disconnects, fuses, peripheral devices and identify components required for the system(s), and which components are included/excluded from the overall pricing schemes. Pre-assembled sub-assemblies are mandatory with connections at rack/cabinet.

19.2.13.5. Provide all physical and electrical attributes of the battery and ancillary equipment, temperature and environmental requirements, optimum operating conditions, HVAC and heat rejection requirements, emergency, and safety aspects, etc. Where possible, provide data in terms of a 24 hour period, with minimum two (2) completed discharges.

19.2.13.6. Provide protection required for ingress/egress of contaminants, dust control, filtering, static and physical guards etc.

19.2.13.7. Provide assurance through the offerings that the systems and equipment will be packaged and shipped to facilitate simple installations by external contracted resources and describe how this is achieved. Use of shock sensors (IoT), air ride suspension vehicles and other devices to ensure safe delivery to be included. Drop shipments to Greater Toronto Area address to be included. Assemblies (cabinets) shall be capable of loading by forklift, with bottom lift.

19.3. Racks

19.3.1. Racks and/or Cabinets shall be offered as available for options for Battery configurations to utilize a more compact footprint and/or at a cost-effective pricing scheme.

19.3.2. Provide specifications of racks and cabinets submitted with the proposal, including footprint/dimensions, weights, wire management etc.

19.3.3. Racks or Cabinets shall be constructed of high-quality materials suitable to carry loads of the Battery, with ease of access to install, connect, replace, and maintain Batteries.

19.3.4. If two or more of the following reference standards are utilized, be cautious of any contradictory requirements between selected references.

19.4. CONTROL

19.4.1. All BESS systems to provide BMS and String Protection Systems.

19.4.2. BMS systems to be capable of communication through a Remote Monitoring port and provide adequate ports for signaling and monitoring of multiple inputs, including state of charge and alarming protocols.

19.4.3. Provide BMS and String Protection System product information, installation, and any pertinent information with proposal.

19.4.4. Provide Battery System connection to UPS systems including signaling configurations for voltage and current monitoring and corrections to supply and discharge power to and from UPS System.

19.4.4.1. UPS systems will not necessarily be of the same manufacturer and/or model across the network deployment. Battery System connections to allow for connections to any UPS installed on the specific site.

19.4.4.2. UPS voltage window is planned to operate between 400V and 540V DC.

19.4.4.3. The output of the UPS (1000KWh) is measured at the output of the UPS inverter.

Assume 97% efficiency of the inverter over the voltage window for calculation system performance, unless the system offerings are designed to hold voltage at a specific voltage as means to optimize efficiency.

19.4.5. Provide data inputs required from UPS systems to Battery System.

19.4.6. Provide output data points from Battery System for Management Reporting and Analysis.

19.5. **Installation**

19.5.1. Information and costing pertaining to the availability for site installation by the supplier is to be included in the proposal.

19.5.2. Where such availability does not exist, the cost details of and arrangements for one-time training of local trades selected by Demand Power is to be included in the proposal.

19.6. **Warranty**

19.6.1. Batteries and System components to state the standard warranty in years, to a degradation curve, including round trip efficiency of the batteries.

19.6.2. Provide details on all warranty policies, and options to extend standard warranty(ies)

19.6.3. Provide timelines, inclusions and exclusion details for the system and components.

19.6.4. Provide warranty claim process, resolution and escalation, normal timelines for claims.

19.7. **Service**

19.7.1. Where servicing of batteries and ancillary devices is already available locally, pricing for service contracts to be included in proposal.

19.7.2. Where servicing of batteries or ancillary devices is not already available locally, training shall be provided as part of installation with costs included in proposal.

Part 4 - Equipment Shelter/Container

20. **GENERAL SCOPE OF WORK**

20.1. Supply Labor and Materials, Complete Fabrication of Equipment Shelter(s)/container for the purpose of housing UPS and Battery Systems, Ancillary Equipment as described in this Specification.

20.2. Complete the Work in accordance with the Standards and Codes applicable, including but not limited to the following:

20.2.1. National Building Code 2015 (where applicable)

20.2.2. Ontario Building Code 2012 (where applicable)

20.2.3. Electrical Standards CSA C22 or equivalent

20.2.4. Steel Building Standards CSA A660-10 (Certified Plant/Procedures)

20.2.5. Welding Standards CSA W59 or equivalent

20.2.6. Personnel Welding Certifications to CSA W479 or equivalent

20.2.7. All drawings to be sealed by qualified, licensed Professional Engineer.

20.2.8. All lift plan drawings to be sealed by qualified, licensed Professional Engineer.

20.3. Nominal sizing of shelters/container is planned to be 40' x 8' x 8'. Supplier standard sizing can be submitted if cost effective and meet minimum requirements. Provide as many models/types as required.

20.4. The deployments are presently planned for the Ontario Region, and Equipment Shelters/Containers should be designed to meet the conditions present in all regions of Ontario.

21. Auxiliary System Design

21.1. Fire Suppression Systems

21.1.1. Supply and Install complete Fire Suppression System sized to extinguish fire event within the Equipment Shelter/Container. The fire suppression and alarm system for the BESS container shall be designed based on the NFPA72, NFPA70, NFPA2001, and NEPA855 standards, and takes into consideration both electrical safety and fire protection safety to supply reliable protection.

21.1.2. The fire protection system mainly consists of an automatic alarm system and a fire extinguishing system. The automatic alarm system consists of a control unit, heat detector, smoke detector, action pull station, abort station, sound and light detector, alarm ring, and emission indicator light. The fire extinguishing system consists of a Novec 1230 fire-extinguishing device including steel bottle, pressure switch, electric control head, and electric head valve. The different components of the fire suppression system are listed below,

- 21.1.2.1. Automatic Alarm System
 - 21.1.2.1.1. Control Unit
 - 21.1.2.1.2. Smoke Detector
 - 21.1.2.1.3. Heat Detector
 - 21.1.2.1.4. Action Pull Station
 - 21.1.2.1.5. Abort Station
 - 21.1.2.1.6. Maintenance Switch
 - 21.1.2.1.7. Sound-light Alarm
 - 21.1.2.1.8. Motor Bell
 - 21.1.2.1.9. Gas Release Indicator
 - 21.1.2.1.10. Backup Battery
 - 21.1.2.1.11. Cylinder(s) and wall mounting hardware.
- 21.1.2.2. Fire Extinguishing System
 - 21.1.2.2.1. Novec 1230 Cylinder
 - 21.1.2.2.2. Pressure Switch
 - 21.1.2.2.3. Electric Control Head
 - 21.1.2.2.4. Nozzles

21.1.2.3. Gas Detection System

21.1.2.3.1. Gas detector is designed to detect and measure the presence and level of flammable gases in industrial applications. It has an H₂ detector that will detect the H₂ density in the container environment. Two pieces will be installed and mounted on the wall, one on each of the long sides of the containers. The gas detection system is designed to activate the exhaust ventilation system when the level of H₂ detected in the container exceeds 25% of the Lower Flammability Limit (LFL). The exhaust ventilation system shall remain on until the H₂ detected is less than 25% of the LFL. The H₂ detectors shall be provided with a minimum of 2 hours of standby power. Failure of the H₂ detection system will annunciate a trouble signal at an approved central station.

21.1.2.4. Water Sprinkler System

21.1.2.4.1. The water sprinkler system shall be designed to discharge water to the whole battery container. The application density shall be no less than 0.3gpm/ft². The application area shall be the whole battery container. Sidewall sprinklers shall be placed at the two sides just under the ceiling. Water distribution must be designed to cover the full area. The sprinkler system shall be dry pipe type with open-type sprinkler. Water supply tie-in shall be at the containers' outer wall with a fire department connection. The user shall make sure to provide the water supply at sufficient flow and head to meet the total water consumption demand.

21.1.2.5. Copy of System Flow Calculations for Review by engineer or sealed.

21.1.2.6. Copy of Design/Engineered Drawing Package, sealed by P. Eng.

21.1.2.7. Integrity tests and results report

21.1.2.8. Final test and commissioning report.

21.1.2.9. All work to be completed at plant.

21.2. The fire extinguishing system shall be equipped with three starting modes: automatic control, manual control, and mechanical emergency operation. The fire extinguishing system can automatically detect the fire, automatically alarm, automatically start the fire extinguishing system, and release the fire extinguishing agent.

21.2.1. The fire extinguishing system shall be Novec 1230 gas fire extinguishing system, and the spraying time of fire extinguishing agent shall not be more than 10 seconds. The agent quantity of the fire extinguishing system will be designed and verified in accordance with the relevant standards. The design amount shall be calculated according to the sum of the fire extinguishing amount and the agent residual amount in the protection area, and the design concentration shall be greater than 7.6%. The number, type, and layout of the nozzles in the protection area shall be considered to make the gas distribution in the protection area uniform, and the spraying of the fire extinguishing agent shall not damage the equipment and staff and shall not make the fire spread. The number, type and layout of smoke and heat sensors in each protection area shall be based on the accuracy of detection. It is necessary to consider that the smoke and temperature monitoring points in the protection area are evenly distributed.

21.2.2. It is strictly prohibited to fail to report or misreport. The fire extinguishing system must have an external communication interface, such as a dry contact. The fire extinguishing system must output at least three groups of dry contact signals, such as fire alarm signal, fault signal, pre spray signal, etc.

21.3. Transportation of Equipment Shelters/Container

21.3.1. Provide general transportation rates on a per km or zoned map for locations from plant to locations within Ontario.

21.3.2. Provide general estimates for permitting for transport,

21.3.3. All loading at Plant to be included.

21.3.4. Off-loading to be by others

21.4. Installation Services

21.4.1. Provide details on capacity, resources, and skills available to provide installation services for the installation of the UPS system and the Battery System, at the plant (Loose Batteries to be installed at site to reduce transportation weights)

21.4.2. Installation guidance, specifications, and general support to be provided by the Suppliers of the Equipment and personnel of Demand Power Group Inc, and/or the Consultant.

21.4.3. Provide examples of recent work to demonstrate experience with installations.

22. PRODUCT

22.1. STRUCTURAL CONSIDERATIONS FOR EQUIPMENT SHELTERS

22.1.1. As the equipment shelters are planned to be deployed in all regions of Ontario, the structural loading for the equipment shelters shall be built to comply with Roof Snow Load, Wind and Seismic Classes for the majority of Ontario.

22.1.2. In Compliance with local building codes

22.1.3. If a concentrated load vs uniform load has advantages in final pricing, alternate pricing and details should be included in the pricing, as an optional line item.

22.1.4. The equipment shelters/container shall be constructed to allow lifting from top of shelter, or by other means, to be detailed in proposal.

22.1.5. Equipment shelters/container to be an all-weld construction of post and beam on a heavy-duty base of beams and cross members (joists), or of concrete/concrete composite construction.

22.2. FLOOR, WALL, AND ROOF/CEILING ASSEMBLIES

22.2.1. Floor Assembly

22.2.1.1. Floor Assembly (Structural Steel) to be constructed in general conformance to the following:

22.2.1.1.1. Structural Steel, Heavy Duty Beams along perimeter of Base

22.2.1.1.2. Structural Steel Floor Joists spaced as required for loading.

22.2.1.1.3. Layer of galvanized steel pan, for rodent control, minimum 29-gauge material

22.2.1.1.4. Insulation in cavity, ROXUL MB Plus, R-14; or equivalent

22.2.1.1.5. VCT tile installed with associated cove base (anti-static)

22.2.1.1.6. Exterior exposed structural steel to be sand blasted and Epoxy Primer, finished with Epoxy Paint (10-year life expectancy minimum)

22.2.1.1.7. Optional ¼" thick steel plate in lieu of VCT, stitch welded underside, full weld topside,

painted with anti-slip epoxy-based paint and rubber cove base.

22.2.1.2. Floor Assembly (Concrete) to be constructed in general conformance to the following:

22.2.1.2.1. Concrete floors to be fabricated in one piece reinforced to meet minimum structural requirements, with ability to receive underground services and to receive wall panels if penalization methods are used, and maintain protection from environment (water, weather, rodent etc.) Floor assembly details to accompany proposal.

22.2.2. Wall Assembly

22.2.2.1. Walls to be non-combustible, 2-hour Fire Rated assemblies (NFPA 885 requirements)

22.2.2.1.1. Structural Steel/Cold-Rolled Steel

22.2.2.1.1.1. Metal clad exterior finish, minimum 26-gauge material with standard profile cladding, in white/off white color (factory finished).

22.2.2.1.1.2. Air Barrier, Tyvek or equivalent

22.2.2.1.1.3. Structural Steel/Cold-rolled Steel Framing

22.2.2.1.1.4. Insulation in cavity, Roxul MB Plus, R-14 Minimum or equivalent

22.2.2.1.1.5. Vapor Barrier, minimum Super 6 mil or equivalent

22.2.2.1.1.6. Required layers, Type 'X' Gypsum Board, Fire Rated, Square Edged Board

22.2.2.1.1.7. PVC 'Batten' trims to cover joints in Board

22.2.2.1.1.8. Paint, Off White Color, Semi-gloss/Velvet finish, hard wearing.

22.2.2.1.1.9. Allow for one (1) location for mounting of antenna on exterior for communications (SCADA)

22.2.2.1.2. Concrete, or Concrete Composite Wall

22.2.2.1.2.1. Walls to be constructed with minimal joints, and in accordance to fire rating and insulation requirements above.

22.2.2.1.2.2. Wall assembly details to accompany proposal.

22.2.2.1.3. Optional: show capacity and methodology to 'stack' units to 2 stories as way of conserving footprint.

22.2.3. Roof/Ceiling Assemblies

22.2.3.1. Roof Assemblies to be non-combustible, ¾ hour Fire Rated assemblies

22.2.3.2. Seamless Steel Roofing Panels, Factory finished White/Off White, with minimum 24-gauge thickness.

22.2.3.3. Flashing and trims to be Factory finished White/Off White, with minimum 24 gauge thickness

22.2.3.4. Steel roof deck minimum 22 gauge, Galvanized.

22.2.3.5. Insulation in cavity, Roxul MB R-14 Minimum

22.2.3.6. Vapor Barrier, minimum Super 6 mil or equivalent

22.2.3.7. One layer, Type 'X' Gypsum Board, Fire Rated, Square Edged Board

- 22.2.3.8. PVC 'Batten' trims to cover joints in Board.
- 22.2.3.9. Paint, Off White Color, Semi-gloss/Velvet finish, hard wearing.
- 22.2.4. Doors, Hardware and accessories
 - 22.2.4.1. Single or Double Door openings as space dictates for ease of equipment installation(s)
 - 22.2.4.2. Doors to be Hollow Metal, Insulated, minimum 18-gauge construction, Fire Rated to 45min/ 1 ½ hour as required
 - 22.2.4.3. Frames to be Hollow Metal, minimum 18-gauge welded construction, Fire Rated to 45 min/1 ½ hour as required.
 - 22.2.4.4. Minimum one (1) door to have Panic Bar c/w Thumb piece and 'D' Handle (Exit), Auto Closer c/w hold open device.
 - 22.2.4.5. All doors to have Stainless Steel, Non-removable Hinge Pins, Metal/rubber door sweeps, Aluminum weather strips, Aluminum Threshold Plates.
 - 22.2.4.6. Main Door entrance to have rubber matting.
 - 22.2.4.7. Lockset to be high quality, key in lever type, with exterior grade nickel finish by Schlage, Best, or equivalent, with minimum 4 keys. Guards to be installed over latch location to prevent prying of door for out swinging doors
 - 22.2.4.8. All Entrance door frames to have rough in for future card access/FOB systems, pre-drilled, pre-wired.
 - 22.2.4.9. All doors and Frames to be painted in matching color to interior/exterior finishes, in high quality Alkyd or Epoxy Paints
- 22.2.5. Cable Entrance and Cable/Wiring Management
 - 22.2.5.1. Allow for two (2) PVC wall sleeves for electrical ground to exterior.
 - 22.2.5.2. Allow for cable entrances through floor assembly for incoming and outgoing wiring from UPS to facility.
 - 22.2.5.3. Allow for cable entrances through floor or wall for incoming and outgoing cabling between UPS and Battery Systems, power and data.
 - 22.2.5.4. Allow for small PVC wall sleeve for wiring to exterior mounted communication (antenna) for SCADA/wireless communications.
 - 22.2.5.5. Allow for small PVC floor sleeve for wiring for communication wiring to facility for SCADA/wireless communications (fiber, CATV or other)
 - 22.2.5.6. Locations of all sleeves to be confirmed prior to fabrication.
 - 22.2.5.7. Cable Tray to be class D, Ladder Type, Aluminum. Minimum dimensions of 12" width, 6" depth and 12" c/c rung spacing, secured to roof assembly to carry imposed loads.
 - 22.2.5.8. Cable tray installed in two (2) rows with minimum four (4) crossover points, spaced evenly. Final configuration of cable tray to be confirmed prior to fabrication/procurement of materials.

23. HVAC SYSTEMS

- 23.1. Equipment shelter/container shall have enough HVAC units to keep the BESS container's indoor temperature within 15C to 25C.

- 23.2. Units to be sized to meet requirements of heating and cooling loads based on equipment specifications.
- 23.3. Dust and Debris control measures to be provided and described in detail.
- 23.4. Units to be Bard or equivalent.
- 23.5. Minimum Cooling Capacity of a unit 57500BTU/hr.
- 23.6. Minimum Heating Capacity of a unit 5 KW
- 23.7. All units to be single phase 240 VAC.
- 23.8. Units to utilize Economizer packages for energy efficiency.
- 23.9. Units to offer a winter operation control package.
- 23.10. Controllers to be matched to the unit supplied. When two (or more) units are installed, controllers to provide Lead/Lag and Change-over options.
- 23.11. System to have ability to be connected to SCADA and/or monitoring systems for High Temperature Alarm, Low Temperature Alarms, HVAC Fail Alarms
- 23.12. All wiring and testing to factory Specifications to be performed at plant, and all documentation delivered with Equipment Shelter (see Documentation)

24. CONTAINER ELECTRICAL SERVICES

- 24.1. Service Entrance
 - 24.1.1. Provide interlocked breakers to feed the power either from input or output of the UPS.
 - 24.1.2. Provide one (1) Distribution Panel, with minimum 24 circuits/breaker positions.
 - 24.1.3. Provide all conduit (EMT) and wiring between disconnect switch and Panel above.
- 24.2. Lighting and Standard Circuits
 - 24.2.1. Provide enough LED light fixtures 1'x4' w/lamps or LED strips, and electronic ballasts (if applicable), wire guard.
 - 24.2.2. Lights to be controlled by single commercial duty switch located at main entrance doorway.
 - 24.2.3. Provide minimum five (5) convenience receptacles spaced evenly throughout Equipment Shelter/container, 15 Amp rating.
 - 24.2.4. Provide a 5000VA UPS with 20min run time at full load to power the communication and control equipment.
 - 24.2.5. A standard, 24 inch (610 mm) wide, 36 inch (914 mm) deep, 42U high equipment racks.
 - 24.2.6. Provide one (2) exterior mounted GFI receptacle, on separate breaker.
 - 24.2.7. Provide one (2) exterior mounted, exterior grade outdoor fixture, LED minimum 10W light, w/motion sensor and dual heads for maximum coverage of area.
 - 24.2.8. Over the main entrance door, install one (1) combination twin head emergency backup battery light fixture, c/w illuminated Exit sign, 'running man' or approved graphic.
 - 24.2.9. All devices wired to main panel with EMT conduits, surface mounted acceptable.
- 24.3. **Alarm and Security Systems**

5.27 TECHNICAL REQUIREMENTS SPECIFICATIONS
UPS, BESS + CONTAINERIZATION EQUIPMENT
DEMAND POWER GROUP INC

24.3.1. Rough in for Door Alarm security from door to Communications Board

24.3.2. Supply and Install one (1) Smoke Detector, hard wired with 120 VAC (NC) c/w HVAC shut down and customer signaling to Communications Board.

24.3.3. Supply and Install one (1) Heat detector c/w NC contact wired to Communications Board.

24.4. Communications Board

24.4.1. Supply and Install, where space permits, 4'x4'x3/4" Plywood backboard fastened to wall assembly, painted w/grey intumescent paint according to manufacturer's instructions.

24.4.2. Provide one (1) of the receptacles supplied above on the board.

24.5. Grounding

24.5.1. Supply and install <grounding spec> for UPS.

24.5.2. Supply and install <grounding spec> for Battery System.

24.5.3. Supply and install <grounding spec> for general electrical grounding.

25. FIRE SUPPRESSION (PORTABLE)

25.1. Supply and Install one (1) Ten Pound CO2 Fire Extinguisher, c/w wall bracket.

26. MISCELLANEOUS ITEMS

26.1. Supply and Install one (1) First Aid Kit

26.2. Supply and Install one (1) Bookshelf to hold manuals and documents (binders)

528

DEMAND POWER - JEBECO Project

Items	Description	Qty	Unit Cost	Total Cost	DELTR PROPOSAL	Comments
	Eng & Submission costs	1		\$55,080	\$55,080	Eng & Submission costs \$ 55,080.00
	Construction & Procurement	1		\$524,920	\$524,920	Construction & Procurement \$ 524,920.00
1	UPS Unit K918331000	2	\$134,756	\$269,512	\$125,000	\$ 250,000.00
	1. Input and output L-L, 400V, 3 ph + N + PE, output PF = 1, parallel model 2. Add a contactor in the UPS automatic bypass 3. UPS uses Kebuh standard lithium battery communication protocol to support CATL lithium battery, it needs to communicate with lithium battery BMS through RS485 communication 4. UPS and EMS use Ethernet to communicate 5. UPS complies with Canadian SPE-1000 certification; 6. UPS conforms to IEC 62040-2 (Category C3) certification 7. The connection mode of the UPS is bottom entrance;					
2	UPS Enclosure	1	\$86,350	\$86,350	\$79,000	\$ 79,000.00
	1. 40F container, including auxiliary systems such as AC distribution box, socket, camera, emergency exit sign, twist-lock, DC cables, and firePro. 2. Meet the SPE-1000 certification. 3. Including 4pcs 4000A 600V circuit breakers, 1 pcs is a drawer type circuit breaker, and the other 3 pcs are fixed type circuit breakers. It can measure voltage, current, frequency, power (P, Q, S), electricity (P, Q, S), power factor, and data can be uploaded via Ethernet. Ethernet modbus TCP 3. Reserve 3 pcs CTs and 3pcs PTs (A supply) for installation in an independent enclosed space, and can be locked 4. All switches are equipped with closing indicator lights 5. Configuration B-C class protect (SPD)					
3	UPS external manual bypass 4000A	1	\$232,543	\$232,543	\$212,000	Refurbished option, Material is Aluminum \$ 212,000.00
4	Battery Rack	7	\$67,464	\$472,248	\$62,500	\$ 437,500.00
	1. CATL 285 72kWh UPS LV Battery Rack, 16 Modules, 280Ah 0 5C Cell, including BMS (SC & SBMU & MBMU);					
5	Battery Enclosure	1	\$99,862	\$99,862	\$79,000	\$ 79,000.00
	1. 40F Container, including auxiliary systems such as power distribution, lighting, camera, fire suppression system, insulation, flooring, DC cables & communication cables, etc.; Nema4IP Standard					
6	AC Busduct	1	\$26,000	\$26,000	\$41,000	Aluminum - modified-refurbished product \$ 41,000.00 SMT had it in Ebooc did not (was by DWG) previously)
	1. DC cables and communication cables inside the containers, bus duct, Aluminum 2000A, 30meters 2. DC bus cable outside containers to connect BESS to UPS					
7	Logistics	1	\$19,500	\$19,500	\$8,000	\$ 8,000.00
	1. Shipping all containers to job site (DDP) 2. FAT 3. Insurance included					
8	HVAC System	1	\$68,000	\$68,000	\$47,500	\$ 47,500.00
	1. Envicool HVAC 2. MIC series 3. INTELLIGENT CONTROL - RS485 interface, support modbus protocol 4. High reliability, life time >10 years, with minimum maintenance					
9	Commissioning & Startup	1	\$50,000	\$50,000	\$16,000	\$ 16,000.00
	1. Site Acceptance Test - with option of buyer witnessing Assumes two (2) technicians; 2. UL9540 Certification 3. Battery modules will be installed on-site; 4. HVAC installation 5. Commissioning					
				Sub-total (CAD):	\$1,904,015	\$ 1,750,000.00
						Insurance & Bonding Excluded \$ - Additional Engineering Excluded \$ -
						\$ 1,750,000.00

530

531**SUPPLEMENTARY CONDITIONS FOR THE STIPULATED PRICE CONTRACT BETWEEN DEMAND POWER GROUP INC. AND DELTRO ELECTRIC LTD. DATED JANUARY 26, 2021, FOR JEBCO MANUFACTURING BESS/UPS PROJECT**

The Standard Construction Document CCDC 14 2013 for a Stipulated Price Contract, English version, consisting of the Agreement Between *Owner* and *Design-Builder*, Definitions, and General Conditions of the Stipulated Price Contract, Parts 1 to 12 inclusive, governing same is hereby made part of these Contract Documents, with the following amendments, additions and modifications:

DEFINITIONS

Delete Definition 25 – “Substantial Performance of the *Work* in its entirety and substitute with the following definition:

“*Substantial Performance of the Work*:

Substantial Performance of the Work shall have been reached when the *Work* is commissioned and operational. *Substantial Performance of the Work* is further defined under the Ontario *Construction Lien Act*.”

ARTICLE A-1 – DESIGN SERVICES AND THE WORK

Amend paragraph 1.2 by deleting “Andrew Rabeau, SPM,” and insert “Demand Power Group Inc., or designate”.

Delete paragraph 1.3 in its entirety and substitute new paragraph 1.3: *Design-Builder* will provide full transparency of supplier schedules and a *Substantial Performance of the Work* date in a schedule submitted within fifteen (15) days of NTP. *Substantial Performance of the Work* date will be within fifteen (15) days of commencement operation date (“*COD*”) based on baseline schedule (“*Baseline Schedule*”).

ARTICLE A-2 — AGREEMENTS AND AMENDMENTS

Add a new Article 2.3:

2.3. If any term or provision of this *Contract* shall be found to be invalid or unenforceable to any extent, the remainder of this *Contract* shall not be affected thereby and each term and provision of this *Contract* shall remain valid and enforceable to the fullest extent permitted by law, including the application of this *Contract* to persons or circumstances other than those against whom or which such term or provision may be found invalid or unenforceable.

532

ARTICLE A-4 – CONTRACT PRICE

Add a new Article 4.6:

This Engineering, Procurement and Construction Agreement entered into by the Parties shall contain a fixed price and fixed schedule.

ARTICLE A-6 — RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

Amend paragraph 6.5:

By changing the *Owner's Advisor's* address:

10 King Street East, Suite 1100, Toronto, ON

ARTICLE A-9 — TIME OF THE ESSENCE

Insert new Article A-9:

9.1 It is agreed that one of the reasons why the *Design-Builder* was selected for the *Work* is the *Design-Builder's* representation and warranty that it will attain *Substantial Performance of the Work* by the date set out in Article A-1, paragraph 1.3 and the *Design-Builder* acknowledges that it has been advised by the *Owner* that it is critical to the *Owner* that *Substantial Performance of the Work* be achieved by the prescribed date and that time is of the essence of this *Contract*. Accordingly the Parties agree that should the *Design-Builder* fail to achieve *Substantial Performance* of the *Work* within the *Contract Time*, *Owner* shall be entitled to assess, as liquidated damages, but not as a penalty, the following amounts until *Substantial Performance* is achieved:

There will be a four-week grace period after the *Substantial Performance of the Work* date noted in Article 1.3

The *Design Builder* will pay to the owner a fixed amount of \$5,000.00/week for the first four weeks past the grace period.

The *Design Builder* will pay to the owner a fixed amount of \$7,500.00/week for the fifth and subsequent weeks past the grace period.

The total for these above costs shall not exceed \$100,000.00

Design-Builder cannot be held responsible for Liquidated Damages due to unforeseen circumstances.

GC 1.1 — CONTRACT DOCUMENTS

Add new paragraph 1.1.11:

- 1.1.11 Where a General Condition or paragraph of the General Conditions of the Design-Build Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

[NOTE TO DRAFT: SEE 3.11]

GC 3.6— DESIGN SERVICES AND WORK SCHEDULE

Amend subparagraph 3.6.1.1:

by deleting the words “promptly after signing the Agreement, prepare and submit to the *Owner* a *Design Services* and *Work* schedule” and replacing with the words “Prepare and submit to the *Owner* a baseline schedule within thirty (30) days from the issuance of the Notice To Proceed”.

by adding the words “in GANTT format based on major milestones supplied by the *Owner*” and agreed to by the design builder after the words “a *Design Services* and *Work* schedule”.

Add new paragraph 3.6.2:

- 3.6.2 If at any time it should appear to the *Owner* or the *Owner's Advisor* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, as a direct result of an act or omission of the *Design-Builder* or anyone employed or engaged by the *Design-Builder* directly or indirectly, or by any cause within the *Design-Builder's* complete control, the *Design-Builder* shall take appropriate steps to cause the actual progress of the *Work* to conform to the schedule and shall produce and present to the *Owner* and the *Owner's Advisor* a recovery plan demonstrating how the *Design-Builder* will achieve the recovery of the schedule. If delay is not caused by DB and additional labour and or equipment is required the costs will be managed as per Part 6. The *Owner*, acting reasonably, may instruct the *Design-Builder*, at the *Design-Builder's* expense, to employ additional labour and equipment or work overtime or employ any other reasonable procedures, at no expense to the *Owner*, to bring the *Work* back to conform with the schedule.

GC 3.8 — LABOUR AND PRODUCTS

Add new paragraph 3.8.4:

3.8.4 The *Design-Builder* is responsible for the safe on-site and off-site storage of *Products* and their protection (including *Products* supplied by the *Owner* or *Products* pre-ordered by the *Design-Builder* or *Owner* and other Contractors to be installed under the *Contract*) in such ways as to avoid dangerous conditions, damage to any *Products* or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Owner's Advisor*.

GC 3.11 — NON-CONFORMING DESIGN AND DEFECTIVE WORK

Amend paragraph 3.11.2 by adding the following to the end of the paragraph:

3.11.2 The *Design-Builder* shall rectify in a manner acceptable to the *Owner* all other defective work and like deficiencies throughout the *Work* whether or not they are specifically identified by the *Owner* or the *Owner's Advisor*.

Add new General Condition 3.12:

GC 3.12 — PERFORMANCE BY DESIGN-BUILDER

Add new General Condition 3.12:

3.12 In performing its services and obligations under the *Contract*, the *Design-Builder* shall exercise a standard of care, skill and diligence that would normally be provided by a Design-Builder supplying similar services for similar projects in Ontario. The *Design-Builder* acknowledges and agrees that throughout the *Contract*, the *Design-Builder's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Design-Builder* shall exercise the same standard of due care and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*.

Add new GC 3.13:

3.13 *Design-Builder* warrants and represents that it is able to source equipment from CATL, including but not limited to 280 Ah batteries. Further, *Design-Builder* agrees to use KaHua for Uninterruptible Power Service equipment or equivalent suppliers and/or electrical designs approved by *Owner*.

535

Add new GC 3.14:

3.14 *Design Builder* will stack containers when stacking is required by space restrictions and any changes to approved container configurations must be approved by *Owner*.

GC 5.2 — APPLICATIONS FOR PROGRESS PAYMENT

Add new paragraph 5.2.9:

5.2.9 The *Design-Builder* shall prepare and maintain current as-built *Drawings* which shall consist of any *Drawings* and *Specifications* which may be revised by the *Design-Builder* during the *Work*, showing mark-ups of the *Drawings* and any changes made to the *Drawings* and *Specifications*.

Add new paragraph 5.2.10:

The *Design-Builder* shall submit, on the second & subsequent applications for progress payment, as a true conditions precedent to the *Design-Builder's* right to payment under this *Contract*, a Statutory Declaration, on an original form of CCDC Document 9A-2018, stating that payments in connection with the *Work*, as noted in the Statutory Declaration, have been made to the end of the period immediately preceding that covered by the current application. The *Design Builder* reserves the right to apply for a milestone payment upon Notice To Proceed for equipment deposits, engineering and other costs, limited to amounts required by third parties plus the *Design-Builder's* management, administration costs & mark-up.

Add new paragraph 5.2.11:

The *Design-Builder* shall submit Workplace Safety & Insurance Board Clearance Certificate with each application for progress payment.

GC 5.3 — PROGRESS PAYMENT

Delete subparagraphs 5.3.1.1, 5.3.1.2 and 5.3.1.3 in their entirety and substitute new subparagraphs 5.3.1.1, 5.3.1.2, 5.3.1.3 and 5.3.1.4:

.1 the *Payment Certifier* shall promptly inform the *Owner* of the date of receipt and the amount claimed therein for payment by the *Design-Builder* (the "Claimed Amount");

536

- .2 the *Payment Certifier* shall issue to the *Owner* and copy to the *Design-Builder*, no later than 10 calendar days after the receipt of such application for payment, a certificate for payment in the Claimed Amount, or in such other amount as the *Payment Certifier* determines to be properly due (the “Certified Amount”);
- .3 if the Certified Amount is less than the Claimed Amount, then in such circumstances the *Payment Certifier* shall prepare and deliver to the *Design-Builder*, on behalf of the *Owner*, no later than 14 calendar days after the receipt of such application for payment, a notice of non-payment as contemplated in, and in compliance with, Section 6.4(2) of the *Construction Act* (Ontario) in respect of the difference (the “Disputed Amount”) between the Claimed Amount and the Certified Amount; and
- .4 the *Owner* shall make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 28 calendar days after the receipt by the *Owner or Owner’s Advisor* of the application for payment, in the amount of the Claimed Amount less the Disputed Amount (if any).

GC 5.4 — SUBSTANTIAL PERFORMANCE OF THE WORK

Delete paragraph 5.4.5 in its entirety and substitute new paragraph 5.4.5:

5.4.5 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Design-Builder*, in consultation with the *Owner*, shall establish reasonable dates for finishing the *Work* and correcting any deficient *Work*.

Add new paragraph 5.4.6:

5.4.6 The *Design-Builder* shall publish, in a construction trade newspaper in the area of the location of the *Work*, a copy of the Certificate of *Substantial Performance* of the *Work* within seven (7) days of receiving a copy of the Certificate signed by the *Owner or Owner’s Advisor*, and the *Design-Builder* shall provide suitable evidence of the publication to the *Owner*. If the *Design-Builder* fails to publish such notice, the *Owner* shall be at liberty to publish and back charge the *Design-Builder* its costs for doing so.

GC 5.7 — FINAL PAYMENT

Delete subparagraphs 5.7.1, 5.7.2, 5.7.3 and 5.7.4 in their entirety and substitute new subparagraphs 5.7.1, 5.7.2, 5.7.3, 5.7.4, 5.7.5 and 5.7.6:

5.7.1 When the *Design-Builder* considers that the *Design Services* and the *Work* is completed, the *Design-Builder* shall apply for final payment.

537

5.7.2 The Payment Certifier shall, following receipt of the *Design-Builder's* application for final payment, promptly inform the Owner of the date of receipt and the amount claimed therein for payment by the *Design-Builder* (the "Claimed Final Amount").

5.7.3 No later than 10 calendar days after the receipt of such application, the *Payment Certifier* shall:

.1 verify the validity of the application and advise the *Design-Builder* in writing that the application is valid or give reasons why it is not valid; and

.2 issue to the *Owner* and copy to the *Design-Builder*, a certificate for payment in the Claimed Final Amount, or in such other amount as the *Owner* or *Owner's Advisor* determines to be properly due (the "Certified Final Amount").

5.7.4 If the Certified Final Amount is less than the Claimed Final Amount, then in such circumstances the *Payment Certifier* shall prepare and deliver to the *Design-Builder*, on behalf of the Owner, no later than 14 calendar days after the receipt of such application for final payment, a notice of non-payment as contemplated in, and in compliance with, Section 6.4(2) of the Construction Act (Ontario) in respect of the difference (the "Disputed Final Amount") between the Claimed Final Amount and the Certified Final Amount.

5.7.5 Subject to the provisions of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION, and any lien legislation applicable to the Place of the Work, the *Owner* shall, on or before 28 calendar days after the receipt by the *Payment Certifier* of the application for final payment, make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement – PAYMENT, in the amount of the Claimed Final Amount less the Disputed Final Amount (if any).

5.7.6 Prior to the release of the finishing holdback provided for under the Construction Act, the *Design-Builder* shall submit:

.1 *Design-Builder's* written request for release of the finishing holdback, including a statement that no written notices of lien have been received by it;

.2 a Statutory Declaration CCDC 9A-2001; and

.3 a final Workplace Safety & Insurance Board Clearance Certificate.

GC 5.10 — WITHHOLDING OF PAYMENT

Add new paragraph GC 5.10:

5.10.1 Notwithstanding the provisions of GC 5.3 PROGRESS PAYMENT, GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK and GC 5.7 FINAL PAYMENT, the *Owner* may withhold payment of any amounts otherwise due

under the *Contract* on account of any costs or damages the *Owner* has incurred or is likely to incur by reason of:

- .1 defective or incomplete portions of the *Work* not rectified in accordance with the *Contract*;
- .2 failure of the *Design-Builder* to indemnify the *Owner* in accordance with the terms of the *Contract*;
- .3 failure of the *Design-Builder* to fulfil its obligations in respect of construction liens in accordance with GC 13.2; and
- .4 evidence of the *Design-Builder*'s failure to make payments to *Subcontractors* or *Suppliers*;

in each case, the existence of which failure (and amounts owing as a result thereof) has been fully and finally determined either by mutual agreement of the parties or by a final and binding order of a court of competent jurisdiction or arbitral tribunal that is not subject to rights of appeal.

GC 6.2 — CHANGE ORDER

Delete Paragraph 6.2.1 in its entirety and substitute with the following:

- 6.2.1 When a change in the *Work* is proposed or required, the *Owner* or the *Design-Builder* will provide a written description of the proposed change in the *Work* to the other party. The *Design-Builder* shall promptly present, in a form acceptable to the *Owner* or *Owner's Advisor*, an estimate for an adjustment in the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change in the *Work*. The *Design-Builder's* estimate for an increase in the *Contract Price*, will be determined based on the *Design-Builder's* estimate for the additional cost of the proposed change in the *Work* plus the *Design-Builder's* mark-up for overhead of 10% & 5% for profit

Delete Paragraph 6.2.3 in its entirety and substitute with the following:

- “6.2.3 The following mark-up shall apply to work added to the *Contract*

In the case of changes in the *Work* to be paid for by the *Owner* under the methods described in paragraph 6.2.2, the *Design-Builder* and *Subcontractor*, respectively, may add to the net cost of additional work, a fee, a mark-up, inclusive of overhead and profit, limited to the following:

The *Design-Builder* may add to the total net cost of additional work to be carried out by his own forces, a mark-up of ten per cent (10% for overhead & 5% for profit). Design-builders are not allowed to treat their own forces as subcontractors.

The *Design-Builder* may add to the net cost of additional work by a *Subcontractor*, a mark-up of five percent (5%) of the net sum proposed by such *Subcontractor*.

Subcontractor may add to the total net cost of additional work to be carried out by his own forces, a mark-up of five percent (5%).

Subcontractor may add to the total net cost of additional work by a sub-subcontractor or *Supplier*, a mark-up of five percent (5%) of the net sum proposed by such sub-subcontractor or *Supplier*.

Such mark-up by *Design-Builder* and *Subcontractor*, respectively, shall be based on net additional cost for any one change in the *Work*, such net cost being derived by deducting credits for labour and materials involved in deleted work from the cost of labour and materials involved in additional work. When quantities of the same product or material are changed in the same change in the *Work*, the change in the *Contract Price* shall be based on the net difference in quantity between the product(s) or material(s) deleted and the product(s) or material(s) added.

“**Overheads**” shall include any additional charges and/or premiums for supervision, permits, insurance (see note GC 11.1), office overhead and the like, which may result from changes in the *Work*. The cost for these items shall not be added onto any cost for changes prior to applying mark-up.”

Add new paragraphs 6.2.4 and 6.2.5 as follows:

“6.2.4 All quotations submitted shall be provided with a detailed breakdown including, but not limited to the following:

1. quantity of each material
2. unit cost of each material
3. man hours involved
4. cost per hour
5. *Subcontractor* quotations submitted listing items 1 to 4 above and item 6 below.
6. mark-up”
7. Labour rates – the following labour rates will apply for the valuation of changes to the Contract
 - a. Electrical Foreman \$85.00/hr
 - b. Electrical Journeyman \$75.00/hr
 - c. Electrical Apprentice \$55.00/hr

“6.2.5 The *Owner* and the *Consultant* will not be responsible for delays to the *Work* resulting from late, incomplete or inadequately broken-down valuations submitted by the *Design-Builder*”.

GC 6.3 CHANGE DIRECTIVES

540

Add new paragraph 6.3.14 as follows:

“6.3.14 Limits to Overhead and Profit as listed in paragraph 6.2.3 shall apply to Change Directives”.

GC 6.5 — DELAYS

Add new subparagraph 6.5.3.5:

6.5.3.5 any order of a court or government authority arising from, or related to, the COVID 19 pandemic or any other virus or disease,

Add new paragraphs 6.5.6 and 6.5.7.

6.5.6 Subject to the other provisions of this GC 6.5, the *Design-Builder* shall at all times:

(a) perform the services required to perform the *Work* in accordance with the *Contract Documents* diligently and expeditiously and to maintain an orderly progress of the *Work* and in accordance with the *Contract Time* and any revisions thereto; and

(b) provide sufficient personnel to accomplish its services within the *Contract Time*.

6.5.7 If the *Design-Builder* is delayed in the performance of the *Work* by an act or omission of the *Design-Builder* or anyone employed or engaged by the *Design-Builder* directly or indirectly, or by any cause within the *Design-Builder's* control, then the *Design-Builder* shall take appropriate steps, in accordance with paragraph 3.6.2, to recover any lost time, and the costs of such recovery efforts shall be to the *Design-Builder's* account. To the extent that the *Design-Builder* caused delay results in the *Owner* incurring additional costs and expenses and/or a change in the *Contract Time*, the *Design-Builder* shall be liable to the *Owner* for the *Owner's* cost and damages arising therefrom.

GC 7.2 — OWNER'S RIGHT TO TERMINATE THE DESIGN-BUILDER'S RIGHT TO CONTINUE WITH THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

Add new paragraphs 7.2.7, 7.2.8 and 7.2.9:

7.2.7 if the *Design-Builder* fails to provide a satisfactory *Substantial Performance of the Work* date by thirty (30) days of NTP, pursuant to Article A-1, paragraph 1.3, then this Agreement shall be null and void and of no further force or effect and *Design-Builder* shall pay back all monies, expenses and costs to the *Owner* in respect of this Agreement.

7.2.8 Notwithstanding anything to the contrary set forth herein, if the *Work* is suspended or otherwise delayed for a period of 90 consecutive *Working Days* or a cumulative total of 180 *Working Days* under an order of the court or other public authority arising from, or

541

directly related to, the COVID-19 pandemic or other virus or disease, the *Owner* may terminate the *Contract* by giving the *Design-Builder Notice in Writing* to that effect.

7.2.9 If the *Owner* terminates the *Contract* under GC 7.2.8 above, the *Design-Builder* shall be entitled to be paid for all *Work* performed up to the date of termination (which shall include the respective *pro rata* portions of the *Design-Builder*'s administrative margins and profit mark-ups) and reasonable expenses incurred for demobilization. The *Design-Builder* shall otherwise not be entitled to be compensated for any loss of profit, loss of opportunity, loss of productivity, or for any special indirect or consequential damages incurred as a result of the termination of the *Contract*. The *Owner* and the *Design-Builder* hereby agree that the *Design-Builder*'s entitlement under this section is subject to Part 8 – Dispute Resolution.

GC 9.4 — CONSTRUCTION SAFETY

Delete paragraph 9.4.1 in its entirety and substitute new paragraph 9.4.1:

9.4.1 The *Design-Builder* shall be solely responsible for construction safety at the Place of the Work and for compliance by it and its Subcontractors and Suppliers with the applicable construction health and safety legislation, orders and directives, including but not limited any directives currently in place or that may be issued in respect of the COVID 19 pandemic or any other virus or disease. The *Design-Builder* shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. The *Design-Builder* hereby accepts the designation of “constructor” as defined under the Occupational Health and Safety Act for the Project, and responsibility for the obligations and liabilities associated therewith. Prior to the commencement of the Work, the *Design-Builder* shall submit to the Owner a copy of the Notice of Project filed with the Ministry of Labour in respect of the Work.

- 8 -

GC 11.1 — INSURANCE

Delete paragraphs 11.1.5, 11.1.6, and 11.1.7

Add the following as new paragraph 11.1.5:

11.1.5 The cost of “all risks” insurance is excluded from the *Contract*. The *Design-Builder*, in consultation with the *Owner*, shall use its best efforts to obtain coverage for “all risks” in the form and coverage requested by the *Owner*. Should the *Design-Builder* be successful in obtaining this coverage, it will present these details to the *Owner*. Should the *Owner* agree to this coverage, the *Design-Builder* will bind this coverage, and bill the *Owner* at cost (with no markup for overhead and profit). Should the *Owner* decline the coverage, it may, at its option, obtain coverage on its own, or proceed without coverage. Should the cost of “all risks” insurance increase due to Change Orders or Change Directives, this increase (at cost, with no markup for overhead and profit) will be billed to the Owner as an additional cost.

Add the following as new paragraph 11.1.6:

11.1.6 In addition to the insurance requirements specified in CCDC 41– CCDC INSURANCE REQUIREMENTS, the *Design-Builder* shall carry professional liability insurance with limits of

542

not less than \$2,000,000 per claim and with an aggregate limit of not less than \$5,000,000 within any policy year, unless specified in the *Contract Documents*. The policy shall be maintained continuously from the commencement of the Contract until 2 years after *Substantial Performance of the Work*.

Add the following as new paragraph 11.1.1.7:

11.1.7 General liability insurance specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS shall be increased to limits of not less than \$10,000,000 per occurrence with an aggregate limit of not less than \$10,000,000 within any policy year. All other requirements of CCDC-41 INSURANCE REQUIREMENTS remain.

GC 11.2 — CONTRACT SECURITY

Delete paragraphs 11.2.1 and 11.2.2 in their entirety and substitute new paragraphs 11.2.1, 11.2.2 and 11.2.3:

11.2.1 The *Design-Builder* shall provide to the *Owner* pricing for Performance and Labour and Material Payment Bonds at no greater than the cost of the Bond charged by their Surety plus ten percent overhead and a five percent profit. If the *Owner* decides to require bonding, the *Design-Builder* will bill the owner as an additional cost to the *Contract* (at the *Design-Builder's* cost plus ten percent overhead and a five percent profit). If the *Owner* agrees to require bonding, the *Design-Builder* shall provide, in favour of the *Owner*, prior to the commencement of the *Work* or within ten (10) Working Days of Contract award:

- .1 a performance bond in a form and amount acceptable to *Owner*, and
- .2 a labour and material payment bond in a form and amount acceptable to *Owner*.

11.2.2 Such bonds shall be maintained in good standing until the fulfilment of the Contract. The form of each bond must be in accordance with the latest edition of the CCDC approved bond forms. Each bond must be in an amount equal to either fifty percent (50%) or one hundred percent (100%) of the Contract Price, depending on the *Owner* requirement

An irrevocable Letter of Credit for 100% of the contract price may be issued in place of the respective bonds.

11.2.3 The *Design-Builder* shall give the *Owner Notice in Writing* of any material change in the bonds or in the surety within 15 days of occurrence.

11.2.4 Should the cost of bonding increase due to Change Orders or Change Directives, this increase (at cost plus ten percent overhead and five percent profit) will be billed to the *Owner* as an additional cost.

543

GC 12.5 WARRANTY

Amend 12.5.1 by deleting “one year” and replacing with “three (3) years”

Amend 12.5.6. by deleting “one year” and replacing with “three (3) years”

Add 12.5.9 as follows:

12.5.9 The *Design-Builder* shall assign manufacturer warranties and performance guarantees to the Owner at the *Design-Builder's* expense. The *Design-Builder* shall ensure that the warranties specified in the *Contract Documents* are obtained from *Suppliers* or *Manufacturers* and are assigned to *Owner*.

Add 12.5.10 as follows:

12.5.10 The selection of the supplier of major components including batteries, Uninterruptible Power Supply, Transformers, containers and Manual Bypass Systems were done by the Owner considering the Performance Guarantees and Warranties offered by the suppliers or manufacturers of these components. Should the *Design-Builder* substitute equipment or material for similar equipment, the *Design-Builder* must ensure that the Warranty or Performance Guarantee is equivalent to or better than the Warranty or Performance Guarantee of the equipment originally selected by the Owner, nor should the *Design-Builder* agree to reduce any Performance Guarantee or Warranty without the express written consent of the *Owner*. Should this not be the case, the *Design-Builder* shall be liable for any shortfall in warranty or performance guarantee compared to that originally proposed to *Owner* by the recommended suppliers.

Add new PART 13 as follows:

GC 13.1 — OWNERSHIP OF MATERIALS

13.1.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*. All *Work* and *Products* delivered to the *Place of the Work* by the *Design-Builder* shall be the property of the *Owner* once paid for. The *Design-Builder* shall remove all surplus or rejected materials as its property when notified in writing to do so by the *Owner*.

GC 13.2 — CONSTRUCTION LIENS

13.2.1 In the event that a construction lien is registered against the *Project* by or through a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, the *Design-Builder* shall, at its own expense:

.1 within ten (10) calendar days, ensure that any and all construction liens and certificates of action are discharged, released or vacated by the posting of security; and

544

.2 in the case of written notices of lien, ensure that such notices are withdrawn, in writing.

13.2.2 In the event that the *Design-Builder* fails to conform with the requirements of paragraph 13.2.1, the Owner may set off and deduct from any amount owing to the *Design-Builder*, all costs and associated expenses, including the costs of borrowing the appropriate cash, letter of credit or bond as security and legal fees and disbursements. If there is no amount owing by the *Owner* to the *Design-Builder*, then the *Design-Builder* shall promptly reimburse the *Owner* for all of the said costs and associated expenses.



Project Proposal

**Jebco Manufacturing Facility UPS System
188 King Street East, Colborne ON**

**for
Demand Power Group Inc.
November 2020**

Table of Contents



<u>Subject</u>	<u>Page</u>
Cover Letter	1
Respondent Certificate	2
Design and Build: Scope Summary	3
General Conditions	3
1. Proponent Engineering Scope of Work	3
2. Proponent Construction & Procurement Scope of Work	5
2.1. Procurement Scope of Work	5
2.2. Construction Scope of Work	5
Notes	8
Warranty & Product Maintenance	8
Work Included	9
Work Excluded	9
Design and Build: Financial Proposal	10
Notes	11
Deltro Company Statement of Qualifications and Experience	12
Engineering, Procurement, Construction and Maintenance (EPCM)	13
Renewable Energy and Sustainability Team	13
Employment Practices	14
Sustainability	14
Our Team	15
Project Team	16

Appendix A:

01. *Proposed Schedule—1 page*
02. *Deltro—Certificate of Insurance —1 page*
03. *Deltro—WSIB Clearance — 1 page*
04. *Deltro Health and Safety Policy — 18 pages*
05. *Deltro QAQC policy — 1 page*
06. *Statement of ability to provide bonding — 1 page*
07. *MCW Consultants Ltd. Credentials Package — 8 pages*

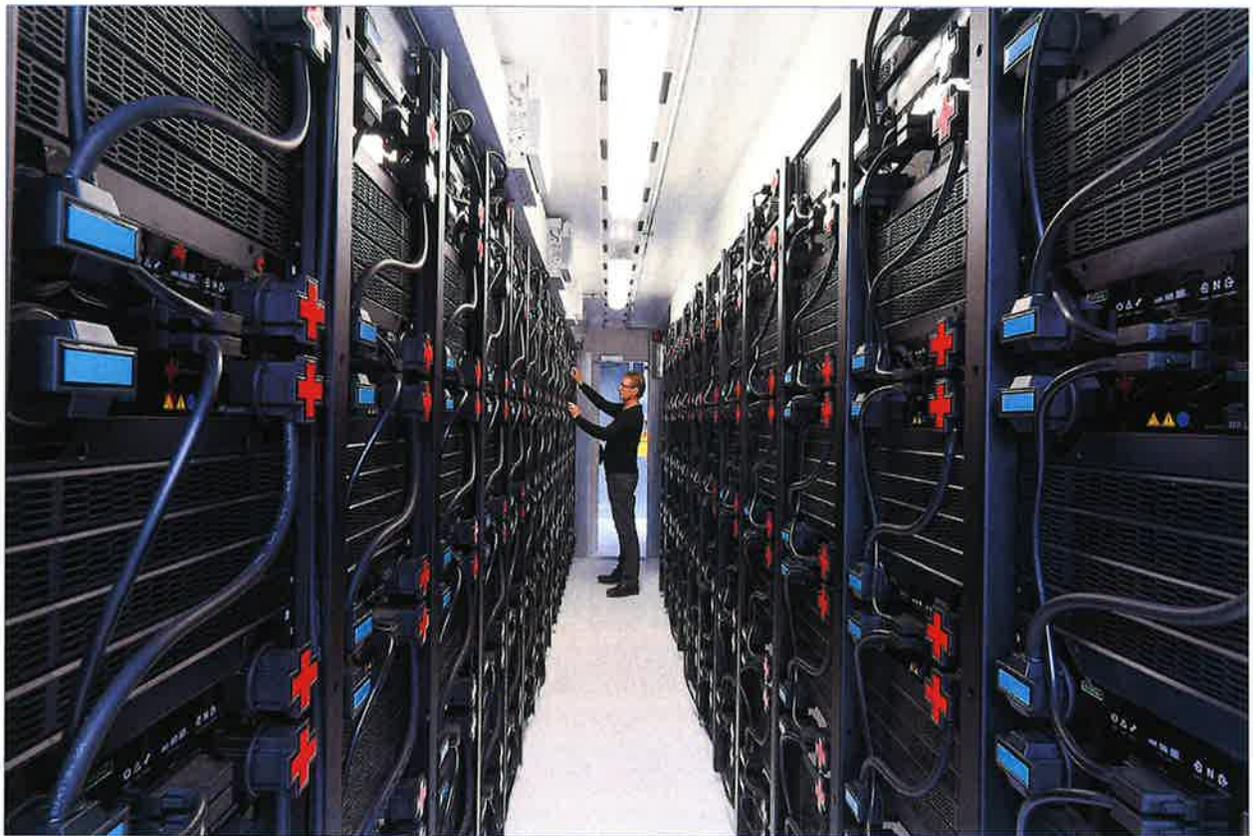
Cover Letter



Deltro Electric is pleased to respond to Demand Power Group Inc.'s request for proposal for the design & construction of a new behind the meter Uninterruptible Power Supply ("UPS") and Battery Energy Storage System ("BESS"), located on the Jebco Manufacturing Facility Project, 188 King Street, Colborne, ON

Deltro has many years of experience in the roll out of projects from concept, through to completion. Some details of prior projects are included in the appendix of this proposal. For this proposal, Deltro will provide the full team required to design, apply for permits & other approvals, procure, construct & finally commission the *complete system*.

As an integral partner with Demand Power & Jebco Manufacturing Facility Project, Deltro will work diligently to ensure all stake holders are involved in the process. Deltro will effectively facilitate all communications with all parties to maintain collaboration & ultimately success.



548

Respondent's Certificate



By submitting this Proposal for the Jebco Manufacturing Facility UPS System project, in response to the RFP from Demand Power Group Inc. (the "RFP") on behalf of Deltro Electric Ltd. (the "Respondent"), the Respondent hereby certifies, on behalf of the Respondent and not in a personal capacity that:

I have read, understand and agree to comply with the terms of this RFP.

I have read, understand and agree to comply with the statements made in this Certificate.

I understand that the accompanying Proposal may be disqualified if this Certificate is found not to be true and complete in every respect.

I am authorized by the Respondent to submit this Certificate, and to submit the accompanying Proposal, on behalf of the Respondent.

Each person whose name appears on this certificate has been authorized by the Respondent to determine the terms of, and to submit, the Proposal, on behalf of the Respondent.

The Proposal has been prepared without any connection, knowledge, comparison of information, or arrangement with any other Respondent (or any Representative thereof), fairly and without collusion or fraud and in full compliance with the laws relating to competitive bidding, including the Competition Act, R.S.C., 1985, c. C-34 (as amended). The terms of the accompanying Proposal have not, and will not be disclosed by the Respondent, directly or indirectly, to any Competitor.

Any and all potential conflicts of interest between the Respondent and Demand Power Group Inc. (or any Representative thereof) are expressly identified and fully disclosed by the Respondent in the attached Proposal, including the disclosure of any personal or business relationships between the Respondent and Demand Power Group Inc. (or any Representative thereof) and the Respondent (or any Representative thereof).

The Respondent, by means of the attached Proposal, hereby offers to enter into a Contract with Demand Power Group Inc. at the prices, and according to the terms and conditions, as set forth in the Proposal and the RFP.

The Respondent agrees that this Proposal shall remain open for acceptance by Demand Power Group Inc. until the Proposal Validity Date, as set out in the RFP.

The price proposed is not in excess of the lowest price charged anyone else, including the Respondent's most favoured customer, for the like quality and quantity of goods, services or both.

Deltro Electric Ltd.

Signature

Samuel McFall

Director, Construction Services

November 10, 2020

uelm@deltro.ca

Design & Build Scope Summary



General Conditions

- This proposal has been prepared based upon the drawings and other information provided by Demand Power (DPGI) for the Jebco Manufacturing Facility Project, located at 188 King Street, Colborne, ON
- The site will be accessible to Deltro & Deltro will be able to fence off a secure compound in an area designated by the owner & DPGI.
- Deltro will be the Constructor of Record for this project.
- It is expected that Deltro will be able to connect to the building for temporary power to the site &/or a lunch trailer.
- Deltro will provide temporary washrooms for the on site workers

1. Proponent Engineering Scope of work

Deltro has partnered with MCW Consultants Ltd. to provide the engineering requirements for the project as outlined in the RFP in Section "7. SCOPE OF WORK" as follows;

1.1 Review of Preliminary Design Package

- 1.1.1 One site visit
- 1.1.2 Summative report of observations
- 1.1.3 Photo data room sent to owner

1.2 60% Design Package

- Owner to provide Geotech reports.
- Noise study and mitigation measures excluded. Containerized components will be greatest source of noise.
- Owner to provide utility response to CIA applications. Any utility requirements following the CIA review process are currently excluded from complete scope
- No fees are assumed by CIA (assumed by owner)

1.3 Issue for Construction (IFC) Package

- 1.3.1 Electrical Design & Engineering
 - Grounding design as per OESC requirements (no grounding study).
- 1.3.2 Structural Design & Reinforcing Plans
 - Foundations will be Precast concrete piers with footing for the transformers and precast vault for the manual bypass switch
- 1.3.3 Incorporate IFT - level comments
- 1.3.4 One IFC - level site plan
- 1.3.5 One IFC - level equipment layout
- 1.3.6 One IFC - level SLD
 - At this time no SCADA requirements are defined, so they won't be part of the package
- 1.3.7 One IFC - level grounding diagram - if required
- 1.3.8 One IFC - level wire schedule (AC & communications)
- 1.3.9 One IFC - level wiring details drawing
- 1.3.10 One IFC - level label drawing
- 1.3.11 One IFC - level Civil drawing
- 1.3.12 Submittal of Building permit & ESA permit drawings

Design & Build Scope Summary



1.4 Commissioning Services

1.4.1 Review of electrical & civil commissioning documentation

1.4.2 Creation of correction punch list

- One trip

1.4.3 Review of LDC commissioning requirements

- Requirements are currently unclear. We have included four hours for this scope

1.4.4 LDC commissioning site visit

- Requirements are currently unclear. We have included four hours for this scope

1.4.5 Completion of LDC required reports and templates

- Requirements are currently unclear. We have included four hours for this scope

1.4.6 Witness commissioning activities by equipment manufacturers & commissioning agents to ensure they adhere to DPGI requirements

- One continuous week, up to 40hrs (weekday hours) included in base scope

1.4.7 Complete protection & control coordination study, arc flash study & grounding study if required.

- Protection and control coordination study from LDC to UPS output breaker. Owner to provide detailed information on equipment they are supplying.
- Arc flash study up to input side of UPS

* The following commissioning activities are included:

- MV Cables (2 sets):
 - Tests: Megger (DC insulation), VLF 30KV (dielectric withstand)
 - Visual and torque inspection (after electrician completes connection)
 - Notes: Deltro to leave cables unconnected to speed up testing.
- MV Disconnect (MW SW1 and MW SW2):
 - Tests: megger, DLRO,
 - Visual and torque inspection (after electrician completes connection)
 - Notes: Based on ground mounted components
- MV TX (T1, T2):
 - Tests: winding resistance, DLRO, Doble (Tan delta), TTR, megger
- 600V cables (2 sets):
 - Tests: Megger, DLRO
 - Visual and torque inspection (after electrician completes connection)
- Equipment rental costs:
 - Included: Megger, DLRO, Doble M4100, Testrano 600
 - Excluded: VLF, rental pricing varies greatly, at cost plus 10%
- Two persons, testing performed during 4 sequential days.
- Commissioning Report

Design & Build Scope Summary



2. Proponent Construction & Procurement Scope of Work

2.1. Procurement Scope of Work

- * Once designs have been completed and accepted by DPGI, Deltro will move forward with the procurement of all materials and equipment required to complete the project as per but not limited to the following items.
- * Balance of Plant as determined by the Engineer of Record
- * Required conduits, mounting hardware, cables & termination kits as per the approved construction drawings (IFC).
- * Required materials for foundations & back fill as per approved drawings
- * All consumable construction materials & PPE.
- * Permanent fencing & bollards.

2.2. Construction Scope of Work

- * Coordinate & schedule with DPGI equipment supplier for preparation to receive equipment
- * Coordinate all cabling demarcation points with supplier c/w confirmation of connection types & sizing.
- * Coordinate timing with supplier for off-loading of containers onto foundations
- * Manage all reviews & inspections as required
 - Engineer of Record
 - Owner
 - Design Build Consultant
 - Local authorities having jurisdiction
 - LDC
 - Building inspector
 - ESA
 - Conservation authority etc.
- * Ensure compliance with all local codes & by-law's

Design & Build Scope Summary



- * Provide complete management of site
 - Construction coordination
 - On-site supervision
 - Site layout
 - Weekly reporting to DPGI
- * When permitted mobilize to site
 - Set up safety fence
 - Establish lay down area
 - Provide sanitation facilities to meet requirements
- * Manage & hire the appropriate size crane to safely lift the UPS and BESS containers when delivered to the site.
 - Engineered & stamped Lift plan to be provided
 - Trained operator complete with necessary assistance to place equipment
 - Equipment to be fastened down to the concrete piers with anchor points provided by others.
 - Units will be bolted together once placed utilizing bolts supplied by equipment supplier.
- * Supply and install a 6 foot chain link fence c/w a 10 foot gate.
 - Fence to be placed no closer than 3 meters to containers to allow access.
 - There is 70 meters of fence complete with a 10 foot, two leaf gate.
 - Fence to meet OPSS-972 101, 102 & 130.
- * A staircase will be provided as shown in concept drawings provided in RFP.
 - Stair to be OBC compliant in all respects
 - Shop drawings will be provided for review and approval
 - Stair to be primed and painted before installation
 - Appropriate concrete bases will be installed to receive stair
- * Deltro will conduct all integration work with existing substation as per design drawings
- * Coordinate with DPGI vendor for delivery of all equipment supplied by others

Design & Build Scope Summary



- * Complete the supply and installation of all the electrical work as per the construction drawings as following:
 - Supply and install Manual bypass switch UPS-SWGR-01
 - Supply and install 2000KVA 4.16kv-400/266v transformer TX-01
 - Supply and install 2000KVA 4.16kv-400/266v transformer TX-02
 - Manual switch and transformers are placed on concrete vault
 - Complete electrical excavation and back fill.
 - Re-route/ extend existing high voltage underground circuit to new Manual bypass switch. Wire install in conduit
 - Supply and install new feed between Manual bypass switch and Transformer TX-01
 - Supply and install new feed between Manual bypass switch and Transformer TX-02
 - Supply and install 3200a 480v bus duct and termination between transformer TX-01 and customer supplied Manual bypass switch DP-01
 - Supply and install 3200a 480v bus duct and termination between transformer TX-02 and customer supplied Manual bypass switch DP-01
 - Grounding of equipment to meet code
 - Include ESA permit & inspection
 - Allow electric scissor lifts for electrical installation
 - Fire stopping and caulking for electrical work.



Design & Build Scope Summary



- * Supply and install foundations for equipment as follows.
 - As no soils report was provided we assume there is suitable bearing capacity for footings at 4 feet below grade.
 - 8 concrete piers for each 53' x 8' container
 - Excavate for and form pour and place reinforced concrete footings and piers to a depth of no less than 4 feet below grade. (frost protection)
- * Footings and piers to be appropriate concrete strength based on use and exposure
- * Backfill with approved native material
- * Precast concrete vaults to be supplied and installed under each transformer and any other equipment.
- * Supply & install 6 x 8" concrete sonotubes to a depth of 4 feet to receive the steel stair.
- * Install & commission breakers, switches, or switchgear as required.
- * Mount metering cabinets & associated CT's and PT's where required
- * Complete any cutting and coring as required where needed
- * Testing & commissioning of installed BESS in collaboration with the DPGI equipment vendor.
- * Support system energization including support entire system commissioning by providing commissioning coordination, and issuing compliance letter to the LDC
- * Issue final commissioning report to DPGI
- * Coordinate with DPGI and Jebco management for scheduling work hours and power shut downs as needed.
 - No allowance for temporary power is allowed for during shut down.
- * Provide ongoing site housekeeping with daily debris removal and garbage containment

Notes:

All as per our design and interpretation of the requirements.

Warranty & Product Maintenance:

- * Standard 1 year labour & material warranty as per CCDC 2.
- * Additional warranty provided by equipment suppliers.

Design & Build Scope Summary



Work Included

- * All design and engineering costs.
- * Design drawings stamped by a Professional Engineer, registered by the Province of Ontario.
- * Structural and electrical design drawings, stamped by a professional Engineer, registered by the Province of Ontario.
- * Full-time site supervisor.
- * Compliance with regulations pertaining to Health & Safety
- * Deltro Project Manager to coordinate complete project, from pre-design to handover.
- * Temporary services, including project office, storage trailers, hydro, telephone, and sanitary site services as may be required for construction.
- * General Liability Insurance and Builder's Risk Insurance.
- * Terms and conditions of Standard Construction Document 14, 1997, Design-Build Stipulated Price.

Work Excluded

- * Geotechnical investigation
- * Property survey
- * Provincial Harmonized Sales Tax (HST).
- * Bonding (Price for bond provided as an option.)
- * Hydro connection cost
- * Hydro shut down cost
- * Supply 3000a & 4000a 600v Bus duct
- * Grounding study
- * Electrical work within UPS container, BESS container, Switchgear container
- * Terminations and wires between UPS containers and BESS containers
- * Temporary power back up generator for any shut down work

556

Design & Build Financial Proposal



FINANCIAL PROPOSAL

Subject to the following notes we are pleased to provide the following complete cost proposal to finalize the design of a new behind the meter Uninterruptible Power Supply (UPS) and Battery Energy Storage System (BESS) for Jebco Manufacturing Facility UPS System.

Base Bid.....\$580,000.00

Broken down as follows:

* Engineering and permitting	\$52,080.00
• As per RFP terms	
• includes Design costs	
• Building permit fees	
• Other application costs & fees.	
• 'Limited Notice To Proceed' from Owner a Purchase Order issued.	
• Deltro Invoices Owner and payment made upon receipt	
*Construction & Procurement.....	\$503,920.00
* Commissioning.....	\$21,000.00
* Cash Allowances (included in above)	
• TWP of Cramahe Permit Fee.....	\$1,000.00
• SPA Amendment (s).....	\$2,000.00

Optional pricing (not included in Base Bid)

• 100% Performance bond.....	\$7,576.00
• 100% Labour & Material Bond.....	\$4,546.00
• 50% Performance bond.....	\$6,061.00
• 50% Labour & Material bond.....	\$3,030.00

Design & Build Financial Proposal



Notes

- * This proposal document will be appended to the Contract upon execution.
- * Design drawings when complete & signed off by owner form part of the contract.
- * Provincial Harmonized Sales Tax (HST) is not included.
- * Cash allowances noted above to be adjusted as per contract to reflect real cost for each item. Design builder will provide proof of such cost to owner
- * Upon LNTP, A design/permitting cost in the amount identified above will be invoiced by Deltro for up front design & permitting required. Invoice to be paid within 7 days of dated invoice.
- * Standard monthly progress draws will apply thereafter
- * Contract to be used will be the latest version of the CCDC 2, Stipulated price Contract.
- * Winter heat costs are not expected or included.
- * Schedule (bound into this proposal) is subject to change as per contract
- * Schedule is based on timely approvals & turn-around of required information from AHJ's and Owner.
- * Deltro Health & Safety policies & the OHSA will apply for the construction of this project, whichever is more stringent.
- * Subcontractors/ suppliers listed in our proposal are subject to change by Deltro.



558

Statement of Qualifications and Experience



Deltro Electric Ltd. Has been in the electrical business for more than 30 years in Canada. David Del Mastro -the company's President & CEO- founded Deltro Electric Ltd. in 1987. Since then, Deltro Electric Ltd. has become an expert in industrial and commercial electrical construction and maintenance services.

Deltro is a project developer focused on renewable energy, energy storage, and waste-to-energy projects. We offer our customers a full range of services from preliminary studies to engineering, procurement and construction, and testing and commissioning. Due to our close and reliable relationships with many national and international engineering firms, subcontractors and suppliers, we are capable of offering our customers the best materials, products and services

Our energy storage projects are designed using various technologies and with strong industry partnerships to deliver innovative solutions for power utility grids, micro-grids, renewable integration and behind the meter applications.

Deltro is currently the owner and operator of two 6MWH/2MW energy storage facilities located at 440 Commissioners street, Toronto. Connected to THESL's Basin substation, these facilities will provide reactive support and voltage control to the IESO regulated distribution grid. Deltro is also responsible for electrical installation, testing, commissioning, operations and maintenance services for these facilities as well as the 4.4MW Ellwood Energy Storage System in Ottawa, Ontario. Deltro Energy provides turnkey solutions that are scalable, practical, deployable and commercially feasible

In 2019 Deltro successfully participated in a Battery Energy Storage System (BESS) rated at 10 MW of capacity and 5 MWh of energy for use primarily as a displacement for the traditional dynamic power system spinning reserve resource and to provide frequency regulation working in a partnership with SAFT for the Bermuda Electric Light Company Limited (BELCO).

For this project Deltro fulfilled the following Scope of Work:

- * Deltro was responsible for engineering, part inventory management, obtaining appropriate Bermuda work permits for all SAFT and ABB site work related employees, and verifying all workers at BELCO BESS Project Site have appropriate work permits.
- * Deltro was responsible for transporting the Project Equipment and other project materials from the Port of Hamilton, Bermuda to the project site and to complete the follow work efforts:
 - ◇ Site management and coordination
 - ◇ to securely install the BESS battery containers on their pilings
 - ◇ to securely install the PCS containers on their pilings
 - ◇ to securely install the transformers on their pads
 - ◇ to seal all cable entry points
 - ◇ to seal the HVAC units to the roof of the BESS battery container
 - ◇ to ground all equipment per Bermuda code
 - ◇ to install the ground grid per Bermuda code
 - ◇ to complete the cable terminations and/or installation
 - ◇ cable terminations between the Project Equipment

559

Statement of Qualifications and Experience



- ◇ termination to BELCO's point of interconnection
- ◇ pulling the cables through Belco supplied conduit. Note that Belco will dig the trenches, lay the conduit, and bury the conduit.
- ◇ supporting commissioning and SAT.
- ◇ responsible for, but not limited to, engineering, crane rental, forklifts and transportation.
- ◇ conduct the following five transformer tests on the (3) 23 kV step up transformers and the auxiliary transformer
 - Insulation Resistance (IR) Test
 - Break-Down Voltage (BDV) Test
 - Voltage Ratio Test
 - Winding Resistance Measurement Test
 - Off-Load Tap Changer Check

Engineering, Procurement, Construction and Maintenance (EPCM):

Deltro has a wide scope of engineering, procurement, construction and maintenance capabilities.

To start, Deltro has a deeply entrenched electrical background, with in-house electrical engineers and an AutoCAD program which allows us to self-perform electrical engineering design work.

Deltro completes all electrical procurement and electrical construction. Our teams have done everything from installing racking and panels, to terminating inverters and transformers, and high voltage connections to the point of interconnection. We have a high-quality Health, Safety and Environment Plan which includes elements of our methods of quality control

Renewable Energy and Sustainability Team:

The Deltro team is as diverse as it is skilled. Our highly accomplished team comprises of approximately fifty employees with experience and designations in the following areas: design build construction, professional quantity surveying, engineering, consulting, project management, estimating, procurement, business development, finance & accounting, health & safety, and human resources management.

560

Statement of Qualifications and Experience



Employment Practices:

Deltro believes that people are its greatest asset. Whether it be our colleagues, employees, sub-contractors, partners, project owners or supplier we treat all stakeholders with respect and dignity. Being part of the Deltro team means receiving competitive wages and comprehensive benefit plan. On all our jobs, safety is our number one priority. To achieve the best safety records possible, we comply with all local laws and regulatory requirements.

Sustainability:

As a developer of renewable energy projects in all fields Deltro provides sustainable solutions that enable end users to lessen their environmental impact and increase profits. Deltro's energy storage systems replace the need for fossil fuels which creates a better environment for future generations.

Since energy storage is focused on efficiency and sustainability, Deltro Energy has incorporated sustainability practices into our day-to-day operations, which we consider an asset for our business partnerships. It is important to Deltro that our partners value the three pillars of sustainability: people, profit and planet. When we assemble our project teams, we choose the best partners to work with who we share these values with.



Our Team



Joshua Machan

Project Coordinator

After starting with our team in 2013, as a part of the testing and commissioning crew, Josh has grown into the role of project coordinator. After completing his Bachelor of Business Administration degree at St. Francis Xavier University, Josh continued with Deltro full time overseeing the construction of 70MW of Solar since the spring of 2018. With an advantageous attitude, and a strong desire to learn in the renewable energy sector Josh brings a youthful mindset to coordinating and seeing projects through.

Ashby Singh

Project Manager

With both technical knowhow and managerial skills, Ashby is one of Deltro's Project managers who is responsible for coordinating site work, attending site meetings, managing man power hours, and coordinating sub trades all while upholding the project's budget, schedule and timeline requirements. To date, Ashby has commissioned and managed over 200MW of solar energy in Ontario's market.

Chris Storning

Project Manager

Chris has been a licensed electrician for the last 15 years, the previous 7 of which have been in leadership roles at Deltro. Having gained years of experience in custom electrical work, electrical controls work and troubleshooting, Chris is an asset for Deltro when it comes to special projects and emerging technologies.

With both technical knowhow and managerial skills, Chris is one of Deltro's Project Managers who is responsible for coordinating site work, attending site meetings, managing *man power hours*, and *coordinating sub-trades all while upholding the project's budget, schedule and timeline requirements*

Hanna Ngo

Chief Estimator

With a Bachelor in Computer Engineering from the University of Toronto and a Certificate of Professional Engineer from the Province of Ontario, Hanna has a vast experience in the electrical industry. Hanna had been part of Deltro's team for more than 18 years, preparing estimates and Identifies labor, material, and time requirements by gathering proposals, blueprints, specifications, and related documents. Resolving discrepancies by collecting and analyzing information and presenting prepared estimates by assembling and displaying numerical and descriptive information.

Samuel McFall

Director of Construction Services

An established leader in the Canadian Construction Industry, Uel brings to Deltro a depth of knowledge and expertise in his position at Deltro. Since his initial interest in the construction industry and hands-on training earned from his father, a professional carpenter, Uel now takes on such tasks as responding to proposals, preparing budgets, tenders, attaining legislative approval and managing contracts.

Project Team



Engineering – **MCW Consultants Ltd.**
Electrical Installation – ***Deltro Electric***
Electrical LV Testing – ***Deltro Electric***
General Contractor – ***Deltro Electric***



Appendix



564

Preliminary Design/Construction Schedule

**Jebco Manufacturing Facility
UPS System Project**



ID	Task Name	Duration	Start	Finish
1	PROJECT TIMELINE	150 days	Tue 20-11-10	Mon 21-06-07
2	Proposals Submitted	0 days	Tue 20-11-10	Tue 20-11-10
3	Deltron Selected	0 days	Tue 20-11-10	Tue 20-11-10
4	DPGI Issues PO for Design (LNTP)	0 days	Tue 20-11-10	Tue 20-11-10
5	Design / Engineering	10 days	Tue 20-11-10	Mon 20-11-23
6	60 % Design completed	0 days	Mon 20-11-23	Mon 20-11-23
7	Procurement & Const cost update	0 days	Mon 20-11-23	Mon 20-11-23
8	90 % Design Completed	0 days	Tue 20-12-08	Tue 20-12-08
9	Procurement & Const cost update	2 days	Tue 20-12-08	Wed 20-12-09
10	ESA Submission	0 days	Wed 20-12-09	Wed 20-12-09
11	Building Permit Submission	0 days	Wed 20-12-09	Wed 20-12-09
12	Procurement & Const Final cost update	4 days	Thu 20-12-10	Tue 20-12-15
13	DPGI Project NTP	0 days	Tue 20-12-22	Tue 20-12-22
14	AHJ Review/approvals	35 days	Tue 20-12-22	Mon 21-02-08
15	CCDC Contract Executed	0 days	Tue 20-12-22	Tue 20-12-22
16	IFC Drawings issued	0 days	Mon 21-02-08	Mon 21-02-08
17	Pre-Construction/Procurement	28 days	Mon 21-02-08	Thu 21-03-18
18	Procurement Start	15 days	Tue 21-02-09	Mon 21-03-01
19	Permit Issued	0 days	Mon 21-02-08	Mon 21-02-08
20	Mobilize to site	2 days	Mon 21-03-15	Tue 21-03-16
21	Safety fence Area	2 days	Wed 21-03-17	Thu 21-03-18
22	Construction	41 days	Fri 21-03-19	Fri 21-05-14
23	Install Fndations	10 days	Fri 21-03-19	Thu 21-04-01
24	U/G Electrical	5 days	Fri 21-04-02	Thu 21-04-08
25	Receive & Install DPGI Equipment	3 days	Fri 21-04-09	Tue 21-04-13
26	Electrical distribution	10 days	Wed 21-04-14	Tue 21-04-27
27	Electrical Interconnect	12 days	Wed 21-04-28	Thu 21-05-13
28	Site clean up	1 day	Fri 21-05-14	Fri 21-05-14
29	Install final Fence	5 days	Wed 21-04-14	Tue 21-04-20
30	Commissioning Containers	5 days	Wed 21-04-21	Tue 21-04-27
31	Post Construction	17 days	Fri 21-05-14	Mon 21-06-07
32	Testing/Inspections	5 days	Fri 21-05-14	Thu 21-05-20
33	Commissioning site	10 days	Fri 21-05-21	Thu 21-06-03
34	Verification	2 days	Fri 21-06-04	Mon 21-06-07
35	Final Completion COD	0 days	Mon 21-06-07	Mon 21-06-07

566

567		CERTIFICATE OF INSURANCE			DATE (MM/DD/YYYY) 10/27/2020	
BROKER JONES  		Jones DesLauriers Insurance Management Inc. 2375 Skymark Avenue Mississauga, Ontario, L4W 4Y6 Tel: (416) 259-4625 Fax: (416) 259-7178		This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.		
INSURED		COMPANIES AFFORDING COVERAGE				
Deltro Electric Ltd. 1706 Mattawa Ave. Mississauga, ON L4X 1K1		COMPANY A	Continental Casualty Company			
		COMPANY B	Strategic Underwriting Managers			
COVERAGES						
This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (YYYY/MM/DD)	POLICY EXPIRATION DATE (YYYY/MM/DD)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY	MPR2832485	2020/02/01	2021/02/01		
	<input type="checkbox"/> CLAIMS MADE				BODILY INJURY & PROPERTY DAMAGE INCLUSIVE LIMITS	\$2,000,000
	<input checked="" type="checkbox"/> OCCURRENCE				GENERAL AGGREGATE	\$5,000,000
	<input checked="" type="checkbox"/> PRODUCTS AND/OR COMPLETED OPERATIONS				PRODUCTS / COMPLETED OPERATIONS AGGREGATE	\$2,000,000
	<input checked="" type="checkbox"/> PERSONAL INJURY				PERSONAL INJURY	\$2,000,000
	<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY				EMPLOYERS' LIABILITY	\$2,000,000
	<input checked="" type="checkbox"/> TENANTS LEGAL LIABILITY				TENANTS LEGAL LIABILITY	\$500,000
	<input checked="" type="checkbox"/> NON-OWNED AUTOMOBILE				NON-OWNED AUTOMOBILE	\$2,000,000
A	UMBRELLA LIABILITY	MPR2832485	2020/02/01	2021/02/01		
	<input checked="" type="checkbox"/> UMBRELLA FORM				EACH OCCURRENCE	\$8,000,000
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM				AGGREGATE	\$8,000,000
A	AUTOMOBILE	CAE2832342	2020/02/01	2021/02/01		
	<input type="checkbox"/> DESCRIBED AUTOMOBILES				THIRD PARTY LIABILITY	\$2,000,000
	<input checked="" type="checkbox"/> ALL OWNED AUTOS					
	<input checked="" type="checkbox"/> LEASED AUTOMOBILES (OPCF 5)					
B	EXCESS LIABILITY	SUM-EXC-20458-001	2020/02/01	2021/02/01		
	<input type="checkbox"/> UMBRELLA FORM				EACH OCCURRENCE	\$10,000,000
	<input checked="" type="checkbox"/> OTHER THAN UMBRELLA FORM				AGGREGATE	\$10,000,000
DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL CONDITIONS/OTHER:					Note: Limits are Stated in Canadian Dollars.	
Description of Operations: Electrical Contracting Work						
Evidence of Insurance						
CERTIFICATE HOLDER				CANCELLATION		
Attn: _____ Fax: _____ Demand Power Group Inc. Attn: Andrew Rabeau 2 Pardee Ave Suite 302 Toronto, ON M6K 3H6				Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavour to mail (0) days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.		
				AUTHORIZED REPRESENTATIVE: Jones DesLauriers Insurance Management Inc. 		

568



Your clearance(s) / Vos certificats de décharge

569

We confirm that the business(es) listed below are active and in good standing with us.
Nous confirmons que la ou les entreprises énumérées ci-dessous sont actives et que leurs comptes sont en règle.

Contractor legal or trade name / Raison sociale ou appellation commerciale de l'entrepreneur	Contractor address / Adresse de l'entrepreneur	Contractor NAICS Code and Code Description / Code du SCIAN de l'entrepreneur et description	Clearance certificat number / Numéro du certificat de décharge	Validity period (dd-mm-yyyy) / Période de validité (jj- mmm-aaaa)
DELTRO ELECTRIC LTD	1706 MATTAWA AVE, MISSISSAUGA, ON, L4X1K1, CA	007010: Non-Exempt Partners and Executive Officers in Construction - G1 238210: Electrical contractors and other wiring installation contractors	A0000H2Q7N	20-Aug-2020 to 19-Nov-2020

Under Section 141 of the *Workplace Safety and Insurance Act*, the WSIB waives our right to hold the principal (the business that has entered into a contractual agreement with the contractor/subcontractor) liable for any unpaid premiums and other amounts the contractor may owe us for the validity period specified.
Aux termes de l'article 141 de la *Loi sur la sécurité professionnelle et l'assurance contre les accidents du travail*, la WSIB renonce à son droit de tenir l'entrepreneur principal (l'entreprise qui a conclu une entente contractuelle avec l'entrepreneur ou le sous-traitant) responsable de toute prime impayée et autre montant que l'entrepreneur pourrait lui devoir pour la période de validité indiquée.

WSIB Head Office: 200 Front Street West
Toronto, Ontario, Canada M5V 3J1

Siège social : 200, rue Front Ouest
Toronto (Ontario) Canada M5V 3J1

1-800-387-0750 | TTY/ATS 1-800-387-0050
employeraccounts@wsib.on.ca | wsib.ca

570

571

DELTR O

ELECTRIC LTD
A DELTRO GROUP COMPANY

Health, Safety and Environment Plan



Table of Contents

Contents

1	Project	3
1.1	Policy Statements	3
1.2	Project Team List	3
2	Orientation and Training	3
2.2	Project Specific Orientation	3
2.3	Project Specific Training	3
3	Communication	4
3.1	Toolbox Talks	4
3.2	Joint Health and Safety Committee Meetings	4
3.3	Posting Material	4
4	Hazard Identification and Control	5
4.1	Hazard Reporting Responsibilities	5
4.1.1	Supervisor Responsibilities	5
4.1.2	Worker Responsibilities	5
4.2	Task Hazard Registry	6
4.3	Job hazard Analysis	6
4.4	Pre-Job Safety Instruction	7
4.5	Fire Extinguisher Requirements	7
5	Inspections	7
5.1	Supervisor Inspections	7
5.2	Worker Inspections	8
6	Personal Protective Equipment	8
6.1	PPE Training	8
7	Environment	9
7.1	Supervisor Responsibilities	9
7.2	Worker Responsibilities	9
8	Preventative Maintenance	10



8.1	Supervisor Responsibilities	10
8.2	Worker responsibilities	10
9	Incident Investigations.....	10
9.1	Supervisor Responsibilities	11
9.2	Worker Responsibilities	11
10	Project Specific Attachments	12
10.1	Policies	12
10.2	Emergency Response Numbers.....	16
10.3	Certified First Aiders	17
10.4	Task Hazard Registry	17

1 Project

1.1 Policy Statements

- Deltro Electric Ltd. Health and Safety Policy
- Deltro Electric Ltd. Violence and Harassment Policy
- Deltro Electric Ltd. Environment Policy
- Deltro Electric Ltd. Hazard Recognition, Analysis and Controls Policy

Please refer to section 10.1 of this project specific HSE Plan for the Deltro Electric Ltd. Policy Statements.

1.2 Project Team List

Project Director	Uel Mcfall
Project Manager	Ashby Singh
Procurement	David Vogel
Project HSE Coordinator	Xavier Jaramillo

2 Orientation and Training

2.2 Project Specific Orientation

All employees of Deltro Electric Ltd. will attend the project specific orientation provided by PCL prior to commencing work.

2.3 Project Specific Training

In addition to the project specific HSE Training Orientation, workers must have the minimum training requirements as listed below:

- WHMIS 2015
- H&S Worker/ Supervisor training
- Fall Protection (if working above 6 Ft)
- First Aid (at least one worker)

3 Communication

3.1 Toolbox Talks

Safe Work Best Practices are to be used in conjunction with job monitoring and worker training. The safe work best practices act as safety talks that are provided to the workers to increase their awareness and understanding of the most common hazards found within their job.

Supervisors of Deltro Electric Inc. will read and discuss with the workers the safe work best practices on an ongoing and as needed basis and have the workers sign the attendance sheets or record their names as present for the training.

3.2 Joint Health and Safety Committee Meetings

The purpose of the Joint Health and Safety Committee is to act as a group that identifies health and safety risks within the workplace, makes recommendations to Deltro Electric

Ltd. for corrective actions and helps to promote a culture of safety at Deltro Electric Ltd. worksites.

The joint health and safety committee has four principal functions:

- to identify potential hazards;
- to evaluate these potential hazards;
- to recommend corrective action;
- to follow up on implemented recommendations.

The number of Deltro workers present during the construction of Under Pressure and the length of the project does not require a Deltro Committee to be formed at the site level.

Should a Worker Trade Committee be formed, a Deltro worker shall be present as a representative of the electrical trade utility.

3.3 Posting Material

All required material shall be posted in a conspicuous location for Deltro Electric Ltd. employees. Items to be posted will help workers and supervisors understand site

procedures, requirements and emergency protocols. The information shall always be accessible to Deltro Electric Ltd. employees.

4 Hazard Identification and Control

4.1 Hazard Reporting Responsibilities

4.1.1 Supervisor Responsibilities

- Conduct hazard assessments for the workers throughout the duration of the project
- Participate in the hazard assessment process through the pre-job safety instruction, job hazard analysis and safe work procedures
- Review completed hazard assessments with workers prior to the start of their work
- Review completed JHA's or SWP's with the workers prior to the start of any high-risk activities
- Review, implement and maintain the sections of this project specific HSE Plan
- Implement corrective actions required based on the hazards identified
- Notify PCL superintendent of any hazards or concerns that require additional attention

4.1.2 Worker Responsibilities

- Be continually alert for unsafe conditions and behaviors and exercises their right to refuse unsafe work
- Participate in the hazard assessment process through the Pre-Job safety instructions
- Follow the sections contained in this Project Specific HSE Plan
- Follow hazard control measures identified for their work
- Use or wear the equipment, protective devices or clothing that is required
- Report to his or her supervisor defective equipment or protective device
- Report to his or her supervisor any hazard of which he or she knows

4.2 Task Hazard Registry

A scope of work assessment will be used to identify the hazards resulting from the work or tasks to be completed. These tasks are then added to the task & hazard registry where they are assessed for risk and control measures developed through safe work best practices or procedures.

Steps taken to conduct a Task Hazard Registry:

1. Identify the types of operations Deltro will conduct during its regular business
2. Identify the work tasks that will be associated with each type of work conducted at the Loyalist Solar Farm project.
3. This information will lead to a Task & Hazard Registry of the most common hazards and jobs throughout the Hillcrest Solar Farm Project and allow for the development of safe work practices, or procedures if required. Safe work practices lead to safety toolbox talks and general training for all workers in the most common hazards and controls within the company.
4. Safe work procedures lead to step by step methods of performing critical tasks e.g. confined space entry must follow a step by step method to ensure the safety of the worker.

4.3 Job Hazard Analysis

The Job Hazard Analysis is a proactive assessment of a Critical task or job prior to its performance and is used to identify hazards and risks. Once the hazards have been identified they can be reduced or lowered to the lowest risk possible with control methods.

Deltro Electric Ltd. Job Hazard Analysis Statements are intended to be completed with a group if possible involving Project/Department management, Supervisors and Workers as may be required. JHA method statements do not require a large amount of personnel to complete but they do require a cross section of experience and viewpoints to be successful. In some cases, a JHA may require the input of a Professional Engineer as determined by applicable legislation or identified conditions.

It is important all hazards are prioritized and that JHA Method Statements are communicated with involvement from the employees performing the tasks. This will result in a more thorough analysis of the work and hazards. It is also important that the completed JHA be reviewed with all Hillcrest Solar Farm personnel prior to the start of the work and any specialized training required is documented and verified.

The JHA is used to create step-by-step procedures to be followed when performing critical task work.



If the performance of any duties determined under the specific JHA method are not adequate, work shall stop, and a reassessment shall take place.

All employees involved in Loyalist Solar Farm shall have the JHA Method Statement reviewed with them, and shall sign the Method Statement to confirm they understand. A Deltro Electric Ltd. Site Supervisor or Project Manager and Health and Safety Representative shall also sign and date the JHA to confirm their understanding. These signed JHA's will remain with Deltro Electric Ltd. as part of the H&S records.

4.4 Pre-Job Safety Instruction

The Pre-Job Safety Instruction (PSI) is to be completed by all Deltro Electric Ltd. Supervisors and employees before the beginning of each workday. A PSI may also be required when the work tasks change throughout the day or as often as may be required by any Deltro Electric Ltd. Supervisor or Project Manager.

The PSI is used as a program to identify and assist workers and supervisors to safely accomplish their day-to-day activities and responsibilities. The PSI identifies hazards and communicates control requirements involved in the work they perform and to ensure that all workers are aware of their expected duties.

Combined with the education of the safe work practices, procedures and the PSI, Deltro Electric Ltd. workers' education and awareness is increased through repetition and awareness. The PSI enhances communication of job safety and work expectations between the Supervisors and the crew members.

4.5 Fire Extinguisher Requirements

Fire Extinguishers with a minimum rating of 4A- 40BC will be used on site. Fire extinguishers will be located in the site trailers, in proximity of all gas/diesel generators. 10 lb fire extinguishers also available inside company vehicles.

5 Inspections

5.1 Supervisor Inspections

In addition to the minimum legislative requirements, supervisors are required to:

- Conduct daily inspections of their work areas
- Implement corrective actions identified during the inspections of their work areas
- Provide PCL supervision of any hazards that may require immediate and or additional attention
- Immediately notify PCL supervision of any hazards that may reside outside their scope of work and/or area on this project

5.2 Worker Inspections

In addition to minimum legislative requirements, workers may be required to:

- Participate in inspections with project HSE committees such as the WTC/JHSC and government agencies such as the Ministry of Labour
- Immediately notify PCL supervision of any hazards that may require immediate and/or additional attention
- Immediately notify PCL supervision of any hazards that may reside outside their scope of work and/or work area on the project

6 Personal Protective Equipment

Personal Protective Equipment (PPE) is regarded as the last option when controlling a hazard. All employees of Deltro Electric Ltd. and subcontractors of Deltro Electric Ltd. shall wear and use Personal Protective Equipment as required by regulatory requirements, identified by hazard identification methods or required by the Deltro Electric Ltd. project manager or supervisors. PPE shall meet all regulatory CSA requirements.

At a minimum, all workers on this project must wear:

- Head protection
- Foot protection
- Eye protection
- Hearing Protection (above 85dB)
- Task specific PPE
- Face covering (COVID-19)

6.1 PPE Training

Personal Protective Equipment should be inspected by a worker before each use.



PPE should be inspected for damaged and/or defective components.

Damaged or defective PPE should be removed from service and replaced.

7 Environment

7.1 Supervisor Responsibilities

Supervisors should be knowledgeable of the project environmental action plan and are responsible for but not limited too:

- Conduct monthly inspections of the work site conditions and report deficiencies or concerns to Deltro supervision
- Communicate project environmental requirements to all workers
- Monitor and enforce project environmental requirements with all workers
- Ensure all workers are adequately trained to identify, and handle any designated substances
- Submit, retain, communicate, and update as required accurate records of all material data sheets (SDS) for all designated products on the project
- Ensure daily housekeeping duties are performed as work progresses
- Report to Deltro Project Manager upon discovery of spilled substance
- Participate in the environmental investigation when required

7.2 Worker Responsibilities

All workers should be knowledgeable of the project environmental action plan and are responsible for, but not limited too:

- Conduct daily inspections of their work areas and report deficiencies or concerns to their immediate supervisor
- Complete the necessary training to safely identify and handle any designated substances
- Prior to handling any designated products, review the product SDS with their immediate supervisor
- Perform daily housekeeping duties as work progresses or as directed by project supervision
- Report to their immediate supervisor or area superintendent upon discovery of a spilled substance
- Participate in the environmental investigation when required

8 Preventative Maintenance

8.1 Supervisor Responsibilities

Subcontractor supervision is responsible for, but not limited too:

- Confirm the safe operation and maintenance of all equipment on the project
- Verify that repairs or corrections of defects are reported to them in a timely manner
- Verify that repairs or corrections of defects are completed by a competent worker
- Remove from service any pieces of equipment or tools that have been tagged “do not start or use” or otherwise defective
- Verify maintenance and/or inspection logs remain with the vehicle or equipment
- When requested, provide proof of pre-inspection and/or maintenance records of tools and equipment on the project

8.2 Worker responsibilities

Workers are responsible for, but not limited to:

- Inspect all tools and equipment before each use and according to the manufacturers instructions
- Remove and tag out from service and defective tool or piece of equipment
- Report and remove damaged or defective tools and equipment to their immediate supervisor
- Keep all equipment and tools in good repair
- Leave all HSE devices operative on equipment and tools
- Document required inspections
- Provide proof of pre-use inspections when required

9 Incident Investigations

Deltro Electric Ltd. will internally investigate all minor incidents, occurrences or accidents that result in injury, property damage or asset loss.

Deltro Electric Ltd. retains the right to have major incidents, or accidents investigations (Critical or Fatalities) conducted either internally or by a third party for the purposes of potential litigation. All documents, photos, statements or evidence are collected for the purposes of potential litigation.



9.1 Supervisor Responsibilities

An investigation must be conducted by supervision for all incidents involving their workers. Supervisors are responsible for but not limited to:

- Immediately notify the Health & Safety Coordinator and Project Manager of designate upon learning of an incident
- Comply with all regulatory agencies reporting requirements
- Actively participate as required, in any incident investigation process

9.2 Worker Responsibilities

Workers are responsible for but not limited to:

- Report all incidents to their supervisors immediately
- Actively participate as required, in all incident investigation processes
- Provide honest statements of know facts to investigators when requested



10 Project Specific Attachments

10.1 Policies



HEALTH AND SAFETY POLICY

Deltro Electric Ltd. is firmly committed to providing a safe, healthy, and environmentally responsible workplace for all employees, subcontractors, visitors, and any person(s) who may be affected by the work of our company. We shall conduct our business in a manner that eliminates or minimizes hazards, provides accident and injury prevention programs, and ensures each of our employees returns safely to their families every evening.

Deltro Electric Ltd. commits to providing training as required to our management, supervisors, and workers. We will cooperate and consult with relevant personnel as may be required to develop and implement the Health and Safety Program. We commit to conducting our business in compliance with all Occupational Health, Safety and Environmental Legislations.

Deltro Electric Ltd commits to providing a Health and Safety Program, yearly review, ongoing monitoring and revision as we grow and learn.

Deltro Electric Ltd. acknowledges the rights of workers, to know the procedures and safety requirements as it pertains to our work, to participate in our Health and Safety Programs and training and to refuse work that they feel to be unsafe, allowing us to address the issues and correct the situations. Workers will not be reprimed against for bringing forth any Health and Safety concerns to our company.

Deltro Electric Ltd. does not accept or condone any Workplace Violence or Harassment in our workplace; consequences may be immediate.

Safety is about respect for our workers, and self-respect from our workers. Each employee and subcontractor of **Del**tro Electric Ltd. is held to the expectation that they will work in compliance with this program and all applicable regulations. They will have the self-respect to speak up when they are unsure of their work tasks, when they observe a hazard or a fellow worker working in an unsafe manner. We are all a team here at **Del**tro Electric Ltd. and safety works best when we all work together.

I trust you to join us by making a personal commitment to safety.

Sincerely:

Date: April 27, 2020

David Del Mastro
President



17.0 WORKPLACE VIOLENCE AND HARASSMENT POLICY

All workers have the right to work in a safe and respectable work environment, free from discrimination, harassment sexual harassment and workplace violence. Deltro Electric Ltd. is committed to providing a respectful work environment and ensuring that all reasonable steps are taken to prevent incidents.

WORKPLACE HARASSMENT

It is the policy of Deltro Electric Ltd. that workplace harassment in any of its forms shall not be tolerated on our worksites.

According to Ontario Ministry of Labour guidelines reasonable action or conduct by an employer, manager or supervisor that is part of his or her normal work function would not normally be considered workplace harassment. This is the case even if there are sometimes unpleasant consequences for a worker. Examples could include changes in work assignments, scheduling, job assessment and evaluation, workplace inspections, implementation of dress codes and disciplinary action.

WORKPLACE VIOLENCE

It is the policy of Deltro Electric Ltd. that any on site workplace violence shall be met with Police action, and possible termination.

WHO IS RESPONSIBLE

Everyone in the workplace must be dedicated to preventing workplace violence and harassment. Managers, Supervisors, Subcontractors and Workers are expected to uphold this policy, and will be held accountable by Deltro Electric Ltd.

Workers are encouraged to immediately report any incidents of workplace harassment, sexual harassment or violence to their supervisor or to Deltro Electric Ltd.

Deltro Electric Ltd. will investigate and deal with all concerns, complaints, or incidents of workplace harassment, sexual harassment or violence in a fair and timely manner while respecting workers' privacy as much as possible. This program may be reviewed periodically to reflect changes in legislation or changes in working conditions.

Sincerely:

Date: April 27, 2020

David Del Mastro
President



DELTRO ENVIRONMENT POLICY

The management of Deltro Electric Ltd is dedicated and firmly committed to providing an environmentally responsible workplace for employees, sub-contractors, and visitors and any other persons who may be affected by our work activities. We shall conduct our business, in so far, as is reasonably practicable, in such a manner as not to expose any persons to risks that may negatively affect their health and minimizes our potential impact on the environment.

At Deltro Electric Ltd we are committed to carrying out all our activities in compliance with all relevant and applicable Environmental Legislation, standards and best practices. We communicate our environmental commitment to our clients and the public, and we encourage them to support it.

Deltro Electric Ltd will continue to integrate the consideration of environmental concerns and potential negative impacts into all our decisions. We promote environmental awareness among our employees and encourage them to work in an environmentally responsible manner.

Deltro Electric Ltd shall, as far as is reasonably practicable:

- Train, educate, and inform our employees about environmental issues that may affect their work, including the reduction of waste through re-use and recycling practices and by purchasing recycled, recyclable or re-furnished products and materials where these alternatives are available, economical, and suitable
- Promote the efficient use of materials and resources throughout our company including water, electricity, raw materials and other resources, particularly those that are non-renewable
- Ensure there is not unnecessary use of hazardous materials and products and seek substitutions when feasible.

Deltro Electric Ltd shall ensure all our policies and procedures are continually reviewed and updated accordingly. We shall continue to improve and enhance the company's performance through the setting and reviewing of annual objectives and goals.

Sincerely

Date: April 27, 2020

David Del Mastro

President

2.0 HAZARD RECOGNITION, ANALYSIS AND CONTROLS

2.1 POLICY

Hazards to Health and Safety (H&S) at Deltro Electric Ltd. are controlled through recognition, analysis, control and training methods. These methods are used to anticipate and control hazards on Deltro Electric Ltd. work sites before they lead to injury, illness or property damage.

The range of hazards associated with Deltro Electric Ltd. workplaces are constantly evolving and changing. Hazards must be addressed on a continual basis as they arise by all Supervisors, Workers and Subcontractors.

The Management of Deltro Electric Ltd. has set out a formal method of reviewing our workplaces by developing a team within Deltro Electric Ltd. to identify our scope of work, create a hazard registry, and design safe work best practices and procedures as may be identified and required to provide a safe workplace.

The team may consist of the following as required members;

- Management Representative(s) - 1
- Supervisor Representative(s) - 1
- Worker JHSC Representative(s) - 2 or more
- 3rd Party Consultants or Specialized Representatives

The Management of Deltro Electric Ltd. support the following methods for our business and will review as required or at a minimum on a yearly basis as part of the management review process described in section 19 of this program.

Signed



David Del Mastro

President

10.2 Emergency Response Numbers



INTERNAL EMERGENCY CONTACT NUMBERS

Name	Role	Contact
Ashby Singh	Project Manager	416-990-3742
David Vogel	Chief Procurement Officer	416-990-3751
Xavier Jaramillo	HSE Coordinator	416-688-9199
Tori Manchulenko	Controller	416-268-2684

EXTERNAL EMERGENCY CONTACT NUMBERS

Name	Emergency	Non-Emergency
Fire Department	911	(905) 615-3377
Ambulance	911	(905) 791-7800
Police	911	(905) 453-2121
Trillium Health Partners	911	(905) 848-7100
Ministry of Environment	1-800-268-6060	1-416-323-4321

Office Location:

1706 Mattawa Ave, Mississauga, ON L4X 1K1



10.3 Certified First Aider Responders

10.4 Task Hazard Registry

QUALITY ASSURANCE AND QUALITY CONTROL POLICY

Deltro Electric Ltd. believes in providing all customers with a high-quality end product. To guarantee quality products and services for our customers, Deltro Electric Ltd. is committed to implementing the highest standard in quality assurance and quality control on all projects.

QUALITY ASSURANCE

It is the policy of Deltro Electric Ltd. that quality requirements on each project will be fulfilled. To ensure quality requirements are fulfilled, auditing is conducted by management as part of the quality assurance function. Quality Assurance auditing compares actual conditions with requirements and is documented in the Quality Assurance Report.

QUALITY CONTROL

It is the policy of Deltro Electric Ltd. that products and installations are examined and tested to ensure their conformity with the specified requirements. Deltro Electric Ltd. guarantees quality in the following ways:

- Deltro Electric Ltd. verifies that procured equipment meets the specifications of the customer and industry standards
- Deltro Electric Ltd. verifies that electrical installations are to the project's specifications and Ontario Electrical Code requirements.
- Deltro Electric Ltd. tests equipment and electrical systems to ensure they conform with specifications and Ontario Electrical Code

WHO IS RESPONSIBLE

Everyone in the workplace must be committed to quality assurance and quality control. Managers, Supervisors, Subcontractors and Workers are expected to uphold this policy.

Workers are required to complete good quality work from the time a task is started until it is completed. Workers must notify their supervisor immediately if they are aware of a task that does not meet Deltro Electric Ltd.'s quality standards so it can be rectified to adhere to quality standards.

Deltro Electric Ltd. will investigate if an incident occurs where quality standards are not being met to ensure the incident is corrected in a timely manner and future incidents are prevented. This program may be reviewed periodically to reflect changes in legislation or changes in working conditions.

Sincerely:

Date: November 2nd, 2020



Samuel McFall
Director, Construction Services

590

591



Shane Sinclair

Marsh Canada Limited
120 Bremner Boulevard, Suite 800
Toronto, Ontario M5J 0A8
+1 416 349 6673
Fax +1 416 349 4518
Shane.Sinclair@marsh.com
www.marsh.ca www.marsh.com

Andrew Rabeau
Demand Power Group Inc.
2 Pardee Ave, Suite 302
Toronto, ON
M6K 3H6

29 October 2020

Subject: Deltro Electric Ltd. - Surety Confirmation – Jebco Manufacturing Facility UPS System

Dear Andrew,

We wish to confirm that Deltro Electric Ltd. ("Deltro") is a highly valued client of Marsh Canada Limited and Northbridge Surety Limited.

The record of completed projects for Deltro's high profile customer list is most impressive. In our experience to date, they have consistently demonstrated an ability to complete their projects in accordance with the conditions of their contracts.

Based on our understanding of the project and estimated contract value we do not foresee any problems in providing final bonds, if asked to do so. (Final bond pricing can be confirmed once the final bond requirements are known)

Naturally, we expect the execution of all final bonds to be subject to review of the final contract terms, conditions and financing, by Deltro and Northbridge Surety Limited.

We at Marsh Canada Limited value our association with this fine organization and have no reservation giving Deltro our highest recommendation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shane Sinclair', written over the word 'Sincerely,'.

Shane Sinclair

592

593



A member of the MCW Group of Companies
www.mcw.com

207 Queen's Quay West, Suite 615
Toronto, Ontario
M5J 1A7



**ELECTRICAL CONSULTING
ENGINEERING SERVICES
CREDENTIALS PACKAGE**

FOR

**JEBCO MANUFACTURING FACILITY –
NEW UPS AND BESS INSTALLATION**

TO

DEMAND POWER GROUP INC.

DATED

OCTOBER 30, 2020

Contact Person: Al Medeiros
Phone: 416-598-2920 Ext. 229
Email: AMedeiros@mcw.com

MCW Project No. P20388A



594

Demand Power Group Inc.
Jebco Manufacturing Facility – New UPS and BESS Installation

1 COMPANY PROFILE

CORPORATE HISTORY

The MCW Group of Companies was established in **1964** and has built a solid reputation for the delivery of Professional Consulting and Engineering Services, Energy Management Services, and Engineering Development Services. Our work helps create and improve environments for our clients where thousands of Canadians live, learn, work, play, and heal.

Our company is wholly-owned by **30** active Canadian partners and employs over **450** people across Canada. Our staff includes **125** Registered Engineers and **65** LEED® (Leadership in Energy and Environmental Design) Accredited Professionals. MCW maintains Canadian offices in Toronto, Ottawa, Halifax, Truro, Moncton, Saint John, Winnipeg, Dauphin, Thunder Bay, Edmonton, Calgary, and Vancouver.

MCW AT A GLANCE

1964	YEAR COMPANY WAS FOUNDED
450	EMPLOYEES IN CANADA
12	CANADIAN OFFICES
125	PROFESSIONAL ENGINEERS
65	LEED ACCREDITED PROFESSIONALS
30	ACTIVE PARTNERS



MECHANICAL, ELECTRICAL & ICAT ENGINEERING

Our company was built on providing mechanical and electrical engineering services to clients from various market sectors. With over 55 years of experience, our firm has a strong knowledge and experience base which allows us to rise to the challenges of any building type. These strengths allow us to creatively apply new green building technologies and LEED principles to provide systems which perform to their highest capability from both an energy and sustainability perspective.



MECHANICAL ENGINEERING SERVICES

- Heating, Ventilation and Air Conditioning
- Refrigeration Systems and Ice Plants
- Plumbing Systems
- Fire Protection Systems
- Building Automation System
- Petroleum Storage and Handling Systems
- Chiller Systems
- Boiler Plants
- Rooftop Equipment
- Cooling Towers
- Ground Source System
- Heat Pump Systems
- Variable Speed Drive Applications
- Conversion of Constant Volume to VAV System
- Air Distribution



ELECTRICAL ENGINEERING SERVICES

- Coordination Studies
- Power Generation Systems
- UPS Systems
- Computer Room Systems Design
- Power Distribution Systems
- Snow Melting Systems
- Fire Alarm Systems
- Lighting Systems & Lighting Control Systems
- Pipe Tracing
- Lightning Protection



595

Demand Power Group Inc.
Jebco Manufacturing Facility – New UPS and BESS Installation



INFORMATION, COMMUNICATIONS, AUTOMATION & TECHNOLOGY (ICAT) ENGINEERING SERVICES

Communications, Security & Audio Visual
Space Planning
Cabinet and Rack Layouts
Grounding and Bonding
Wireless Access Point (WAP)
Video Surveillance
Intrusion Detection
Video Analytics
Public Address
Digital & Interactive Display
Video Wall
Video Conferencing
Sound Masking
Systems Integration
Patient Wandering
Synchronized Clock

Fibre and Copper Backbone Distribution
Copper Horizontal Distribution
Connecting Hardware
Pathway Design
Distributed Antenna System (DAS)
Access Control
Intercom
Security Control Room Planning
Sound Reinforcement
Projector & Drop Screen
Audio Visual Control
Assistive Listening
Theatrical Lighting & Sound
Nurse Call/Emergency Response
Real Time Location System (RTLS)

596

Demand Power Group Inc.
Jebco Manufacturing Facility – New UPS and BESS Installation

2 RELEVANT EXPERIENCE

CLARKSON GO STATION MULTI-LEVEL PARKING STRUCTURE

Owner: Metrolinx

Status: Completed 2015

Project Value: \$45.4M

Description: The Clarkson GO Station Parking Garage consists of a five-level above ground precast concrete parking structure which includes approximately 1,160 exterior parking spaces and 1,600 spaces inside the structure. The multi-storey parking garage also includes a photovoltaic system installed on the roof (250 kW Rooftop Solar PV Array).

MCW provided mechanical and electrical engineering services for this project.



GO ERINDALE PARKING GARAGE

Owner: GO Transit

Status: Completed 2014

Project Value: \$74.6M

Description: This is an open air multi-level parking structure and related facilities. The project incorporated innovative sustainable and energy conservation measures minimizing its carbon footprint. The new parking structure adds 981 parking spaces to the existing configuration. Other project components include:

- A 200kW rooftop Solar PV array
- A new vehicle exit ramp from the garage onto Burnhamthorpe Road and related alterations to the existing retaining walls and berms.
- The relocation of utilities and the storm and sanitary easement that runs through the site.
- A new bus loop that meets both Metrolinx and City of Mississauga requirements.
- A new "Kiss and Ride" area.
- Future bike storage room and future electric car parking area within the parking structure, in preferred locations.

MCW provided mechanical and electrical engineering consulting services for this project.



597

Demand Power Group Inc.
Jebco Manufacturing Facility – New UPS and BESS Installation

GO AJAX TRANSIT PARKING STRUCTURE

Owner: Metrolinx/GO Transit

Status: Completed 2013

Project Value: \$54M

Description: Completed in late 2013, MCW Consultants was the mechanical and electrical engineers for the Ajax GO Station Parking Structure which is located on Westney Road South in Ajax. The 6-level parking structure provides a total of 1,300 parking spaces for GO patrons. The multi-storey parking garage also includes a photovoltaic system installed on the roof (250 kW Rooftop Solar PV Array).

The superstructure for the garage includes: 6-levels of pre-cast concrete, extensive improvements to the existing platform, permanent platform extensions, new elevator and stairwell structure, connection to the pedestrian tunnel including finishing works, platform canopies, and rehabilitation of existing platforms.



598

Demand Power Group Inc.
Jebco Manufacturing Facility – New UPS and BESS Installation

3 KEY PERSONNEL

AL MEDEIROS

ROLE ON PROJECT: Electrical Project Manager

As the **Electrical Project Manager**, Al's scope of services is as follows:

At the schematic design and design development stages, Al will work with the rest of the design team and the client stakeholders to establish the electrical systems design concepts and a project budget. Al will be assisted by engineering and technical support staff to produce technical and drawing support material as required to ensure optimal electrical system design. At the end of these phases of work, an electrical design concept brief, with a budget, will be provided.

As the project moves into construction documents, Al will ensure that the electrical engineering and design staff produce technical documentation that adheres to the concepts and budget previously produced. He will continue to attend design meetings with the client and the design team.

During construction, dedicated field supervision staff will be allocated to the project, and will attend meetings, but Al will remain involved providing electrical design interpretations and clarifications as required.

SUNANDA PERERA

ROLE ON PROJECT: Electrical Project Engineer

As the **Electrical Project Engineer**, Sunanda's scope of services is as follow:

Sunanda will work alongside the Electrical Project Manager. Sunanda will provide technical support through all design stages of the project. He will provide electrical engineering review of options; liaise with other members of the design team and work to provide a comprehensive and well-coordinated set of tender documents.

Sunanda will contribute input regarding project budgeting and will value engineer the project as may be required. He will be the prime engineer on the construction document phase of the project.

Curricula for our key proposed personnel are attached

599



**ACTIVE
PROFESSIONAL
SINCE: 1979**

EDUCATION

Central Technical High
School Building /
Engineering Services, 1979

PROFESSIONAL AFFILIATIONS

Building Industry Consulting
Services International
(BICSI)

Illuminating Engineering
Society of North America
(IESNA)

AL MEDEIROS PARTNER



PROFILE

Al has been in the electrical industry since 1979 and brings in-depth knowledge that encompasses project management, electrical design and field services. His practical experience, attention to detail and commitment to client satisfaction throughout design and construction all contribute to the completion of successful projects.

He has extensive experience in commercial office buildings and in high rise residential buildings, both with MCW Consultants Ltd. and in his previous employment with another consulting firm in Toronto. Al has developed experience in alternate power sources, as our clients look for new alternate means of power supply.

Al joined MCW Consultants Ltd. in 1998 after nineteen years of service with another engineering firm in the Toronto area, the last eight of which were as a partner with that firm. As a partner at MCW, Al has total responsibility for all aspects of the electrical design on projects issued by our Toronto office.

RELEVANT PROJECT EXPERIENCE

Green Projects

- Design and Installation of Solar Wall, Wing 4, Cold Lake, Alberta, (NRCan grant provided)
- Photovoltaic (PV) Installations:
 - 250 KW – GO Clarkson Multilevel Parking Facility, Mississauga, ON
 - 250 KW – GO Erindale Multilevel Parking Facility/Station House, Mississauga, ON
 - 250 KW – GO Ajax Multilevel Parking Facility, Ajax, ON
- Camana Bay – Block 5N
- Camana Bay – Block 5S
- Foster's Food Fair

Industrial

- Husky Components, Bolton, ON
- Husky Hot Runner, Milton, Vermont, USA
- Newspring Industries, Kearny, New Jersey, USA
- Husky Tech Centres Philadelphia, Boston, USA
- Niigon Technologies, Moose Deer, ON
- Design and implementation of 40 kW photovoltaic array

Parking Structures

- 100 Yorkville TPA, Toronto, ON
- 40 Falstaff Renovation, Toronto, ON
- Charles Benton Parking Structure, Toronto, ON
- Charles Hayden Parking Garage, Toronto, ON
- City of Guelph Parking Garage, Guelph, ON
- Concord Adex – Bus Parking Facility, Toronto, ON
- GO Burlington, Burlington, ON
- GO Whitby, Whitby, ON
- GO Transit Streetsville – Bus Facility, Streetsville, ON
- GTAA Terminal 3 Parking Garage Expansion, Mississauga, ON
- City of Saint John – Saint John NB

600



**ACTIVE
PROFESSIONAL
SINCE: 1997**

EDUCATION

Honours B.Sc. (Eng) in Electrical Engineering, Majored in power electrical, University of Moratuwa-Sri Lanka, 1995.

Successfully passed the 2006 Ontario building code examinations of Building Services and General/Legal Process

PROFESSIONAL AFFILIATIONS

Registered Professional Engineer, Province of Ontario, 2008

SUNANDA PERERA, P. ENG. ASSOCIATE



PROFILE

Sunanda joined MCW Consultants Ltd. in 2010 with thirteen years of experience in electrical building service industry mainly in consulting engineering firms in Toronto, Japan and Sri Lanka as an Electrical Engineer/Electrical-Design Engineer/Site Engineer.

He also worked 5 years in building construction industry in Canada and has very good knowledge and experience of electrical construction standards and practices as well.

Sunanda has sound knowledge of Ontario Building codes.

Sunanda is familiar with standards and practices in Ontario, UK, and Dubai.

As an Electrical Engineer/Project Manager, Sunanda has the responsibility of working closely with designers, CAD operators, contractors, manufacturers as well as clients to ensure the best engineering solutions are achieved.

RELEVANT PROJECT EXPERIENCE

Green Projects

- Photovoltaic (PV) Installations:
 - 250 KW – GO Clarkson Multilevel Parking Facility, Mississauga, ON
 - 250 KW – GO Erindale Multilevel Parking Facility/Station House, Mississauga, ON
 - 250 KW – GO Ajax Multilevel Parking Facility, Ajax, ON

Industrial

- Flextronics Meter Testing Facility, Newmarket, ON

Commercial

- Sobeys Warehouse, Vaughan, ON
- Hatton National Bank, Sri Lanka
- Bank of Maldives, Maldives
- Toyota Lanka Showroom, Sri Lanka
- Intelligent Office Tower, Myanmar
- YKK Building, Myanmar

International

- Cayman Island Office/Retail Tower Block 5 North (5 Storey), Cayman Islands (LEED)
- Cayman Island Office/Retail Tower Block 5 South (5 Storey), Cayman Islands(LEED)
- Apartment Tower C-03 at Jumairah Palm-Dubai
- Camana Bay Bock 5, Grand Cayman, Cayman Islands
- Hotel Tower C-03 at Jumairah Palm, Dubai, UAE
- In-Flight Catering Hotel-Maldives
- Rum Point Club Condo, Cayman Islands

Post-Secondary Education

- Mohawk College – C Wing Renovation, Hamilton, ON
- Mohawk College – High Voltage Distribution System Upgrade, Hamilton, ON

SUBMISSION LIST

ITEM 8

601

Major Equipment Documentation to be Provided	
Exhibit	Document
A	DPGI Acceptance Criteria
B	Tests and Completion Criteria (FAT and SAT Plan) FAT Files List Battery information traceability table Battery Cell Test Battery Module Test Battery Rack test report UPS Test Report MBS test report UPS Container test report BESS Container test report Fire Suppression System Test Report HVAC test report UL Compliance Certificate for cable and Auxiliary Components CIMC products Rhos and REACH statement Kehua products Rhos and REACH statement BESS SAT UPS SAT MBS SAT Fire Suppression System SAT HVAC SAT Container Shop drawings P.Eng Drawing Set 40ft battery Container P.Eng Drawing Set 40ft UPS Container Junction box shop drawings MBS shop drawings Detailed Electrical Drawing inside container Control wiring diagram

01/20/21

			Service Agreement
			3 Year Spare Parts List
			Product Warranty Agreement and Performance Guarantee DRAFT
			Efficiency Curves/Tables
			DC combiner user manual
			Control cabinet user manual
			Battery Rack User Manual
			UPS User Manual
			MBS User Manual
			Fire suppression system user manual
			HVAC User Manual
			O&M Manuals
			HVAC Instalational Manual
			Container Installation Instruction
			Container Guide Plate 1
			Container Guide Plate 2
			Container Lifting Assembly
			Battery rack assembly instruction
			Battery module package description
			Installation Drawings
			Installation Checklist
			Commissioning Procedures
			Commissioning Checklist
			List of Special Tools for Installation / Maintenance
E	Form of Operation Services Agreement (3 Year)		
F	Equipment Warranty Package		
G	Operation and Maintenance Manuals		
H	Installation Manual and Commissioning Manual		

606

607

This is Exhibit "J" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

4F6A7FBBFF6C441

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

LRO # 1 **Construction Lien**Registered as **AL243217** on 2022 02 11 at 12:40

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 3

Properties

PIN 31511 - 0192 LT
Description LOT 3 RCP H731 TARENTORUS; PT LT 1 RCP H731 TARENTORUS PART 2,3 & 5 ON 1R10841 EXCEPT PART 12 ON 1R11212; S/T T321075; S/T EASEMENT IN GROSS OVER PT 19 ON 1R11212 AS IN AL11618; S/T EASEMENT IN GROSS OVER PT 2, 1R11430 AS IN AL24699; T/W EASEMENT OVER PT LT 1 RCP H731 TARENTORUS, PTS 6 & 7 1R11212 AS IN AL17279; S/T EASEMENT IN GROSS OVER PTS 1,2,3 & 4 1R11607 AS IN AL43667; SAULT STE. MARIE; SUBJECT TO AN EASEMENT IN GROSS OVER PART 19, 1R11212 PART 9, 1R12074 PART 1, 1R12350 AS IN AL125299
Address 750 GREAT NORTHERN ROAD
 SAULT STE. MARIE

PIN 31511 - 0264 LT
Description PT LT 1 RCP H731 TARENTORUS BEING PARTS 1,2,14,15,16,17,18 AND 20 ON 1R11212 EXCEPT PTS 11, 17 & 18 1R11945; S/T EASEMENT OVER PTS 1,2,14,15,16,17,18,20 1R11212 AS IN AL17278; S/T EASEMENT IN GROSS OVER PTS 5,6,7,8,9,10,11,12 & 13 1R11607 AS IN AL43667; SAULT STE. MARIE; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 1, 2, 3, 4, 5, 6, 7, & 8, 1R12074 PARTS 5, 6, 7, 8, 9, 10, 11, 12, & 13, 1R11607 AS IN AL125299
Address 750 GREAT NORTHERN RD
 SAULT STE. MARIE

Consideration

Consideration \$6,607,022.87

Claimant(s)

Name DELTRO ELECTRIC LTD.
Address for Service Deltro Electric Ltd.
 c/o Rousseau Mazzuca LLP
 600-65 Queen Street West
 Toronto, ON M5H 2M5
 Attn: Michael Mazzuca
 Tel: 416-304-9899
 Fax: 437-800-1453

I, David Del Mastro, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner SAULT AREA HOSPITAL, 750 Great Northern Rd., Sault Ste Marie, ON P6B 0A8 Name and address of person to whom lien claimant supplied services or materials Demand Power Group Inc., 10 King St E Suite 1100, Toronto, ON M5C 1C3 Time within which services or materials were supplied from 2021/01/28 to 2022/02/04 Short description of services or materials that have been supplied design, manufacturing and installation of battery energy storage system and uninterruptable power supply system and other related labour and materials. Contract price or subcontract price \$9,956,857.59 inclusive of HST. Amount claimed as owing in respect of services or materials that have been supplied \$6,607,022.87 inclusive of HST.

Schedule: See Schedules

Signed By

Michael Carmine Mazzuca 65 Queen Street, Suite 600 acting for Signed 2022 02 11
 Toronto Applicant(s)
 M5H 2M5

Tel 416-304-9899

Fax 437-800-1453

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

ROUSSEAU MAZZUCA LLP 65 Queen Street, Suite 600 2022 02 11
 Toronto
 M5H 2M5

Tel 416-304-9899

Fax 437-800-1453

LRO # 1 **Construction Lien**

Registered as **AL243217** on 2022 02 11 at 12:40

609
The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 3

Fees/Taxes/Payment

Statutory Registration Fee	\$66.30
Total Paid	\$66.30

610

SCHEDULE "A"

SCHEDULE OF OWNER(S) AND/OR PERSON(S) WITH AN INTEREST

Sault Area Hospital

750 Great Northern Rd.
Sault Ste Marie, ON
P6B 0A8

Demand Power Group Inc.

10 King Street East, Suite 1100
Toronto, ON
M5C 1C3

The Corporation of the City of Sault Ste. Marie

99 Foster Drive
Sault Ste. Marie, ON
P6A 5X6

Her Majesty The Queen in Right of Ontario, as Represented by the Minister of Health

The Honourable Christine Elliott, Minister of Health
5775 Yonge Street, 16th Floor
Toronto, ON
M7A 2E5

Her Majesty The Queen in Right of Ontario, as Represented by the Minister of Long-Term Care

The Honourable Paul Calandra, Minister of Long-Term Care
400 University Avenue, 6th Floor
Toronto, ON
M7A 1N3

Ministry of Health

5775 Yonge Street, 16th Floor
Toronto, ON
M7A 2E5

Ministry of Long-Term Care

400 University Avenue, 6th Floor
Toronto, ON
M7A 1N3

Ontario Health

500 - 505 University Ave
Toronto, ON
M5G 2L3

LRO # 39 **Construction Lien**Registered as **ND230042** on 2022 02 11 at 11:30

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Properties

PIN 51146 - 0100 LT
Description PT BLK I PL REID CRAMAHE PT 1 & 6, 38R4537 & AS IN CL106888; CRAMAHE
Address 188 KING ST E
 COLBORNE

Consideration

Consideration \$2,581,442.79

Claimant(s)

Name DELTRO ELECTRIC LTD.
Address for Service Deltro Electric Ltd.
 c/o Rousseau Mazzuca LLP
 600-65 Queen Street West
 Toronto, ON M5H 2M5
 Attn: Michael Mazzuca
 Tel: 416-304-9899
 Fax: 437-800-1453

I, David Del Mastro, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner JEBSCO Manufacturing Inc., 188 King Street East, Colborne, ON K0K 1S0 Name and address of person to whom lien claimant supplied services or materials Demand Power Group Inc., 10 King St E Suite 1100, Toronto, ON M5C 1C3 Time within which services or materials were supplied from 2021/01/28 to 2022/02/04 Short description of services or materials that have been supplied design, manufacturing and installation of battery energy storage system and uninterruptable power supply system and other related labour and materials. Contract price or subcontract price \$3,979,918.44 inclusive of HST. Amount claimed as owing in respect of services or materials that have been supplied \$2,581,442.79 inclusive of HST.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Michael Carmine Mazzuca 65 Queen Street, Suite 600 acting for Signed 2022 02 11
 Toronto Applicant(s)
 M5H 2M5

Tel 416-304-9899

Fax 437-800-1453

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

ROUSSEAU MAZZUCA LLP 65 Queen Street, Suite 600 2022 02 11
 Toronto
 M5H 2M5

Tel 416-304-9899

Fax 437-800-1453

Fees/Taxes/Payment

Statutory Registration Fee \$66.30
Total Paid \$66.30

612

This is Exhibit "K" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

4F6A7FBBFE6C441...

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH



Canadian Imperial Bank of Commerce

Trade Finance Centre
595 Bay Street, 7th Floor
Toronto, ON M5G 2M8
Tel: 1-800-268-6331
Fax: 416-217-8583
SWIFT: CIBCCATT

**Irrevocable
Standby Letter of Credit No.:
SBGT140101**

Beneficiary:

The Accountant, Ontario
Superior Court of Justice
595 Bay Street, Suite 808
Toronto, ON M5G 2M6 Canada

Applicant:

Star America Fund II GP, LLC
(Full details refer to below)
165 Roslyn Road
Roslyn Heights, NY 11577 United States

Date of Issue:

March 16, 2022

Date and Place of Expiry:

December 30, 2022 Toronto, Canada

Amount:

CAD 2,831,442.79 Two Million Eight Hundred Thirty One
Thousand Four Hundred Forty Two and 79/100 Canadian Dollars

Applicant's full name and address:

Star America Fund II GP, LLC
(Acting in its capacity as General Partner of Star America Infrastructure Fund II, LP and Star America
Infrastructure Fund II (Parallel), LP)
165 Roslyn Road
Roslyn Heights, NY 11577, United States

Pursuant to the request of Star America Fund II GP, LLC (Acting in its capacity as General Partner of Star America Infrastructure Fund II, LP and Star America Infrastructure Fund II (Parallel), LP) ("Applicant"), we, Canadian Imperial Bank of Commerce, Trade Finance Centre, 595 Bay Street, 7th Floor, Toronto, Ontario, M5G 2M8, Canada hereby establish and give to you an Irrevocable Standby Letter of Credit in your favour in the total amount of CAD2,831,442.79 (Two Million Eight Hundred Thirty One Thousand Four Hundred Forty Two and 79/100 Canadian Dollars) which may be drawn on by you at any time, from time to time, upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have a right as between yourself and our said Customer to make such demand, and without recognizing any claim of our said Customer, or objection by it to payment by us.



Canadian Imperial Bank of Commerce

Your drawing by sight Draft must bear reference to this Standby Letter of Credit number SBT140101 dated March 16, 2022 and must be accompanied by a certified copy of an Order, or Judgement, or Report of the Ontario Superior Court of Justice directing that an amount up to CAD2,831,442.79 (Two Million Eight Hundred Thirty One Thousand Four Hundred Forty Two and 79/100 Canadian Dollars) be paid.

This Standby letter of Credit has been established for delivery to the Accountant, Superior Court of Justice as security in place of the property described as set out on Schedule "A" attached hereto and made part of this Standby Irrevocable Letter of Credit, being lands and premises registered in the Registry Office for the Registry Division of Northumberland (No. 39) and for the purpose of vacating the Claim for lien of Deltro Electric Ltd. in the amount of CAD2,581,442.79 registered against the said property as Instrument No. ND230042 on February 11, 2022.

Partial drawings are permitted under this Standby Letter of Credit.

This Standby Letter of Credit expires on December 30, 2022 subject to the following. This Standby Letter of Credit shall be deemed to be automatically extended without any formal amendment for successive one year periods from the present or any future expiration date, unless at least thirty (30) days prior to any such date we shall notify you in writing, by registered mail or courier, that we elect not to extend this Standby Letter of Credit for any further period and at the same time forward to you together with such written notice of election a bank draft in the amount of CAD2,831,442.79, less any amount drawn under this Standby Letter of Credit, payable to the Accountant, Superior Court of Justice.

ORIGINAL

A small, handwritten mark or signature at the bottom right of the page.



Canadian Imperial Bank of Commerce

THIS PAGE FORMS AN INTEGRAL PART OF OUR LETTER OF CREDIT NO. SBTGT140101

SCHEDULE "A"

PROPERTY

PIN 51146-0100(LT) IN LRO # 39

DESCRIPTION : PT BLK 1 PL REID CRAMAHE PT 1 & 6, 38R4537 & AS IN CL106888; CRAMAHE

ADDRESS: 188 KING STREET EAST, COLBORNE, ONTARIO

Regards,

Authorised Signature(s)

Telan Jayagoda

Ihavaretnam
T1444

ORIGINAL

616

No Declared Value Entered By Sender / Aucune valeur déclarée entrée par

CONDITIONS OF CARRIAGE

IMPORTANT - PLEASE READ: The consignor agrees that the act of tendering the shipment to the carrier for transportation shall be sufficient to constitute signature of this bill of lading by the consignor and shall bind the consignor to the conditions of carriage stated below.

RECEIPT Carrier acknowledges receiving from the shipper, at the point of origin and on the date specified, the shipment described in this bill of lading in apparent good order, except as noted (contents and conditions of contents of shipment unknown), and agrees to carry and deliver the shipment to the receiver at the destination set out in this bill of lading, subject to payment of all lawful charges. "Carrier" refers to Purolator Inc. and any connecting and/or successive carriers involved in the transportation of the shipment herein described, including any of their respective subsidiaries, controlled entities, and their respective employees, agents and independent contractors.

LIMITATION ON LIABILITY Carrier's liability in respect of the shipment described in this bill of lading (including for any loss, damage, delay, misdelivery, non-delivery or failure to deliver) is limited to \$2.00 per pound (\$4.41 per kilogram) computed on the total weight of the shipment, unless a higher value is declared in the specially marked Purolator Online Shipping user entry field, "Declared Value for Insurance (\$)". Notwithstanding any disclosure of the nature or value of the goods carried or any special agreement to the contrary, carrier is not liable under any circumstances for the consequences of delay, or for any indirect or consequential damages (including lost profits) howsoever caused.

NOTICE OF CLAIM Carrier is not liable for any loss, damage or delay to any goods carried under this bill of lading unless notice of the claim setting out particulars of the origin, destination and date of shipment of the goods and the estimated amount claimed in respect of such loss, damage or delay is given in writing to the carrier within sixty (60) days after the delivery of the goods, or, in the case of failure to make delivery, within nine (9) months from the date of shipment. Subject to any overriding statutory provisions, the final statement of the claim must be filed within nine (9) months from the date of shipment, together with a copy of the paid freight bill. If the Convention applies, other notice periods may govern. No claim will be entertained until all transportation charges due in connection with this bill of lading have been paid in full. All claims are subject to proof of amount of loss.

TERMS INCORPORATED BY REFERENCE Every service to be performed under this bill of lading is subject to the conditions of carriage contained in this bill of lading, including the terms and conditions contained in Purolator Inc.'s published terms and conditions of carriage and the terms and conditions prescribed by the law of the jurisdiction where the goods originate (including the uniform conditions of carriage thereunder, if any). If the carriage involves an ultimate destination or a stop in a country other than the country of departure, the Convention (as defined below) may apply and limit the liability of the carrier in respect of loss of, damage to or delay of cargo. "Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, Poland, 12 October, 1929, or the Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal, Canada, 28 May, 1999, or those Conventions as amended or supplemented as may be applicable to the carriage hereunder.

MISCELLANEOUS Unless otherwise indicated, the consignor's name and address is the sender's name and address indicated on this bill of lading, and the latter is the place of execution and the place of departure; the consignee's name and address is the receiver's name and address indicated on this bill of lading, and the latter is the place of destination; and the date indicated on this bill of lading is the date of execution. There are no specific stopping places which are agreed to, and the carrier reserves the right to select the route and the mode of transportation that the carrier deems appropriate. The consignor warrants that the shipment is properly described on this bill of lading and on any accompanying documentation, and that the shipment is properly marked, addressed and packed to ensure safe transportation in accordance with the carrier's ordinary care in handling. Unless otherwise indicated on this bill of lading, the consignor waives its right to determine the volume or dimensions of the shipment, and to indicate same on this bill of lading. The consignor appoints the carrier as its agent for the performance of customs clearance and selecting a customs broker.

ENTIRE AGREEMENT The terms and conditions contained in this bill of lading, including those incorporated herein by reference, constitute the entire agreement relating to the carriage of the shipment described in this bill of lading, and no agent, servant or representative of the carrier or consignor has the authority to alter, waive or otherwise modify any provision of this agreement. In tendering the shipment described herein for carriage, the consignor agrees to these terms and conditions on his own behalf and on behalf of the consignee and any other party claiming an interest in this shipment.

Fold the Bill of Lading on the dotted line and insert into the adhesive pouch. Attach a Bill of Lading to each package.

Pliez ce connaissement sur la ligne pointillée et l'insérer dans la pochette adhésive. Veuillez joindre un connaissement à chaque colis.

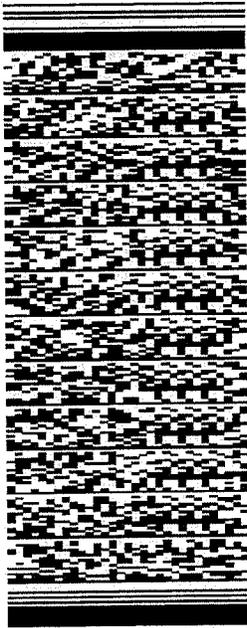
Purolator Express Envelope

FROM/DE

595 BAY ST
Trade Finance ops SUITE 700 FL
TORONTO, ON
M5G 2M8
416-980-8023
REF: S8GT140101

TO/À

Chad Kopach
Blaney McMurtry LLP
2 QUEEN ST E
SUITE 1500
TORONTO, ON
M5C 3G5



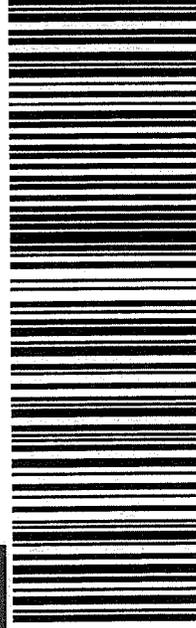
DATE: 16 MAR 2022

PIECES: 1 of/de 1

WEIGHT/POIDS 1 LB

56C

EXP



PUROLATOR PIN: 333431670749

ESO - PDF

Purolator's published terms and conditions of service apply - see www.purolator.com.
Les Modalités et conditions de service publiées de Purolator s'appliquent - voir www.purolator.com.



Canadian Imperial Bank of Commerce

Trade Finance Centre
595 Bay Street, 7th Floor
Toronto, ON M5G 2M8
Tel: 1-800-268-6331
Fax: 416-217-8583
SWIFT: CIBCCATT

**Irrevocable
Standby Letter of Credit No.:
SBGT140398**

Beneficiary:

The Accountant, Ontario
Superior Court of Justice
595 Bay Street, Suite 808
Toronto, ON M5G 2M6 Canada

Applicant:

Star America Fund II GP, LLC
(Full details refer to below)
165 Roslyn Road
Roslyn Heights, NY 11577 United States

Date of Issue:

March 23, 2022

Date and Place of Expiry:

December 30, 2022 Toronto, Canada

Amount:

CAD 6,857,022.87 Six Million Eight Hundred Fifty Seven
Thousand Twenty Two and 87/100 Canadian Dollars

Applicant's full name and address:

Star America Fund II GP, LLC
(Acting in its capacity as General Partner of Star America Infrastructure Fund II, LP and Star America
Infrastructure Fund II (Parallel), LP)
165 Roslyn Road
Roslyn Heights, NY 11577, United States

Pursuant to the request of Star America Fund II GP, LLC (Acting in its capacity as General Partner of Star America Infrastructure Fund II, LP and Star America Infrastructure Fund II (Parallel), LP) ("Applicant"), we, Canadian Imperial Bank of Commerce, Trade Finance Centre, 595 Bay Street, 7th Floor, Toronto, Ontario, M5G 2M8, Canada hereby establish and give to you an Irrevocable Standby Letter of Credit in your favour in the total amount of CAD6,857,022.87 (Six Million Eight Hundred Fifty Seven Thousand Twenty Two and 87/100 Canadian Dollars) which may be drawn on by you at any time, from time to time, upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have a right as between yourself and our said Customer to make such demand, and without recognizing any claim of our said Customer, or objection by it to payment by us.



Canadian Imperial Bank of Commerce

Your drawing by sight Draft must bear reference to this Standby Letter of Credit number SBT140398 dated March 23, 2022 and must be accompanied by a certified copy of an Order, or Judgement, or Report of the Ontario Superior Court of Justice directing that an amount up to CAD6,857,022.87 (Six Million Eight Hundred Fifty Seven Thousand Twenty Two and 87/100 Canadian Dollars) be paid.

This Standby letter of Credit has been established for delivery to the Accountant, Superior Court of Justice as security in place of the property described as set out on Schedule "A" attached hereto and made part of this Standby Irrevocable Letter of Credit, being lands and premises registered in the Registry Office for the Registry Division of Algoma (No. 1) and for the purpose of vacating the Claim for lien of Deltro Electric Ltd. in the amount of CAD6,607,022.87 registered against the said property as Instrument No. AL243217 on February 11, 2022.

Partial drawings are permitted under this Standby Letter of Credit.

This Standby Letter of Credit expires on December 30, 2022 subject to the following. This Standby Letter of Credit shall be deemed to be automatically extended without any formal amendment for successive one year periods from the present or any future expiration date, unless at least thirty (30) days prior to any such date we shall notify you in writing, by registered mail or courier, that we elect not to extend this Standby Letter of Credit for any further period and at the same time forward to you together with such written notice of election a bank draft in the amount of CAD6,857,022.87, less any amount drawn under this Standby Letter of Credit, payable to the Accountant, Superior Court of Justice.

DRAFT



Canadian Imperial Bank of Commerce

THIS PAGE FORMS AN INTEGRAL PART OF OUR LETTER OF CREDIT NO. SBT140398

SCHEDULE "A"

PROPERTY

PIN 31511-0192 (LT) in LRO #1

DESCRIPTION :

R10841 EXCEPT PART 12 ON 1R11212; S/T T321075; S/T EASEMENT IN GROSS OVER PT 19 ON 1R11212 AS IN AL11618; S/T EASEMENT IN GROSS OVER PT 2, 1R11430 AS IN AL24699; T/W EASEMENT OVER PT LT 1 RCP H731 TARENTORUS, PTS 6 & 7 1R11212 AS IN AL17279; S/T EASEMENT IN GROSS OVER PTS 1,2,3 & 4 1R11607 AS IN AL43667; SAULT STE. MARIE; SUBJECT TO AN EASEMENT IN GROSS OVER PART 19, 1R11212 PART 9, 1R12074 PART 1, 1R12350 AS IN AL125299

PIN 31511 - 0264 (LT) in LRO #1

DESCRIPTION:

PT LT 1 RCP H731 TARENTORUS BEING PARTS 1,2,14,15,16,17,18 AND 20 ON 1R11212 EXCEPT PTS 11, 17 & 18 1R11945; S/T EASEMENT OVER PTS 1,2,14,15,16,17,18,20 1R11212 AS IN AL17278; S/T EASEMENT IN GROSS OVER PTS 5,6,7,8,9,10,11,12 & 13 1R11607 AS IN AL43667; SAULT STE. MARIE; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 1, 2, 3, 4, 5, 6, 7, & 8, 1R12074 PARTS 5, 6, 7, 8, 9, 10, 11, 12, & 13, 1R11607 AS IN AL125299

ADDRESS: 750 Great Northern Road, Sault Saint Marie, ON P6B 0A8

Regards,

Authorised Signature(s)

620

This is Exhibit "L" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Zev Smith

4F6A7FBBE6C441

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

621

Demand Power Group Inc.

Consolidated Financial Statements

December 31, 2022

DRAFT

622

Independent Auditor's Report



To the Shareholders of Demand Power Group Inc.:

Opinion

We have audited the consolidated financial statements of Demand Power Group Inc. and its subsidiaries (the "Group"), which comprise the consolidated statement of financial position as at December 31, 2022, and the consolidated statements of loss and other comprehensive loss, changes in shareholders' equity (deficiency) and cash flows for the year then ended, and notes to the consolidated financial statements, including a summary of significant accounting policies.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Group as at December 31, 2022, and the results of its consolidated operations and its consolidated cash flows for the year then ended in accordance with International Financial Reporting Standards.

Basis for Opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are independent of the Group in accordance with the ethical requirements that are relevant to our audit of the consolidated financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Emphasis of Matter - liquidation basis of accounting

We draw attention to note 2 to the consolidated financial statements, which describes the liquidation basis of accounting and certain uncertainties as a result of the Group's intent to liquidate. Our opinion is not modified in respect of this matter.

Responsibilities of Management and Those Charged with Governance for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with International Financial Reporting Standards, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Group's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Group or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Group's financial reporting process.

Auditor's Responsibilities for the Audit of the Consolidated Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Group's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Group's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Group to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Toronto, Ontario

Chartered Professional Accountants

Licensed Public Accountants

Demand Power Group Inc.
624
 Consolidated Statement of Financial Position
 As at December 31, 2022
 (Expressed in Canadian dollars)

	2022	2021
	\$	\$
Assets		
Current assets		
Cash	1,699,187	4,543,908
Restricted cash (Note 9)	29,200	-
Receivables (Note 4)	72,416	287,867
Lease receivable (Note 10)	89,083	-
Unbilled revenue (Note 5)	-	84,652
Due from affiliates (Note 6)	776,968	632,201
Loan receivable (Note 7)	-	815,634
Prepaid expenses and deposits	84,875	288,909
Contract costs (Note 8)	-	323,061
	2,751,729	6,976,232
Restricted cash (Note 9)	-	29,200
Deposits	-	34,846
Right-of-use asset (Note 10)	-	142,532
Property and equipment (Note 11)	16,057	28,674
Investment in Envista Energy LP (Note 12)	101,449	99,430
Investment in Narrows Green, LP (Note 12)	84,905	139,244
	2,954,140	7,450,158
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,776,767	3,031,040
Due to affiliates (Note 6)	359,720	1,822,224
Other liability (Note 13)	-	1,091,118
Deferred revenue	-	238,257
Current portion of lease liability (Note 10)	60,329	67,367
	3,196,816	6,250,006
Lease liability (Note 10)	46,138	90,226
Borrowings (Note 14)	60,000	60,000
	3,302,954	6,400,232
Contingencies (Note 28)		
Shareholders' Equity (Deficiency) (Note 16)		
Common shares (Note 17)	985,980	985,980
Class A Preferred shares (Note 18)	12,955,161	10,210,529
Share-based benefits reserve (Note 19)	231,609	178,232
Warrant reserve (Note 20)	147,435	147,435
Foreign currency translation reserve	(896)	(29)
Deficit	(14,668,103)	(10,472,221)
	(348,814)	1,049,926
	2,954,140	7,450,158

Approved on behalf of the Board

 Director

 Director

Demand Power Group Inc.**Consolidated Statement of Loss and Comprehensive Loss****For the Year Ended December 31, 2022**

(Expressed in Canadian dollars)

	2022	2021
	\$	\$
Revenues		
Developer fees	-	676,027
Consulting	-	48,747
	-	724,774
Expenses		
Salaries, wages and benefits (Note 22)	2,134,601	1,771,553
Provision for penalties arising from contract delay (Note 23)	381,429	1,440,000
Consultants and subcontractors (Note 22)	416,135	475,352
Professional fees	936,370	499,514
General and administrative	249,236	312,835
Share-based compensation (Note 20)	53,377	170,537
Short-term and variable lease payments (Note 10)	112,085	128,136
Finance costs (Note 27)	21,468	113,825
Sales and marketing	142,745	108,160
Depreciation (Notes 10 and 11)	68,646	76,849
Market settlement costs	12,583	36,698
Share of loss of associates (Note 12)	52,320	1,770
Foreign exchange gain	(309,903)	(38,640)
	4,271,092	5,096,589
Loss before other income	(4,271,092)	(4,371,815)
Other income		
Investment tax credits (Note 24)	72,453	55,213
Other income (Note 10)	2,757	9,366
	75,210	64,579
Loss before undernoted	(4,195,882)	(4,307,236)
Other comprehensive loss		
Exchange difference on translating foreign operations	(867)	(29)
Total loss and comprehensive loss	(4,196,749)	(4,307,265)

Demand Power Group Inc.**Consolidated Statement of Changes in Shareholders' Equity (Deficiency)****For the Year Ended December 31, 2022****(Expressed in Canadian dollars)**

	Common shares	Class A Preferred shares	Share- based benefits reserve	Warrant reserve	Foreign currency translation reserve	Deficit	Total shareholders' equity
	\$	\$	\$	\$	\$	\$	\$
Balance, December 31, 2020	605,508	10,210,529	372,616	147,435	-	(6,165,878)	5,170,210
Share-based compensation expense (Note 20)	-	-	170,537	-	-	-	170,537
Fair value transfer of Common shares issued pursuant to an executive compensation arrangement (Note 20)	360,053	-	(360,053)	-	-	-	-
Issue of Common shares upon exercise of stock options (Note 20)	20,419	-	(3,975)	-	-	-	16,444
Forfeited stock options (Note 20)	-	-	(893)	-	-	893	-
Net loss and total comprehensive loss	-	-	-	-	(29)	(4,307,236)	(4,307,265)
Balance, December 31, 2021	985,980	10,210,529	178,232	147,435	(29)	(10,472,221)	1,049,926
Share-based compensation expense (Note 20)	-	-	53,377	-	-	-	53,377
Issue of Class A Preferred shares (Note 18)	-	2,744,632	-	-	-	-	2,744,632
Net loss and total comprehensive loss	-	-	-	-	(867)	(4,195,882)	(4,196,749)
Balance, December 31, 2022	985,980	12,955,161	231,609	147,435	(896)	(14,668,103)	(348,814)

Demand Power Group Inc.
Consolidated Statement of Cash Flows
For the Year Ended December 31, 2022
(Expressed in Canadian dollars)

	2022	2021
	\$	\$
Cash flows from (used in) operating activities		
Net loss	(4,196,749)	(4,307,236)
Adjustments for:		
Provision for penalties arising from contract delay (Note 23)	381,429	1,440,000
Share of loss of associates (Note 12)	-	1,770
Depreciation (Notes 10 and 11)	68,646	76,849
Share-based compensation (Note 20)	53,377	170,537
Unrealized foreign exchange loss	(167,375)	13,779
Finance costs (Note 27)	21,468	113,825
	(3,839,204)	(2,490,476)
Changes in non-cash working capital items:		
Receivables	215,451	186,770
Lease receivable	-	-
Unbilled revenue	84,652	50,850
Due from/to affiliates	(1,619,459)	2,759,916
Prepaid expenses and deposits	204,034	444,148
Contract costs	323,061	232,648
Deposits	34,846	-
Accounts payable and accrued liabilities	(621,380)	297,361
Other liability	(1,091,118)	1,091,118
Deferred revenue	(238,257)	238,257
	(6,547,374)	2,810,592
Finance fees paid (Note 27)	-	(87,160)
	(6,547,374)	2,723,432
Cash flows used in investing activities		
Loan advance (Note 7)	815,634	(815,634)
Lease payments (Note 10)	(72,594)	(75,569)
Purchases of property and equipment (Note 11)	(2,580)	(16,258)
Investment in Envista Energy LP (Note 12)	(2,019)	(36,496)
Investment in Narrows Green, LP (Note 12)	54,339	(113,561)
	792,780	(1,057,518)
Cash flows from financing activities		
Proceeds from exercise of stock options (Note 20)	-	16,444
Proceeds from borrowings (Note 14)	-	20,000
Proceeds from issue of Class A Preferred shares (Note 18)	2,745,499	-
	2,745,499	36,444
Net increase in cash	(3,009,095)	1,702,358
Cash, beginning of year	4,543,908	2,854,684
Effects of exchange rate changes on the balance of cash held in foreign currencies	164,374	(13,134)
Cash, end of year	1,699,187	4,543,908

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

1. General information

Demand Power Group Inc. (the "Company") was incorporated under the laws of the Province of Ontario on March 5, 2018. The Company's principal place of business is 10 King Street East, Toronto, Ontario, Canada. These consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries:

Subsidiary	Domicile and country of incorporation	Date of incorporation
Demand Power Inc.	Delaware, United States of America	June 17, 2019
2711171 Ontario Inc.	Ontario, Canada	August 13, 2019
2711173 Ontario Inc.	Ontario, Canada	August 13, 2019
2711176 Ontario Inc.	Ontario, Canada	August 13, 2019

The Company, together with its subsidiaries, is referred to collectively as the Group.

The Group is a development stage, innovative energy services provider. The Group, together with its affiliates, will offer electricity solutions to industrial and commercial customers. The Group's core energy storage solution is a behind-the-meter system incorporating industrial-grade batteries and an uninterruptible power supply ("UPS"), improving power reliability while reducing energy costs.

The Group's subsidiaries, except for Demand Power Inc., were incorporated for the purpose of holding interests in unconsolidated structured entities, as described in Note 12.

Going concern/liquidation

In February 2023, the directors determined that it was in the best interests of the Group to liquidate and wind-up operations. This process to wind-up operations was ongoing at the time these consolidated financial statements were authorized for issuance. See Note 2 for the impact on the basis of preparation of the consolidated financial statements.

2. Significant accounting policies*Statement of compliance*

The consolidated financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

The consolidated financial statements were authorized for issuance by the board of directors on **July XX, 2023**.

Basis of preparation

The consolidated financial statements have been prepared using the liquidation basis of accounting. Under the basis of accounting, the Group measures its assets based on their net realizable value and its liabilities based on the settlement amounts. The financial statements do not include costs to liquidate the assets of the Group, settle any contingent liabilities or future administrative costs and professional fees to wind up the activities of the Group. These costs may be material and the amounts disclosed as net assets in liquidation in total will change. The actual amounts available for distribution to shareholders will change and such changes may be material. All financial information is presented in Canadian dollars, the Group's functional currency, except share and per share amounts or as otherwise noted.

The principal accounting policies are set out below.

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

2. Significant accounting policies (continued from previous page)

Revenue recognition (continued from previous page)

Basis of consolidation

The consolidated financial statements incorporate the financial statements of the Company and its wholly-owned subsidiaries. All intra-group transactions, balances, income and expenses are eliminated in full on consolidation.

Revenue recognition

The core principle of IFRS 15 *Revenue from Contracts with Customers* ("IFRS 15") is that an entity should recognize revenue to depict the transfer of promised goods and services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The standard establishes a comprehensive five-step framework for the timing and measurement of revenue recognition. The standard also specifies how to account for the incremental costs of obtaining a contract and the costs directly related to fulfilling a contract.

The Group accounts for a contract with a customer when it has approval and commitment from all parties, the rights of the parties and payment terms are identified, the contract has commercial substance and collectability of consideration is probable. Revenue is recognized when control of the promised goods and services is transferred to customers, and in an amount that reflects the consideration the Group is contractually due in exchange for those goods and services.

Developer fees

The Group enters contracts to design, construct and install energy distribution systems on behalf of affiliates, which will ultimately be used to deliver energy optimization services to industrial and commercial customers of the affiliate. As consideration for its services, the Group receives a developer fee, calculated as a percentage of the capital expenditure to design, construct and install the energy distribution system.

When determining the proper revenue recognition method for these contracts, the Group evaluates whether the contract should be accounted for as more than one performance obligation. This evaluation requires significant judgment and the identification of performance obligations could affect the amount of revenue and profit recorded in a given period.

The Group's contracts to design, construct and install energy distribution systems generally consist of two performance obligations. The first performance obligation is the delivery to the affiliate of a comprehensive investment proposal for an energy development project under which the Group will install and operate an energy distribution system at a customer site on behalf of the affiliate. The investment proposal includes (i) the budget for development, construction and operation of the project, (ii) a financial model that stipulates the budgeted capital expenditure and projected rate of return of the project, and (iii) the proposed power purchase agreement ("PPA"), a multi-year, fixed price, retail power purchase agreement to be contracted with an end customer. The second performance obligation relates to the services provided by the Group to manage the construction and implementation of the energy distribution system. The total developer fee is allocated to each of these two performance obligations in an amount based on the estimated relative stand-alone selling prices of the promised goods and services underlying each performance obligation.

With respect to the delivery of an investment proposal, the Group transfers control of the product, and satisfies the performance obligation, at the point in time when the affiliate accepts the project, as evidenced by a notice to proceed ("NTP").

With respect to the services to manage the construction and implementation of the energy distribution system, the Group transfers control of the services, and satisfies the performance obligation, over time. Therefore, the Group recognizes revenue over time as this performance obligation is satisfied. This continuous transfer of control to the affiliate is supported by the affiliate's legal title to the energy distribution system, and corresponding PPA.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

2. Significant accounting policies (continued from previous page)*Revenue recognition* (continued from previous page)Developer fees (continued from previous page)

As a result of control transferring over time, revenue is recognized based on the extent of progress towards completion of the performance obligation. The performance obligation is fully satisfied when the energy distribution system is ready to begin active operation, referred to as the commercial operations date ("COD"). The Group generally uses the cost-to-cost measure of progress for its contracts because it best reflects the transfer of an asset to the affiliate which occurs as costs are incurred on the contract. Under the cost-to-cost measure of progress, the extent of progress towards completion is measured based on the ratio of costs incurred to-date to the total estimated costs at completion of the performance obligation. Revenues are recorded proportionately as costs are incurred.

The developer fee is determined as a percentage of the total capital expenditure of the project. The Group estimates this variable consideration at the most likely amount it expects to be entitled. The Group includes the estimated amount in the transaction price to the extent it is highly probable that a significant reversal of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is resolved. The estimate of variable consideration and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of the Group's anticipated performance and all information, historical, current, and forecasted, that is reasonably available.

Due to the nature of the Group's performance obligations, the estimation of total revenue at completion is complex, subject to many variables, and requires significant judgment. These areas of measurement uncertainty are discussed further in Note 3. Any changes to the estimates of forecasted revenue are recognized on a cumulative basis, which recognizes in the current period the cumulative effect of the changes based on a performance obligation's percentage of completion.

Unbilled revenue represents revenue earned in excess of amounts billed on uncompleted contracts. Unbilled revenue arises when the cost-to-cost method of revenue recognition is utilized, and revenue recognized exceeds the amount billed.

Operator fees

Once the construction and implementation of the energy distribution system is complete, the Group provides ongoing services to the affiliate to operate and maintain the energy distribution system for the purpose of delivering electricity optimization services to the affiliate's end customer. The Group provides several integrated services in connection with these arrangements, which are accounted for as a single, combined performance obligation that is satisfied over time. As consideration for its services, the Group receives a monthly operator fee, calculated as a fixed amount per installed megawatt of uninterruptible power supply, payable in equal monthly installments. The Group recognizes its operator fee as revenue over time, as the performance obligation is satisfied. The term of the contracts to provide operator services are generally commensurate with the term of the corresponding PPA, or 10 years.

Other consulting services

Revenue related to other consulting services is recognized over time, as the performance obligations are satisfied by the Group.

Contract costs

The Group recognizes as an asset the incremental costs of obtaining a contract with a customer if the Group expects to recover those costs. Costs to obtain a contract that would have been incurred regardless of whether the contract was obtained are recognized as an expense when incurred, unless those costs are explicitly chargeable to the customer regardless of whether the contract is obtained.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

2. Significant accounting policies *(continued from previous page)**Contract costs (continued from previous page)*

The Group recognizes an asset from the costs incurred to fulfil a contract only if those costs meet all the following criteria:

- (a) the costs relate directly to a contract or to an anticipated contract that the Group can specifically identify (for example, costs relating to services to be provided under renewal of an existing contract or costs of designing an asset to be transferred under a specific contract that has not yet been approved);
- (b) the costs generate or enhance resources of the entity that will be used in satisfying (or in continuing to satisfy) performance obligations in the future; and
- (c) the costs are expected to be recovered.

Costs that relate directly to a contract (or a specific anticipated contract) include any of the following:

- (a) direct labour (for example, salaries and wages of employees who provide the promised services directly to the customer);
- (b) direct materials (for example, supplies used in providing the promised services to a customer);
- (c) allocations of costs that relate directly to the contract or to contract activities (for example, costs of contract management and supervision, insurance and depreciation of tools, equipment and right-of-use assets used in fulfilling the contract);
- (d) costs that are explicitly chargeable to the customer under the contract; and
- (e) other costs that are incurred only because an entity entered into the contract (for example, payments to subcontractors).

An asset recognized for contract costs is amortized on a systematic basis that is consistent with the transfer to the customer of the goods or services to which the asset relates.

The Group recognizes an impairment loss in profit or loss to the extent that the carrying amount of an asset recognized for contract costs exceeds:

- (a) the remaining amount of consideration that the Group expects to receive in exchange for the goods or services to which the asset relates; less
- (b) the costs that relate directly to providing those goods or services and that have not been recognized as expenses.

The Group recognizes in profit or loss a reversal of some or all of an impairment loss previously recognized in accordance with criteria described above when the impairment conditions no longer exist or have improved. The increased carrying amount of the asset shall not exceed the amount that would have been determined (net of amortization) if no impairment loss had been recognized previously.

Restricted cash

Restricted cash relates to a deposit held by a Canadian chartered bank as security in connection with the Group's corporate credit card facility.

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

3. Significant accounting policies (continued from previous page)

Leases

At inception of a contract, the Group assesses whether a contract is, or contains, a lease based on whether the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration. The Group recognizes a right-of-use asset and a lease liability at the lease commencement date. The right-of-use asset is initially measured based on the initial amount of the lease liability adjusted for any lease payments made at or before the commencement date, less any lease incentives received.

The right-of-use assets are depreciated to the earlier of the end of the useful life of the right-of-use asset or the lease term using the straight-line method. The lease term includes periods covered by an option to extend if the Group is reasonably certain to exercise that option. In addition, the right-of-use asset can be periodically reduced by impairment losses, if any, and adjusted for certain remeasurements of the lease liability. The lease liability is initially measured at the present value of the lease payments that are not paid at the commencement date, discounted using the interest rate implicit in the lease or, if that rate cannot be readily determined, the Group's incremental borrowing rate.

Property and equipment

Property and equipment are recorded at cost less accumulated depreciation and accumulated impairment losses. Cost includes all expenditures incurred to bring the assets to the location and condition necessary for them to be operated in the manner intended by management.

Depreciation is recognized so as to write off the cost of assets less their residual values over their useful lives, using the straight-line method. The estimated useful lives, residual values and depreciation method are reviewed at the end of each reporting period, with the effect of any changes in estimate accounted for on a prospective basis.

Management has assessed the useful life of the Group's property and equipment to be as follows:

Computer equipment	3-years
--------------------	---------

Foreign currencies

In preparing the financial statements of each individual entity comprising the Group, transactions in currencies other than the entity's functional currency (foreign currencies) are recognized at the rates of exchange prevailing at the dates of the transactions. The functional currency of each entity comprising the Group follows:

Demand Power Group Inc.	Canadian dollar
Demand Power Inc.	United States dollar ("USD")
2711171 Ontario Inc.	Canadian dollar
2711173 Ontario Inc.	Canadian dollar
2711176 Ontario Inc.	Canadian dollar

At the end of each reporting period, monetary items denominated in foreign currencies are retranslated at the rates prevailing at that date. Non-monetary items carried at fair value that are denominated in foreign currencies are retranslated at the rates prevailing at the date when the fair value was determined. Non-monetary items that are measured in terms of historical cost in a foreign currency are not retranslated. Exchange differences on monetary items are recognized in profit or loss in the period in which they arise.

For the purposes of presenting consolidated financial statements, the assets and liabilities of the Group's foreign operations are translated into Canadian dollars using exchange rates prevailing at the end of each reporting period. Income and expense items are translated at the average exchange rates for the period, unless exchange rates fluctuate significantly during that period, in which case the exchange rates at the dates of the transactions are used. Exchange differences arising, if any, are recognized in other comprehensive income or loss and accumulated in equity.

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

2. Significant accounting policies (continued from previous page)

Share-based payment arrangements

Equity-settled share-based payments to employees and others providing similar services are measured at the fair value of the equity instruments at the grant date.

The fair value determined at the grant date of the equity-settled share-based payments is expensed on a straight-line basis over the vesting period, based on the Group's estimate of equity instruments that will eventually vest, with a corresponding increase in equity. At the end of each reporting period, the Group revises its estimate of the number of equity instruments expected to vest. The impact of the revision of the original estimates, if any, is recognized in profit or loss such that the cumulative expense reflects the revised estimate, with a corresponding adjustment to the share-based benefits reserve.

Equity-settled share-based payment transactions with parties other than employees are measured at the fair value of the goods or services received, except where that fair value cannot be estimated reliably, in which case they are measured at the fair value of the equity instruments granted, measured at the date the entity obtains the goods or the counterparty renders the service.

Deferred tax

Deferred tax is recognized on temporary differences between the carrying amounts of assets and liabilities in the consolidated financial statements and the corresponding tax bases used in the computation of taxable profit. Deferred tax liabilities are generally recognized for all taxable temporary differences. Deferred tax assets are generally recognized for all deductible temporary differences to the extent that it is probable that taxable profits will be available against which those deductible temporary differences can be utilized. Such deferred tax assets and liabilities are not recognized if the temporary difference arises from goodwill or from the initial recognition (other than in a business combination) of other assets and liabilities in a transaction that affects neither the taxable profit nor the accounting profit.

The carrying amount of deferred tax assets is reviewed at the end of each reporting period and reduced to the extent that it is no longer probable that sufficient taxable profits will be available to allow all or part of the asset to be recovered.

Deferred tax liabilities and assets are measured at the tax rates that are expected to apply in the period in which the liability is settled or the asset realized, based on tax rates (and tax laws) that have been enacted or substantively enacted by the end of the reporting period.

The measurement of deferred tax liabilities and assets reflects the tax consequences that would follow from the manner in which the Group expects, at the end of the reporting period, to recover or settle the carrying amount of its assets and liabilities.

Deferred tax is recognized in profit or loss, except when it relates to items that are recognized in other comprehensive income or loss or directly in equity, in which case, the deferred tax is also recognized in other comprehensive income or loss or directly in equity, respectively. Where deferred tax arises from the initial accounting for a business combination, the tax effect is included in the accounting for the business combination.

Financial instruments

IFRS 9 *Financial Instruments* ("IFRS 9") contains three principal classification categories for financial assets: measured at amortized cost, fair value through other comprehensive income ("FVOCI") and fair value through profit or loss ("FVTPL"). The classification of financial assets under IFRS 9 is generally based on the business model in which a financial asset is managed and its contractual cash flow characteristics. Financial liabilities are classified as those to be measured at amortized cost unless they are designated as those to be measured subsequently at fair value through profit or loss (irrevocable election at the time of recognition). For assets and liabilities measured at fair value, gains and losses are either recorded in profit or loss or other comprehensive income or loss.

The Group reclassifies financial assets when and only when its business model for managing those assets changes. Financial liabilities are not reclassified.

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

2. Significant accounting policies (continued from previous page)

Financial instruments (continued from previous page)

Financial assets

Recognition and initial measurement

The Group recognizes financial assets when it becomes party to the contractual provisions of the instrument. Financial assets are measured initially at their fair value plus, in the case of financial assets not subsequently measured at fair value through profit or loss, transaction costs that are directly attributable to their acquisition. Transaction costs attributable to the acquisition of financial assets subsequently measured at fair value through profit or loss are expensed in profit or loss when incurred.

Classification and subsequent measurement

On initial recognition, financial assets are classified as subsequently measured at amortized cost, fair value through other comprehensive income ("FVOCI") or fair value through profit or loss ("FVTPL"). The Group determines the classification of its financial assets, together with any embedded derivatives, based on the business model for managing the financial assets and their contractual cash flow characteristics.

Financial assets are classified as follows:

- Amortized cost - Assets that are held for collection of contractual cash flows where those cash flows are solely payments of principal and interest are measured at amortized cost. Interest revenue is calculated using the effective interest method and gains or losses arising from impairment, foreign exchange and derecognition are recognized in profit or loss.
- Fair value through other comprehensive income - Assets that are held for collection of contractual cash flows and for selling the financial assets, and for which the contractual cash flows are solely payments of principal and interest, are measured at fair value through other comprehensive income. Interest income calculated using the effective interest method and gains or losses arising from impairment and foreign exchange are recognized in profit or loss. All other changes in the carrying amount of the financial assets are recognized in other comprehensive income. Upon derecognition, the cumulative gain or loss previously recognized in other comprehensive income is reclassified to profit or loss.
- Mandatorily at fair value through profit or loss - Assets that do not meet the criteria to be measured at amortized cost, or fair value through other comprehensive income, are measured at fair value through profit or loss. All interest income and changes in the financial assets' carrying amount are recognized in profit or loss.
- Designated at fair value through profit or loss - On initial recognition, the Group may irrevocably designate a financial asset to be measured at fair value through profit or loss in order to eliminate or significantly reduce an accounting mismatch that would otherwise arise from measuring assets or liabilities, or recognizing the gains and losses on them, on different bases. All interest income and changes in the financial assets' carrying amount are recognized in profit or loss.

The Group measures all equity investments at fair value. Changes in fair value are recorded in profit or loss except where the Group has irrevocably elected on initial recognition to present in other comprehensive income the fair value gains and losses of an equity investment that is neither held for trading nor contingent consideration acquired in a business combination. In such cases, the cumulative gains and losses recognized in other comprehensive income are not reclassified to profit or loss on derecognition of the investment.

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

2. Significant accounting policies (continued from previous page)

Financial instruments (continued from previous page)

Financial assets (continued from previous page)

Business model assessment

The Group assesses the objective of its business model for holding a financial asset at a level of aggregation which best reflects the way the business is managed, and information is provided to management. Information considered in this assessment includes stated policies and objectives.

Contractual cash flow assessment

The cash flows of financial assets are assessed as to whether they are solely payments of principal and interest on the basis of their contractual terms. For this purpose, 'principal' is defined as the fair value of the financial asset on initial recognition. 'Interest' is defined as consideration for the time value of money, the credit risk associated with the principal amount outstanding, and other basic lending risks and costs. In performing this assessment, the Group considers factors that would alter the timing and amount of cash flows such as prepayment and extension features, terms that might limit the Group's claim to cash flows, and any features that modify consideration for the time value of money.

Impairment

The Group recognizes a loss allowance for the expected credit losses associated with its financial assets, other than financial assets measured at fair value through profit or loss. Expected credit losses are measured to reflect a probability-weighted amount, the time value of money, and reasonable and supportable information regarding past events, current conditions and forecasts of future economic conditions.

The Group applies the simplified approach for trade receivables. Using the simplified approach, the Group records a loss allowance equal to the expected credit losses resulting from all possible default events over the assets' contractual lifetime.

The Group assesses whether a financial asset is credit-impaired at the reporting date. Regular indicators that a financial instrument is credit-impaired include significant financial difficulties as evidenced through borrowing patterns or observed balances in other accounts and breaches of borrowing contracts such as default events or breaches of borrowing covenants. For financial assets assessed as credit-impaired at the reporting date, the Group continues to recognize a loss allowance equal to lifetime expected credit losses.

For financial assets measured at amortized cost, loss allowances for expected credit losses are presented in the consolidated statement of financial position as a deduction from the gross carrying amount of the financial asset.

Financial assets are written off when the Group has no reasonable expectations of recovering all or any portion thereof.

Derecognition of financial assets

The Group derecognizes a financial asset when its contractual rights to the cash flows from the financial asset expire, or the financial asset has been transferred under particular circumstances.

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

2. Significant accounting policies (continued from previous page)

Financial instruments (continued from previous page)

Financial assets (continued from previous page)

Derecognition of financial assets (continued from previous page)

For this purpose, a financial asset is transferred if the Group either:

- Transfers the right to receive the contractual cash flows of the financial asset, or;
- Retains the right to receive the contractual cash flows of the financial asset but assumes an obligation to pay received cash flows in full to one or more third parties without material delay and is prohibited from further selling or transferring the financial asset.

Transferred financial assets are evaluated to determine the extent to which the Group retains the risks and rewards of ownership. When the Group neither transfers nor retains substantially all the risks and rewards of ownership of the financial asset, it evaluates whether it has retained control of the financial asset.

Where substantially all risks and rewards of ownership have been transferred, or risks and rewards have neither been transferred nor retained and control of the financial asset has not been retained, the Group derecognizes the financial asset. At the same time, the Group separately recognizes as assets or liabilities the fair value of any rights and obligations created or retained in the transfer. Any difference between the carrying amount measured at the date of recognition and the consideration received is recognized in profit or loss.

Financial liabilities

Recognition and initial measurement

The Group recognizes a financial liability when it becomes party to the contractual provisions of the instrument. At initial recognition, the Group measures financial liabilities at their fair value plus transaction costs that are directly attributable to their issuance, with the exception of financial liabilities subsequently measured at fair value through profit or loss for which transaction costs are immediately recorded in profit or loss.

Where an instrument contains both a liability and equity component, these components are recognized separately based on the substance of the instrument, with the liability component measured initially at fair value and the equity component assigned the residual amount.

Classification and subsequent measurement

Subsequent to initial recognition, all financial liabilities, except for financial liabilities subsequently measured at fair value through profit or loss, are measured at amortized cost using the effective interest rate method. Interest, gains and losses relating to a financial liability are recognized in profit or loss.

Derecognition of financial liabilities

The Group derecognizes a financial liability only when its contractual obligations are discharged, cancelled or expire.

Puttable instruments

Puttable instruments that give a right for the holder to sell the instrument back to the Group ("put option") for cash or another financial asset or is automatically put back to the Group on occurrence of an uncertain future event, are generally recorded as financial liabilities.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

2. Significant accounting policies (continued from previous page)*Financial instruments* (continued from previous page)*Derivative financial instruments*

Derivative instruments are recorded at fair value, including those derivatives that are embedded in financial or non-financial contracts that are not closely related to the host contracts. Changes in the fair values of derivative instruments are recorded in profit or loss.

Embedded derivatives

For hybrid contracts containing a host that is not an asset in the scope of IFRS 9, embedded derivatives are evaluated on initial recognition to determine if the embedded derivative must be separated from the host contract. Embedded derivatives are separated from the host contract when the economic characteristics and risks of the derivative are not closely related to those of the host contract, a separate instrument with the same terms as the embedded derivative would meet the definition of a derivative, and the hybrid contract is not measured at fair value through profit or loss. Embedded derivatives that are separated from the host contract are initially measured at fair value and subsequently measured at fair value through profit or loss. The host contract is accounted for in accordance with the appropriate Standards.

Non-option derivatives are separated from the host contract on the basis of their stated or implied substantive terms so as to result in them having a fair value of zero at inception. Option-based derivatives are separated from the host contract on the basis of stated terms and conditions and measured at their fair value on inception, with the host contract's initial carrying amount being the residual amount after separating the derivative.

Classification of financial instruments

The following table summarizes the classification of the Group's financial instruments:

<u>Asset / liability:</u>	<u>Classification:</u>
Cash	FVTPL
Receivables	Amortized cost
Due from / to affiliates	Amortized cost
Loan receivable	Amortized cost
Restricted cash	Amortized cost
Accounts payable and accrued liabilities	Amortized cost
Other liability	Amortized cost
Borrowings	Amortized cost
Lease liability	Amortized cost
Conversion option on Class A Preferred shares	FVTPL
Special shares	Amortized cost

Fair value

Assets and liabilities carried at fair value must be classified using a three-level hierarchy that reflects the significance and transparency of the inputs used in making the fair value measurements.

- Level 1 inputs are unadjusted quoted prices of identical instruments in active markets;
- Level 2 inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly; and
- Level 3 inputs that are not based on observable market data (unobservable data).

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

2. Significant accounting policies (continued from previous page)

Financial instruments (continued from previous page)

Fair value (continued from previous page)

Determination of fair value and the resulting hierarchy requires the use of observable market data whenever available. The classification of a financial instrument in the hierarchy is based upon the lowest level of input that is significant to the measurement of fair value.

3. Critical accounting judgments and key sources of estimation uncertainty

In the application of the Group's accounting policies, the directors and management are required to make judgments, estimates and assumptions about the carrying amounts of assets and liabilities that are not readily apparent from other sources. The estimates and associated assumptions are based on historical experience and other factors that are considered to be relevant. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

Critical judgments in applying accounting policies

The following are the critical judgments, apart from those involving estimations, that the directors and management have made in the process of applying the Group's accounting policies and that have the most significant effect on the amounts recognized in the consolidated financial statements.

Financial liabilities designated as at FVTPL

An entity can elect to designate a financial liability in the scope of IFRS 9 as at FVTPL at initial recognition even though the instrument would not meet the definition of held for trading. This option is available when the financial liability is a hybrid contract containing one or more embedded derivatives, unless:

- (a) the embedded derivative does not significantly modify the cash flows that otherwise would be required by the contract; or
- (b) it is clear with little or no analysis when a similar hybrid instrument is first considered that separation of the embedded derivative is prohibited, as in the case of a prepayment option embedded in a loan that permits the holder to prepay the loan for approximately its amortized cost.

The application of the guidance in IFRS 9 when determining whether it is appropriate to designate a hybrid contract as a whole at FVTPL is complex and requires management to apply significant judgment.

Fair value of financial liabilities as at FVTPL

The determination of the fair values of debt instruments or the component parts of hybrid contracts requires the use of valuation models and/or techniques for which the underlying assumptions are inherently subject to significant estimation and judgment. These models and techniques require that management make estimates and assumptions with respect to one or more of the following at the date of issuance: the fair value of Common shares underlying conversion rights, expected volatility of the Company's share value, estimated life of conversion rights and interest rates which could be obtained for debt instruments with similar terms and maturities.

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

3. Critical accounting judgments and key sources of estimation uncertainty *(continued from previous page)*

Selecting the option pricing model to estimate the fair value of equity instruments granted

The Group uses the Black-Scholes Merton formula to estimate the fair value of equity instruments granted in connection with equity-settled share-based payments. Management considered factors that knowledgeable, willing market participants would consider when selecting the option pricing model to apply.

Interests in unconsolidated structured entities

The identification of structured entities, and the nature of risks arising from interests held in unconsolidated structured entities, requires management to make significant judgments and assumptions. The identification of structured entities requires management to assess the Group's rights and obligations arising from the terms of the contractual arrangement and other relevant facts and circumstances. A different conclusion on the nature of the interest could have a material impact on the accounting treatment.

Key sources of estimation uncertainty

The following are the key assumptions concerning the future, and other key sources of estimation uncertainty at the end of the reporting period, that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial year.

Revenue recognition

Revenues derived from developer fees to construct and implement energy distribution systems are determined on the percentage of completion method, based on the ratio of costs incurred to-date over estimated total costs. The Group has a process whereby progress on jobs is reviewed by management on a regular basis and estimated costs to complete are updated. However, due to unforeseen changes in the nature or cost of the work to be completed or performance factors, contract revenue can differ significantly from earlier estimates.

Management believes, based on its experience, that its current systems of management and accounting controls allow the Group to produce materially reliable estimates of total contract revenue during any accounting period. However, many factors can and do change during a contract performance period, which can result in a change to contract profitability from one financial reporting period to another. Some of the factors that can change the estimate of total contract revenue include differing site conditions, the availability of skilled contract labour, the performance of major material suppliers to deliver on time, the performance of major subcontractors, unusual weather conditions and the accuracy of the original investment proposal. Changes in cost estimates, which can have a material impact on the Group's consolidated financial statements, are reflected in the results of operations when they become known.

Expected credit losses

The Group recognizes a loss allowance for the expected credit losses associated with its financial assets, other than financial assets measured at fair value through profit or loss. Expected credit losses are measured to reflect a probability-weighted amount, the time value of money, and reasonable and supportable information regarding past events, current conditions and forecasts of future economic conditions.

The Group applies the simplified approach for trade receivables. Using the simplified approach, the Group records a loss allowance equal to the expected credit losses resulting from all possible default events over the assets' contractual lifetime.

The Group assesses whether a financial asset is credit-impaired at the reporting date. Regular indicators that a financial instrument is credit-impaired include significant financial difficulties as evidenced through borrowing patterns or observed balances in other accounts and breaches of borrowing contracts such as default events or breaches of borrowing covenants. For financial assets assessed as credit-impaired at the reporting date, the Group continues to recognize a loss allowance equal to lifetime expected credit losses.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

3. Critical accounting judgments and key sources of estimation uncertainty *(continued from previous page)*

For financial assets measured at amortized cost, loss allowances for expected credit losses are presented in the consolidated statement of financial position as a deduction from the gross carrying amount of the financial asset.

Financial assets are written off when the Group has no reasonable expectations of recovering all or any portion thereof. The Group did not assess any credit loss provision at year end.

Valuation of common share purchase warrants and equity-settled share-based payments

The Group uses valuation techniques that include inputs that are not based on observable market data to estimate the fair value of common share purchase warrants and equity-settled share-based payments. The valuation techniques require the input of subjective assumptions including expected volatility, dividend yield and expected life of the instrument. Management believes that the chosen valuation techniques and assumptions used are appropriate in determining the fair value of these instruments.

Impairment of contract costs recognized as an asset

Assessing an asset recognized for contract costs for impairment requires management to estimate:

- the remaining amount of consideration that the Group expects to receive in exchange for the goods or services to which the asset relates; and
- the costs that relate directly to providing those goods or services and that have not been recognized as expenses.

When estimating the amount of consideration that the Group expects to receive, the Group applies the same principles for determining the transaction price of the customer contract, adjusted to reflect the effects of the customer's credit risk.

Legal contingencies

The Group reviews outstanding legal cases following developments in the legal proceedings and at each reporting date, in order to assess the need for provisions and disclosures in its consolidated financial statements. Among the factors considered in making decisions on provisions are the nature of litigation, claim or assessment, the legal process and potential level of damages in the jurisdiction in which the litigation, claim or assessment has been brought, the progress of the case (including the progress after the date of the financial statements but before those statements are issued), the opinions or views of legal advisers, experience on similar cases and any decision of the Group's management as to how it will respond to the litigation, claim or assessment.

4. Receivables

	2022	2021
	\$	\$
Harmonized sales tax receivable	-	41,522
Holdbacks receivable	-	184,994
Investment tax credits (Note 24)	72,416	61,351
	72,416	287,867

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

5. Unbilled revenue

The following schedule shows the movement in the carrying amount of unbilled revenue during the year:

	2022	2021
		\$
Balance, beginning of year	84,652	135,502
Revenue earned in the year	-	676,027
Billings in the year	(84,652)	(726,877)
Balance, end of year	-	84,652

6. Due from / to affiliates

	2022	2021
	\$	\$
<i>Due from affiliates</i>		
Narrows Green, LP	776,968	632,201
<i>Due to affiliates</i>		
Envista Energy LP	359,720	1,822,224

Amounts due from affiliates relate to payments made by the Group in connection with the ongoing construction and installation of energy distribution systems for which the respective affiliates are obliged to reimburse.

Amounts due to affiliates relate to advances received by the Group in excess of construction and installation costs already incurred. To the extent the excess balance is not applied to future project costs, the amount is refundable to the affiliate.

At December 31, 2022, the amount due to Envista Energy LP also includes \$100,496 (2021 - \$100,496) in respect of unpaid capital contributions (Note 12).

7. Loan receivable

In 2021, the Group advanced \$591,422 (USD \$460,000) to a battery supplier, pursuant to the terms of a secured promissory note (the "Note"). The principal amount of the Note bears interest at a rate of 16% per annum. The Note is secured by a security interest in all properties, rights and assets of the borrower. In addition, the Note provides the Group a specific security interest in the collateral held under the supply bond described in Note 13. The terms of the corresponding security agreement provide the Group with the right to offset amounts owing under the Note against any amounts that the Group may owe the borrower under any other agreement.

The principal amount, together with accrued interest thereon, was originally due on February 20, 2021. The Group agreed to amend the terms of the arrangement such that the Note was repaid during the year ended December 31, 2022.

In addition to the original principal amount, the Group paid \$224,212 in respect of various construction and equipment costs on behalf of the borrower which were added to the carrying amount of the loan.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

7. Loan receivable (continued from previous page)

The following schedule shows the movement in the carrying amount of the loan during the year:

	2022	2021
	\$	\$
Balance, beginning of year	(815,634)	-
Advances made	815,634	(815,634)
Balance, end of year	-	(815,634)

8. Contract costs

	2022	2021
	\$	\$
<i>Costs to fulfil customer contracts</i>		
Payments to subcontractors	-	155,902
Professional fees	-	167,159
	-	323,061

In accordance with the terms of the Group's contracts to design, construct and install energy distribution systems, the Group's affiliates are required to reimburse the Group for contract costs directly attributable to investment proposals which are accepted and receive a notice to proceed ("NTP"). The contract costs recognized as an asset at December 31, 2022, related to anticipated contracts or customer contracts for which the Group had not yet satisfied any performance obligation. Accordingly, no amount of amortization was recognized in profit or loss in respect of the Group's contract costs during the year (2021 - \$nil).

No amount of impairment loss was recognized in profit or loss in 2022 or 2021.

9. Restricted cash

Restricted cash includes deposits held by a Canadian chartered bank as security in connection with the Group's corporate credit card facility. The deposits are invested in one-year, redeemable, guaranteed investment certificates with an aggregate principal amount of \$29,200 (2021 - \$29,200), bearing interest at a rate of 0.5% to 0.75% per annum (2021 - 0.1% to 1.0% per annum), payable upon maturity.

10. Right-of-use asset, lease receivable and lease liability

In 2021, the Group leases office premises and relocated its head office to 10 King Street East, Toronto, Ontario following the maturity of its previous lease. On the December 1, 2022, the Group sub-leased this office premises for the remaining term of the lease which is scheduled to expire in August 2024. The Group derecognized the right-of-use asset and recognized a lease receivable upon entering into the new lease as sub lessor, which was measured at the present value of the remaining lease payments, discounted using a rate of 8%.

The lease liability was measured at the present value of the remaining lease payments, discounted using a rate of 18%.

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

10. Right-of-use asset, lease receivable and lease liability (continued from previous page)

The following schedule shows the movement in the Group's right-of-use asset during the year:

	Office premises
	\$
Cost	
Balance, December 31, 2020	87,854
Derecognized upon lease maturity	(87,854)
Recognized during the year	191,528
Balance, December 31, 2021	191,528
Derecognized due to sub lease agreement	(191,528)
Balance, December 31, 2022	-
Accumulated depreciation	
Balance, December 31, 2020	74,338
Depreciation	62,512
Derecognized upon lease maturity	(87,854)
Balance, December 31, 2021	48,996
Depreciation	53,449
Derecognized due to sub lease agreement	(102,445)
Balance, December 31, 2022	-
Carrying amount	
December 31, 2021	142,532
December 31, 2022	-

In 2022, the Group recognized an expense of \$112,085 (2021 - \$128,136) relating to short-term and variable lease payments in the consolidated statement of loss and comprehensive loss.

The following schedule shows the movement in the Group's lease liability during the year:

	\$
Balance, December 31, 2020	14,969
Recognized during the year	191,528
Lease payments	(75,569)
Interest expense (Note 27)	26,665
Balance, December 31, 2021	157,593
Lease payments	(72,594)
Interest expense (Note 27)	21,468
Balance, December 31, 2022	106,467

A reconciliation of the current and non-current components of the lease liability at December 31, 2022 follows:

	\$
Current	60,329
Non-current	46,138
	106,467

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

10. Right-of-use asset, lease receivable and lease liability (continued from previous page)

The following table provides a maturity analysis of the Group's lease liability. The amounts disclosed in the maturity analysis are the contractual undiscounted cash flows before deducting interest or finance charges.

	\$
2023	72,594
2024	48,396
	<u>120,990</u>

11. Property and equipment

	Computer equipment
	\$
Cost	
Balance, December 31, 2020	26,753
Additions	16,258
Balance, December 31, 2021	43,011
Additions	2,580
Balance, December 31, 2022	45,591
Accumulated depreciation	
Balance, December 31, 2020	-
Depreciation	14,337
Balance, December 31, 2021	14,337
Depreciation	15,197
Balance, December 31, 2022	29,534
Carrying amount	
December 31, 2021	28,674
December 31, 2022	16,057

12. Interests in affiliates*Envista Energy LP*

On August 23, 2019, 2711171 Ontario Inc., a subsidiary of the Group, together with PPL Canada GP ULC (the "Envista GP") and PPL Canada Holdings Inc., formed Envista Energy LP ("Envista") under the laws of the Province of Ontario. The parties entered into a limited partnership agreement (the "Envista LPA") that sets forth the terms applicable to the relationship between the Envista GP and the limited partners and the conduct of the activities of Envista. Envista, located in Toronto, Canada, was formed for the purpose of acquiring, managing and operating distributed energy facilities in Canada, including the purchase and installation of battery systems and generation units.

2711171 Ontario Inc. and PPL Canada Holdings Inc. are each a limited partner of Envista. Pursuant to the terms of the Envista LPA, the Envista GP has exclusive authority to manage, control, administer and operate the business of Envista. The Envista LPA provides 2711171 Ontario Inc. with protective rights such that certain actions require its approval. Such actions include: the sale of all or substantially all of Envista's assets; changing the distribution percentages of any limited partner; engaging in a new business other than the purchase and installation of battery systems and generation units; borrowing and/or lending money of Envista; determining the payment of compensation, fees or expenses to the Envista GP or any of its affiliates; entering into material contracts outside the ordinary course of business; giving any guarantee or indemnity, or issuing debt instruments; making an investment in any other company; making of any distribution outside the terms of the Envista LPA, and; entering into any joint venture partnership or profit-sharing arrangement with another party.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

12. Interests in affiliates (continued from previous page)*Envista Energy LP* (continued from previous page)

The Group has committed to contribute up to USD \$303,030 to Envista, in exchange for one Series B-1 Unit for each dollar contributed. In addition, the Group has received one Series B-2 Unit in exchange for services rendered to or for the benefit of Envista. Subject to the Limited Partnerships Act (Ontario) and any other specific assumption of liability, the liability of the Group for the debts, liabilities and obligations of Envista is limited to the amount of the capital contributed or agreed to be contributed to Envista by it, and the Group's share of the undistributed income of Envista, as set out in the Envista LPA.

The capital commitment is payable to Envista in one or more tranches upon notice and call therefor by the Envista GP. At December 31, 2022, the Group had accrued \$100,496 in respect of its capital contribution to Envista, included in the line item 'due to affiliates' (Note 6) in the consolidated statement of financial position (2021 - \$100,496).

The Series B-1 Units entitle the Group to a proportionate share of the net cash flows of Envista available for distribution of an amount up to the Group's original capital contribution.

Subject to the prior rights attaching to the Class A Units, the Series B-2 Unit entitles the Group to a 35% interest in the net cash flows available for distribution from Envista.

Contractual arrangements between the Group and Envista provide the Group with significant influence. Accordingly, the Group accounts for its interest in Envista using the equity method. The following schedule shows the movement in the Group's interest during the year:

	2022	2021
	\$	\$
Carrying amount, beginning of year	99,430	63,975
Contributions	-	36,496
Share of net income (loss)	2,019	(1,041)
Carrying amount, end of year	101,449	99,430

Narrows Green, LP

On February 28, 2020, 2711173 Ontario Inc., a subsidiary of the Group, together with SAIF DP OpCo GP, Inc. (the "Narrows Green GP") and SAIF DP HoldCo, LP, formed Narrows Green, LP ("Narrows Green") under the laws of the Province of Manitoba. The parties entered into a limited partnership agreement (the "Narrows Green LPA") that sets forth the terms applicable to the relationship between the Narrows Green GP and the limited partners and the conduct of the activities of Narrows Green. Narrows Green, located in Toronto, Canada, was formed for the purpose of acquiring, managing and operating distributed energy facilities in Canada, including the purchase and installation of battery systems and generation units.

2711173 Ontario Inc. and SAIF DP HoldCo, LP are each a limited partner of Narrows Green. Pursuant to the terms of the Narrows Green LPA, the Narrows Green GP has exclusive authority to manage, control, administer and operate the business of Narrows Green. The Narrows Green LPA provides 2711173 Ontario Inc. with protective rights such that certain actions require its approval. Such actions include: the sale of all or substantially all of Narrows Green's assets to an affiliate of Narrows Green or SAIF DP HoldCo, LP; changing the distribution percentages of any limited partner; engaging in a new business other than the purchase and installation of battery systems and generation units; borrowing and/or lending money of Narrows Green; determining the payment of compensation, fees or expenses to the Narrows Green GP or any of its affiliates; entering into material contracts outside the ordinary course of business; giving any guarantee or indemnity, or issuing debt instruments; making an investment in any other company; making of any distribution outside the terms of the Narrows Green LPA, and; entering into any joint venture partnership or profit-sharing arrangement with another party.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

12. Interests in affiliates (continued from previous page)*Narrows Green, LP* (continued from previous page)

The Group has committed to contribute up to USD \$1,250,000 to Narrows Green, in exchange for one Series B-1 Unit for each dollar contributed. In addition, the Group contributed USD \$100 to Narrows Green in exchange for 100 Series B-2 Units. Subject to The Partnerships Act (Manitoba) and any other specific assumption of liability, the liability of the Group for the debts, liabilities and obligations of Narrows Green is limited to the amount of the capital contributed or agreed to be contributed to Narrows Green by it, and the Group's share of the undistributed income of Narrows Green, as set out in the Narrows Green LPA.

The capital commitment is payable to Narrows Green in one or more tranches upon notice and call therefor by the Narrows Green GP.

The Series B-1 Units entitle the Group to a proportionate share of the net cash flows of Narrows Green available for distribution of an amount up to the Group's original capital contribution.

Subject to the prior rights attaching to the Class A Units, the Series B-2 Unit entitles the Group to a 30% interest in the net cash flows available for distribution from Narrows Green.

Contractual arrangements between the Group and Narrows Green provide the Group with significant influence. Accordingly, the Group accounts for its interest in Narrows Green using the equity method. The following schedule shows the movement in the Group's interest during the year:

	2022	2021
	\$	\$
Carrying amount, beginning of year	139,244	26,412
Contributions	-	113,561
Share of net loss	(54,339)	(729)
Carrying amount, end of year	84,905	139,244

13. Other liability

In 2021, the Group received \$1,418,660 (USD \$1,114,078) pursuant to the release of collateral funds that were held under a supply bond with a battery supplier. The funds are being used to reimburse the Group for the cost of remediating the design, construction and installation of certain energy distribution systems. The funds are also held as security for the repayment of amounts owed from the battery supplier, pursuant to the terms of the secured promissory note arrangement described in Note 7. The Group is required to remit any unused funds to the battery supplier upon satisfaction of the remediation work and settlement of any other amounts that the battery supplier owes the Group.

At December 31, 2022, the unused balance of collateral funds was \$nil (2021 - \$1,091,118). The remediation work was completed as at December 31, 2022.

14. Borrowings*Canada Emergency Business Account*

In 2020, the Group successfully applied for the Canada Emergency Business Account ("CEBA") loan. The CEBA loan is one of the Government of Canada's financial relief measures to support Canadian businesses that have been adversely affected by the COVID-19 pandemic. Eligible businesses are provided access to a \$60,000 loan to help pay for operating expenses, payroll and other non-deferrable expenses which are critical to sustain business continuity.

Until December 31, 2020, CEBA was funded as a revolving line of credit for \$40,000. In 2021, the Group received additional funding of \$20,000. The aggregate outstanding balance on the revolving \$60,000 line of credit was converted into a non-revolving 5-year term loan maturing on December 31, 2025, at which time the balance must be repaid in full.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

14. Borrowings (continued from previous page)*Canada Emergency Business Account (continued from previous page)*

The CEBA loan bears no interest until January 1, 2024, at which time interest will accrue on the balance of the term loan at the rate of 5% per annum, payable monthly on the last day of each month. Loan forgiveness of \$20,000 will apply if the Group repays the remaining principal amount of \$40,000 by December 31, 2023.

The implied interest benefit arising from the below-market interest rate loan was determined to be insignificant. Accordingly, the borrowing is measured at its principal amount of \$60,000 (2021 - \$60,000).

15. Income tax

The following schedule reconciles the expected income tax expense (recovery) at the Canadian combined federal and provincial statutory rate of 26.5% to the amounts recognized in the consolidated statement of loss and comprehensive loss:

	2022	2021
	\$	\$
Net loss	(4,195,882)	(4,307,236)
Statutory rate	26.5%	26.5%
Expected income tax recovery	(1,111,909)	(1,141,418)
Difference in tax rates		72
Permanent differences	1,875	48,599
Other items	14,145	(44,237)
Effect of temporary differences and unused tax losses not recognized as deferred tax assets	1,095,889	1,136,984
Income tax expense	-	-

Deductible temporary differences and unused tax losses for which no deferred tax assets have been recognized are attributable to the following:

	2022	2021
	\$	\$
Right-of-use asset, net of lease liability	17,384	15,060
Other assets	1,887,784	161,938
Share issue costs	556,309	743,039
SR&ED incentives	2,365,682	1,051,336
Canadian non-capital losses available for carryforward	9,880,705	8,567,617
U.S. net operating losses available for carryforward	2,023	2,023
	14,709,887	10,541,013

The Group's share issue costs will be fully amortized in 2024.

The Group has not recorded a deferred tax asset related to these unused losses and other temporary differences as it is uncertain if future taxable income will be available against which these unused tax attributes can be utilized.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

15. Income tax (continued from previous page)

The Group has non-capital losses for tax purposes of \$9,880,705 that may be used to reduce taxable income in the future. If not utilized, these losses will expire as follows:

	\$
2038	236,995
2039	1,715,310
2040	2,273,338
2041	2,274,627
2042	3,380,435
	<u>9,880,705</u>

16. Share capital*Authorized*

Pursuant to the Company's articles of amendment dated February 28, 2020, the Company's authorized share capital consists of:

- 100,655,107 Common shares (Note 17);
- 22,430,202 Class A-1 Preferred shares;
- 22,430,202 Class A-2 Preferred shares; and
- 2,010,395 Special shares (Note 19).

The Class A-1 and Class A-2 Preferred shares are collectively referred to as the "Class A Preferred shares" (Note 17).

17. Common shares*Voting*

Subject to the rights attaching to any other class of shares, the Common shares are entitled to one vote for each share held at all meetings of the shareholders of the Group, other than meetings of the holders of a particular class of shares. Holders of Common shares, exclusively and as a separate class, are entitled to elect three of the five directors of the Group, of whom one of the directors must be the chief executive officer. The holders of Class A Preferred shares, exclusively and as a separate class, are entitled to elect two of the five directors of the Group.

Dividends

The Common shares are entitled to receive dividends, in subordination to the Class A Preferred shares, if and when declared by the board of directors. In the event of dissolution, and subject to the prior rights attaching to any other class of shares, the holders of Common shares are entitled to receive rateably the remaining property of the Group.

Issued

The following schedule shows the movement in Common shares during the year:

	#	\$
Balance, December 31, 2020	40,500,000	605,508
Issue of Common shares pursuant to executive compensation arrangement (Note 19)	1,500,000	360,053
Issue of Common shares upon exercise of stock options (Note 19)	750,097	20,419
Balance, December 31, 2021 and 2022	42,750,097	985,980

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

18. Class A Preferred shares

Voting

On any matter presented at a meeting of the shareholders of the Group, each holder of outstanding Class A Preferred shares is entitled to the number of votes equal to the number of Common shares into which the Class A Preferred shares are convertible as of the record date for determining shareholders entitled to vote on such matter. The holders of Class A Preferred shares vote together with the holders of Common shares as a single class and on an as-converted basis.

Holders of Class A Preferred shares, exclusively and as a separate class, are entitled to elect two of the five directors of the Group, and holders of Common shares, exclusively and as a separate class, are entitled to elect three of the five directors of the Company, of whom one of the directors must be the chief executive officer.

Dividends

The Class A Preferred Shares are entitled to a cumulative dividend at a rate of 8% per annum of the applicable Original Issue Price (as defined below), which shall be payable only when, as, and if declared by the Group's board of directors. Pursuant to the articles of amendment, the original issue price for (i) the Class A-1 Preferred shares is USD \$0.22913734 per share (the "Class A-1 Original Issue Price"), and (ii) the Class A-2 Preferred shares is USD \$0.267496480 per share (the "Class A-2 Original Issue Price"), and together referred to as the "Original Issue Price", each subject to adjustment in the event of any share dividend, share split, combination or other similar recapitalization with respect to the Class A Preferred shares. The declaration, payment or setting aside of any dividend on the Class A Preferred shares has priority over any dividend of any other class of shares.

Redemption

In the event of any voluntary or involuntary liquidation, dissolution, winding up of the Group or Deemed Liquidation Event (as defined below), the holders of Class A Preferred shares are entitled to be paid prior to any payment to the holders of Common shares or Special shares, the Class A Liquidation Amount, defined as the amount per share equal to the greater of:

- (i) Two times (2x) the Class A Original Issue Price, plus any accrued but unpaid dividends thereon, whether or not declared by the Company's board of directors; or
- (ii) Such amount per share as would have been payable had all Class A Preferred shares been converted into Common shares immediately prior to such event.

A Deemed Liquidation Event is defined in the Company's articles of amendment as meaning any of the following events, unless the holders of a majority of Class A Preferred shares elect otherwise:

- (a) An amalgamation, consolidation or other arrangement or reorganization of the shares of the Company such that the resultant shares immediately following such transaction do not represent a voting majority interest in the Company; or
- (b) A transaction or series of related transactions in which more than 50% of the voting power of the Company is transferred to a third party, except for equity financings in which the Company is the surviving entity; or
- (c) The sale, lease, transfer, license or disposition of all or substantially all the assets of the Group.

Conversion rights

Each Class A Preferred share is convertible, at the option of its holder, at any time, and without the payment of additional consideration, into such number of Common shares as is determined by dividing the Original Issue Price of the applicable

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

18. Class A Preferred shares (continued from previous page)

Classification and measurement

Class A Preferred share by its Conversion Price in effect at the time of conversion. The "Conversion Price" of an applicable Class A Preferred share is initially equal to its Original Issue Price, subject to adjustment for certain corporate events.

The Class A Preferred shares shall automatically be converted into Common shares, at the then effective conversion rate, if the Group completes a public listing of Common shares resulting in at least USD \$40 million of gross proceeds.

The Class A Preferred shares represent a hybrid instrument, consisting of an equity host contract and a derivative conversion option.

The Group evaluated the conversion option under IAS 32 *Financial Instruments: Presentation* ("IAS 32") and concluded that, as the instrument may be settled by the Group delivering a variable number of equity instruments in exchange for a variable amount of consideration, given the instrument is denominated in U.S. dollars whereas the functional currency of the Group is Canadian dollars, the definition of equity is not met. Accordingly, the conversion option is classified as a separate, free-standing derivative at FVTPL.

The allocation of proceeds between each of the components comprising the hybrid contract is made upon initial recognition of the instruments and is not subsequently revised. The method used is as follows:

- firstly, the fair value of the conversion option is estimated on a stand-alone basis and the resultant fair value establishes the amount of proceeds allocated to that component;
- secondly, the residual amount, being the difference between the total proceeds received from the issuance and the fair value of the conversion option, is allocated to the equity component.

Subsequent to initial recognition, the conversion option is remeasured to fair value at each reporting date. The carrying amount of the equity component is not subsequently remeasured.

Group put option / Investor call option

In 2019, the Group executed a subscription agreement with an investor for the issuance of up to 22,430,202 Class A-1 Preferred shares for aggregate proceeds of USD \$5,000,000 (\$0.2229 per share, or the "Class A-1 Subscription Price"). The investor agreed to purchase the shares in five separate tranches subject to the achievement of certain operational milestones of the Group, as mutually agreed upon.

In 2020, the Group executed a subscription agreement with an investor for the issuance of up to 22,430,202 Class A-2 Preferred shares for aggregate proceeds of USD \$6,000,000 (\$0.2675 per share, or the "Class A-2 Subscription Price"). The investor agreed to purchase the shares in three separate tranches subject to the achievement of certain operational milestones of the Group, as mutually agreed upon.

Pursuant to the terms of the subscription agreements, the Group has the right, but not the obligation, to proceed with the closing of the subsequent tranches, as the case maybe, in its sole discretion (the "Group put option"). If the Group elects to exercise its right to require the closing of any subsequent tranche related to the Class A-1 Preferred shares, then the Group must simultaneously proceed with the corresponding tranche related to the Class A-2 Preferred shares. Each tranche represents a separate option that entitles the Group to receive a fixed amount of consideration in exchange for a fixed number of Class A Preferred shares. The value of the option changes in response to the change in the underlying price of the Class A Preferred shares. Therefore, the option meets the definition of a derivative instrument.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

18. Class A Preferred shares (continued from previous page)*Group put option / Investor call option (continued from previous page)*

If the Group does not exercise its option to require the closing of an applicable tranche (as described above), then the terms of the subscription agreement provides the respective investors a right, but not the obligation, to purchase an additional number of Class A Preferred shares at the applicable per share Subscription Price such that immediately following such purchase the individual investor shall own shares representing 25% of the votes attaching to all of the then-outstanding securities of the Group, calculated on a fully-diluted basis (the "Investor call option"). The value of the option changes in response to the change in the underlying price of the Class A Preferred shares. Therefore, the option meets the definition of a derivative instrument.

The Group put option and the Investor call option are mutually exclusive. Therefore, the two options are combined and recognized as one financial instrument that is either a derivative asset or liability to the Group.

The applicable Subscription Price reflects the incremental value associated with the achievement of all five operational milestones. At December 31, 2021, all but one milestone had been achieved and management believes that achievement of the final milestone remains highly probable. As a result, the estimated fair value of the combined derivative instrument was estimated to be \$nil at the date of initial recognition and at December 31, 2021 as no events or conditions arose that would indicate the combined option was likely, or able, to be exercised.

Issued

The following schedule shows the movement in Class A Preferred shares:

	#	\$
Balance, December 31, 2020 and 2021	35,888,322	10,210,529
Issue of Class A Preferred shares	8,972,082	2,744,632
Balance, December 31, 2022	44,860,404	12,955,161

Conversion option

At the time the Class A Preferred share were issued, there were no events or conditions, present or otherwise expected to occur in the foreseeable future, that would cause the holders of the Class A Preferred shares to exercise their conversion right. The terms of the Class A Preferred shares, considering these existing and expected events and conditions, are such that the holders thereof, acting reasonably, would not have had any economic incentive to convert their equity interests into Common shares, at that date or in the foreseeable future. Accordingly, the fair value of the conversion option was estimated to be \$nil on initial recognition, and the proceeds from the issuance of the Class A Preferred shares were allocated entirely to the equity component.

The expectation that the holders of Class A Preferred shares may have an economic incentive to convert their equity interests into Common shares remained unchanged at December 31, 2022 and 2021 based on events and conditions present and expected to occur in the foreseeable future. Accordingly, the estimated fair value of the conversion option remained \$nil at December 31, 2022 and 2021.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements**

December 31, 2022

(Expressed in Canadian dollars)

19. Share-based benefits reserve*Share option plan*

The Group has a share option plan (the "Plan") to attract, retain and motivate qualified directors, officers, employees and consultants whose present and future contributions are important to the success of the Group by offering them an opportunity to participate in the Group's future performance through the award of share options.

Each share option converts into one Common share of the Group on exercise. No amounts are paid or payable by the recipient on receipt of the option. The options carry neither rights to dividends nor voting rights. Options may be exercised at any time from the date of vesting to the date of their expiry.

The total number of Common shares reserved and available for grant and issuance pursuant to the Plan shall not exceed 10% of the issued and outstanding Common shares, up to a maximum of 6,757,426 Common shares. The following reconciles the number of share options available for grant under the Plan:

	#
Total number of options reserved and available for grant and issuance under the Plan	6,757,426
Issued and outstanding at end of year	(5,075,952)
Number of options available for grant under the Plan at December 31, 2022	1,681,474

The vesting terms of options granted pursuant to the Plan will be determined by the board of directors. Generally, options vest over a period of 3-years, whereby 1/3rd of the options granted vest on the first anniversary date of the grant, and the remaining unvested options vest in equal monthly installments thereafter.

The following reconciles the options outstanding at the beginning and end of the year that were granted to eligible participants pursuant to the Plan:

	2022		2021	
	Number of options	Weighted average exercise price	Number of options	Weighted average exercise price
	#	USD \$	#	USD \$
Balance, beginning of year	4,232,281	0.20	3,011,043	0.1900
Granted	843,671	0.21	1,333,234	0.21
Exercised	-	0.18	(75,097)	0.18
Forfeited	-	0.19	(36,899)	0.19
Balance, end of year	5,075,952	0.20	4,232,281	0.20
Exercisable, end of year	3,260,642	0.19	876,000	0.19

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

19. Share-based benefits reserve (continued from previous page)*Share option plan (continued from previous page)*

The weighted average fair value of share options granted during the year was \$0.00 (2021 - \$0.06). The Group used the Black-Scholes Merton formula to estimate the fair value of share options granted during the year, based on the following inputs:

Weighted average estimated fair value per common share	USD \$0.00
Weighted average exercise price of the share option	USD \$0.21
Weighted average expected volatility of the underlying common share	26.9%
Weighted average expected life of the share option	5 years
Weighted average expected dividend yield	0.00%
Weighted average risk-free interest rate	1.0%

No active market exists for the Common shares. For this reason, the Group considers the historical volatility of similar entities for which share price information is publicly available when estimating the expected volatility.

The following table provides additional information about the Group's share option plan at December 31, 2022:

Exercise prices	Share options issued and outstanding	
	Number of options	Weighted average remaining contractual life in years
	#	#
USD \$0.1782	1,722,498	6.6
USD \$0.2140	3,353,454	8.5
	5,075,952	7.8

In 2022, the Group recognized share-based compensation expense of \$53,377 (2021 - \$95,526) in respect of options under the Plan, presented in the line item 'share-based compensation' in the consolidated statement of loss and comprehensive loss for the year.

In 2022, 75,097 share options were exercised for cash consideration of \$nil (2021 - \$16,444). Accumulated share-based compensation expense of \$nil (2021 - \$3,975) was reclassified from 'share-based benefits reserve' to 'Common shares' upon exercise.

Executive compensation arrangement

In 2019, the Group allotted 4,000,000 Common shares for issuance to an officer of the Group as part of the individual's compensation, pursuant to the terms of an employment contract. The shares vested over a 3-year period, whereby 1,000,000 Common shares vested on June 3, 2019, and the remaining Common shares vested in equal installments of 1,500,000 Common shares on each anniversary date of the first tranche for 2-years thereafter.

The fair value of Common shares allotted for issuance under the arrangement was estimated to be \$0.2400 per share (USD \$0.1782 per share). In 2022, the Group recognized share-based compensation expense of \$nil (2021 - \$75,011) in respect of the arrangement, included in the line item 'share-based compensation' in the consolidated statement of loss and comprehensive loss.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

19. Share-based benefits reserve *(continued from previous page)**Executive compensation arrangement (continued from previous page)*

In 2022, no Common shares vested and were issued to the executive officer (2021 – 1,500,000 Common shares). The accumulated share-based compensation expense of \$nil (2021 - \$360,053) related to these Common shares was transferred from the share-based benefits reserve to Common shares (Note 17) in the consolidated statement of changes in shareholders' deficiency.

20. Common share purchase warrants reserve

As at the December 31, 2022, there was 2,243,020 (2021 – 2,243,020) warrants outstanding with a balance of \$147,435 (2021 - \$147,435).

In 2019, the Group entered into an arrangement with a consultant pursuant to which the consultant was engaged as the Group's exclusive financial advisor with respect to the raising of capital. Upon the closing of each capital raise, the consultant is entitled to receive, as compensation for services performed, that number of warrants equal to 1/20th of the number of share equivalents issued in connection with the raise.

In 2020, upon closing the subscription agreement for Class A Preferred Shares (Note 17), the Group issued 1,120,931 Common share purchase warrants pursuant to the terms of the arrangement, with an estimated fair value of \$59,293.

The fair value of consulting services received, and the corresponding increase in equity, was measured by reference to the fair value of equity instruments granted.

The warrants issued to the consultant entitle the holder thereof to acquire one Common share of the Group in exchange for payment of the exercise price for a period of 5 years from the date of issuance.

The fair value of the warrants issued in 2020 was estimated to be \$0.0529 (USD \$0.0400) using the Black-Scholes Merton formula and the following inputs:

	2020
Estimated fair value per Common share	USD \$ 0.2140
Exercise price of the warrant	USD \$ 0.2675
Expected volatility of the underlying Common share	26.9%
Expected life of the warrant	5 years
Expected dividend yield	0.0%
Risk-free interest rate	1.1%

No active market exists for the Common shares. For this reason, the Group considers the historical volatility of similar entities for which share price information is publicly available when estimating the expected volatility.

At December 31, 2022, the weighted average remaining contractual life of the issued and outstanding warrants was 1.8 years (2021 – 2.8 years).

21. Related party transactions

Balances and transactions between the Company and its subsidiaries, which are related parties of the Company, have been eliminated on consolidation and are not disclosed in these consolidated financial statements. Details of transactions between the Group and other related parties are disclosed below.

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

21. Related party transactions (continued from previous page)*Compensation of key management personnel*

The remuneration of key management personnel, including directors and officers, during the year was as follows:

	2022	2021
	\$	\$
Short-term benefits	1,165,170	1,246,865
Share-based payments	23,147	148,083
	1,188,317	1,394,948

Short-term benefits include salaries of \$1,027,646 (2021 - \$1,022,308) and consulting fees of \$137,524 (2021 - \$224,557). Consulting fees were recognized in the line item 'consultants and subcontractors' in the consolidated statement of loss and comprehensive loss.

Share-based payments of \$23,147 (2021 - \$148,083) were recognized in the line item 'share-based compensation' in the consolidated statement of loss and comprehensive loss.

The remuneration of key management personnel is determined by the board of directors having regard to the performance of individuals and market trends.

Other related party transactions

Refer to Notes 6 and 12 for disclosure of additional related party transactions.

22. Provision for penalties arising from contract delay

Pursuant to the terms of a certain power purchase agreement ("PPA"), the Group must provide the end user with specified compensation if the energy distribution system is not fully implemented and available for commercial operation on or before a certain date.

In 2022, the Group recognized a provision of \$381,429 (2021 - \$1,440,000) for expected compensation to the end user. At December 31, 2022, the arrangement was not yet available for commercial operation, and no amount had been paid to the end user. As at December 31, 2022, a provision of \$1,821,429 (2021 - \$1,440,000) was recognized in the consolidated statement of financial position included in the line item 'accounts payable and accrued liabilities'. The Group is negotiating a possible reduction to the required compensation with the end user. However, the amount of the reduction, if any, is not determinable at the date of these consolidated financial statements.

23. Investment tax credits

In 2022, the Group received \$61,361 (2021 - \$68,974) in respect of Canadian federal and provincial investment tax credits, which are earned as a percentage of eligible scientific research and experimental development ("SR&ED") expenditures. The amount received relates to the Group's claim for investment tax credits for its 2021 tax year (2021 - 2020 tax year).

At December 31, 2022, the Group accrued an additional \$72,416 of investment tax credits for its 2022 tax year (2021 - \$61,351).

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

24. Capital management

Prior to the liquidation decision made by the directors of the Group, the Group's objective in managing capital is to ensure a sufficient liquidity position to safeguard the Group's ability to continue as a going concern in order to provide returns for shareholders and benefits for other stakeholders. As the Group is liquidating its assets, it will manage its capital structure by maintaining a reserve to pay for all the remaining liabilities, operating expenses and any unforeseen expenses incurred until the liquidation of the Group. The Group does not currently have access to any other forms of external financing. Therefore, upon dissolution, the Group may have obligation in excess of its liquid assets.

The capital structure of the Group consists of net debt (comprising amounts due to affiliates, borrowings and lease liability and offset by cash and equity (comprising Common shares, Class A Preferred shares, reserves and deficit).

25. Financial instruments

In the normal course of business, the Group is exposed to a number of risks that can affect its operating performance. These risks, and the actions taken to manage them, are described below.

Fair value

The carrying value of financial instruments classified at amortized cost (including accounts payable and accrued liabilities, due to affiliates, other liability and borrowings) approximate fair value due to their short-term nature. As described in Note 14, the implied interest benefit arising from the below-market interest rate CEBA loan was determined to be insignificant. Accordingly, the carrying amount of the borrowing approximates its fair value at the reporting date.

Credit and concentration risk

Credit risk refers to the risk that a counterparty will default on its contractual obligations resulting in financial loss to the Group. The Group does not provide any guarantees which would expose the Group to credit risk.

The credit risk on cash and restricted cash is limited because the counterparties are banks with high credit ratings assigned by international credit-rating agencies.

Since its inception, the Group has not incurred any credit loss in respect of trade receivables or amounts due from affiliates.

Interest rate risk

Interest rate risk is the risk that the value of a financial instrument might be adversely affected by a change in the interest rates. Changes in market interest rates may have an effect on the cash flows associated with some financial assets or liabilities, known as cash flow risk, and on the fair value of other financial assets or liabilities, known as price risk.

The Group's financial liabilities are non-interest bearing or subject to fixed rates of interest. Accordingly, the fair values of these financial liabilities could fluctuate because of changes in market interest rates.

Liquidity risk

Liquidity risk refers to the risk that the Group will encounter difficulty in meeting obligations associated with financial liabilities that are settled by delivering cash or another financial asset.

Ultimate responsibility for liquidity risk management rests with the board of directors, which has established an appropriate liquidity risk management framework for the management of the Group's short-, medium- and long-term funding and liquidity management requirements. The Group manages liquidity risk by maintaining adequate cash balances and borrowings, by continuously monitoring forecast and actual cash flows, and by matching the maturity profiles of financial assets and liabilities.

Demand Power Group Inc.**Notes to the Consolidated Financial Statements****December 31, 2022**

(Expressed in Canadian dollars)

26. Financial instruments (continued from previous page)*Liquidity risk* (continued from previous page)

The following table provides details of the Group's remaining contractual maturity for its non-derivative financial liabilities with agreed repayment periods. The table has been drawn up based on the undiscounted cash flows of financial liabilities based on the earliest date on which the Group can be required to pay. The tables include both interest and principal cash flows.

	Later than one year	Later than one year and not later than five years	Later than five years	Total
	\$	\$	\$	\$
Accounts payable and accrued liabilities	2,776,767	-	-	2,776,767
Due to affiliates	359,720	-	-	359,720
Borrowings	-	60,000	-	60,000
	3,136,487	60,000	-	3,196,487

Refer to Note 10 for a maturity analysis of the Group's lease liability.

Foreign currency risk

The Group undertakes transactions denominated in foreign currencies; consequently, exposures to exchange rate fluctuations arise. The Group does not use derivative instruments to reduce its exposure to foreign currency risk.

The carrying amounts of the Group's foreign currency denominated monetary assets and monetary liabilities at the end of the reporting period are as follows:

	2022	2021
	\$	\$
Monetary assets		
U.S. dollars	1,388,300	3,169,368
Monetary liabilities		
U.S. dollars	81	(330,835)

The following table details the Group's sensitivity to a 10% increase and decrease in the Canadian dollar against the U.S. dollar. The sensitivity analysis includes only outstanding foreign currency denominated monetary items and adjusts their translation at the period end for a 10% change in foreign currency rates. A negative number below indicates a decrease in profit where the Canadian dollar strengthens 10% against the U.S. dollar. For a 10% weakening of the Canadian dollar against the U.S. dollar, there would be a comparable impact on the profit, and the balances below would be opposite.

	U.S. dollar	
	2022	2021
	\$	\$
Decrease in profit	(188,042)	(359,869)

Demand Power Group Inc.

Notes to the Consolidated Financial Statements

December 31, 2022

(Expressed in Canadian dollars)

27. Finance costs

	2022	2021
	\$	\$
Finance fees paid	-	87,160
Interest expense on lease liability (Note 10)	21,468	26,665
	21,468	113,825

28. Contingencies

The Group is currently involved in several legal disputes for which the aggregate amounts of claims exceed \$9,000,000. Management is contending these claims. The amount provided represents the directors' best estimate of the Group's liability having taken legal advice. Uncertainties relate to whether claims will be settled out of court or if not whether the Group is successful in defending any action. Because of the nature of the disputes, the directors have not disclosed future information on the basis that they believe that this would be seriously prejudicial to the Group's position in defending the cases brought against it.

DRAFT

659

This is Exhibit "M" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



#F0A7F8E8C441...

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

660

**DEMAND POWER GROUP INC.
CLOSED BOARD OF DIRECTORS MEETING**

DATE: Tuesday, December 13, 2022

LOCATION: Conducted via video conference

THOSE PRESENT:

Board Members:	
Rajan Chudgar	DPGI, CEO and Chairman
Srikant Akula	PPL Corporation, Director
Jahred Kallop	TKO America Infrastructure Partners, Director
Chris Frauenberger	TKO America Infrastructure Partners, Head of Asset Management
Carlo Crozzoli	Independent, Director
Robert Aiello	Independent, Director
Robert Carillo	DPGI, General Counsel
Brian Fratus	[NTD]
Other:	
Angelique Bedford	Blaney McMurtry LLP, Associate
Filomena Harmantas	Blaney McMurtry LLP, Associate

ABSENT:

Dan Giantsopoulos	Blaney McMurtry LLP, DPGI Secretary
Robert Weir	DPGI, COO
Shaun Greffard	TKO America Infrastructure Partners, Infrastructure Advisor

1. Call to Order

Rajan Chudgar called the meeting to order at 4:00 p.m.

2. Agenda

Rajan Chudgar discussed the agenda for the meeting.

3. Old Business

Review of the 3Q 2021 Board Minutes

Rajan Chudgar stated that a resolution approving the Demand Power Group Inc. ("DPGI") 3Q 2022 Board Meeting Minutes was passed by the Board between 11:30 a.m. and 11:45 a.m. on December 13, 2022:

Motion to approve brought as described and provided to all Board members to approve the 3Q 2022 Board Meeting Minutes. The motion was passed unanimously.

Rajan Chudgar stated that a resolution approving STAR and TKO's waiver agreeing to the deferral of the 2022 financial audit until after February 15, 2023 was passed by the Board between 11:30 a.m. and 11:45 a.m. on December 13, 2022:

Motion to approve STAR and TKO's waiver of DPGI's completion of the 2022 financial audit before February 15, 2023. Motion passed unanimously.

661**4. General: OnEnergy**

Rajan Chudgar stated that the Board could direct to him any follow-up questions regarding OnEnergy or Robert Koblinksy's presentation, and he would appropriately send out said questions for response.

Rajan Chudgar advised the Board that a capitalization table was requested from OnEnergy prior to the delivery of a Term Sheet. OnEnergy advised that one would be provided. Srikant Akula inquired whether it is realistic that OnEnergy can be closed and if the terms could be improved at this late stage. Rajan Chudgar replied that the deal could close before 1Q 2023, however it is unlikely to close with the sale of the company. The ongoing litigation items will need to be worked through with OnEnergy to determine if they can be cleansed in order to move forward. However, if not, OnEnergy will still move forward with funding.

Rajan Chudgar pointed out that OnEnergy is aware that DPGI is engaged in ongoing lawsuits and have not walked away, however they are currently unaware of the scope of said lawsuits. Any purchase of DPGI will likely not occur before March 2023, as the Deltro legal case will not be resolved before then.

5. General: Ameresco

Rajan Chudgar stated his belief that DPGI signed a Non-Disclosure Agreement (“**NDA**”) with Ameresco, which is when they stated there was a potential conflict in Canada, and thus could not move forward. Brian Fratus agreed that he also believes there was an NDA but, like Rajan Chudgar, could not confirm.

6. Standing Topics: Legal and Regulatory Updates

Rajan Chudgar discussed the current status of the Deltro and the Northbridge legal disputes, as summarized by Robert Carillo in the Closed Board Meeting materials.

Deltro and Northbridge Disputes

Rajan Chudgar stated that, regarding the lien action, pre-trial occurred on December 13, 2022, to set a date for next steps. Deltro once again asked if DPGI would settle for DPGI paying Deltro Two Million Dollars (\$2,000,000.00). Rajan Chudgar asked the Board if there is a price that they would feel comfortable giving the management team the authority to settle on. For example, from a positive perspective, instead of DPGI paying Deltro, if it was Deltro paying DPGI, is there a price the Board would be comfortable with settling for? Deltro has now asked DPGI to settle twice.

Brian Fratus walked the Board through a scenario. If DPGI settles for Three Million Dollars (\$3,000,000.00), the money would come from Northbridge, as that is where the bond is. Northbridge would then pursue Deltro through the third-party claim. As such, Deltro will never settle. Therefore, the only way the litigation settles is to walk away from Northbridge and Deltro. Otherwise, DPGI will bleed until it has no money left, as legal bills will increase astronomically once discovery begins. However, there is no settlement of dollar value that Deltro will agree to. Rajan Chudgar agreed with Brian Fratus that if Deltro does not have any money, it is correct that any sort of settlement would have to come from Northbridge. At this point, DPGI has not proposed any settlement to Deltro.

Robert Carillo replied that, for the bond action, DPGI could walk away and discontinue the action, given that DPGI is the claimant. However, Northbridge would have to agree, given they now have a counterclaim. It is likely that Northbridge would agree. For the lien action, DPGI is the defendant, and therefore walking away would mean withdrawing its defense. Deltro could continue to sue DPGI, access the security DPGI has without a defense, and DPGI would lose the security. Brian Fratus clarified that by walking away, he meant a three (3) way negotiation that would result in everyone agreeing no money would change hands. Robert Carillo replied that Deltro will not agree to this, as they want damages. Brian Fratus disagreed that DPGI could be certain that Deltro would not agree to walk away.

Chris Frauenberger stated that the only way he could see DPGI receiving money is if Northbridge

662

believes the selling amount is less than the total amount of their bonds, such that they feel their argument is weak and they are going to lose, so they are mitigating their losses.

Jared Kallop stated that no one on the Board knows how Northbridge has perfected its security with Deltro. Depending on what is in place, Northbridge could be asking Deltro to give them whatever the settlement amount is. As such, Deltro will not walk away without a payment from DPGI.

Chris Frauenberger informed Rajan Chudgar that that the Board is seeking to recover as much cost as possible from Jebco and the Sault Ste. Marie Area Hospital. The approach would be to ideally, get the full amount that DPGI paid to Deltro back. Alternatively, the floor would be to receive the amount paid to Deltro minus any salvageable value of the equipment DPGI can sell off, plus the cost of litigation and the cost of posting the letter of credit. This would allow DPGI to break even, which would be a satisfactory outcome.

Rajan Chudgar estimated that STAR put in approximately Three Million Eight Hundred Thousand Dollars (\$3,800,000.00) into Sault Ste. Marie Hospital and Jebco. DPGI has spent approximately Two Hundred Fifty Thousand Dollars (\$250,000.00) in legal fees, and Three Hundred Thousand Dollars (\$300,000.00) in costs for the Letter of Credit. As such, the order of magnitude is approximately Four Million Five Hundred Thousand Dollars (\$4,500,000.00). Chris Frauenberger agreed that this was correct conceptually, but exact numbers need to be determined. Rajan Chudgar confirmed exact numbers would be determined and then returned to the Board for approval. Transformers are the only asset that is legitimately salvageable off the site, therefore their value will also be returned to the Board. Chris Frauenberger opined that site remediation costs may also be a relevant obligation of DPGI.

Rajan Chudgar reiterated that Board approval on a floor value was necessary if DPGI wants to submit a Rule 49 Offer to Settle to the Court, which states DPGI will sell at any point in time for a given value. This will allow DPGI to begin negotiating in earnest with opposing counsel on a settlement. Robert Aiello inquired what Deltro could actually pay, and if it is greater than zero (0). Rajan Chudgar did not know. Jared Kallop reiterated that it is relevant and unknown how Northbridge secured its bonding line with Deltro. Robert Carillo replied that this information would be revealed during discovery.

Rajan Chudgar stated he will set up a call for early next week for the directors to give the management team authorization on the behalf of DPGI to negotiate. Rajan Chudgar will ask for a vote and the Board members will need to say yes or no. Only the Board can decide on a legal settlement.

Brian Fratus inquired who this settlement would be presented to. Robert Carillo replied that a Rule 49 Offer to Settle would be presented to Deltro. Brian Fratus asked how Northbridge becomes involved in this settlement situation. Robert Carillo clarified that, as it is two (2) different actions, the idea would be to settle with Deltro, and then discontinue the bond action against Northbridge. Rajan Chudgar stated it is unknown, and will be determined, if there is a way to inform Northbridge that DPGI has made an offer to Deltro, even if Deltro refuses to make any payment to DPGI.

Rajan Chudgar stressed that DPGI continues to pay all rising legal costs, which has been put in the budget. If DPGI were to receive a settlement today, as per its investor agreement, the money will be allocated to STAR to choose what to do with it. As such, if DPGI drops the legal suit, there is both a financial potential liability and there is a shareholder liability.

7. Standing Topics: Operations Updates

Vision

Brian Fratus inquired if DPGI has made any progress with Vision. Srikant Akula replied that the latest communications have been that, following DPGI providing an informal proposal, and Vision commissioned a technical report that their engineers are looking at to highlight its positive and negative attributes. They stated they will get back to us this week. There has been a lot of email tag, however, there has been little contention. Vision did file their notice for arbitration, but they did so with the caveat

663

that they do not wish to go that route, thus DPGI is in bilateral discussions. There appears to be motivation and interest on their end, but until they engage in meaningful discussion regarding purchasing the system, it is difficult to be certain. DPGI continues to push, but has not gotten any indication of Vision's seriousness to acquire the system, at this stage.

8. General: Cashflow

Rajan Chudgar stated that it is necessary to consider and delineate its obligations if DPGI is to winddown the corporation. DPGI must continue to support all its obligations, either with internal personnel or external personnel. The management team will start the exercise to fully understand, first and foremost, what all the obligations are, which the Board will then approve and comment on. From there, DPGI can begin to determine the pathway to winding down the corporation. Otherwise, if these obligations are not handled, the route is filing for bankruptcy, which has unfavorable implications for directors.

If DPGI is to let employees go, Canadian law stipulates that there are some requirements around severance that DPGI must at least be concerned about, because individuals can sue if payroll, vacation, and severance is not properly paid. This is an important component of the winddown process.

9. Audit Committee

Rajan Chudgar confirmed that DPGI received a waiver to defer completion of its audit until after February 15, 2023. Srikant Akula confirmed. Chris Frauenberger added and clarified that something is needed in regard to the tax filings according to the normal timeline. Tax filings can be completed without an audit, however they are not due until June nonetheless. Rajan Chudgar stated that Steven [NTD: Last name] would follow up with Chris Frauenberger on this matter.

[BOD members left the call. Those remaining from this point forward were: Rajan Chudgar, Srikant Akula, Robert Aiello, Carlo Crozzoli, Jahred Kallop, Angelique Bedford, and Filomena Harmantas.]

10. General: Other Topics

Rajan Chudgar stated that he surveyed DPGI's executives individually, without consultation of any other parties, as to what their preferences would be for DPGI moving forward regarding various topics.

OnEnergy Term Sheet

All executives are in favor of providing a Term Sheet to OnEnergy. Their logic was that there is a potential earnout here, and the opportunity to work with an entity that has a much better track record to assist DPGI with its current business, as well as what it may do in the future.

Srikant Akula agreed that DPGI must move forward, and he does not see any choice other than proceeding with OnEnergy. DPGI cannot afford to waste time negotiating and redlining at this stage. OnEnergy must be told that DPGI wants to get something done quickly. Otherwise, the only option is to wind down the company.

Robert Aiello asked if OnEnergy has seen the Term Sheet that has been circulated to the Board, given that it included a range of changes from the previous draft. Rajan Chudgar replied that OnEnergy has seen the new Term Sheet, and are willing to accept the terms with some minor changes. The one (1) piece that they were concerned about is that they are not comfortable purchasing the company nor company shares without all the legal disputes sunsetting. They cannot, and will not, take common or preferred shares until they are clear of litigation.

Robert Aiello suggested a conditional closing, such that, once the legal issues are resolved, DPGI can force OnEnergy to buy, or OnEnergy could force DPGI to sell. Rajan Chudgar suggested a call option.

DPGI's valuation under numerous situations was considered and discussed.

Srikant Akula inquired how common shareholders can be incentivized to approve DPGI's sale, as they will be receiving nothing. Robert Aiello agreed that it is expected that common shareholders will ask why they are getting nothing. Rajan Chudgar stated that, once due diligence occurs, it is uncertain that even Five Million Dollars (\$5,000,000.00) is a realistic sale price when all issues come to life.

Srikant Akula asked if Robert Koblinsky and Anthony Quinto have to agree to the transaction. Rajan Chudgar answered that the majority of the shareholders have to agree. Robert Aiello added that there are also secondary issues that could arise based on proceeding through a transaction that gives nothing to one (1) class of shareholders. As such, there will be a negotiation, such that the amount is not zero (0). Jahred Kallop stated that proper legal advice is required on this issue.

Jahred Kallop stressed that it is in everyone's collective interest to maximize value by looking over and renegotiating DPGI's contracts, as quickly as possible. If DPGI can approach OnEnergy with numerous projects that are meeting the necessary requirements, its value increases. Rajan Chudgar agreed and stated that the number of projects meeting requirements is zero (0) at this time.

New Term Sheet Robert Koblinsky's Proposal

Executives were asked their opinion on how to proceed if another Term Sheet is acquired. The response was that, if another Term Sheet is obtained before the end of the year, DPGI should entertain it. However, if DPGI does not get another Term Sheet before the end of 2022, it is out of time. Rajan Chudgar stated that if Robert Koblinsky can bring a Term Sheet that actually has the capability to fund projects before the end of this year, he (Rajan Chudgar) has a fiduciary responsibility to bring it to the Board and look at it. This will be the case until something with OnEnergy is signed. Robert Koblinsky has not yet provided anything in writing.

Srikant Akula inquired whether there is merit in Robert Koblinsky's assertion that double conversion UPS is not viable unless the customer pays some ridiculous amount for that service. He asked if, from a CapEx perspective, there is a way to generate a return for a project with this solution available. Rajan Chudgar stated that what Robert Koblinsky was validly proposing was whether DPGI can reduce the overall CapEx. Robert Aiello stated it was necessary to look at the numbers Robert Koblinsky was working with to determine if there was merit in his proposal. Rajan Chudgar stated that the management team will compare Robert Koblinsky's numbers to what they should be, given that he did not possess all the necessary information in making his analysis, and then evaluate from there.

Srikant Akula observed that Robert Koblinsky did not make a much different recommendation than OnEnergy, in that DPGI needs to cut its costs, reduce overhead, and remove a number of employees to make its contractual business model work. Robert Aiello agreed that the current model does not work and, one way or another, DPGI needs to produce a model that works in this market right now. As such, there is no harm in determining if Robert Koblinsky's model works. Rajan Chudgar confirmed he would obtain and circulate Robert Koblinsky's PowerPoint presentation and model.

Rajan Chudgar shared that Robert Koblinsky stated he believes he can get all of DPGI's customers transformed into a contract that can be funded by a party such as OnEnergy if he works full-time with DPGI. Rajan Chudgar opined that he is a supporter of Robert Koblinsky, as he is a "blue-sky thinker" and has been the catalyst to getting a lot of DPGI's original contracts signed. Rajan Chudgar believes that Robert Koblinsky can get this done, however he suggested that the Board provide management with the authority to enter into a new, six (6) month contract with Robert Koblinsky to redo all these contracts. Srikant Akula replied that, at this stage, he does not see an issue with getting Robert Koblinsky involved with some of these contracts to make them more viable. Carlo Crozzoli agreed, with the caveat that if Robert Koblinsky will now be paid an extra Ten Thousand Dollars (\$10,000.00) per month, therefore this spend has to be eliminated elsewhere. Robert Aiello also agreed, and stated that he did not believe anyone else is capable of reworking these contracts.

665

Jared Kallop suggested that Robert Koblinsky's new contract should be three (3) months, given DPGI's current cashflow projections. DPGI likely does not want to have a new contract extending past the time that it may run out of money. Rajan Chudgar clarified that Robert Koblinsky stated he believed he could get Seventy-Five Percent (75%) of the contracts amended between a three (3) to six (6) month period, which was why Rajan Chudgar presented a potential six (6) month contract to the Board.

Rajan Chudgar stated that he told Robert Koblinsky that the contracts had to be amended to conform to a funding mechanism that is in place. Jared Kallop suggested that Robert Koblinsky's pay be structured so that it is correlated to his success at renegotiating contracts, rather than a set amount.

All directors except Jared Kallop agreed to give management the authority to negotiate a consulting agreement with Robert Koblinsky, to essentially reform all of DPGI's contracts to conform to what DPGI has on the table, for a minimum of three (3) month period. Jared Kallop stated he needed to check with someone else before giving his approval. Carlo Crozzoli stated that Jared Kallop's approval was not required to proceed, as this is not a veto situation. Jared Kallop stated that his one (1) ask would be to limit the consulting agreement to three (3) months or until whatever the current cash flow forecast is.

11. General: Funding for Legal Cases and Employee Liabilities

Rajan Chudgar stated that he is concerned about the legal cases. DPGI is in a great position, but is running out of money. Currently, Fifty Thousand Dollars (\$50,000.00) per month is allocated to the legal claims, which is not enough. This amount will quickly be blown through during discovery. On December 12, 2022, Deltro filed two thousand (2000) pages in their affidavits for discovery. This action is for a Six Million Dollar (\$6,000,000.00) contract that was fixed cost.

Srikant Akula agreed that it is concerning for directors to be named on lawsuits, and it is further daunting to be responsible for severance. The directors are personally exposed. He stated that DPGI needed to reach a settlement. Robert Aiello agreed that Deltro must know DPGI is running out of money, and opined that the best option would be for everyone to walk away with Zero Dollars (\$0).

Rajan Chudgar asked the Board members on the call to write down a complete list of their questions, including worst-case scenario, for the Broker, and he would obtain answers for them.

Carlo Crozzoli stated that funds needed to immediately be carved out and kept untouched for employee severance before any funds are carved out for litigation. OnEnergy will not absorb all of DPGI's employees. Rajan Chudgar stated that OnEnergy will likely take on half (1/2) of DPGI's employees, which equals seven (7) employees. He suggested that, once DPGI obtains a signed Term Sheet, employees can be told that a migration process is occurring, but not everyone will be taken on.

12. Meeting Adjourned

The meeting adjourned at 5:30 p.m.

Respectfully submitted,

Dan Giantsopoulos, DPGI Secretary
Blaney McMurtry LLP

666

This is Exhibit "N" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Zev Smith

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

667



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

(Court Seal)

DEMAND POWER GROUP INC.

Plaintiff

and

NARROWS GREEN, LP and SAIF DP OPCO GP, INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

668

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto, Ontario
M5G 1R7

TO: NARROWS GREEN, LP
79 Wellington St. W Box 270, 30th Floor
Toronto, Ontario
Canada M5K 1N2

AND TO: NARROWS GREEN, LP
c/o STAR INFRASTRUCTURE PARTNERS, LLC
165 Roslyn Road
Roslyn Heights, New York
U.S.A. 11577

AND TO: SAIF DP OPCO GP, INC.
700 West Georgia Street, 25th Floor
Vancouver, British Columbia
Canada V7Y 1B3

AND TO: SAIF DP OPCO GP, INC.
1700-242 Hargrave Street
Winnipeg, Manitoba
Canada R3C 0V1

869

-3-

CLAIM

1. The Plaintiff, Demand Power Group Inc. (“**Demand Power**”) claims:
 - (a) Payment of the sum of \$402,266.18 plus amounts which continue to accrue and are properly due and owing, inclusive of HST, for the Outstanding Legal Fees, as defined herein;
 - (b) In the alternative, damages in the amount of \$402,266.18, plus amounts which continue to accrue and are properly due and owing, inclusive of HST, on the basis of *quantum meruit* or unjust enrichment;
 - (c) Payment of pre-judgment interest on all amounts found to be due and owing, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (d) Payment of post-judgment interest on all amounts found to be due and owing, in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (e) Its costs of this proceeding, plus all applicable taxes attributable to any award of costs; and
 - (f) Such further and other relief as counsel may advise and this Honourable Court deems just.

THE PARTIES

2. The Plaintiff, Demand Power, is a corporation incorporated pursuant to the laws of the Province of Ontario, and carries on business as a provider of power supply systems.

3. The Defendant, Narrows Green LP is a limited partnership formed in the Province of Manitoba. Narrows Green LP is extra-provincially registered to conduct business in the Province of Ontario.

4. The Defendant Saif DP Opco GP, Inc. (“**Saif DP**”) is a corporation incorporated pursuant to the laws of the Province of British Columbia, and is the General Partner of Narrows Green LP. Saif DP Inc. is extra-provincially registered to conduct business in the Province of Ontario.

5. The Defendants are hereinafter referred to as “**Narrows Green**”.

OVERVIEW

6. This action arises out of the obligation of Narrows Green to reimburse Demand Power for legal fees incurred by Demand Power, arising from three court actions:

- (a) Action No. CV-22-00028916-0000 commenced pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, relating to a CCDC14-2013 construction contract (the “**SAH Contract**”) between Demand Power and Deltro Electric Ltd. for the Sault Area Hospital Project dated January 28, 2021 (the “**SAH Lien Action**”);

-5-

- (b) Action No. CV-22-00000062-0000 commenced pursuant to the *Construction Lien Act*, R.S.O, 1990, c. C.30, as amended, relating to a CCDC14-2013 construction contract (the “**Jebco Contract**”) between Demand Power and Deltro Electric Ltd. for the Jebco Manufacturing Facility Project dated January 28, 2021 (the “**Jebco Lien Action**”); and
- (c) Action No. CV-22-00680199-0000 for payment to Demand Power under Performance Bond No. BND0002520 for the Sault Area Hospital Project and Performance Bond No. BND0002519 for the Jebco Manufacturing Facility Project (“**Bond Action**”).

THE OBLIGATION

7. On or about February 28, 2020, Demand Power and Narrows Green entered into an investment agreement (“**Investment Agreement**”) whereby the parties established a process to determine a project or projects in which Narrows Green may choose to invest (defined therein as an “**Accepted Project**”).

8. The Sault Area Hospital Project and the Jebco Manufacturing Facility Project are both “Accepted Projects” under the Investment Agreement.

9. The Investment Agreement provides, in part:

THIS INVESTMENT AGREEMENT (“*Agreement*”) is entered into as of February 28, 2020 (the “*Effective Date*”), by and between Demand Power Group Inc., an Ontario corporation (“*Developer*”), and Narrows Green, LP a Manitoba limited partnership (“*DPSII*”). Developer and DPSII are sometimes hereinafter referred to individually as a “*Party*” and collectively as the “*Parties*.”

[...]

072

-6-

2.8 Subject to Article 3, Developer shall transfer or assign the Property in each Accepted Project, as well as the supporting Documentation, including the Power Purchase Agreement, to DPSII or the applicable DPSII SPV in accordance with Article 3 such that following such transfer DPSII or the applicable DPSII SPV shall own the Accepted Project pursuant to the terms of this Agreement.

[...]

3.3 Non-Assignable Rights. Nothing in this Agreement shall be construed as an assignment of, or an attempt to assign to DPSII or the applicable DPSII SPV, any Property in connection with the Accepted Projects which, as a matter of Applicable Law or by its terms, is (i) not assignable, or (ii) not assignable without the approval or consent of the issuer thereof or the other party or parties thereto without first obtaining such approval or consent (collectively, the “*Non-Assignable Rights*”). In connection with such Non-Assignable Rights, Developer shall, at the request of DPSII:

(a) cooperate with DPSII or the applicable DPSII SPV in any reasonable arrangements designed to provide the benefits of such Non-Assignable Rights to DPSII or the applicable DPSII SPV, including holding any such Non-Assignable Rights in trust for DPSII or the applicable DPSII SPV or acting as agent for DPSII. Without limiting the foregoing, except where prohibited by such Non-Assignable Rights, Developer shall enforce, at the expense of DPSII or the applicable DPSII SPV, any rights of Developer arising from such Non-Assignable Rights against the issuer thereof or the other party or parties thereto;

10. Because the rights under the SAH Contract, the Jebco Contract, and the Performance Bond which forms the subject matter of the Bond Action, all fall within the definition of “Non-Assignable Rights”, Demand Power is unconditionally obliged to “*enforce, at the expense of DPSII [Narrows Green] or the applicable DPSII SPV, any rights of Developer [Demand Power] arising from such Non-Assignable Rights against the issuer thereof or the other party or parties thereto [...]*” [emphasis added].

11. Demand Power states that, by operation of s. 3.3(a) of the Investment Agreement, Narrows Green is contractually obligated to bear the costs of Demand Power’s enforcement of the “Non-Assignable Rights”, in the form of the SAH Lien Action, the Jebco Lien Action, and the Bond Action.

-7-

THE INDEBTEDNESS

12. As of the date hereof, Narrows Green remains indebted to Demand Power in the amount of \$402,266.18, as set out in Schedule “A” hereto.

13. The indebtedness continues to increase as the SAH Lien Action, the Jebco Lien Action, and the Bond Action progress.

14. Despite repeated demands for payment over a protracted period of time, Narrows Green has failed, refused and/or neglected to pay the current sum of \$402,266.18, which is properly due and owing to Demand Power. Amounts continue to accrue.

UNJUST ENRICHMENT/QUANTUM MERUIT

15. In the alternative, Demand Power states that by reason of its obligation to enforce the rights of Narrows Green under the Investment Agreement, and because Demand Power has not been reimbursed any amounts whatsoever by Narrows Green, Narrows Green has been unjustly enriched in the current amount of \$402,266.18, at the expense of, and to the detriment of, Demand Power, plus amounts which continue to accrue, and are properly due and owing.

16. In the further alternative, Demand Power states that it is entitled to damages in the amount of \$402,266.18, plus amounts which continue to accrue, and are properly due and owing, on the basis of *quantum meruit*.

17. Full particulars and quantification of Demand Power’s damages will be provided prior to trial.

-8-

18. Demand Power pleads and relies on the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

19. Service on Saif DP outside of Ontario without leave is permitted pursuant to Rule 17.02(f) of the *Rules of Civil Procedure*, because the action is in respect of a contract (i) made in Ontario; (ii) governed by or interpreted by the laws of Ontario; (iii) the parties to the contract have agreed that the courts of Ontario have jurisdiction over the legal proceedings in respect of the contract; and (iv) a breach of the contract has been committed in Ontario

20. Demand Power states that this action should be tried at Toronto, Ontario.

August 28, 2023

PALLET VALO LLP

Lawyers

77 City Centre Drive, West Tower, Suite 300

Mississauga ON L5B 1M5

CATHERINE DIMARCO (LSO # 50726V)

cdimarco@pallettvalo.com

Tel: 289.805.4465

Lawyers for the Plaintiff

-9-

SCHEDULE "A"

January 31, 2022 Inv 732173	20,145.00
February 28, 2022 Inv 734783	19,525.00
March 31, 2022 Inv 737124	19,779.85
April 13, 2022 Inv 2004101	9,865.85
April 30, 2022 Inv 739240	17,674.80
May 20, 2022 Inv 2004146	4,330.00
May 31, 2022 Inv. 740502	4,235.00
May 31, 2022 Inv. 740503	5,605.00
May 31, 2022 Inv. 740504	1,650.00
June 14, 2022 Inv 426431	11,242.43
June 14, 2022 Inv 426432	8,167.50
July 1, 2022 Inv. 744490	14,209.00
July 1, 2022 Inv. 744487	2,640.00
July 20, 2022 Inv 430187	1,312.50

-10-

July 20, 2022 Inv 430189	1,434.50
August 3, 2022 2004218	16,065.00
August 31, 2022 747499	19,652.00
August 31, 2022 747501	3,190.00
September 30, 2022 2004324	2,472.91
September 18, 2022 2004277	13,830.00
September 30, 2022 749525	11,803.00
September 30, 2022 2004291	7,483.25
October 31, 2022 752371	15,689.50
October 31, 2022 7519943	2,645.00
November 30, 2022 754801	7,836.00
November 30, 2022 754802	5,440.00
December 31, 2022 756716	9,391.50
December 31, 2022 756715	225.00
January 31, 2023 758914	10,239.50

-11-

December 8, 2022 226467	10,290.00
November 10, 2022 225839	10,717.00
February 13, 2023 228067	15,332.96
February 28, 2023 7662332	11,817.50
February 28, 2023 762309	2,430.00
March 31, 2023 764869	210.00
March 31, 2023 764963	8,200.00
March 21, 2023 228801	5,804.63
April 19, 2023, 229474	10,884.00
April 30, 2023 766931	4,391.50
May 31, 2023 768990	4,348.50
June 30, 2023 771155	16,530.00
May 12, 2023 230007	4,042.50
May 23, 2023 230185	10,900.50
June 20, 2023 230912	2,548.50

078

-12-

June 28, 2023 231131	16,302.50
June 28, 2023 231872	844.50
July 31, 2023 232068	3,892.50
July 31, 2023 772702	3,780.00

679

Electronically issued / Délivré par voie électronique : 28-Aug-2023
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-23-00705135-0000

DEMAND POWER GROUP INC.
Plaintiff

-and- NARROWS GREEN LP et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

PALLET VALO LLP

Lawyers

77 City Centre Drive, West Tower, Suite 300
Mississauga ON L5B 1M5

CATHERINE DIMARCO (LSO # 50726V)

TEL: 289.805.4466

cdimarco@pallettvalo.com

Lawyers for the Plaintiff

680

This is Exhibit "O" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Zev Smith

4F6A7E8DFE0C441

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

681

Court File No. CV-23-00705135-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DEMAND POWER GROUP INC.

Plaintiff

and

NARROWS GREEN, LP and SAIF DP OPCO GP, INC.

Defendants



AND BETWEEN:

NARROWS GREEN, LP and SAIF DP OPCO GP, INC.

Plaintiffs by Counterclaim

and

DEMAND POWER INC. and ROBERT CARILLO

Defendants by Counterclaim

STATEMENT OF DEFENCE AND COUNTERCLAIM

TO THE DEFENDANTS TO THE COUNTERCLAIM

A LEGAL PROCEEDING has been commenced against you by way of a counterclaim in an action in this court. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or an Ontario lawyer acting for you must prepare a defence to counterclaim in Form 27C prescribed by the Rules of Civil Procedure, serve it on the plaintiff by counterclaim's lawyer or, where the plaintiff by counterclaim does not have a lawyer, serve it on the plaintiff by counterclaim, and file it, with proof of service, in this court, WITHIN TWENTY DAYS after this statement of defence and counterclaim is served on you.

If you are not already a party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

682

If you are not already a party to the main action, instead of serving and filing a defence to counterclaim, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your defence to counterclaim.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE AMOUNT OF THE COUNTERCLAIM AGAINST YOU, and \$1,500.00 for costs, within the time for serving and filing your defence to counterclaim, you may move to have the counterclaim against you dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the counterclaim and \$400 for costs and have the costs assessed by the court.

Date Oct 6/2023 Issued by W. CARILLO
Local registrar

Address of court office: Superior Court of Justice
330 University Avenue 8TH FL.
Toronto, ON M5G 1R7

TO: **ROBERT CARILLO**
c/o 350 Bay Street, Suite 1100
Toronto, ON M5H 2S6

AND TO: **PALLET VALO LLP**
Barristers and Solicitors
77 City Centre Drive
West Tower, Suite 300
Mississauga ON L5B 1M5

Catherine DiMarco (LSO# 50726V)
cdimarco@pallettvalo.com
Tel: 289.805.4465

Lawyers for Demand Power Group Inc.

683

STATEMENT OF DEFENCE

1. The Defendants, Narrows Green, LP ("**Narrows**") and Saif DP Opco GP, Inc., ("**Saif DP**") (collectively, the "**Defendants**") admit the allegations contained in paragraphs 3, 7 and 8 of the Statement of Claim.
2. The Defendants deny or have no knowledge of the balance of the allegations in the Statement of Claim.

The Investment Agreement

3. On February 28, 2020, Narrows and the Plaintiff, Demand Power Group Inc. ("**Demand Power**") entered into an Investment Agreement (the "**Investment Agreement**") pursuant to which Narrows agreed to (i) provide the capital necessary for Demand Power to develop certain power supply projects and, in turn, (ii) acquire all of Demand Power's ownership interests in those projects in exchange for an acquisition fee payable to Demand Power.
4. The Investment Agreement does not obligate Narrows to invest in any specific project. Rather, it serves as a master agreement detailing the framework and process by which Narrows can elect to purchase a project. In general, the Investment Agreement contemplated the following:
 - (a) for each project that Demand Power wants Narrows to fund, Demand Power is required to prepare a comprehensive investment proposal, which includes, among other things, a budget for the development, construction and operation of the project, the business case for the project, and the proposed power purchase agreement between Demand Power and its customer, which Narrows will ultimately assume if it funds the project;
 - (b) following receipt of the investment proposal, Narrows has 20 days to conduct due diligence prior to making its investment decision. At the end of this 20-day period,

Narrows must advise Demand Power whether it will purchase the project (an “**Accepted Project**”) by issuing an acceptance notice or reject the project by issuing a rejection notice. This decision is within Narrows’ sole and absolute discretion; and

- (c) if Narrows issues an acceptance notice, it is required to pay to Demand Power 4.0% of the budgeted capital expenditures in respect of the construction of the Accepted Project as an acquisition fee, among other things. Demand Power must then (i) develop the Accepted Project in accordance with a master Construction Management, Operations and Maintenance Agreement entered into between Narrows and Demand Power as of February 28, 2020 (the “**COMA**”); and (ii) “transfer, assign, convey and deliver” all of Demand Power’s right, title and interest in and to each Accepted Project to Narrows.

5. In some cases, Narrows may accept to purchase a project where the underlying project agreements entered into by Demand Power are not assignable or transferrable (a “**Non-Assignable Project**”). That is, Demand Power is not able to legally transfer, assign, convey and deliver all of its right, title and interest in and to the Accepted Project to Narrows. In these cases, section 3.3 of the Investment Agreement provides that Narrows will become the beneficial owner of the Non-Assignable Projects and Demand Power will hold its right, title and interest in and to those projects “in trust for” and “as an agent for” Narrows. Section 3.3 also entitles Narrows to direct Demand Power take certain steps to enforce and preserve Demand Power’s contractual rights for the benefit of Narrows as follows:

3.3 Non-Assignable Rights. Nothing in this Agreement shall be construed as an assignment of, or an attempt to assign to [Narrows] or the applicable [Narrows special purpose vehicle], any Property in connection with the Accepted Projects which, as a matter of Applicable Law or by its terms, is (i) not assignable, or (ii) not assignable without the approval or consent of the issuer thereof or

the other party or parties thereto without first obtaining such approval or consent (collectively, the "Non-Assignable Rights"). **In connection with such Non-Assignable Rights, [Demand Power] shall, at the request of [Narrows]:**

(a) **cooperate with [Narrows] or the applicable [Narrows special purpose vehicle] in any reasonable arrangements designed to provide the benefits of such Non-Assignable Rights to [Narrows] or the applicable [Narrows special purpose vehicle], including holding any such Non-Assignable Rights in trust for [Narrows] or the applicable [Narrows special purpose vehicle] or acting as agent for [Narrows]. Without limiting the foregoing, except where prohibited by such Non-Assignable Rights, [Demand Power] shall enforce, at the expense of [Narrows] or the applicable [Narrows special purpose vehicle], any rights of [Demand Power] arising from such Non-Assignable Rights against the issuer thereof or the other party or parties thereto;**

(b) take all such actions and do, or cause to be done, all such things at the request of [Narrows], and at the expense of [Demand Power], as shall reasonably be necessary in order that the value of any Non-Assignable Rights shall be preserved and shall inure to the benefit of [Narrows] or the applicable [Narrows special purpose vehicle];

(c) **promptly upon receipt, pay over to [Narrows] or the applicable [Narrows special purpose vehicle] all monies collected by or paid to [Demand Power] in respect of such Non-Assignable Rights, without deduction of any kind; and**

(d) transfer and assign to [Narrows] or the applicable [Narrows special purpose vehicle] without further consideration all Non-Assignable Rights as soon as such Non-Assignable Rights are capable of being transferred or assigned to [Narrows] or the applicable [Narrows special purpose vehicle]. [Emphasis added].

6. By virtue of section 3.3 of the Investment Agreement, Demand Power is Narrows' agent, fiduciary, and/or trustee for any Non-Assignable Project.

7. The Defendants plead and rely on the Investment Agreement.

The Construction Agreement

8. As an ancillary to the Investment Agreement, Demand Power and Narrows also entered into the COMA. The COMA outlines Demand Power's obligations in respect of the development

and distribution of energy supply facilities for each Accepted Project. In particular, Demand Power is responsible for the construction and installation management of “systems”— a system consists of: (a) a battery with the capacity to meet Narrows’ customers’ electricity requirements for at least two hours; and/or (b) a generation unit; and/or (a) and (b) together — for each Accepted Project. These obligations are generally summarized in section 2.1 of the COMA as follows:

2.1 Construction and Installation Management by [Demand Power].
[Demand Power] shall: **(a) oversee the design, procurement, construction, and installation of particular Systems**; and (b) shall oversee the work by an EPC Contractor. During the construction and installation phase, [Demand Power] shall interface with the affected Customers, as needed. Exhibit A identifies or lists the management services and operations and maintenance services that will be provided by [Demand Power], as well as specific services that may require [Demand Power] to retain third party suppliers or contractors. In respect of the construction of the Systems... [Emphasis added].

The Deltro Accepted Projects

9. In early 2021, Demand Power submitted investment proposals to Narrows in respect of two new projects, namely (i) the “Sault Area Hospital” project (the “**SAH Project**”) and (ii) the Jebco Manufacturing facility project (the “**Jebco Project**”).

(a) The SAH Project

10. The SAH Project was to design, build and provide a backup power supply system to the Sault Area Hospital in Sault Ste. Marie, Ontario for a ten-year term pursuant to a power supply agreement entered into between Demand Power and the Sault Area Hospital (the “**SAH PSA**”). Given the intricacies involved in the specific power supply system requested by the Sault Area Hospital (namely, a BESS/UPS system), Demand Power retained Deltro Electric Ltd. (“**Deltro**”) to design and build the system pursuant to the terms of a CCDC14 2013 Design-Build Stipulated

Price Contract dated January 28, 2021 (the "**Deltro SAH Contract**"). The purchase price payable by Demand Power to Deltro was \$4,300,000 plus HST under the Deltro SAH Contract.

11. The investment proposal submitted to Narrows in connection with the SAH Project included a copy of the SAH PSA and summary of the Deltro SAH Contract. It did not, however, include a copy of Deltro's most recent financial statements. Demand Power's Chief Executive Officer at the time, Rajan Chudgar, and Chief Financial Officer, Doug Brown, instead misrepresented to Narrows that Deltro was in a strong financial position to complete the design and build of the BESS/UPS system.

12. On February 17, 2021, Narrows elected to purchase the SAH Project, in part, in reliance on the representations contained in the applicable investment proposal and those of Messrs. Chudgar and Brown regarding Deltro's ability to perform and financial position, as well as the express terms of the SAH PSA, among other things. Upon delivering its acceptance notice, Demand Power executed a bill of sale and assignment agreement (the "**SAH Assignment Agreement**"), which provides that effective as of February 17, 2021:

[Demand Power] does hereby irrevocably grant, sell, transfer, convey and assign to Narrows all of [Demand Power's] right, title and interest in and to the Accepted Project, including, but not limited to, all supporting Documentation and Property in respect of the Accepted Project, free and clear of all Liens, including ... [the Deltro SAH Contract]."

13. Demand Power backstopped this transfer with the representation and warranty at section 2 of the SAH Assignment Agreement, which states that "there are no Non-Assignable Rights in respect to the Accepted Project." However, the Deltro SAH Contract was not assignable or transferable to Narrows without the consent of Deltro (which consent was not requested or obtained) and therefore Demand Power was not able to transfer all of its right, title and interest in

and to the SAH Project to Narrows. This representation and warranty was a material misrepresentation which Narrows relied upon in purchasing the SAH Project.

14. Given Demand Power's misrepresentation and failure to obtain Deltro's consent in respect of the Deltro SAH Contract, the SAH Project ultimately became a Non-Assignable Project and Narrows was forced to rely upon its rights under the Investment Agreement, namely, to become the beneficial owner of the SAH Project and have the right to direct Demand Power, as its agent and fiduciary, in respect of the project.

(b) ***The Jebco Accepted Project***

15. At the same time that the SAH Project was presented to Narrows, Demand Power proposed that Narrows acquire the Jebco Project.

16. The Jebco Project was to design, build and provide a backup power supply system to a manufacturing facility located in Colbourne, Ontario, for a period of ten years pursuant to the terms of a power supply agreement (the "**Jebco PSA**"). Similar to the SAH Project, Demand Power outsourced the design and build of the power supply systems (more particularly, a BESS/UPS system) to Deltro pursuant to the terms of a CCDC14 2013 Design-Build Stipulated Price Contract dated January 28, 2021 (the "**Deltro Jebco Contract**"). The purchase price payable by Demand Power to Deltro was \$1,700,000 plus HST under the Deltro Jebco Contract.

17. The investment proposal submitted to Narrows in connection with the Jebco Project included a copy of the Jebco PSA and summary of the Deltro Jebco Contract. It did not, however, include a copy of Deltro's most recent financial statements. As with the SAH Project, Messrs. Chudgar and Brown misrepresented to Narrows that Deltro was in a strong financial position to complete the design and build of the BESS/UPS system.

689

- 7 -

18. On February 17, 2021, Narrows elected to purchase the Jebco Project, in part, in reliance on the representations contained in the applicable investment proposal and those of Messrs. Chudgar and Brown regarding Deltro's abilities and financial position, as well as the express terms of the Jebco PSA, among other things. Upon delivering its acceptance notice, Demand Power executed a bill of sale and assignment agreement (the "**Jebco Assignment Agreement**"), which provides identical terms as the SAH Assignment Agreement, including a transfer of the Jebco Project to Narrows and a representation and warranty that the Jebco Project was not the subject of any non-assignable rights.

19. Once again, the representation and warranty in the Jebco Assignment Agreement was materially false. The Deltro Jebco Contract was not assignable or transferable to Narrows without the consent of Deltro (which consent was not requested or obtained) and therefore Demand Power was not able to transfer all of its right, title and interest in and to the Jebco Project to Narrows. This was a material misrepresentation which Narrows relied upon in purchasing the Jebco Project.

20. Given Demand Power's misrepresentation and failure to obtain Deltro's consent in respect of the Deltro Jebco Contract, the Jebco Project ultimately became a Non-Assignable Project and Narrows was forced to rely upon its rights under the Investment Agreement, namely, to become the beneficial owner of the Jebco Project and have the right to direct Demand Power, as its agent and fiduciary, in respect of the project.

Demand Power Breaches the COMA

21. Shortly after Narrows acquired its beneficial interest in the SAH Project and Jebco Project, Demand Power was required to oversee the construction of the power supply systems in accordance with the COMA. Section 2.1 of the COMA obligates Demand Power to "oversee the design, procurement, construction and installation" of the power supply systems; to use

commercially reasonable efforts to achieve the deadline for the commercial operation date contemplated in the SAH PSA and Jebco PSA; and to "oversee the work by an EPC Contractor". An "EPC Contractor" is defined in the COMA as an engineering, procurement and/or construction contractor, such as Deltro, for the purpose of designing, installing and constructing the supply system. Section 8.1 of the COMA also requires Demand Power to obtain and keep in force extensive insurance, including builder's risk insurance, among other things. Section 8.1 also requires Demand Power to ensure that any of its subcontractors, including Deltro, obtain and keep in force the same insurance coverage.

22. Throughout 2022, Demand Power neglected each of the SAH and Jebco Projects and failed to oversee the development of the power supply systems in breach of the COMA. Leaving aside that the Jebco Project had virtually no construction completed for more than a full calendar year, Demand Power failed to adequately oversee Deltro's work in connection with the design and build of the BESS/UPS systems. Indeed, by the end of 2021, Demand Power had not met the targeted commercial operation dates for either the SAH Project or Jebco Project. Moreover, Demand Power appears not to have obtained builder's risk insurance or ensured that Deltro obtained builder's risk insurance in respect of the SAH Project and Jebco Project and failed to disclose to Narrows for an entire year that it and Deltro remained uninsured in connection with those projects.

23. Narrows was then required to pay liquidated damages to Jebco at the rate of \$5,000 per week for every week the project was not completed after September 12, 2021 pursuant to the terms of the Jebco PSA (the '**Jebco Liquidated Damages**'). Once it became clear that Demand Power would not cure its default under the COMA, either on its own or with the assistance of Deltro, by completing the Jebco Project in a timely and commercially reasonable manner, Narrows terminated the Jebco PSA on June 8, 2023. Narrows also terminated the SAH PSA on May 17, 2023 for the same reasons. These terminations resulted in Narrows paying (i) \$450,000 to Jebco

691

due to certain Jebco Liquidated Damages and remediation costs, and (ii) approximately \$40,000 in remediation costs in connection with the SAH Project.

The Deltro Litigation and Northbridge Litigation

24. Compounding this problem was that several disputes between Demand Power and Deltro arose throughout the course of the SAH Project and Jebco Project that led to significant litigation between the parties and further delays in the performance of Demand Power's obligations under the COMA.

25. On February 11, 2022, Deltro caused a construction lien in the amount of \$6,607,022.87 to be registered in the Land Registry Office No. 1 (Instrument No. AL243217) with respect to the SAH Project (the "**SAH Lien**"), and a construction lien in the amount of \$2,581,442.79 to be registered in the Land Registry Office No. 39 (Instrument No. ND230042) with respect to the Jebco Project (the "**Jebco Lien**", and together with the SAH lien, the "**Deltro Liens**"). Deltro filed these liens because it alleged that Demand Power had repeatedly failed to pay for Deltro's supply of labour, materials and equipment to the SAH and Jebco Projects.

26. Within days of the Deltro Liens being filed, Mr. Chudgar and Demand Power's General Counsel, Robert Carillo, approached Narrows to request that Narrows obtain letters of credit and post them as security under the *Construction Act* to vacate the liens. In making this request, Messrs. Chudgar and Carillo:

- (i) represented that Demand Power did not have the means or creditworthiness to post the required security;
- (ii) misrepresented that the SAH and Jebco Projects continued to be economically viable and that there were no scheduling concerns with respect to the delivery of the projects, notwithstanding that Demand Power knew that neither project would

meet their commercial operation date and were experiencing significant delays and costs overruns;

- (iii) misrepresented that Demand Power would be capable of satisfying a judgment rendered against it in the future;
- (iv) misrepresented that posting security and participating in the construction lien litigation was in the best interest and for the benefit of Narrows; and
- (v) misrepresented that Narrows was obligated to obtain "the proper lien bond" to vacate the Deltro Liens.

27. Based on these misrepresentations, Narrows agreed to post security and its parent, Star America Fund II GP, LLC, acting in its capacity as General Partner of Star America Infrastructure Fund II, LP and Star America Infrastructure Fund II (Affiliates), LP ("**Star America**"), obtained letters of credit to discharge the Deltro Liens. On March 16, 2022, Star America deposited into Court two Letters of Credit issued by CIBC, namely: (i) Letter of Credit No. SGBT140398 dated March 23, 2022 for \$6,857,022.87 for the SAH Lien and (ii) Letter of Credit No. SGBT140101 dated March 16, 2022 in the amount of \$2,831,442.79 for the Jebco Lien (collectively, the "**Letters of Credit**").

28. Although Messrs. Chudgar and Carillo expressly represented to Narrows that Narrows would participate in the construction lien litigation, Messrs. Chudgar and Carillo proceeded to retain the law firm Blaney McMurtry LLP ("**Blaneys**") as Demand Power's counsel to represent the company in vacating the liens and in any subsequent litigation involving Deltro, without Narrows' direction or request. Narrows did not direct or request Demand Power to retain Blaneys nor did it agree to (or have the opportunity to consider) Blaneys' fees in connection with Blaneys'

engagement. Narrows has never seen a copy of the engagement letter entered into between Blaneys and Demand Power in connection with this litigation.

29. On March 24, 2022, Blaneys brought a motion to vacate the Deltro Liens. The Deltro Liens were vacated that day pursuant to the Order of the Honourable Associate Justice Wiebe. Narrows did not direct or request that Blaneys perform any work in connection with this order.

Narrows is Not Liable for Demand Power's Legal Fees

30. Shortly after the Deltro Liens were vacated, significant litigation between Demand Power and Deltro ensued. Demand Power instructed Blaneys to commence a claim against Deltro – without Narrows' direction or request – claiming damages of approximately \$8.3 million for negligence and breaches of the Deltro SAH Contract and Deltro Jebco Contract. In response, Deltro commenced two actions against Demand Power claiming damages of approximately \$9.65 million for breaches of the Deltro SAH Contract and Deltro Jebco Contract and its unpaid invoices (collectively, the "**Deltro Litigation**").

31. In addition, Mr. Carillo retained and instructed Pallett Valo LLP ("**Pallett Valo**") as counsel for Demand Power to commence a claim against Northbridge General Insurance Company ("**Northbridge**") – without Narrows' direction or request – seeking payment of approximately \$3.5 million in respect of certain construction bonds issued by Northbridge in connection with the SAH and Jebco Projects (the "**Northbridge Litigation**").

32. Narrows has never been consulted or permitted to instruct Demand Power in connection with the Deltro Litigation or Northbridge Litigation. Rather, Mr. Carillo has unilaterally instructed Blaneys and Pallett Valo, failed to consult, request or honour instructions from Narrows, and refused Narrows' repeated requests to be involved in the litigation. Indeed, Mr. Carillo refused for several months to allow Blaneys or Pallet Valo to even speak with a representative of Narrows –

including Narrows' nominee on the board of Demand Power – for the sole purpose of updating Narrows on the status of the litigation. Mr. Carillo also ignored and/or refused to honour Narrows' requests for copies of the invoices and/or particularized dockets of Blaneys and Pallet Valo, which entirely restrained Narrows' ability to ascertain the status of the litigation.

33. Mr. Carillo's conduct in this regard is a flagrant breach of Narrows' rights under the Investment Agreement. Contrary to the Statement of Claim, Demand Power does not have *carte blanche* to enforce Demand Power's rights arising from a Non-Assignable Project; rather, it is only permitted to enforce its rights "at the request of" Narrows. Demand Power is Narrows' trustee, agent and/or fiduciary for Non-Assignable Projects, such as the SAH Project or Jebco Project.

34. All of the legal fees charged to Demand Power in connection with the Deltro Litigation and Northbridge Litigation have been incurred solely at Mr. Carillo's instruction and request, and not with any input or request by Narrows. Narrows is not liable for the expenses incurred by Demand Power in connection with the Deltro Litigation and Northbridge Litigation (or the SAH Project and Jebco Project more generally) when those expenses were not incurred at the request of Narrows or, as discussed below, for the benefit of Narrows.

35. In addition to the foregoing, the amounts claimed are excessive. The Deltro Litigation and Northbridge Litigation have not materially advanced since they were first commenced. To the best of Narrows' knowledge, discovery has not been completed (or even started) in either action and the litigation stalled shortly after pleadings closed. It is neither reasonable nor appropriate for Demand Power to have authorized and incurred legal fees of more than \$400,000 in connection with litigation that has not advanced beyond the pleadings.

36. To the extent Blaneys and/or Pallet Vallo have incurred fees of approximately \$400,000, as claimed, Demand Power has negligently overseen and instructed its external. Demand Power is a fiduciary and the agent for Narrows in respect of the SAH Project and Jebco Project and

materially breached its obligations by directing Blaneys and Pallett Valo to pursue and defend litigation without providing the degree of skill and care that would be expected of a fiduciary in these circumstances.

37. Demand Power's litigation strategy in the Deltro Litigation was aggressive and largely for benefit of Demand Power – not Narrows. Demand Power alleged counterclaims seeking damages of approximately \$10.5 million (or more than 55% of the total damages claimed) in respect of reputational damages suffered by Demand Power. These alleged reputational damages are not tethered to the enforcement of any rights in connection with a Non-Assignable Project, as per section 3.3 of the Investment Agreement. Any costs incurred in connection with these allegations do not relate to Narrows and are not the subject of any indemnification obligations under the Investment Agreement.

38. Demand Power has not paid all of the outstanding invoices of Blaneys and/or Pallett Valo. Demand Power has a duty to mitigate its damages and, to the extent that Narrows is required to indemnify Demand Power for these invoices (which is denied), Narrows is not liable for any outstanding interest associated with the unpaid invoices.

39. Furthermore, Narrows has repeatedly advised Mr. Carillo and certain shareholders of Demand Power that it will not indemnify Demand Power for any legal fees incurred in connection with the Deltro Litigation or Northbridge Litigation purportedly for Narrows' benefit while its contractual rights have been, and continue to be, disregarded. Despite this, Mr. Carillo has continuously and negligently instructed Blaneys and Pallet Valo to continue to act and accrue fees in connection with the Deltro Litigation and Northbridge Litigation, respectively, without any regard to Narrows' rights and interests.

40. Pallett Valo is counsel of record in connection with the Northbridge Litigation and, to the extent the Northbridge Litigation was commenced "in trust for" or "as agent for" Narrows, as

required by the Investment Agreement, Pallet Valo cannot act in the within action against Narrows without breaching its duty of loyalty, including a duty to avoid conflicts of interest. It is presently acting in the Northbridge Litigation purportedly for Narrows' benefit while simultaneously acting against Narrows in the within action.

No Unjust Enrichment

41. The doctrine of *quantum meruit* does not have any application to this Claim and there is no basis on which an award of damages on a *quantum meruit* basis can be founded. Demand Power has not performed any services for the benefit of Narrows, nor has its payment of Blaneys' and/or Pallet Valo's invoices (or a portion thereof) benefitted Narrows. Demand Power has not been deprived and, even if it has been (which is denied), Narrows has not received any corresponding benefit.

42. Demand Power's claim for damages on a *quantum meruit* basis in the amount of \$402,266.18 conflates the work performed by Blaneys and Pallett Valo, at Mr. Carillo's instruction without any direction or request by Narrows to do so, with the work Demand Power has performed.

43. In the alternative, if Demand Power is entitled to indemnification for the work Mr. Carillo unilaterally performed on behalf of Demand Power by instructing Blaneys on the Deltro Litigation or Pallett Valo on the Northbridge Litigation (which is denied), the amounts claimed are excessive. Mr. Carillo is a salaried employee and Demand Power did not incur any additional costs by virtue of his role in connection with the Deltro Litigation and Northbridge Litigation.

44. The Defendants rely on the doctrine of *ex turpi causa*. This action arises from the wrongful acts of Demand Power, Mr. Chudgar, Mr. Brown, and Mr. Carillo including, but not limited to, breaches of Demand Power's fiduciary duties, breaches of the Investment Agreement and COMA,

697

- 15 -

and Messrs. Chudgar and Brown's negligent misrepresentations regarding the financial state of Deltro, as particularized above.

45. In the alternative, if Demand Power is entitled to the relief and damages claimed in this proceeding (which is denied), such damages should be set off against all amounts due and owing by Demand Power to Narrows for the breach of the Investment Agreement, COMA, negligent misrepresentations referred to above, and the claims detailed in the Counterclaim below. The Defendants plead and rely upon the doctrines of legal and equitable set off and s. 111(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.

46. The Defendants request that this action be dismissed with costs on a substantial indemnity basis.

COUNTERCLAIM

47. The Defendants/Plaintiffs by Counterclaim, Narrows and Saif DP, claim as against Demand Power and Mr. Carillo, jointly and severally:

- (a) damages to be particularized prior to trial and, in any event, no less than \$5,000,000 for breach of contract (including the Investment Agreement and COMA), negligence, breach of fiduciary duty, and negligent misrepresentation;
- (b) pre- and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) costs of this proceeding, plus all applicable taxes; and
- (d) such further and other relief as to this Honourable Court may deem just.

48. Narrows repeats and relies upon the allegations in the Statement of Defence in support of the Counterclaim.

The Deltro SAH Contract and Deltro Jebco Contract

49. Prior to entering into the Deltro SAH Contract and Deltro Jebco Contract, Demand Power did not conduct appropriate due diligence into Deltro to confirm whether it was a suitable contractor to design and build the BESS/UPS systems for the SAH and Jebco Projects.

50. Two weeks before Demand Power entered into either the Deltro SAH Contract or Deltro Jebco Contract, on January 13, 2021, Demand Power obtained several credit reports in respect of Deltro that depicted a "moderate-high" risk of credit delinquency and rating between F+ and D+ in the years prior. The credit reports also recommended a lending limit with Deltro of no more than \$49,000.

51. Demand Power never disclosed these credit reports to Narrows prior to Narrows agreeing to purchase the SAH and Jebco Projects. Indeed, Doug Brown, Demand Power's former Chief Financial Officer at the time the Deltro SAH Contract and Deltro Jebco Contract were entered into, deliberately withheld this information and Deltro's financial statements from Narrows when Narrows was asked to purchase the projects. On March 2, 2022, Narrows requested a copy of Deltro's financial statements that Demand Power obtained in early 2021 and Mr. Brown confirmed that he "swore [he] wouldn't share them at that time, and that [he] would get rid of them." Mr. Brown only shared this email, the credit reports and Deltro's financial statements with Narrows in March 2022.

52. In light of these credit reports and Deltro's known precarious financial position, it was negligent of Demand Power to enter into the Deltro SAH Contract and Deltro Jebco Contract. Mr. Brown's withholding of material financial information on behalf of Demand Power and Messrs. Chudgar and Carillo's negligent misrepresentations regarding Deltro's financial position were intended to, and did, induce Narrows into acquiring the SAH and Jebco Projects. Had Narrows

not been deceived by Messrs. Chudgar and Carillo and received the financial information that Mr. Brown withheld, it would not have invested in the projects.

The Agnora Project

53. In addition to Demand Power's breaches of the Investment Agreement and COMA in relation to the SAH Project and Jebco Project, Demand Power also breached its obligations under these agreements in respect of another Accepted Project known as the "Agnora Project".

54. In or around May 2019, Demand Power entered into a power supply agreement (the "**Agnora PSA**") with 2367790 Ontario Inc. ("**Agnora**") to supply several back up battery powered generators to Agnora for a period of ten years (the "**Agnora Project**").

55. A couple of years later, Demand Power submitted an investment proposal to Narrows to acquire the Agnora Project. The investment proposal materially misrepresented the scope of the Agnora Project by providing a budget, construction plan, and corresponding financial metrics that did not meet the requirements of the Agnora PSA (the "**Agnora Misrepresentation**"). More particularly, and unbeknownst to Narrows, the proposal submitted by Demand Power did not contemplate the construction and installation of an adequate number of batteries to supply the volume of power promised to Agnora in the Agnora PSA.

56. Based on the Agnora Misrepresentation and supporting documents contained in the investment proposal, Narrows elected to purchase the Agnora Project in accordance with the Investment Agreement. Narrows and Demand Power then executed a Project Acceptance Confirmation Agreement dated June 18, 2021 (the "**Agnora Purchase Agreement**") and Demand Power executed a bill of sale and assignment agreement in substantially the same form as the SAH Assignment Agreement and Jebco Assignment Agreement.

57. After entering into the Agnora Purchase Agreement, in August 2023, Narrows learned that the Agnora Project required many more batteries than Demand Power represented to it. Contrary to the Agnora Misrepresentation, the Agnora Project required at least twelve backup battery generators (compared to the seven installed by Demand Power) to guarantee power supply in the event of a grid shutdown, which was the inherent purpose of the Agnora PSA. The cost to install the five additional batteries is approximately \$500,000. The need for these additional batteries was known or ought to have been known by Demand Power at the time the Agnora Misrepresentation was made.

Personal Liability of Mr. Carillo

58. In addition to the tortious conduct of Mr. Carillo referred to in the Statement of Defence, including his negligence and repeated misrepresentations to Narrows which he knew to be false and were intended to induce Narrows to purchase the SAH and Jebco Projects, Mr. Carillo also engaged in unlawful conduct that was and continues to be beyond the scope of his authority and constitutes improper self-dealing, which has caused significant damages to Narrows.

59. For the past several months, Demand Power has been on the brink of insolvency. As of August 1, 2023, the company had very little cash remaining in its bank accounts and is barely (if at all) able to pay its liabilities as they become due. Demand Power's board of directors directed the company to preserve cash in early 2023 and to obtain pre-approval from the board for any significant expenditures. Contrary to this direction, Mr. Carillo retained counsel, incurred significant costs and directed the commencement of this litigation without authorization.

60. Mr. Carillo commenced this claim without authorization because, if he is terminated in conjunction with an insolvency process, the likelihood of him receiving severance or other employment related payments without Demand Power significantly reducing its outstanding liabilities (such as the Blaneys' or Pallet Valo's invoices) is likely negligible. Given his

701

- 19 -

unauthorized conduct and self-dealing, Mr. Carillo is personally liable for any costs in connection with this litigation.

61. Furthermore, Mr. Chudgar and Mr. Carillo also surreptitiously orchestrated an amendment to Mr. Chudgar's employment agreement with Demand Power by including an indemnity, on behalf of Demand Power, in respect of "any and all acts taken or omitted to be taken by him" during the course of his employment. The inclusion of this indemnity is a breach of the unanimous shareholder agreement of Demand Power (the "**Shareholders Agreement**"), which requires unanimous approval of Demand Power's board of directors for any indemnification agreements. Mr. Carillo knowingly assisted Mr. Chudgar in breaching the Shareholders Agreement to protect Mr. Chudgar's self-interest in an attempt to prevent Narrows from commencing this claim and seeking to recover against him personally for his improper acts.

October 6, 2023

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Zev Smith LSO# 70756R
Tel: 416.869.5260
zsmith@stikeman.com

Jenna Rumeo LSO# 82903W
Tel: 416.869.5249
jrumeo@stikeman.com

Lawyers for the Defendants/Plaintiffs by
Counterclaim

702

DEMAND POWER GROUP INC. et al.
Plaintiff/Defendant by Counterclaim

-and-

NARROWS GREEN, LP et al.
Defendants/ Plaintiffs by Counterclaim

Court File No. CV-23-00705135-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

STATEMENT OF DEFENCE AND COUNTERCLAIM

STIKEMAN ELLIOTT LLP

Barristers & Solicitors
5300 Commerce Court West, 199 Bay Street
Toronto, ON M5L 1B9

Zev Smith (LSO# 70756R)

zsmith@stikeman.com
Tel: 416.869.5260

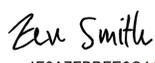
Jenna Rumeo (LSO# 82903W)

JRumeo@stikeman.com
Tel: 416.869.5249

Lawyers for the Defendants/
Plaintiffs by Counterclaim

703

This is Exhibit "P" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

4F6A7FBBFE6C441...

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

704

----- Forwarded message -----

From: "Hartline, Vanessa D" <VDHartline@pplweb.com>

Date: Oct 5, 2023 6:02 PM

Subject: RE: Demand Power Group Inc. - OVERDUE INVOICES

To: Jahred KALLOP <jkallop@tikehaucapital.com>, Weir <rweir@demandpower.ca>, Carillo <rcarillo@demandpower.ca>

Cc: "DiBona, Cheryl L." <CDiBona@pplweb.com>

Caution: External email. In case of doubt, contact IT Support.

Jahred,

No one has disputed Demand's ability to pay its liabilities. As stated in my email below, we are deadlocked on the correct bankruptcy procedure for Demand and there is no way to break the deadlock.

We expressed our concerns to you about an affiliate of Narrows financing the insolvency process while there is an outstanding lawsuit between Demand and Narrows. We have asked you for the proposed financing terms, but we have not yet received that information. Please provide a copy of the term sheet referenced in your proposed resolution. We have also notified you that we do not agree with the terms of the Resolution that you provided, including the requirement that I resign from the Board.

As you know, the Board must treat those affected by corporate actions fairly and equitably. Under the circumstances, we believe it is prudent to discuss these actions with the shareholders. I also suggest that we schedule a call with Robert to determine the nature of the motion and Demand's options under the current circumstances.

Best regards,

Vanessa Hartline | Director of Cash Management

Treasury | phone: (610) 774-4565 | vdhartline@pplweb.com



PPL
Two North Ninth Street
GENTW12
Allentown, PA 19510

705

This is Exhibit "Q" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Zev Smith

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH



From: DiBona, Cheryl L. <CDiBona@pplweb.com>
Sent: Tuesday, September 26, 2023 10:36 AM
To: Carillo <rcarillo@demandpower.ca>
Cc: Hartline, Vanessa D <VDHartline@pplweb.com>; Jahred KALLOP <jkallop@tikehaucapital.com>; Amy BOHANNON <abohannon@tikehaucapital.com>
Subject: Demand - Shareholder Meeting Request

Caution: External email. In case of doubt, contact IT Support.

Hi Robert,

The Board has been in discussions concerning the impending insolvency of Demand, and potential options to effect an orderly process that is in the best interests of Demand.

Because the Board consists only of directors appointed by Preferred Shareholders, it seems appropriate to have a shareholder meeting to discuss insolvency options and vote on a path forward.

Can you schedule a shareholders' meeting for this purpose? Star has engaged bankruptcy counsel. I defer to Amy on whether Star would like for bankruptcy counsel to present at the meeting.

Thanks,
Cheryl
Best regards,

Cheryl DiBona | Senior Counsel
Office of General Counsel | phone: (215) 520-1355 | cdibona@pplweb.com



PPL
Two North Ninth Street
GENTW4
Allentown, PA 18101

Business Use

707

The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately, and delete the original message.

The information contained in this message is intended for the addressee only and may contain confidential and/or privileged information and/or information protected by intellectual property rights or other legal rules. If you are not the intended recipient, please delete this message and any attachment to it and notify the sender; you may not copy or use this message or its attachments in any way nor disclose its contents to anyone. Emails cannot be guaranteed to be secure or to be error or virus free. No liability is accepted by the sender for any loss or damage arising in any way from this message or its use. Any views or opinions expressed in this message are those of the author and do not necessarily represent those of Tikehau Capital or any of its affiliated companies. Hence, this email does under no circumstances constitute a binding commitment by or on behalf of Tikehau Capital or any of its affiliated companies, unless it contains an express statement to the contrary from an authorized representative and clearly identifies the entity for which the commitment is taken.

Les informations contenues dans ce message sont destinées exclusivement à l'usage de la personne à laquelle elles sont adressées. Elles peuvent contenir des données confidentielles et/ou privilégiées et/ou protégées par des droits de propriété intellectuelle ou d'autres lois. Si vous avez reçu ce message par erreur, veuillez le détruire, ainsi que toutes ses annexes, et notifier son expéditeur ; il vous est interdit de copier ou d'utiliser ce message ou ses annexes ou de divulguer son contenu à quiconque. La transmission de données par e-mail ne peut être garantie comme un moyen sûr et infaillible, ni comme étant exempt de tout virus. L'expéditeur décline toute responsabilité en cas de perte ou dommage résultant de ce message ou de son utilisation, quelle qu'elle soit. Toute vue ou opinion exprimée dans ce message est celle de son auteur et ne représente pas nécessairement celle de Tikehau Capital ou de ses sociétés liées. Par conséquent, ce message ne constitue pas un engagement de Tikehau Capital ou de ses sociétés liées, sauf s'il contient une déclaration explicite en sens contraire par un de ses représentants officiels et que l'entité pour laquelle l'engagement est pris est clairement identifiée.

708

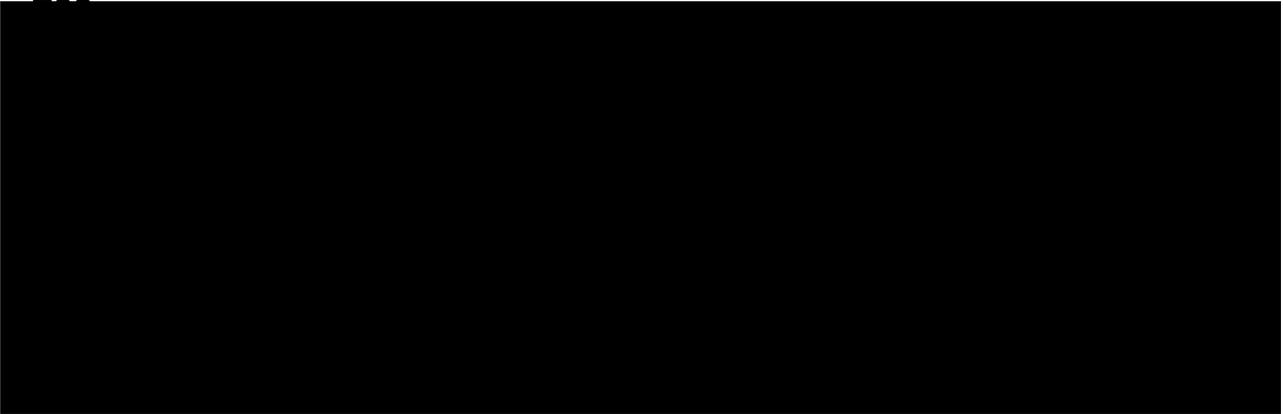
This is Exhibit "R" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

4F6A7FBBFE6C441...

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH



From: Amy BOHANNON
Sent: Wednesday, October 18, 2023 4:33 PM
To: Hartline, Vanessa D <VDHartline@pplweb.com>; Jahred KALLOP <jkallop@tikehaucapital.com>
Cc: DiBona, Cheryl L. <CDiBona@pplweb.com>
Subject: RE: FW: Outstanding invoices and Blaney's

Hi Vanessa,

As requested, please see attached.

Best, Amy

From: Hartline, Vanessa D <VDHartline@pplweb.com>
Sent: Wednesday, October 11, 2023 10:31 AM
To: Amy BOHANNON <abohannon@tikehaucapital.com>; Weir <rweir@demandpower.ca>; Jahred KALLOP <jkallop@tikehaucapital.com>
Cc: Carillo <rcarillo@demandpower.ca>; DiBona, Cheryl L. <CDiBona@pplweb.com>
Subject: RE: FW: Outstanding invoices and Blaney's

Caution: External email. In case of doubt, contact IT Support.

Thanks Amy for the email.

For the legal fees, can you recommend a path forward to address any of the outstanding invoices?

To help expedite the insolvency filing, could you provide the financing term sheet referenced in the NOI resolution that Jahred forwarded.

Rob Weir- Based upon the attached email from PPL and Starr, please proceed with payment for the insurance.

Best regards,

Vanessa Hartline | [Director of Cash Management](#)

710

Treasury | phone: (610) 774-4565 | vdhartline@pplweb.com



PPL
Two North Ninth Street
GENTW12
Allentown, PA 19510

Business Use

From: Amy BOHANNON <abohannon@tikehaucapital.com>

Sent: Tuesday, October 10, 2023 9:55 PM

To: Hartline, Vanessa D <VDHartline@pplweb.com>; Weir <rweir@demandpower.ca>; Jahred KALLOP <jkallop@tikehaucapital.com>

Cc: Carillo <rcarillo@demandpower.ca>

Subject: FW: FW: Outstanding invoices and Blaney's

EXTERNAL email. STOP and THINK before responding, clicking on links, or opening attachments.

Hi Vanessa,

Since Jahred is in and out with jury duty, he asked me to respond to you.

We agree with the payment of the insurance.

For the legal fees, we still think these appear to be excessive and considering the insolvency of the company, we would not be inclined to pay the full outstanding amount, but rather a portion thereof. We think these fees need to be closely monitored, particularly since Blaney's is a related party, it being a shareholder of Demand Power.

Moreover, our position remains unchanged and it is essential that we proceed quickly with an insolvency filing, as we cannot continue to incur liabilities that we know the company cannot pay.

Best regards,

Amy

----- Forwarded message -----

From: "Hartline, Vanessa D" <VDHartline@pplweb.com>

Date: Oct 10, 2023 3:09 PM

Subject: FW: Outstanding invoices and Blaney's

To: Weir <rweir@demandpower.ca>, Jahred KALLOP <jkallop@tikehaucapital.com>

Cc: Carillo <rcarillo@demandpower.ca>

Caution: External email. In case of doubt, contact IT Support.

Rob/Jahred,

711

In light of the deadlock over the bankruptcy approach, I am in agreement with moving forward with payment of all legal fees, including the fees that Demand will incur in connection with the litigation between Demand and Narrows.

Can you confirm that we must pay for the Professional Liability/Run off policy? It is my understanding that we are required to make payment because the policy has been issued.

Best regards,

Vanessa Hartline | Director of Cash Management
Treasury | phone: (610) 774-4565 | vdhartline@pplweb.com



PPL
Two North Ninth Street
GENTW12
Allentown, PA 19510

Business Use

From: Rob Weir <rweir@demandpower.ca>

Sent: Tuesday, October 10, 2023 11:06 AM

To: Hartline, Vanessa D <VDHartline@pplweb.com>; Jahred KALLOP <jkallop@tikehaucapital.com>

Cc: Robert Carillo <rcarillo@demandpower.ca>

Subject: Outstanding invoices and Blaney's

Importance: High

EXTERNAL email. STOP and THINK before responding, clicking on links, or opening attachments.

Hi Vanessa and Jahred,

A couple of items.

1. Professional Liability Run-off policy – as much discussion you know the policy was bound by Steven G., the broker (Marsh) informed me last week that the account has gone into collections. After initial direction to pay, there was a split between Board members on requirement/necessity to pay this policy premium (approx.. \$15k). Please advise if you both agree that this premium should be paid I will process payment today.
2. Blaney's – while there were two invoices circulated last week that total \$14-\$15k, there is a total AP of approximately \$52k to Blaney's. I have attempted to get in touch with Dan G to confirm the total AR, from their perspective, I have not received a response. As you also know, I have not talked to Chad directly, Blaney's intends to go to court tomorrow to request that Blaney's be removed from the case. If the desire is for Blaney's to continue or at least to get a date for the lien reduction pleading then we should be in contact today with Blaney's regarding payment and direction. Robert Carillo is in Europe today and may not be readily available.

712

Look forward to receiving your direction.

Regards,

Rob

Rob Weir

COO

Demand Power Group Inc.

Mobile: [416-526-3623](tel:416-526-3623) **Phone:** [647-812-8815](tel:647-812-8815) ext. 242

Email: rweir@demandpower.ca

Website: www.demandpower.ca

Address: 10 King St. E., Suite 1100
Toronto ON, M5C 1C3



IMPORTANT CONFIDENTIALITY NOTICE:

The contents of this email message and any attachments are intended only for the recipient(s) to whom it is addressed. The message may contain information that is privileged, confidential and exempt from disclosure under applicable law or legal agreement. No waiver of privilege, confidentiality or any other protection is intended by its delivery. Be aware that any disclosure, copying, distribution or use of the contents of this e-mail, without the consent of such person, is prohibited. If you have received this email in error or you are not a named recipient, please immediately notify the sender and delete all copies of the original email including all attachments without copying distributing or disclosing the same. Thank you.

This email, including any attachments, is for the sole use of the intended recipient and may contain confidential information. If you are not the intended recipient, please immediately notify us by reply email or by telephone, delete this email and destroy any copies. Thank you.

The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately, and delete the original message.

The information contained in this message is intended for the addressee only and may contain confidential and/or privileged information and/or information protected by intellectual property rights or other legal rules. If you are not the intended recipient, please delete this message and any attachment to it and notify the sender; you may not copy or use this message or its attachments in any way nor disclose its contents to anyone. Emails cannot be guaranteed to be secure or to be error or virus free. No liability is accepted by the sender for any loss or damage arising in any way from this message or its use. Any views or opinions expressed in this message are those of the author and do not necessarily represent those of Tikehau Capital or any of its affiliated companies. Hence, this email does under no circumstances constitute a binding commitment by or on behalf of Tikehau Capital or any of its affiliated companies, unless it contains an express statement to the contrary from an authorized representative and clearly identifies the entity for which the commitment is taken.

Les informations contenues dans ce message sont destinées exclusivement à l'usage de la personne à laquelle elles sont adressées. Elles peuvent contenir des données confidentielles et/ou privilégiées et/ou protégées par des droits de propriété intellectuelle ou d'autres lois. Si vous avez reçu ce message par erreur, veuillez le détruire, ainsi que toutes ses annexes, et notifier son expéditeur ; il vous est interdit de copier ou d'utiliser ce message ou ses annexes ou de divulguer son contenu à quiconque. La transmission de données par e-mail ne peut être garantie comme un moyen sûr et infaillible, ni comme étant exempt de tout virus. L'expéditeur décline toute responsabilité en cas de perte ou dommage résultant de ce message ou de son utilisation, quelle qu'elle soit. Toute vue ou opinion exprimée dans ce message est celle de son auteur et ne représente pas nécessairement celle de Tikehau Capital ou de ses sociétés liées. Par conséquent, ce message ne constitue pas un engagement de Tikehau Capital ou de ses sociétés liées, sauf s'il contient une déclaration explicite en sens contraire par un de ses représentants officiels et que l'entité pour laquelle l'engagement est pris est clairement identifiée.

The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately,

713

and delete the original message.

714

This is Exhibit "S" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Zev Smith

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

715

SE Draft
10/17/2023

PERSONAL AND CONFIDENTIAL

Dated as of ●, 2023

Demand Power Group Inc.
[71 Marycroft Avenue, Unit 20
Woodbridge, ON L4L 5Y6]
Canada

COMMITMENT LETTER

WHEREAS Demand Power Group Inc. (the “**Borrower**”) has ceased to meet its liabilities as they become due and has filed a notice of intention pursuant to the *Bankruptcy and Insolvency Act* (the “**NOI Process**”).

WHEREAS [STAR America DPGI Acquisition Company, Inc.] (the “**Lender**”) has agreed to provide funding to the Borrower by way of a senior first ranking secured debtor-in-possession facility in order to fund certain obligations of the Borrower in the context of the NOI Process.

THE DIP FACILITY

Trustee

The Lender understands that the trustee to the NOI Process is Deloitte Restructuring Inc. (the “**Trustee**”), and Toni Vanderlaan (or such other person as may be acceptable to the Lender) shall be the person with primary responsibility for fulfillment of the Trustee's duties in connection with this DIP Facility (as defined below). The Lender shall be authorized by the DIP Order (as defined below) to have direct discussions with the Trustee, and to receive information from the Trustee as requested by the Lender from time to time.

DIP Facility

The Lender agrees to advance to the Borrower a super-priority (debtor-in-possession) non-revolving credit facility (the “**DIP Facility**”) in a principal amount to be determined by the Trustee in consultation with the Borrower but not exceeding \$●. **[NTD: Deloitte is currently working on a budget, following receipt of updated financial information from Rob Weir, which will allow us to determine the quantum required to fund these proceedings]**

After the grant by the Court of an order, in a form and substance reasonably satisfactory to the Lender, authorizing the DIP Facility on the terms and conditions hereof and creating the DIP Charge (as defined below) with the priority contemplated herein (the “**DIP Order**”), the Lender shall make available to the Borrower the Maximum Amount, to be drawn in tranches of not less than \$● each (each a “**DIP Advance**”) for the purposes set forth below under the heading “**Use of Proceeds**”, each of which DIP Advance shall be made subject to the Lender having received a written draw request having been approved by the Trustee. Subject to the terms and conditions set out in this commitment

716

letter, each DIP Advance shall be deposited into the Borrower's designated bank account.

Use of Proceeds

The DIP Facility shall be used for any costs, fees and expenses incurred in connection with the NOI Process **[and for the limited purposes of funding working capital requirements as contemplated in the cash flow statement attached hereto as Schedule A]** or, with the prior written approval of the Lender, for other general corporate purposes of the Borrower. For greater certainty, no proceeds from the DIP Facility shall be used other than in accordance with this commitment letter and the DIP Order, unless otherwise agreed in writing by the Lender.

Evidence of indebtedness

The Lender shall open and maintain accounts and records evidencing advances and repayments under the DIP Facility and all other amounts owing from time to time hereunder, which shall constitute, in the absence of manifest error, prima facie evidence of the indebtedness of the Borrower to the Lender pursuant to this DIP Facility.

Currency

Unless otherwise stated, all monetary denominations shall be in lawful currency of Canada.

Interest Rate

The outstanding principal balance of the DIP Facility shall bear interest at a rate per annum equal to 8% and, upon the occurrence and during the continuance of an Event of Default, at a rate per annum equal to ●%, which interest shall accrue daily and be payable on the Maturity Date.

Commitment Fees

The Borrower shall pay to the Lender a commitment fee equal to **[2%]** of the DIP Facility, which commitment fee shall be earned as at the date of the first DIP Advance and payable on the Maturity Date.

Costs and Expenses

The Borrower shall reimburse the Lender for all reasonable fees, expenses and disbursements of legal counsel, appraisers, field auditors, and any financial consultant in connection with the negotiation, implementation and administration of the DIP Facility and the transactions contemplated herein, including any costs and expenses incurred by the Lender in connection with the enforcement of any of the rights and remedies available hereunder or any related security.

PAYMENT/REPAYMENT

Term and Termination

Without the Lender being required to make any demand upon the Borrower or to give notice that the DIP Facility has been terminated and that amounts are due and payable, all amounts advanced under the DIP Facility shall be repaid in full, and the Lender's commitment to advance amounts under the DIP Facility shall terminate at the earliest of:

717

- (i) **[April 23, 2024]** (the “**Maturity Date**”);
- (ii) the closing of any transaction related to the acquisition of all or substantially all of the Borrower's assets; or
- (iii) the occurrence of an Event of Default (as defined below).

Voluntary Prepayment

The Borrower may prepay all or any part of the DIP Facility at any time.

Mandatory Prepayment

Unless otherwise consented to in writing by the Lender, the Borrower shall be required to make mandatory prepayments of amounts outstanding under the DIP Facility to the extent of 100% of the net cash proceeds (for greater certainty, net of reasonable costs and closing adjustments) of any sale or transfer of the assets or shares of the Borrower to any person or entity whatsoever outside the ordinary course of business.

SECURITY AND PRIORITY**Security**

All obligations of the Borrower under or in connection with the DIP Facility and the DIP Order (including, without limitation, all principal amounts outstanding, all accrued and unpaid interest thereon, all fees and charges, all other amounts payable and all other obligations of the Borrower under or in connection with this commitment letter or any other agreement or understanding in virtue of which the Borrower is bound to the Lender) shall be secured by a super priority Court-ordered charge (the “**DIP Charge**”) over all present and after-acquired property, assets and undertakings of the Borrower (including all proceeds therefrom and all causes of action of the Borrower) ranking in priority to all other creditors, interest holders, lien holders and claimants of any kind whatsoever, except for a Court-ordered administration charge to secure payment of professional fees and disbursements incurred by professionals, including, without limitation, the Trustee's fees (the “**Administration Charge**”).

CONDITIONS PRECEDENT**Conditions**

The obligation of the Lender to make any DIP Advance is subject to the satisfaction of the following conditions, which shall be considered to have been stipulated for the exclusive benefit of the Lender who may, at its sole discretion, waive any one of such conditions or grant an extension of time for their fulfilment:

- (i) the DIP Order, in a form and substance satisfactory to the Lender in its sole discretion, shall have been obtained and no Event of Default shall have occurred or would occur as a result of the requested DIP Advance;
- (ii) all fees and expenses payable to the Lender have been paid or will be paid from the proceeds of any requested

DIP Advance within such time as is acceptable to the Lender, in their sole discretion;

- (iii) the Lender will have received such evidence of corporate authorization as necessary relating to the validity and enforceability of this commitment letter and any other documents executed in connection herewith, including the DIP Charge;
- (iv) the Lender shall be satisfied that the Borrower has complied with and is continuing to comply with, in all material respects, all applicable laws, regulations and policies in relation to its business, other than as may be permitted under a Court order which is satisfactory to the Lender in its discretion;
- (v) the Trustee shall be granted by the Court all necessary powers to supervise the operations of the Borrower, in accordance with this commitment letter;
- (vi) there shall be no liens ranking in priority to the DIP Charge, other than the Administrative Charge; and
- (vii) there shall have occurred no material adverse change in the assets, business, prospects, conditions or operations of the Borrower (a "**Material Adverse Change**") since the date hereof.

As soon as practicable, the DIP Charge shall be registered against title to all of the assets of the Borrower.

COVENANTS AND EVENTS OF DEFAULT

Covenants

In addition to all other covenants and obligations contained herein, the Borrower agrees and covenants to perform and do each of the following until the DIP Facility is permanently and indefeasibly repaid in full and cancelled:

- (i) keep the Lender apprised on a timely basis of all material developments with respect to the business and affairs of the Borrower and allow the Lender, its consultants and representatives free and unrestricted access to the Borrower's premises, books and records for purposes of inspection and periodic reviews;
- (ii) pay and discharge all taxes and other priority and statutory charges on a timely basis;
- (iii) maintain in good standing its legal existence and all permits, licenses and other rights and privileges required or necessary for the Borrower to carry on its general business, objects and purposes;

- (iv) comply in all material respects with the requirements of all laws, orders and judgements that affect its existence and business;
- (v) use any and all of the DIP Advances and other cash on hand only in accordance with the terms of this commitment letter and the DIP Order;
- (vi) maintain, preserve and protect all of its properties and equipment necessary for the operation of its business and maintain current insurance coverage over all of its assets and property and designate the Lender as first loss-payee and secured creditor thereunder;
- (vii) forthwith notify the Lender of the occurrence of any Event of Default, or of any event or circumstance that (a) may result in a Material Adverse Change or (b) with the giving of notice of the passing of time may constitute an Event of Default;
- (viii) deliver all financial statements and other books and records reasonably requested by the Lender from time to time and execute, acknowledge, deliver, file, register and record any and all such further acts, deeds, certificates, assurances and other instruments as the Lender may reasonably request from time to time in order to carry out more effectively the purposes of this commitment letter and the security granted therefor; and
- (ix) ensure that the Borrower and its directors and officers (i) refrain from seeking any and all financing with any third party and (ii) dedicate their full time and efforts to the operations of the Borrower as contemplated pursuant to this commitment letter.

In addition to the above-mentioned covenants, the Borrower further undertakes not to (i) request, obtain or consent to any variations of the DIP Order or (ii) create or allow the creation of any hypothecation, pledge, security interest, mortgage, charge or other preferential rights in any of the Borrower's present or after-acquired property or assets.

Event of Default

The occurrence of any one or more of the following events, without the prior written consent of the Lender, shall constitute an event of default ("**Event of Default**") under this commitment letter:

- (i) the Borrower defaults in the payment to the Lender, when due, of any amount (principal, interest, fees, costs, charges, expenses or otherwise) owed under the DIP Facility or under any other agreement entered into between the Borrower and the Lender in connection herewith;

720

- (ii) the Borrower fails to perform, fulfill, observe or comply with any covenant, term or condition hereunder or under the DIP Order or any other agreement entered into with the Lender or any of its affiliates;
- (iii) the Borrower fails to pay to the appropriate authorities any taxes or deductions at source;
- (iv) the Borrower attempts to sell or dispose of or sells or disposes of any of its undertaking or property or assets, except in the ordinary course of business or as authorized by the Court;
- (v) the Borrower abandons its undertaking or property or assets or any part thereof or the Borrower suspends or ceases or threatens to suspend or cease business operations;
- (vi) the whole or any portion of the Borrower's property is sold in execution or in satisfaction of the rights of any other party;
- (vii) any judgment is rendered against the Borrower which is likely to result in a Material Adverse Change;
- (viii) the rendering of an order of the Court reversing, staying, vacating, amending, supplementing or modifying the DIP Order and/or the order approving an investment solicitation process or granting a claim or charge which is senior to or *pari passu* with the ranking of the DIP Charge, other than the Administration Charge; and
- (ix) the Borrower becoming the object of any receivership, or interim receivership or similar appointment at the request of anyone other than the Lender.

Remedies

Upon the occurrence of an Event of Default, and to the extent such actions are not inconsistent with any Court order including the DIP Order, the Lender may declare the obligations in respect of this commitment letter to be immediately due and payable, cease making any further DIP Advances and exercise all other rights and remedies available to them under the DIP Order, including, without limitation, the enforcement of the DIP Charge, or otherwise available to them, at law or in equity.

MISCELLANEOUS

Entire Agreement

This commitment letter constitutes the entire agreement between the parties relating to the subject matter hereof.

Amendment and Waivers

No waiver or delay on the part of the DIP Lender in exercising any right or privilege hereunder will operate as a waiver hereof or

721

thereof unless made in writing and delivered in accordance with the terms of this commitment letter.

Assignment

The Lender may assign this commitment letter and its rights and obligations hereunder, in whole or in part, to any party acceptable to the Lender in its sole and absolute discretion (subject to providing the Trustee with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of the Lender hereunder). Neither this commitment letter nor any right and obligation hereunder may be assigned by the Borrower.

Counterparts and Facsimile Signatures

This commitment letter may be executed in any number of counterparts and by facsimile or other electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this commitment letter by signing any counterpart of it.

Severability

Any provision in this commitment letter which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Governing Jurisdiction

Law and

This commitment letter shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

[signature page follows]

722

IN WITNESS HEREOF, the parties hereby execute this commitment letter as at the date first above mentioned.

**[STAR AMERICA DPGI ACQUISITION
COMPANY, INC.]**

By: _____
Name:
Title:

DEMAND POWER GROUP INC.

By: _____
Name:
Title:

723

SCHEDULE A

724

This is Exhibit "T" referred to in the Affidavit of Jahred Kallop affirmed by Jahred Kallop of the City of East Hampton, in the state of New York, before me at the City of Toronto, in the Province of Ontario, on November 5, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Zev Smith

Commissioner for Taking Affidavits (or as may be)

ZEV SMITH

725

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

STAR AMERICA DPGI ACQUISITION COMPANY, INC.

Applicant

and

DEMAND POWER GROUP INC.

Respondent

APPLICATION UNDER section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

CONSENT TO ACT

DELOITTE RESTRUCTURING INC. HEREBY CONSENTS to act as receiver and manager, without security, over the assets, undertakings and properties of the Respondent, in accordance with an order substantially in the form of the receivership order sought and included in the Application Record of the Applicant.

DATED AT Toronto, this 2nd day of November, 2023.

DELOITTE RESTRUCTURING INC.



Per: Toni Vanderlaan
Title: Senior Vice President

726

STAR AMERICA DPGI ACQUISITION COMPANY, INC.
Applicant

-and-

DEMAND POWER GROUP INC.
Respondent

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

CONSENT TO ACT

STIKEMAN ELLIOTT LLP

Barristers & Solicitors
5300 Commerce Court West, 199 Bay Street
Toronto, ON M5L 1B9

Zev Smith (LSO# 70756R)

zsmith@stikeman.com

Tel: 416.869.5260

Jenna Rumeo (LSO# 82903W)

JRumeo@stikeman.com

Tel: 416.869.5249

Lawyers for the Applicant

Email for party served:

Catherine DiMarco (LSO # 50726V)

cdimarco@pallettvalo.com

Lawyer for the Respondent

727

STAR AMERICA DPGI ACQUISITION
COMPANY, INC.
Applicant

-and-

DEMAND POWER GROUP INC.
Respondent

Court File No. CV-23-00709164-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

AFFIDAVIT OF JAHRED KALLOP

STIKEMAN ELLIOTT LLP

Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street
Toronto, ON M5L 1B9

Guy P. Martel

gmartel@stikeman.com

Tel: 514.397.3163

Nathalie Nouvet

nnouvet@stikeman.com

Tel: 514.397.3128

Zev Smith (LSO# 70756R)

zsmith@stikeman.com

Tel: 416.869.5260

Lawyers for the Applicant

STAR AMERICA DPGI ACQUISITION COMPANY, INC.
Applicant

-and-

DEMAND POWER GROUP INC.
Respondent

Court File No. CV-23-00709164-00CL

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

Proceeding Commenced at Toronto

APPLICATION RECORD

STIKEMAN ELLIOTT LLP

Barristers & Solicitors
5300 Commerce Court West, 199 Bay Street
Toronto, ON M5L 1B9

Guy P. Martel

Tel: 514.397.3163
gmartel@stikeman.com

Nathalie Nouvet

Tel: 514.397.3128
nnouvet@stikeman.com

Zev Smith (LSO# 70756R)

zsmith@stikeman.com
Tel: 416.869.5260

Lawyers for the Applicant