



## BY-LAW

NO. 2023 –

---

**Being a By-law to Authorize a Water Supply Agreement with  
Bruce Power L.P.**

---

**Whereas** Section 8 (1) and 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

**Whereas** the Municipality has the authority to enter into a water supply agreement under Sections 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended; and

**Whereas** Bruce Power has requested that Kincardine provide Drinking Water to the Bruce Site; and

**Whereas** Council of The Corporation of the Municipality of Kincardine deems it advisable to enter into a Water Supply Agreement with Bruce Power L.P.;

**Now Therefore be it Resolved** that the Council of The Corporation of the Municipality of Kincardine **Enacts** as follows:

1. That The Corporation of the Municipality of Kincardine enter into a Water Supply Agreement with Bruce Power L.P., in accordance with the terms and conditions outlined in the Agreement attached hereto as Schedule 'A' and forming part of this By-law.
2. That the Mayor and Clerk be authorized to sign and execute, on behalf of The Corporation of the Municipality of Kincardine, the Agreement with Bruce Power L.P. and to affix the corporate seal as required.
3. That this By-law shall come into full force and effect upon its final passage.
4. That this By-law be cited as "Bruce Power Water Supply Agreement (2023) By-law".

**Read a First and Second Time** this 11<sup>th</sup> day of October, 2023.

**Read a Third Time and Finally Passed** this 11<sup>th</sup> day of October, 2023.

---

Mayor

---

Clerk

**DRAFT**

**WATER SUPPLY AGREEMENT**

**THIS AGREEMENT**, made in triplicate, as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the “**Effective Date**”).

**BETWEEN**

**THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**

(Hereinafter referred to as the “**Municipality**” or “**Kincardine**”)

- and -

**BRUCE POWER L.P.**

(Hereinafter called “**Bruce Power**”)

**WHEREAS** the Municipality has the authority to enter into a water supply agreement under Sections 9 and 11 of the *Municipal Act, 2001*, SO. 2001, c. 25 (the “**Municipal Act**”).

**AND WHEREAS** Bruce Power has requested, and Kincardine has consented, that Kincardine provide Drinking Water to the Bruce Site.

**AND WHEREAS** it has been established that both an extension and an expansion of the Kincardine Drinking Water System will be required to accommodate the rates of supply and volumes of Drinking Water requested by Bruce Power.

**AND WHEREAS** Bruce Power and Kincardine have agreed to a sharing of the costs of the required studies, approvals, and the capital costs of system expansion and extension as set out herein;

**AND WHEREAS** prior to Phase 1, Bruce Power and Kincardine entered into an agreement effective August 31, 2017 (the “**2017 Funding Agreement**”) pursuant to which Kincardine completed a portion of the work necessary to assess (the “**Assessment**”) the feasibility of the Municipality providing water and wastewater services (collectively, “**Water Services**”) to the Bruce Site with Bruce Power funding certain of Kincardine’s consultant costs associated with the Assessment. The 2017 Funding Agreement has been terminated.

**AND WHEREAS** in connection with Phase 1, Bruce Power and Kincardine have entered into an agreement effective June 22, 2022 (the “**2022 Funding Agreement**”) pursuant to which Kincardine agreed to undertake the next phase of the work to assess the feasibility of continuing towards Kincardine providing Water Services to the Bruce Site, such work includes the completion of a Schedule C Class Environmental Assessment for the Kincardine Water Supply System in accordance with the Municipal Class Environmental Assessment planning process (the “**Schedule C Class EA**”), with Bruce Power funding the actual work to be performed by each of Kincardine’s consultants B.M. Ross and Associates Limited (“**BMROSS**”) and Stantec Consulting Ltd. (“**Stantec**”), in each case up to a not-to-exceed cap. The 2022 Funding Agreement is attached hereto as Schedule B.

**AND WHEREAS** Bruce Power and Kincardine have agreed to terms relating to the purchase and sale of Drinking Water as set out herein.

**NOW THEREFORE IN CONSIDERATION OF** the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

## **Article 1**

### **INTERPRETATION AND PHASING**

#### **1.1 Definitions:**

“**2017 Funding Agreement**” has the meaning ascribed to it in the recitals herein.

“**2022 Funding Agreement**” has the meaning ascribed to it in the recitals herein.

“**AACE Guide**” means the AACE International Recommended Practice No. 18R-97: Cost Estimate Classification System – As Applied in Engineering, Procurement, and Construction for the Process Industries; TCM Framework 7.3 – Cost Estimating and Budgeting, Rev. August 7, 2020 as the same may be amended from time to time.

“**Agreement**” means this agreement as the same may be amended or restated from time to time.

“**Arbitration Notice**” has the meaning ascribed to it in Subsection 7.2.2 herein.

“**Assessment**” has the meaning ascribed to it in the recitals herein.

“**BMROSS**” has the meaning ascribed to it in the recitals herein.

“**BNPD**” means the Bruce Nuclear Power Development located in Municipality of Kincardine, Ontario.

“**Break-even**” means that the revenue generated by application of the monthly charges, based on the Water Rates, for Drinking Water supplied and delivered by the Municipality to Bruce Power from the Commencement Date to the expiry of the Term shall not be less than cost of treating and delivering the Drinking Water with such Water Rates including an amount to provide for an equitable portion to be borne by Bruce Power of the funding required for the future replacement

of the Physical Facilities and the WTP expansion all of which shall be achieved by the Parties establishing the Minimum Annual Volume in accordance with Section 3.4.8 of this Agreement.

**“Bruce Power”** has the meaning ascribed to it in the preamble herein.

**“Bruce Power Buy-in Contribution”** means the amount to be paid by Bruce Power to Kincardine to fund the expansion of the WTP needed to connect Bruce Power to the Kincardine Drinking Water System and allow Bruce Power to obtain Drinking Water. The amount of the buy-in contribution will be as set out in Section 3.2 of this Agreement.

**“Bruce Power Capital Contribution”** means the sum of Bruce Power’s share, as set out in Article 3 of this Agreement, of the Total Cost of putting in place each of the Physical Facilities as set out in Section 3.3 of this Agreement.

**“Bruce Power Flow Requirement”** means 2,764 cubic metres per day as a maximum daily volume and 32 Litres per second as a maximum rate of flow.

**“Bruce Power Parties”** has the meaning ascribed to it in Subsection 6.2.1 herein.

**“Bruce Site”** means that part of the BNPD located inside the perimeter fence between the Tie Road and Lake Huron including, without limitation, those portions of the BNPD leased by Bruce Power and Hydro One Networks Inc. and land retained by OPG, but excluding, for clarity that part of the BNPD known as the visitor’s centre. A map of the Connection Point at the Bruce Site is attached as Schedule A to this Agreement.

**“Business Day”** means a day other than any holiday as defined in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

**“Class 2 Estimate”** means an estimate for the design and construction of the Physical Facilities and WTP based on and meeting the “Class 2” requirements, as such requirements are described in the Association for the Advancement of Cost Engineering (“AACE”) Guide.

**“Class 3 Estimate”** means an estimate for the design and construction of the Physical Facilities and WTP based on and meeting the “Class 3” requirements, as such requirements are described in the AACE Guide.

**“Commencement Date”** has the meaning ascribed to it in Section 4.5 herein.

**“Connection Point”** means the point of physical connection of the waterworks belonging to Kincardine and the water lines leased or owned by Bruce Power, which point of connect shall be located outside of the BNPD on lands owned by Kincardine. The proposed Connection Point is shown on the map attached as Schedule A hereto.

**“Construction Contract”** or **“Construction Contracts”** each has the meaning ascribed to it in Section 4.3 herein.

**“Construction Contractor”** or **“Construction Contractors”** each has the meaning ascribed to it in Section 4.3 herein.

**“Defaulting Party”** has the meaning ascribed to it in Section 7.4 herein.

**“Disputes”** has the meaning ascribed to it in Subsection 7.1.1 herein.

**“Dispute Notice”** has the meaning ascribed to it in Subsection 7.2.1 herein.

**“Effective Date”** has the meaning ascribed to it in the preamble herein.

**“Fixed Charge”** has the meaning ascribed to it in Subsection 3.4.2 herein.

**“Drinking Water”** means the water that is treated at the WTP, which water (a) is intended for human consumption or (b) is required by an act, regulation, order, municipal by-law or other document issued under the authority of an act (i) to be potable or (ii) to meet or exceed the requirements of the prescribed drinking water quality standards including under Ontario’s *Safe Drinking Water Act, 2002*, S.O. 2002, c. 32, as amended or replaced from time to time.

**“Erosion Amount”** has the meaning ascribed to it in Subsection 3.3.5(iv) herein.

**“Funding Request”** has the meaning ascribed to it in Subsection 3.3.5(i) herein.

**“Funding Threshold”** has the meaning ascribed to it in Subsection 3.3.5(ii) herein.

**“Good Construction Practices”** means any of the practices, methods and activities adopted by experienced and qualified procurement and construction contractors, suppliers and service providers providing construction services and the supply of products, goods, materials and equipment to the North American water utility industry as good practices applicable to the procurement and construction of facilities or structures of similar design to the Physical Facilities, or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent Person who provides such in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices and applicable law, and, for greater certainty, includes Good Project Management Practices.

**“Good Project Management Practices”** means any of the practices, methods and activities adopted by experienced and qualified procurement and project management contractors providing project management services to the North American water utility industry as good practices applicable to the procurement and construction of facilities or structures of similar design to the Physical Facilities, or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent Person who provides such in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices and applicable law.

**“Interest Rate Policy”** means Municipality’s Development Charge Interest Policy (GG.2.24) adopted on July 5, 2021, as amended or replaced from time to time.

**“Interest Rate”** means the interest rate per annum obtained by the Municipality in respect of its Interest Rate Policy and applied in the context of this Project. The interest rate as of the Effective Date is 5% with any increase or decrease to such rate pursuant to the Interest Rate Policy being

advised by the Municipality to Bruce Power within a reasonable period prior to the adoption of such increase or decrease.

“**Kincardine**” has the meaning ascribed to it in the preamble herein.

“**Kincardine Capital Contribution**” means the sum of Kincardine’s share, as set out in Article 3 of this Agreement, of the Total Cost of putting in place the Physical Facilities required to provide the Bruce Site with Drinking Water from the Kincardine Drinking Water System.

“**Kincardine Drinking Water System**” means, collectively, the water intake facilities, the water treatment facilities, water distribution system, pumping and storage facilities, the water line to Bruce Power in the Municipality of Kincardine, as and when such infrastructure exists or is constructed by the terms of this Agreement, and related facilities as described in the Municipality’s most recent Municipal Drinking Water License and Drinking Water Works Permit.

“**Kincardine Parties**” has the meaning ascribed to it in Section 6.1 herein.

“**Lease**” means the Second Amended and Restated Bruce Lease dated as of October 11, 2016 between OPG, Bruce Power, certain subsidiaries of OPG, TransCanada Pipelines Limited, and OMERS Administration Corporation, as amended, renewed, supplemented, or restated from time to time.

“**Meter**” has the meaning ascribed to it in Subsection 2.1.5 herein.

“**Minimum Annual Volume**” means the annual cubic meter volume of Drinking Water over the Term starting on the Commencement Date to be paid for by Bruce Power at the Water Rates which will enable the Municipality to Break-even with such volume having been established by the Municipality as being 312,075 m3.

“**Municipal Engineer**” means the party designated from time to time, by written notice to Bruce Power, as Kincardine’s municipal engineer, which party, as at the Effective Date, is BMROSS.

“**Municipality**” has the meaning ascribed to it in the preamble herein.

“**Non-Defaulting Party**” has the meaning ascribed to it in Section 7.4 herein.

“**Operating Protocol**” has the meaning ascribed to it in Section 2.5 herein.

“**OPG**” means Ontario Power Generation Inc.

“**Parties**” means collectively the Municipality or Kincardine (denoting the same entity, as noted in the preamble herein) and Bruce Power and “**Party**” means any one of the Municipality, Kincardine or Bruce Power.

“**Person**” means any individual, partnership, limited partnership, joint venture, syndicate, company or corporation with or without share capital, trust, trustee, executor, administrator or other legal personal representative, governmental authority or entity however designated or constituted.

**“Phase 1”** means the preliminary phase of the Project, being undertaken and funded pursuant to the 2022 Funding Agreement, within which the Phase 1 Scope of Work is performed. Such Phase commenced in August of 2022 and is scheduled to be completed in August of 2023, as such dates may be adjusted by written agreement from time to time by the Parties, each acting reasonably.

**“Phase 1 All-In Estimate”** means all costs set out in the Class 3 Estimate plus the then estimated additional Total Costs to the extent such costs are not accounted for in the Class 3 Estimate.

**“Phase 1 Scope of Work”** means:

- (a) all of the work contemplated by the 2022 Funding Agreement entailing four sub-phases comprised of (i) public consultation, (ii) environmental/archeological/geotechnical studies (including completion of the Schedule C Class EA), (iii) technical analysis and (iv) preliminary design and drawings; and
- (b) all of the work required to identify and agree on location and size of and price for the property, if any, required pursuant to Subsection 3.3.2 for purposes of constructing the primary booster pumping station along with the work required to enter into an option to purchase the land for such booster pumping station if it is determined to be required,
- (c) all of the work required to identify and agree on the physical facilities that are required to be constructed up to the Connection Point in order to provide the Bruce Site with Drinking Water from the Kincardine Drinking Water System, a preliminary list of which is set out herein as Schedule C, such list to be revised and finalized by Bruce Power and Kincardine, each acting reasonably, prior to the commencement of Phase 2,
- (d) Parties working collaboratively to reach agreement upon the applicable percentages for the Proportionate Share attributable to each party for each of the Physical Facilities and for the design cost for the expansion of the WTP,

unless Bruce Power or the Municipality exercises a termination right in accordance with Subsection 1.2.6, and, by the end of which a Class 3 Estimate and a Phase 1 All-In Estimate are delivered to Bruce Power for consideration.

**“Phase 2”** means the intermediate phase of the Project within which the Phase 2 Scope of Work is performed. Such Phase is scheduled to commence in September of 2023 and to be completed in February of 2024, as such dates may be adjusted by written agreement from time to time by the Parties, each acting reasonably.

**“Phase 2 All-In Estimate”** means all costs set out in the Class 2 Estimate plus the then estimated additional Total Costs to the extent such costs are not accounted for in the Class 2 Estimate.

**“Phase 2 Scope of Work”** means:

- (a) the work required to finalize the design, prepare the “for construction” drawings, facilitate the issuance of the Tender for the construction and commissioning of the Physical Facilities and the expansion of the WTP by the Municipality and receipt of bids from the bidders unless Bruce Power or the Municipality exercises a termination right in accordance with Subsection 1.2.6, and, by the

end of which a Class 2 Estimate and a Phase 2 All-In Estimate are delivered to Bruce Power for consideration.

**“Phase 3”** means the penultimate post-Tender phase of the Project within which Phase 3 Scope of Work is performed. Such Phase is scheduled to commence in March of 2024 and to be completed in February of 2025, as such dates may be adjusted by written agreement from time to time by the Parties, each acting reasonably.

**“Phase 3 Scope of Work”** means the work required to award each Construction Contract, complete the construction and commissioning of the Physical Facilities and the WTP expansion and tie-in the Kincardine Drinking Water System to the Bruce Power infrastructure via the Connection Point to facilitate the supply of Drinking Water to the Bruce Site and includes the work required to exercise the option for a purchase of the property, if any, required pursuant to Subsection 3.3.2 for purposes of constructing the primary booster pumping station.

**“Phase 4”** means the final operational phase of the Project within which the Phase 4 Scope of Work is performed. Such Phase is scheduled to commenced in March, 2025 and to run for the then remaining duration of the Term of this Agreement, as such dates may be adjusted by written agreement from time to time by the Parties, each acting reasonably.

**“Phase 4 Scope of Work”** means the Municipality supplying and delivering Drinking Water to the Bruce Site and operating and maintaining the Kincardine Drinking Water System, including the Physical Facilities and the WTP, up to the Connection Point and Bruce Power collecting and using such Drinking Water subject to payment of the Water Charges, all as further described herein.

**“Phases”** means collectively Phase 1, Phase 2, Phase 3 and Phase 4 and **“Phase”** means each such phase taken individually.

**“Project”** means the aggregate of the works and services to be performed and completed during the Phases.

**“Proportionate Share”** means the portion of the capital cost of the design and construction of each of the Physical Facilities and for the design cost for the expansion of the WTP that each Party will pay, based on the amount of the service or benefit that each Party receives from each such Physical Facility, expressed as a percentage, as such percentages are agreed to by the Parties as part of the Phase 1 Scope of Work. For clarity, it is expected that the service or benefit received by Bruce Power is likely to be different for each Physical Facility and, accordingly, the Proportionate Share attributable to each Party is likely to be different for each Physical Facility.

**“Physical Facilities”** means, with the exception of the WTP, the physical facilities that are required to be constructed up to the Connection Point in order to provide the Bruce Site with Drinking Water from the Kincardine Drinking Water System, a preliminary list of which is set out herein as Schedule C, such list to be revised and finalized by Bruce Power and Kincardine, each acting reasonably, prior to the commencement of Phase 2.

**“Rates Bylaw”** means the Kincardine Consolidated Rates and Fees By-law, current as of the Effective Date, as the same may be amended from time to time.

**“Remaining Buy-In Contribution Invoice”** has the meaning ascribed to it in Subsection 3.2.4(vi) herein.

**“Remaining Capital Contribution Invoice”** has the meaning ascribed to it in Subsection 3.3.5(vi) herein.

**“Schedule C Class EA”** has the meaning ascribed to it in the recitals herein.

**“Standard Interest Rate”** means the interest rate payable by all the Municipality’s utility customers, being 1.25% per month as at the Effective Date, applied on the first day of default as well as on the first day of each month thereafter, as such rate may be adjusted from time to time.

**“Stantec”** has the meaning ascribed to it in the recitals herein.

**“Tender”** has the meaning ascribed to it in Section 4.3 herein.

**“Term”** has the meaning ascribed to it in Section 8.1 herein.

**“Total Cost”** means the total costs payable during Phase 3, including, as applicable, the costs payable pursuant to the Construction Contracts, for:

(i) solely as it relates to the WTP, the completion of the WTP, with such costs being payable through the Bruce Power Buy-in Contribution mechanism described in Section 3.2 herein; and

(ii) solely as it relates to the Physical Facilities, the completion of the Physical Facilities, with such costs being payable through the Bruce Power Capital Contribution mechanism described in Section 3.3 herein,

in each case, including all reasonable, actual and substantiated third party costs related to design, approvals, construction, taxes, property acquisition, interest costs and all other reasonable third party costs incurred by Kincardine in respect of the obligations set out in this Agreement up to the Commencement Date; provided, for clarity, such costs do not include costs incurred by or in any way related to Kincardine staff.

**“Uncontrollable Circumstance”** means any event or condition causing interruption of service or reduction in capacity of the Kincardine Drinking Water System which event or condition is beyond the reasonable control of or could not reasonably be anticipated by, the Municipality or Bruce Power, and is being relied upon as justification for a delay in or non-performance of any obligation of Bruce Power or the Municipality pursuant to this Agreement and shall include but not be limited to:

(i) an act of God, landslide, lightning, earthquake, hurricane, flood, tornado, fire, explosion, acts of public enemy, war, blockade, strike, supply chain issues, sabotage, insurrection, riot, nuclear event or public disturbance;

(ii) loss or inability to obtain service from any utility (such as a power utility), which service is needed by the Municipality to operate the Kincardine Drinking Water System or by Bruce Power to take and use the Drinking Water;

- (iii) an unanticipated watermain break caused by an event or condition that is beyond the reasonable control of, and could not have been reasonably anticipated by, the Municipality; and
- (iv) an unanticipated impact (increase or decrease) on demand for the Drinking Water

provided, however, that a failure by a Party to perform its obligations under this Agreement arising from or related to such Party's insufficient cash flow or its economic or financial condition generally, shall not constitute an Uncontrollable Circumstance.

**"Volume Charge"** has the meaning ascribed to it in Subsection 3.4.2 herein.

**"Water Charges"** has the meaning ascribed to it in Subsection 3.4.2 herein.

**"Water Rates"** means the rate or rates for all customers of the Municipality within the same category as Bruce Power, which rate or rates are currently set out in the Rates Bylaw as being \$1.10 per cubic metre plus a flat rate monthly charge, both of which may change from time to time, in accordance with the Rates Bylaw and this Agreement.

**"Water Services"** has the meaning ascribed to it in the recitals herein.

**"WTP"** means the Kincardine Water Treatment Plant.

**"WTP Construction Contract Invoice"** has the meaning ascribed to it in Subsection 3.2.4(iii) herein.

**"WTP Design Invoice"** has the meaning ascribed to it in Subsection 3.2.4(i) herein.

## 1.2 Phasing Mechanism

The Parties agree that:

1.2.1 *Phase 1 Scope of Work* – The Phase 1 Scope of Work will be completed by Stantec, with oversight by the Municipal Engineer and Kincardine. For avoidance of doubt, the estimates required during Phase 1 shall be prepared and delivered by Stantec.

1.2.2 *Phase 2 Scope of Work* – The Phase 2 Scope of Work shall, subject to Subsection 1.2.6 below, follow the completion of the Phase 1 Scope of Work and it is anticipated that the Phase 2 Scope of Work will be completed by Stantec. For avoidance of doubt, the estimates required during Phase 2 shall be prepared and delivered by Stantec.

1.2.3 *Phase 3 Scope of Work* – The Phase 3 Scope of Work shall, subject to Subsection 1.2.6 below, follow the completion of the Phase 2 Scope of Work and shall include such other duties and obligations specified as being the responsibility of the Municipality for Phase 3 as set out in this Agreement.

1.2.4 *Cost Caps* – Bruce Power shall be responsible for the third party costs of completing the scopes of work in each Phase. As it relates to the Phase 1 scope of work, the Parties have agreed to a total cap of **\$544,914.22 (plus HST)**. The Parties have agreed that the cap for the Phase 2 Scope of Work shall be determined by the Parties, each acting reasonably, at the end of Phase 1, with each Party being responsible for its Proportionate Share of the design costs for the expansion of the WTP. The Parties have agreed that both the Phase 1 cap and the Phase 2 cap amounts may be amended by written agreement of the Parties. The costs of the Phase 3 Scope of Work shall be determined in accordance with the applicable provisions of Article 3 herein. Notwithstanding anything else in this Agreement, the Parties agree that no exceedance of any of the Phase caps will be permitted without the prior written approval of Bruce Power.

1.2.5 *Phased Evaluations* – There will be an evaluation jointly conducted by Bruce Power and Kincardine at the end of each of the Phase 1 and Phase 2 scopes of work prior to the Parties agreeing, each acting reasonably, to proceed to the subsequent Phase. During Phase 3, Kincardine will provide monthly status reports, including costing updates, to Bruce Power and Bruce Power shall engage in its own evaluation and analyses in relation to the contents of such reports.

### 1.2.6 *Phase 1 and Phase 2 Off-Ramps*

1.2.6.1 If, during the performance of the Phase 1 Scope of Work, Bruce Power exercises its right under the 2022 Funding Agreement to terminate the 2022 Funding Agreement at any time prior to the commencement of Phase 2, this Agreement shall automatically terminate and be of no further force or effect and Bruce Power shall have no further liability whatsoever to the Municipality under this Agreement; and

1.2.6.2 Subject to Subsection 1.2.6.1 above, at the end of each Phase 1 and Phase 2 evaluation conducted pursuant to Subsection 1.2.5 above (the date of submission to Bruce Power of the Phase 1 All-In Estimate and the Phase 2 All-In Estimate being considered the end of such Phase 1 and Phase 2, respectively, for purposes of this Subsection 1.2.6), either one of Bruce Power or Kincardine will have the right, at its sole discretion, to

terminate this Agreement. As part of Phase 1 and Phase 2, respectively, each Party shall have 30 days following the date of receipt of the Phase 1 All-In Estimate or the Phase 2 All-In Estimate, depending on the Phase, to notify the other Party, in writing, of its decision to terminate the Agreement, effective from the date of such written notice. If such termination right is exercised at the end of Phase 1 or Phase 2, then: (a) Bruce Power's sole liability on account of such termination shall be the actual reasonable and substantiated third party costs incurred to the date of termination, in each case up to the cost cap, as set out in Subsection 1.2.4, related to the Phase within which such termination occurs; and (b) the Municipality shall be liable for payment of its Proportionate Share of the costs of designing the expansion of the WTP, should the Municipality trigger the termination right pursuant to this Subsection 1.2.6.2.

**1.2.7 Phase 3** – If the Agreement is not terminated following the completion of the Phase 2 Scope of Work, then the provisions set out in the remainder of this Agreement shall be in full force and effect and be applicable to Bruce Power and Kincardine. Subject to section 7.4 of this Agreement, for clarity and without limiting the generality of the foregoing, Bruce Power shall not have a right to terminate this Agreement during Phase 3 once one or more Construction Contracts for the Phase 3 Works is awarded by the Municipality in accordance with the terms of this Agreement including section 4.3 of this Agreement.

**1.2.8** Intentionally Deleted.

**1.2.9 Phase 4** – If the Agreement is not terminated earlier in accordance with its terms, then Phase 4 shall commence on the Commencement Date and amounts payable by Bruce Power in relation to such Phase shall be made pursuant to Section 3.4 herein.

**1.2.10 Kincardine Oversight** – Notwithstanding any other provision of this Agreement, during any of the Phases, where the Municipal Engineer is providing input, sign-off, certification or performing some similar obligation, the Municipality shall have ultimate responsibility for the oversight of the Project, including those matters being addressed by the Municipal Engineer.

## **Article 2**

### **DUTIES AND SERVICES IN PROVIDING WATER AND DURING CONSTRUCTION AND OPERATIONS – PHASE 3 AND PHASE 4**

#### **2.1 Duties of the Municipality**

The Municipality agrees:

**2.1.1 Water Supply** – to construct the Physical Facilities, or cause the Physical Facilities to be constructed, and continuously supply Drinking Water 24 hours a day/7 days a week to Bruce Power on the terms and conditions, and subject only to the exceptions, expressly set forth in this Agreement. The Physical Facilities shall be constructed in compliance with Good Construction Practices and in accordance with each Construction Contract and this Agreement, as applicable. The Municipality shall have total control of the construction and commissioning work to be performed up to the Connection Point and shall effectively direct and supervise such work so as to ensure conformity with each Construction Contract and this Agreement. Further, the

Municipality shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the construction and commission work to be performed up to the Connection Point.

2.1.2 *Water Quality* – to supply Drinking Water. Without limiting the generality of the foregoing the Drinking Water supplied shall meet the quality requirements of the most recent applicable law with respect to Drinking Water and as described in the Municipality’s most recent Municipal Drinking Water License and Drinking Water Works Permit.

2.1.3 *Delivery Point and Pressure* – to deliver the Drinking Water supplied hereunder to the Connection Point at such pressures as shall be determined from time to time by the Municipality in consultation with Bruce Power, except during one or more Uncontrollable Circumstances such pressures, at all times being no less than an agreed minimum threshold and no more than an agreed maximum threshold such thresholds to be set by the Parties, each acting reasonably, at the conclusion of Phase 1 following completion of the conceptual design. Upon delivery to the Connection Point, all right, title and interest in the Drinking Water supplied hereunder shall be transferred to and vested in Bruce Power for use as may be required by Bruce Power within the Bruce Site.

2.1.4 *Water Quantity* – to deliver such quantity of Drinking Water as Bruce Power may require from time to time, to the Connection Point, so long as, subject to Subsection 3.4.7, the quantity does not exceed the Bruce Power Flow Requirement, unless the Municipality authorizes an increase pursuant to Subsection 5.1.2 herein, in which event then so long as the quantity does not exceed such increased amount, all subject only to Uncontrollable Circumstance.

2.1.5 *Volume Metering* – to install, maintain, repair, inspect, read, test, calibrate and alter, as necessary, such equipment and associated valves (collectively the “**Meter**”) located at the Connection Point as may be necessary for the purpose of recording the volume or rate of flow of Drinking Water supplied and delivered to Bruce Power.

2.1.6 *Flow Control* – to install, maintain, repair, inspect, alter and test such equipment, including necessary alarms, as may be required for the purpose of controlling the flow of Drinking Water through the Meter, including the remote control of such equipment if and as required.

2.1.7 *Monthly Reporting* – to record the readings from the Meter monthly for the purpose of calculating the monthly volume of Drinking Water supplied and delivered to Bruce Power.

2.1.8 *Meter Calibration* – to carry out the calibration of the Meter annually, as required by applicable legislation permit or license.

2.1.9 *Meter and Connection Point Maintenance* – to maintain the Meter, the equipment at the Meter Chamber and the Connection Point at a frequency of not less than that recommended in the literature published by the manufacturer of the Meter and in accordance with applicable laws and standards throughout the entire Term.

2.1.10 *Calibration Reporting* – to provide promptly the results of all calibration testing of the Meter to Bruce Power.

2.1.11 *Skilled Personnel* – and represents and warrants to Bruce Power that it has, and shall have, and any employee or other Person that it may retain to help perform the services hereunder has, and shall have, the necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable laws and standards.

2.1.12 Intentionally Deleted.

2.1.13 *Compliance with Construction Contract* – that it shall comply with all of its obligations under each Construction Contract, in accordance with the applicable terms of each such Construction Contract.

2.1.14 *Payments to Construction Contractor* – that it shall pay all amounts payable to each Construction Contractor when due and payable under each Construction Contract in accordance with the applicable terms of each such Construction Contract.

2.1.15 *Operation and Maintenance of Kincardine Drinking Water System* – that, following the construction and commissioning of the Physical Facilities, it shall:

- (i) operate, maintain and repair the Kincardine Drinking Water System, in accordance with good industry practice and good operating practices;
- (ii) perform its remaining obligations using suitably qualified personnel;
- (iii) obtain, maintain and comply with all necessary permits and approvals which are required to operate and maintain the Kincardine Drinking Water System

all of the foregoing to be performed in accordance with all applicable laws, throughout the Term of this Agreement and any renewals or extensions thereof. For avoidance of doubt, in the event of damage to the Kincardine Drinking Water System, the Municipality shall rectify such damage in a timely manner so as to facilitate continued performance of its obligation pursuant to this Subsection 2.1.14.

2.1.16 *Cost Substantiation and Audit Rights* – to require the Municipal Engineer to substantiate all amounts comprising the Total Costs for which it is seeking payment by Bruce Power at all times up to the Commencement Date. In addition, in the interest of, and to facilitate, transparency, provide Bruce Power with rights to audit (i) all amounts comprising the Total Costs at all times up to the Commencement Date and (ii) each Construction Contract and the associated costs and correspondences between the Municipality and each Construction Contractor during the term of each Construction Contract, in each case, upon reasonable request from Bruce Power.

## **2.2 Duties of Bruce Power**

Bruce Power agrees:

2.2.1 Intentionally Deleted

2.2.2 *Payment* – to pay all of the Bruce Power Capital Contribution, Bruce Power Buy-In Contribution, and Water Charges in accordance with Article 3 of this Agreement.

2.2.3 *Bruce Site Water Facilities* – to design, construct and maintain Drinking Water facilities from the Connection Point to and within the Bruce Site in accordance with Good Construction Practices and applicable law. Bruce Power shall have total control of the construction and commissioning work to be performed within the Bruce Site. Further, Bruce Power shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for coordinating the various parts of the construction and commission work to be performed within the Bruce Site.

## 2.3 Duties Regarding Temporary Shut Down

2.3.1 *Periodic Temporary Shutdowns* – If required, the Municipality shall have the right to schedule periodic temporary shutdowns of the Kincardine Drinking Water System for required scheduled maintenance, repair and alteration, not to exceed in any event one Business Day; provided that the Municipality provides reasonable prior notice to Bruce Power. If the Municipality is of the view that a period of shut down greater than one Business Day is required, the Municipality is required to seek prior approval from Bruce Power, such approval not to be unreasonably withheld or delayed.

2.3.2 *Schedule* – The Municipality consults with Bruce Power and establishes a schedule to the greatest extent possible that coincides with temporary periodic shutdowns so as to minimize disruption of operations of the Bruce Site; and

2.3.3 *Protocol* – The Municipality and Bruce Power have established a mutually agreed upon protocol with respect to the procedures leading up to temporary shutdown, during temporary shutdown, and during the resumption of regular operations as per Schedule E.

## 2.4 Flow Reduction Protocol

In the event the Kincardine Drinking Water System is not capable of operating at capacity to meet the requirements of all of the users and the Bruce Power Flow Requirement cannot be met in full at any time, the water flow available to Bruce Power shall be provided based upon the relevant provisions within the Operating Protocol as per Schedule E.

## 2.5 Operating Procedures and Communications

The Parties have prepared operating procedures and communications protocols for operations (the “**Operating Protocol**”) a copy of which is attached as Schedule “E”. The Parties agree to comply with and coordinate their respective day-to-day operations in accordance with the Operating Protocol. Each Party agrees to consider, acting reasonably, any amendments to the Operating Protocol that may be suggested by the other Party.

### **Article 3**

#### **BUY-IN, CAPITAL, AND WATER RATE CHARGES, INVOICING AND REPORTS**

#### **3.1 Principles for Cost Sharing**

The general principle of no cross subsidization between Bruce Power and other users of the Kincardine Drinking Water System including that the financial contributions to be made by Bruce Power to permit the supply of Drinking Water to the Bruce Site are that Kincardine should not incur any costs to put in place the Physical Facilities required to allow the supply of the Bruce Power Flow Requirement and Bruce Power should not be required to provide funding beyond its Proportionate Share of the cost of operation or expansion of the Kincardine Drinking Water System during the Term of this Agreement. Notwithstanding the foregoing, and for greater clarity, Bruce Power and Kincardine acknowledge and agree that (a) the post-construction operating costs associated with the Kincardine Drinking Water System will be the responsibility of the Municipality; (b) where the required works are for the sole benefit of Bruce Power, Bruce Power will pay solely the Total Cost payable by Bruce Power pursuant to Section 3.3 below; (c) where the works are for the sole benefit of Kincardine or its other users, Kincardine will pay the Total Cost; (d) where works have a mutual benefit, there will be a sharing of costs in accordance with each Party's Proportionate Share, with Bruce Power's maximum payment obligation being solely that payable by Bruce Power pursuant to Section 3.2 below and (e) the costs attributed to, and payable by, Bruce Power as reflected in Section 3.2 to and including Section 3.4 comprise, in the aggregate, all costs payable by Bruce Power pursuant to and in accordance with this Agreement for the Project. For greater certainty, and subject only to Subsection 3.7.1 below, the Parties acknowledge and agree that, from and after the commencement of Phase 4, Bruce Power shall have no obligations for capital contributions, other than as set out in Section 3.7 below, buy-in or similar types of payments to the Municipality, its contractors, subcontractors or any other Person whether or not associated or affiliated with the Municipality. The Parties acknowledge and agree that the Water Rates, which are a component of the Water Charges, include an amount on account of future replacement of capital assets. For clarity, during Phase 4, Bruce Power shall be obligated to pay the Water Charges, in accordance with the provisions of this Agreement

#### **3.2 Bruce Power Buy-in Contribution**

**3.2.1 Purpose** – The purpose of the Bruce Power Buy-in Contribution is to provide Bruce Power with the right to connect to the Kincardine Drinking Water System and an obligation to fund Bruce Power's proportionate share of the Total Costs of the expansion of the WTP as required to expand the Kincardine Drinking Water System. The Total Costs of the expansion of the WTP and scope of expansion of the Kincardine Drinking Water System shall be determined in accordance with section 3.2.2 following Phase 2 and implemented during Phase 3, to facilitate the treatment of sufficient water to provide Drinking Water to meet the Bruce Power Flow Requirement.

**3.2.2 Basis of Calculation** – The Bruce Power Buy-in Contribution will be a one-time charge to Bruce Power, payable in accordance with Subsection 3.2.4 below, and derived by multiplying the water service component of the Development Charge for a Single Dwelling Unit as set out in the most recent Kincardine Development Charges By-law by 1,616, which is Bruce Power's Flow

Requirement of 2,764 m<sup>3</sup>/day, divided by the estimated usage of a Single Dwelling Unit which is 1.71 m<sup>3</sup>/day.

*3.2.3 For Water Treatment Capacity* – Through payment of the Bruce Power Buy-in Contribution, Bruce Power agrees to pay its proportionate share of the Total Costs of increasing the capacity of the WTP for purposes of supplying Drinking Water to the Bruce Site. If the Total Costs of the expansion of the WTP exceed the amount paid on account of the Bruce Power Buy-In Contribution, then, following an agreed reconciliation of the Total Costs, Bruce Power shall pay to the Municipality, Bruce Power's Proportionate Share of the amount by which the Total Costs of the WTP exceed the Bruce Power Buy-in Contribution.

*3.2.4 Payment of the Bruce Power Buy-in Contribution* – Bruce Power agrees to pay the Bruce Power Buy-in Contribution on or before the Commencement Date. The process associated with the fulfilment of such payment obligation shall be as follows:

- (i) on or before the start of Phase 2, the Municipality shall advise Bruce Power of its Proportionate Share of the cost of the WTP design and issue a one-time invoice to Bruce Power, reflecting such Proportionate Share amount payable by Bruce Power (the “**WTP Design Invoice**”);
- (ii) Bruce Power shall pay all undisputed amounts payable pursuant to the WTP Design Invoice to the Municipality or its designate within 30 days of receipt of such WTP Design Invoice;
- (iii) on or before the start of Phase 3 and the award of a Construction Contract therefor by the Municipality in accordance with the terms of this Agreement, the Municipality shall issue a one-time invoice to Bruce Power reflecting the amount of the Construction Contract for the WTP treatment capacity upgrade (the “**WTP Construction Contract Invoice**”);
- (iv) Bruce Power shall pay all undisputed amounts payable pursuant to the WTP Construction Contract Invoice to the Municipality or its designate within 30 days of receipt of such WTP Construction Contract Invoice and prior to the award of a Construction Contract therefor by the Municipality in accordance with the terms of this Agreement. The Municipality shall execute the WTP Construction Contract within ten (10) Business Days of payment of such invoice by Bruce Power to the Municipality; and
- (v) Upon completion of the construction of the WTP, the Municipality shall conduct a reconciliation process to determine any overpayment or underpayment by Bruce Power on the WTP Construction Contract Invoice issued pursuant to Subsection 3.2.4(iii) above. The Municipality shall also advise Bruce Power of any overpayment or underpayment by Bruce Power in capital costs payable by Bruce Power in relation to the WTP treatment capacity upgrade. If the Municipality determines that there has been an underpayment, Bruce Power shall pay all undisputed amounts payable pursuant to this Subsection 3.2.4(v) following issuance of a one-time invoice for same from the Municipality. Such invoice shall be payable to the Municipality or its designate within 30 days of receipt of same by Bruce Power. If the Municipality determines that there has been an overpayment, Municipality shall refund such amount to Bruce Power within 30 days of such determination. Bruce Power shall be entitled to request, and upon such request Municipality shall provide, supporting documentation to verify the foregoing reconciliation.

(vi) If there are any amounts comprising the Bruce Power Buy-In Contribution remaining to be paid by Bruce Power to the Municipality following receipt of the payment made under Subsection 3.2.4(v) above, then the Municipality shall issue a one-time invoice to Bruce Power reflecting the balance of the Bruce Power Buy-In Contribution (the “**Remaining Buy-In Contribution Invoice**”) on the Commencement Date;

(vii) Bruce Power shall pay all undisputed amounts payable pursuant to the Remaining Buy-In Contribution Invoice to the Municipality or its designate within 30 days of receipt of such Remaining Buy-In Contribution Invoice.

Late payments will be subject to interest at the Interest Rate and errors or omissions in the invoicing shall be addressed in accordance with the procedures set out in Section 3.6 below, subject to application of the Interest Rate and not the Standard Interest Rate.

### **3.3 Bruce Power Capital Contribution**

3.3.1 *Purpose* – The purpose of the Bruce Power Capital Contribution is to allow Bruce Power to fund the costs of the Physical Facilities required to expand the Kincardine Drinking Water System pursuant to this Agreement, as determined following Phase 2 and implemented during Phase 3. For clarity, the amounts to be paid by Bruce Power pursuant to Subsections 3.3.2 to and including 3.3.5 below collectively comprised all of the Total Costs payable to the Municipality by Bruce Power.

3.3.2 *For Booster Pumping Capacity* – Bruce Power agrees to pay the Total Costs of providing a primary booster pumping station, if determined to be required, which is a Physical Facility listed in Schedule C as item 1, along the route of the existing watermain extending from the WTP to the Bruce Site. The Total Cost is to include the costs of any property required to be purchased, as agreed by the Parties each acting reasonably, to allow the pumping station to be constructed and all applicable legal fees and taxes (including land transfer tax) for such property. Notwithstanding the foregoing, the Municipality shall not agree to the purchase of property without the prior written approval of Bruce Power, acting reasonably.

3.3.3 *For the Watermain Extension* – Bruce Power agrees to pay the Total Cost of extending the watermain, which is a Physical Facility listed in Schedule C as item 4, from its existing terminus at the intersection of Alma Street and Albert Road in the community of Inverhuron to the Bruce Site.

3.3.4 *For Treated Water Storage* – Bruce Power agrees to pay the Total Cost of the Drinking Water storage facility, which is a Physical Facility listed in Schedule C as item 3, consisting of a specified volume to be determined at the end of Phase 1 or alternatively, Bruce Power shall pay its Proportionate Share of the Total Costs of providing Drinking Water storage facilities consistent with the increase in storage volume required as a consequence of supplying Drinking Water to the Bruce Site. Whether Bruce Power pays the total cost or a volumetric Proportionate Share will depend on the final design and function of the Drinking Water storage facility to be determined at the end of Phase 1 and prior to the commencement of Phase 2. Should the Municipality require an increase in storage capacity over and above the Bruce Power specified volume, Bruce Power shall pay its Proportionate Share of the Total Costs of the storage facilities.

**3.3.5 Payment of the Bruce Power Capital Contribution** – Bruce Power will pay its Proportionate Share of the Physical Facilities as the Phase 3 work proceeds in accordance with each Construction Contract and the following procedure:

- (i) Following execution and delivery by the Municipality of a copy of each Construction Contract to Bruce Power, the Municipality shall submit a written request for funding, in respect of each such Construction Contract (each a “**Funding Request**”);
- (ii) Each Funding Request shall be submitted to Bruce Power at least 30 days prior to the commencement of work under the applicable Construction Contract and shall include, at a minimum, (a) an amount being requested of no greater than the estimated projected cost of the first three months of work to be performed pursuant to an agreed construction schedule (the “**Funding Threshold**”); (b) an invoice for the amount of the Funding Threshold and (c) a letter from the Municipal Engineer substantiating such Funding Threshold;
- (iii) Bruce Power shall, within 14 days of receipt of the invoice for the applicable payment, included in the Funding Request, pay such Funding Threshold amount to the Municipality for use as the work under the applicable Construction Contract progresses.
- (iv) Over the term of each Construction Contract, the Municipality may provide Bruce Power with a written monthly report, at the end of any month during such term, of the amount by which the Funding Threshold was decreased over the course of such month (the “**Erosion Amount**”). Where such a monthly report has been issued, it shall include an invoice for the Erosion Amount and a letter from the Municipal Engineer substantiating the Erosion Amount. Bruce Power shall pay to the Municipality or its designate, on within 14 days of receipt of the invoice for the Erosion Amount, all undisputed amounts payable in relation to the Erosion Amount;
- (v) Such payments of the undisputed Erosion Amount shall be made by Bruce Power, in accordance with the terms of this Agreement and in relation to each Construction Contract, until three months prior to the end of each such Construction Contract, at which time, and subject always to the change mechanism set out in each Construction Contract, the Municipality shall use what remains of the Funding Threshold amount in relation to each Construction Contract to make payments for work performed by the Construction Contractor pursuant to each such Construction Contract;
- (vi) On or before the Commencement Date, the Municipality shall conduct a reconciliation process to determine any overpayment or underpayment by Bruce Power of the Total Costs for the Bruce Power Capital Contribution. If the Municipality determines that there has been an underpayment, the Municipality shall issue a one-time invoice to Bruce Power reflecting the balance owing with respect to the Total Costs of the Bruce Power Capital Contribution (the “**Remaining Capital Contribution Invoice**”) on the Commencement Date. If the Municipality determines that there has been an overpayment, Municipality shall refund such amount to Bruce Power within 30 days of such determination. Bruce Power shall be entitled to request, and upon such request Municipality shall provide, supporting documentation to verify the foregoing reconciliation.

(vii) Bruce Power shall pay all undisputed amounts payable pursuant to the Remaining Capital Contribution Invoice to the Municipality or its designate within thirty (30) days of receipt of such Remaining Buy-In Contribution Invoice. Late payments will be subject to interest at the Standard Interest Rate and errors or omissions in the invoicing shall be addressed in accordance with the procedures set out in Section 3.6 below.

3.3.6 *Municipality Receipt of Funding* – In the event the Municipality receives government funding currently or in the future relating to the Kincardine Capital Contribution such funding shall reduce the Total Cost on the same proportionate basis as contributions were determined and the Bruce Power Capital Contribution shall be recalculated, and the Bruce Power payments pursuant to Article 3 shall be reduced, reimbursed, refunded and/or readjusted accordingly.

### 3.4 Volume and Related Charges

3.4.1 *Obligation for Water Charges* – During Phase 4, Bruce Power shall pay to the Municipality, or its designate, the Water Charges for Drinking Water supplied and delivered by the Municipality pursuant to this Agreement, which charges shall be as described in Subsection 3.4.2 below.

3.4.2 *Volume and Related Charges* – Subject to the other provisions of this Section 3.4, the monthly charges for Drinking Water supplied and delivered by the Municipality to Bruce Power shall be equal to the sum of (a) the product achieved by multiplying the then applicable Water Rate, by the total volume of water passing through the Connection Point in such month as determined herein (the “**Volume Charge**”) ; and (b) a monthly lump sum fee on account of ancillary charges related to the Water Rate (the “**Fixed Charge**”), consistent with values established by Kincardine and published in the Rate Bylaw (the Volume Charge and the Fixed Charge collectively, the “**Water Charges**”).

3.4.3 *Monthly Invoice Issuance and Payment*– The Municipality shall issue a monthly utility bill to Bruce Power, reflecting the Water Charges payable by Bruce Power pursuant to Subsection 3.4.2 above. Bruce Power shall pay all undisputed amounts payable pursuant to the utility bill to the Municipality or its designate by the due date reflected on the utility bill. Late payments will be subject to interest at the Standard Interest Rate and errors or omissions in the invoicing shall be addressed in accordance with the procedures set out in Section 3.6 below. Applicable fees payable pursuant to the Consolidated Rates and Fees By-law of the Municipality, as amended from time to time, may also apply.

3.4.4 *Estimated Volume* – If the Municipality or its designate determines that the supply and delivery of Drinking Water to Bruce Power has not been recorded or has not been recorded accurately for any period of time, the Municipality or its designate shall reasonably estimate the average volume of Drinking Water supplied and delivered to Bruce Power during such period of time based upon the data documented for and relating to the corresponding period of time during the previous month or year, as applicable.

3.4.5 *Rate Increases* – Bruce Power acknowledges that the Municipality shall review the Water Charges in accordance with the Consolidated Rates and Fees By-law of the Municipality, or such review may occur from time-to-time at the Municipality’s discretion.

3.4.6 *No Subsidization* – The Municipality acknowledges and agrees that it will at no time require Bruce Power, and Bruce Power shall have no obligation, to inequitably subsidize Water Charges attributable to and/or payable by any other customer of the Municipality.

3.4.7 *Temporary Increase in Bruce Power Flow Requirement* - During the Term, Bruce Power may request a temporary increase in the Bruce Power Flow Requirement, which request shall include the specified time period of the temporary increase, and Kincardine shall consider such request, acting reasonably. Bruce Power acknowledges that it shall not be unreasonable for the Kincardine to refuse such request if such request:

- 3.4.7.1 imposes additional costs or expenses on Kincardine which Bruce Power is unwilling to pay;
- 3.4.7.2 imposes additional operational concerns on Kincardine, including concerns in relation to permits, that cannot be addressed to the satisfaction of Kincardine, acting reasonably;
- 3.4.7.3 imposes additional impacts upon the Physical Facilities that cannot be addressed to the satisfaction of Kincardine, acting reasonably;
- 3.4.7.4 creates employee issues for Kincardine that cannot be addressed to the satisfaction of Kincardine, acting reasonably;
- 3.4.7.5 unreasonably impacts other users of the Kincardine Drinking Water System; or
- 3.4.7.6 the duration or the frequency of the temporary increase is such that it would reasonably require adjustment of the cost sharing proportions set out in Section 3.

3.4.8 *Minimum Annual Volume to Allow Kincardine to Break-even* – Bruce Power acknowledges, and Kincardine represents and agrees that it shall use the funds generated through both the Volume Charge and the Fixed Charge to fund the cost of treating and delivering Drinking Water as well as maintaining and funding the future replacement of the Physical Facilities and the WTP expansion. The Parties acknowledge that the construction of the WTP expansion and the Physical Facilities is expected to increase the amount of funds necessary to operate and fund future replacement of such infrastructure. To ensure that Kincardine will Break-even in respect of such incremental costs, should Bruce Power's annual consumption of Drinking Water in any year of the Term starting on Commencement Date through to the expiry of the Term, to the extent not at the fault of Kincardine (through a failure to perform its obligations under this agreement) or the result of an Uncontrollable Circumstance declared by Kincardine, is less than the Minimum Annual Consumption Kincardine shall be entitled to, and Bruce Power shall pay for, a Volume Charge for the amount of Drinking Water that would bring such annual volume of Drinking Water consumed by Bruce Power to the Minimum Annual Volume. On each anniversary of the Commencement Date, Kincardine shall within 60 days of such anniversary provide Bruce Power with a statement of its calculation of Bruce Power's consumption of Drinking Water for such year. Bruce Power shall have 30 days to review such statement and may request supporting particulars in respect of Kincardine's calculation which Kincardine shall promptly provide to Bruce Power. If Bruce Power raises any objection to Kincardine's calculation the parties shall promptly meet to resolve such objections. If Bruce Power raises no objections to Kincardine's calculation within such 30 days Bruce Power shall be deemed to have accepted such calculation. Once the calculation

has been agreed or deemed to have been agreed and if the calculation determines that a Break-even payment is required, Kincardine shall issue a utility bill to Bruce Power for such amount.. Bruce Power shall pay all undisputed amounts payable pursuant to the utility bill to the Municipality or its designate by the due date reflected on the utility bill. Late payments will be subject to interest at the Standard Interest Rate and errors or omissions in the invoicing shall be addressed in accordance with the procedures set out in Section 3.6 below.

### **3.5 Kincardine Capital Contribution**

During Phase 3, Kincardine agrees to pay its share of the Total Costs for the Physical Facilities and increasing the capacity of the WTP. Kincardine and Bruce Power will agree, each acting reasonably to Bruce Power's share of such costs and, once agreed by the Parties, each acting reasonably, the remainder of the Total Costs shall constitute the amount attributable to Kincardine.

### **3.6 Invoicing Error or Omission**

If any error or omission is made in any payment notification, utility bill, statement of account or invoice delivered to Bruce Power under this Agreement, the Municipality or its designate shall, use commercially reasonable efforts to correct such error or omission in the notification, utility bill, statement of account or invoice promptly, and in any event within five (5) Business Days following the date on which such error or omission comes to the attention of the Municipality or its designate. Bruce Power shall have the right to receive reasonable and substantiated back-up information relating to each notification, utility bill, statement of account or invoice and shall have the right to claim errors or omissions in respect of such notifications, utility bills, statements of account or invoices. Bruce Power shall pay the outstanding amounts payable pursuant to such notifications, utility bills, statements of account or invoices and shall engage in the process set out in Article 7 – Disputes, to resolve the responsibility for payment in relation to the portion of the notifications, utility bills, statements of account or invoices paid by Bruce Power which was disputed by Bruce Power. If the disposition in the process undertaken pursuant to Article 7 is that Bruce Power is liable for the disputed amount of the notifications, utility bills, statements of account or invoices, Bruce Power shall, within 30 days of receipt of the disposition, pay to the Municipality interest at the Standard Interest Rate. If the disposition is that Bruce Power was not liable for the disputed amount paid, the Municipality shall, within 30 days of receipt of the disposition, reimburse Bruce Power for the disputed amount paid by Bruce Power.

### **3.7 Secondary Booster Pumping Stations**

**3.7.1 *Bruce Power's Share*** – If one or more secondary booster pumping stations or any alternative infrastructure instead of such booster pumping stations, all of which is a Physical Facility listed in Schedule C as Item 2, is identified as a future requirement during Phase 1, Bruce Power agrees to pay its Proportionate Share of the Total Costs of such Physical Facility on the basis of replacing the current excess capacity that Bruce Power displaces, which becomes the numerator in a proportional share calculation where the denominator is the current excess capacity displaced by Bruce Power plus any additional capacity Kincardine requires for Kincardine's own purposes to provide service to areas not already serviced in the northern part of the Kincardine Drinking Water System. For Bruce Power to pay its share, Kincardine is required to (i) provide Bruce Power, by written notice, within 5 years of the Effective Date of its intent to construct such Physical Facility and (ii) commence the construction of the secondary booster pumping station within 10

years of the Effective Date. Kincardine shall provide Bruce Power with an estimate of the cost of such Physical Facility at least 30 days prior to the end of Phase 2.

**3.7.2 *Kincardine's Share*** – Kincardine agrees to pay its Proportionate Share, which is equal to the percentage amount of the Total Costs of a secondary booster pumping station that is not attributable to Bruce Power as calculated in accordance with Subsection 3.7.1, at the time that a secondary booster pumping station is designed and constructed, should one be required by Kincardine to provide service to areas as described in Subsection 3.7.1.

**3.7.3 *Payment of Bruce Power Share*** -- For clarity, the Parties acknowledge and agree that the costs of the secondary booster pumping station shall be invoiced by Kincardine to Bruce Power for Bruce Power's share, at the time of detailed design of the secondary booster pumping station and such amount shall be payable by Bruce Power to Kincardine within 30 days of receipt of same by Bruce Power. Kincardine will provide Bruce Power with a minimum of 18 months written notice of Kincardine's intent to invoice. Upon completion of the construction of the secondary booster pumping station, the Municipality shall conduct a reconciliation process to determine if any overpayment or underpayment was made by Bruce Power pursuant to this subsection. If Kincardine determines that there has been an underpayment, Bruce Power shall pay all undisputed amounts payable pursuant to this Subsection 3.7.3 following issuance of a one-time invoice for same from Kincardine. Such invoice shall be payable to Kincardine or its designate within 30 days of receipt of same by Bruce Power. If Kincardine determines that there has been an overpayment, Kincardine shall refund such amount to Bruce Power within 30 days of such determination. Bruce Power shall be entitled to request, and upon such request Kincardine shall provide, supporting documentation to verify the foregoing reconciliation.

### **3.8 Further Information**

Upon request by a Party hereto, the other Party shall supply such written reports or other relevant information as the requesting Party may reasonably require relevant to the proper administration and delivery of services and invoicing pursuant to this Agreement.

## **Article 4**

### **CONSTRUCTION OF THE KINCARDINE DRINKING WATER SYSTEM AND COMMENCEMENT DATE**

#### **4.1 Responsibility for Construction**

Kincardine will be responsible for the design, approvals, construction and commissioning of the Physical Facilities required, up to the Connection Point, to supply the Bruce Site with Drinking Water.

#### **4.2 Coordination**

Subject to the Operating Protocol, Kincardine and Bruce Power will communicate on a regular basis during the course of the Project at a mutually agreed frequency and by agreed methods, including, without limitation, the delivery of a detailed monthly report from the Municipality's engineer or other consultant reflecting, *inter alia*, the status of the Project over the course of such month, the progress achieved, the remaining work to be completed, including updates on costs, schedule, progress payments, change orders submitted for consideration, defaults, Uncontrollable Circumstances, and other similar factors impacting the construction and commissioning processes

### 4.3 Required Covenants

4.3.1 *Required Construction Contract Covenants* – Kincardine acknowledges and agrees that during Phase 2, it will engage in multiple concurrent competitive tender processes to identify one or more contractor(s) (such processes collectively, the “**Tender**”) to enter into one or more contract(s) for the construction and commissioning of some or all of the Physical Facilities required, up to the Connection Point, to supply the Bruce Site with Drinking Water (each a “**Construction Contract**” and collectively, the “**Construction Contracts**”). Kincardine shall ensure that the terms of the Tender and the Construction Contracts permit Kincardine to make full disclosure to Bruce Power of all information related to the Tender and the respective Construction Contract. Kincardine further acknowledges and agrees that each Construction Contract it negotiates and enters into with a contractor (each a “**Construction Contractor**” and collectively, the “**Construction Contractors**”) shall, (a) be substantially in the form provided to Bruce Power by the Municipality on July 6, 2023, for the Municipality's standard template (without material amendment if prior approval has not been granted by Bruce Power, acting reasonably) and (b) include provisions reflecting the concepts set out in Schedule D hereto. Further, Kincardine hereby covenants and agrees to enforce, on Bruce Power's behalf, the provisions in each Construction Contract reflecting the concepts set out in Schedule D.

4.3.2 *Required Municipality Construction-Related Covenants* – The Municipality hereby covenants and agrees with Bruce Power to:

(i) provide Bruce Power with all default notices received from any Construction Contractor, immediately following receipt of same and confer with, and obtain consent from, Bruce Power prior to issuing a termination notice from the Municipality to a Construction Contractor. In addition, Bruce Power shall, acting reasonably and after consultation with the Municipality, have the right to require the Municipality to terminate any Construction Contract for actual default and the Municipality shall comply with Bruce Power's direction. If Bruce Power does not consent to the termination of a Construction Contract proposed by the Municipality, or if Bruce Power directs the Municipality to terminate a Construction Contract, Bruce Power shall be responsible for the reasonable and actual additional costs thereby incurred. If a Construction Contract is terminated for default of the Construction Contractor, the Parties shall promptly collaborate to identify and implement the most expeditious and affordable approach to complete the work that has not been performed under such Construction Contract as of the date of termination, each Party acting reasonably and in good faith;

(ii) add a supplemental condition to each Construction Contract entered into with a Construction Contractor for the indemnity provision in the Construction Contract to include the

“Funding Partner” as an Owner Indemnitee such that Bruce Power, as Funding Partner gains the benefit of the indemnities from each Construction Contractor to the Municipality;

(iii) agree only to a pricing mechanism which requires a unit price (for watermain contract) or lump sum tender value regime in relation to each Construction Contract;

(iv) promptly provide copies of all change orders and consult and seek approval from Bruce Power before approving any change to the scope of work (proposed by way of a single or a group of aggregated change orders), where the single or aggregated value of such change orders meets or exceeds 80% of the value of the contingency spend amount included by each Construction Contractor in its tender submission. If Bruce Power does not respond to such approval request within five (5) Business Days of such request being made of Bruce Power, then Bruce Power will be deemed to have approved such request;

(v) be fully transparent with respect to matters related to each Construction Contract including, without limitation, provision of the submission made by the successful bidder, reports, notices, and similar matters;

(vi) confer with Bruce Power and agree to a mechanism for liquidated damages to be imposed on the Construction Contractor if the Project is materially delayed or the Construction Contractor fails to complete the Project;

(vii) in addition to Subsection 4.3.2(i) above, include non-performance/failure to complete the work as an event of default in each Construction Contract, triggering a right of Bruce Power to require the Municipality to enforce its rights and remedies under the Construction Contract on behalf of Bruce Power and to confer Bruce Power’s Proportionate Share of any such recovery to Bruce Power;

(viii) include the formulation and coordination of a working group, consisting of representatives from Bruce Power and Kincardine staff and consultants, to deal with issues arising from each Construction Contractor’s non-performance of its obligations under each Construction Contract;

(ix) work collaboratively with Bruce Power in the determination to exercise and enforce rights under any bond delivered by each Construction Contractor as security for its obligations under each Construction Contract;

(x) take ultimate responsibility for the oversight of any matter being addressed by the Municipal Engineer where the Municipal Engineer is providing input, sign-off, certification, etc. in the context of any Construction Contract; and

(xi) include Bruce Power as an additional insured on its policies of insurance required pursuant to each Construction Contract and provide prior notification to Bruce Power of the terms of the policies of insurance required to satisfy the requirements under each Construction Contract.

#### **4.4 No-Contract Scenario**

Notwithstanding Subsection 4.3.1 above, the Parties each acknowledge and agree that Kincardine will ensure that the Tender expressly contemplates the possibility that no Construction Contract

will be awarded, including to ensure that Bruce Power and Kincardine have the right to exercise an off-ramp in accordance with section 1.2.6.2 as determined by either Party in their sole discretion. Should a no-contract scenario arise, Bruce Power shall not be responsible for any break fees or similar payments to Kincardine or bidders in the Tender process, nor shall Kincardine be responsible for any payments to Bruce Power, provided that if a no-contract scenario arises at the discretion of Bruce Power and a bidder commences legal action against Kincardine as a result thereof, Bruce Power shall indemnify Kincardine for its reasonable and actual costs in defending such litigation to the extent not caused by the failure of Kincardine to comply with the terms of the Tender.

#### **4.5 Commencement Date**

The Parties acknowledge and agree that the commencement date shall be the date that Kincardine is ready to commence the flow of Drinking Water to the Bruce Site, as certified in writing by the Municipal Engineer (the “**Commencement Date**”). If Bruce Power is not willing or not capable of accepting Drinking Water on the Commencement Date, then commencing on the Commencement Date and continuing until Bruce Power accepts such Drinking Water, Bruce Power shall be responsible for payment of the Fixed Charge. For clarity, Bruce Power would not be liable for the payment of the Volume Charge until the date on which Bruce Power accepts flow of the Drinking Water; provided that, if the Municipality provides appropriate costs substantiation, Bruce Power will be responsible for making the Municipality whole with respect to costs incurred above the Fixed Charge incurred solely as a result of Bruce Power being incapable of accepting the Drinking Water on the Commencement Date.

## Article 5

### REPRESENTATIONS, WARRANTIES AND COVENANTS

#### 5.1 Representations, Warranties and Covenants of Bruce Power

5.1.1 *Authority to Contract* – Bruce Power warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.

5.1.2 *Increase in Bruce Power Flow Requirement* – Except for an Uncontrollable Circumstance, and subject to Subsection 3.4.7, Bruce Power shall not receive Drinking Water supply from time to time from the Kincardine Drinking Water System in excess of the Bruce Power Flow Requirement without the express authorization of the Municipality, such authorization to be given by written notice of the Municipality’s Director of Infrastructure and Development or such successor permission as specified in writing by the Municipality.

#### 5.2 Representations, Warranties and Covenants of the Municipality

The Municipality warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.

## Article 6

### LIABILITY, INDEMNITY, UNCONTROLLABLE CIRCUMSTANCES AND INSURANCE RESPECTING THE PROVISION OF WATER SERVICES

#### 6.1 Indemnification of the Municipality by Bruce Power

Bruce Power shall indemnify and hold the Municipality, its employees, officers, directors, agents and representatives (collectively, the “**Kincardine Parties**”) harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, in all cases related to the Project, which is caused by or directly attributable to the negligent or wrongful act of Bruce Power, its employees, officers, directors, agents and representatives for which it may be responsible, but only to the extent and in proportion to the negligence or fault of Bruce Power.

#### 6.2 Indemnification of Bruce Power by the Municipality

6.2.1 *General Indemnity* – The Municipality shall indemnify and hold Bruce Power, its employees, officers, directors, agents and representatives (collectively, the “**Bruce Power Parties**”) harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, in all cases related to the Project, which is caused by or directly attributable to the negligent or wrongful act of the Municipality, its employees, officers, directors, agents and representatives for which it may be responsible, but only to the extent and in proportion to the negligence or fault of the Municipality. For greater clarity, indemnity under this subsection 6.2.1 shall not include negligence damages for policy decisions of the Municipality or a local board

thereof made in the good faith exercise of a discretionary power or function, for which a claim would be excluded by section 450 of the *Municipal Act, 2001*.

**6.2.2 Patent Indemnity** – The Municipality shall indemnify and hold the Bruce Power Parties harmless from any claims of patent infringement for any equipment, systems or materials incorporated (other than those provided by Bruce Power), in respect of the Kincardine Drinking Water System and shall be solely responsible for any claim or damages due to such infringement.

**6.2.3 Environmental Indemnity** – The Municipality shall indemnify and hold the Bruce Power Parties harmless from and against all liability for all claims or damages of any nature whatsoever incurred by any of the Bruce Power Parties caused by or otherwise related to (a) any pre-existing environmental conditions on, in or under the lands upon which the expansion of the Kincardine Drinking Water System will be constructed up to the Connection Point; (b) the release or threatened release of any hazardous substances from the Kincardine Drinking Water System; or (c) any violation of any applicable environmental laws by any of the Kincardine Parties in the design, construction or operation of the Kincardine Drinking Water System.

### **6.3 Waiver of Consequential Damages**

In no event shall the Parties be liable to each other, and each Party specifically waives as against the other, any and all claims for consequential, incidental, indirect, special or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under breach of contract or warranty, tort (including negligence), fault, strict liability, indemnity, or other theory of legal liability.

### **6.4 Uncontrollable Circumstance**

**6.4.1 Process** – In the event there is an Uncontrollable Circumstance, and if a Party seeks to rely on the occurrence of such Uncontrollable Circumstance as grounds for not performing its obligations under this Agreement, then the Party relying on such Uncontrollable Circumstance shall;

**6.4.1.1** Provide prompt notice to the other Party of the occurrence of the Uncontrollable Circumstances as soon as reasonably practicable after the Party first knew of such occurrence and give a description of such Uncontrollable Circumstance and an estimation of its expected duration and the probable impact on the performance of its obligations hereunder,

**6.4.1.2** Exercise all reasonable efforts to continue to perform its obligations hereunder,

**6.4.1.3** In accordance with this Agreement, as expeditiously as reasonably practicable take action to correct or cure the act, event or condition preventing such performance,

**6.4.1.4** Exercise all reasonable efforts to mitigate or limit damages to the other Party, and

**6.4.1.5** Provide prompt notice to the other Party of the cessation of the act, event or condition giving rise to the Uncontrollable Circumstance.

6.4.2 *Result* – Except as expressly provided under the terms of this Agreement, neither Party to this Agreement shall be liable to the other for any loss, damage, delay, default, or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a Party's obligation to pay monies previously accrued and owing under this Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance.

## Article 7

### DISPUTES AND DEFAULT

#### 7.1 Disputes

7.1.1 *Disputes Defined* – Differences between the Parties as to the interpretation, application or administration of the this Agreement, findings or determinations under this Agreement or any matter in question relating to the performance of the work or services to be performed pursuant to this Agreement, or any failure to agree where agreement between the Parties is called for or such similar events (collectively, the “**Disputes**”) shall be settled in accordance with the dispute resolution provisions of this Article 7.

7.1.2 *Instructions Pending Resolution* – If a Dispute is not resolved promptly, the parties will confer on which steps are necessary for the proper performance of the work to be performed pursuant to this Agreement, the avoidance of undue costs on either Party and to prevent delays pending resolution of the Dispute. The Parties shall undertake such steps promptly, it being understood that by so doing neither Party will jeopardize any claim it may have against the other Party.

7.1.3 *Survival* – This Section 7.1 shall survive the termination or expiration of this Agreement for the maximum period permitted by applicable law.

#### 7.2 Negotiation and Arbitration

7.2.1 *Dispute Notice* – Each Party shall make all reasonable efforts to resolve Disputes by amicable negotiations and, unless prohibited by applicable law, each Party shall provide to the other Party, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations, such information not to be unreasonably withheld. Either Party may initiate such negotiations by giving to the other Party written notice (the “**Dispute Notice**”) of the Dispute with reasonable particulars of the Dispute.

7.2.2 *Arbitration Notice* – If the Dispute is not resolved on or before the tenth (10th) Business Day following delivery of the Dispute Notice, either Party may, by notice in writing (the “**Arbitration Notice**”) to the other Party, refer the Dispute for arbitration to be resolved by arbitration governed by the provisions of the *Arbitration Act, 1991* (Ontario) and will take place before a single arbitrator. Such arbitration proceedings are the sole and exclusive remedy for the resolution of Disputes not resolved pursuant to Subsection 7.2.1. The resolution of Disputes pursuant to the terms of Article 7 shall be final and binding upon the Parties, and there shall be no appeal therefrom, including any appeal to a court of law on a question of law, a question of fact, or a question of mixed fact and law. The application of Subsection 7(2) of the *Arbitration Act*,

1991 (Ontario) is expressly excluded. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement, and except as expressly provided herein, shall have no power to modify or change this Agreement in any manner. The Parties agree that the arbitrator shall have no power to award any type of losses that the Parties have agreed in section 6.3 are not recoverable under this Agreement.

### 7.2.3 Intentionally Deleted

7.2.4 *Time Extension or Abridgement* – Notwithstanding the foregoing, the Parties agree that the arbitrator shall have the power, if the arbitrator considers it just and appropriate in the circumstances, to extend or abridge a period of time (i) required pursuant to this Article 7 or (ii) fixed or determined by the arbitrator.

7.2.5 *Discoveries* – In any Disputes which proceed to arbitration under this Section 7.2, the Parties shall exchange information, evidence and other documents, for the purposes of discoveries, in an e-discovery system or format agreed to by the Parties or their legal advisors.

7.2.6 *Survival* – This Section 7.2 shall survive the termination or expiration of this Agreement for the maximum period permitted by applicable law.

## 7.3 Retention of Rights

For any Dispute, neither Party may suspend the performance of its obligations under this Agreement.

## 7.4 Defaults

If either Party (the “**Defaulting Party**”) fails to perform any material obligation under this Agreement, which is not otherwise excused under the terms of this Agreement, the other Party (the “**Non-Defaulting Party**”) may give notice to the Defaulting Party that, unless the obligation is completely fulfilled within thirty (30) days after receipt of such notice or such other period of time as mutually agreed by the Parties, each acting reasonably, then, subject to all other rights and remedies that the Non-Defaulting Party may have contractually, in law or in equity, the Non-Defaulting Party may issue a subsequent notice to the Defaulting Party terminating this Agreement with immediate effect.

## Article 8

### TERM

#### 8.1 Term of Agreement

Subject to the other terms of this Article 8, this Agreement shall remain in full force and effect from the Effective Date up to and including the date of expiry or termination of the Lease (the “**Term**”), unless extended or renewed by mutual agreement of the Parties or earlier terminated in accordance with the provisions of this Agreement.

## 8.2 Assignment

8.2.1 *Prohibition* – Subject to Subsection 8.2.2 below, neither Party shall assign this Agreement or any of its interests thereunder without the prior written consent of the other, which consent may not be unreasonably withheld; provided that the assignee shall have executed an agreement assuming all of the assignor's obligations hereunder, which agreement shall be in form and substance acceptable to the non-assigning Party; and further provided that no such assignment shall release or relieve the assignor from any of its obligations hereunder. Any purported assignment without full compliance with the foregoing shall be null and void.

8.2.2 *Permitted Assignments* – Notwithstanding Subsection 8.2.1 above, Bruce Power may assign this Agreement and its interests thereunder to: (i) any operator of the portion of the Bruce Site leased by Bruce Power under the Lease, including any assignee or subtenant of Bruce Power, or (ii) Bruce Power's general or limited partners, or any affiliate of Bruce Power's general or any of its limited partners or Bruce Power or (iii) any governmental authority or, (iv) if the Lease expires or is otherwise terminated, to OPG, or such Person as OPG may direct, in each case without obtaining the written consent required under Subsection 8.2.1 above. Such permitted assignee shall have all of the rights and remedies available to Bruce Power under this Agreement, as well as Bruce Power's responsibilities thereunder, from and after the time such assignee succeeds to all of Bruce Power's right, title and interest to and under this Agreement. Notwithstanding any such assignment, Bruce Power shall remain liable to the Municipality for its obligations under this Agreement, save and except in the event of an assignment pursuant to (i), (iii) or (iv) above, in which event Bruce Power shall be released from all liabilities and obligations under this Agreement, provided that the assignee executes an agreement with the Municipality agreeing to be bound by terms and conditions of this Agreement and assuming all of Bruce Power's accrued liabilities and obligations to the Municipality through the date of the assignment. The Municipality shall reasonably provide its co-operation and assistance in respect of any Bruce Power financing for the Project, including executing a consent and acknowledgement agreement with respect to an assignment of this Agreement to a lender, which consent and acknowledgement agreement may provide for notices of default to the lender, or opportunity for the lender to cure defaults and such other terms as are customary to such an agreement.

## 8.3 Early Termination by Bruce Power

Without derogating from any other right of Bruce Power to terminate this Agreement as provided for herein, if, at any time during Phase 4, the supply of Drinking Water from Kincardine pursuant to this Agreement is no longer required by Bruce Power, as determined in Bruce Power's sole discretion, then upon providing Kincardine with not less than five (5) years prior written notice in accordance with the notice provisions contained in this Agreement, Bruce Power may terminate this Agreement. In the event of an early termination pursuant to this Section 8.3, the Parties acknowledge and agree that, over the 5 years notice period, Bruce Power shall, within 60 days of receipt of written request from the Municipality, return to the Municipality all capacity reserved by the Municipality for Bruce Power, which is not then required for use by Bruce Power. At the end of the 5 years notice period, all capacity not previously returned will be automatically returned to the Municipality on the effective date of the termination, and the Connection Point shall be disconnected at Bruce Power's expense.

## **Article 9**

### **GENERAL PROVISIONS**

#### **9.1 Applicable Law**

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

#### **9.2 Cost of Agreement**

Bruce Power agrees to reimburse the Municipality for all reasonable external actual legal costs with respect to the review and negotiation of this Agreement, within thirty (30) days of an invoice being sent to Bruce Power with appropriate detail of the incurred legal costs.

#### **9.3 Headings**

The headings and captions appearing in this Agreement have been inserted for convenience of reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.

#### **9.4 Amendments**

No amendment to this Agreement shall be effective unless in writing and signed by all Parties to this Agreement.

#### **9.5 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties hereto and supersedes all previous or contemporaneous communications, representations or agreements. No oral agreement or conversation with any officer, agent or employee of either Party, either before or after the execution of this Agreement, shall affect or modify any of its terms or obligations herein contained.

#### **9.6 Enurement**

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

#### **9.7 Survival**

Wherever this Agreement contains an express obligation by one Party to indemnify the other Party, such obligation to indemnify shall survive the completion or termination of this Agreement and continue in full force and effect.

#### **9.8 Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be

severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

## **9.9 Waiver**

The failure on the part of either Party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.

## **9.10 Notices**

9.10.1 *Delivery Mode and Address* – Any notice that is required to be or that may be given or made by one of the Parties hereto to the other, shall be in writing and shall be delivered in person, transmitted by means of recorded electronic communication, including e-mail, or sent by ordinary or registered mail to the respective addresses of the Parties hereto:

If to the Municipality:

The Corporation of the Municipality of Kincardine  
Municipal Administration Centre  
1475 Concession 5  
Kincardine, ON N2Z 2X6

Attention: Adam Weishar C.E.T., Director of Infrastructure and Development

Phone: 519-396-3468 x 119

E-mail: [iddirector@kincardine.ca](mailto:iddirector@kincardine.ca)

with copies to:

Attention: Steven O'Melia

Email: [somelia@millerthomson.com](mailto:somelia@millerthomson.com)

Attention: Thomas Sanderson

Email: [tsanderson@millerthomson.com](mailto:tsanderson@millerthomson.com)

If to Bruce Power:

Bruce Power L. P.  
Bldg. B10, 177 Tie Road  
Tiverton, Ontario N0G 2T0

Attention: Senior Vice-President, Operational Services, Finance and Business Development

Phone: 519-385-2907

E-mail: [Jennifer.EDEY@brucepower.com](mailto:Jennifer.EDEY@brucepower.com)

with a copy to :

Attention: General Counsel

Email: [generalcounsel@brucepower.com](mailto:generalcounsel@brucepower.com)

9.10.2 *Time of Delivery* – Any such notice shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day), or if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter (or in the case of e-mail) there is or occurs a labour dispute or other events which might reasonably be expected to disrupt the delivery of document by mail or e-mail as the case may be, any notice hereunder shall be delivered or transmitted by means of other recorded electronic communications as aforesaid that are not so disrupted.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF** the Municipality and Bruce Power have caused this Agreement to be executed by the affixing of their proper seals attested by the signature of the proper Persons duly authorized in that behalf.

**THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**

---

Mayor

---

Clerk

I/We have the authority to bind the Corporation.

**BRUCE POWER L.P., by its  
general partner, Bruce Power Inc.**

---

I/we have the authority to bind the Corporation.

---

I/we have the authority to bind the Corporation.

## SCHEDULE A

### Map of Proposed Location for Connection Point



**SCHEDULE B**

**2022 Funding Agreement**

## **SCHEDULE C**

### **Physical Facilities**

1. Primary booster pumping station as detailed in Subsection 3.3.2 of this Agreement;
2. One or more secondary booster pumping stations or alternate infrastructure as detailed in Subsection 3.7.1 of this Agreement;
3. Drinking Water storage facility as detailed in Subsection 3.3.4 of this Agreement; and
4. Watermain to the Connection Point as detailed in Subsection 3.3.3 of this Agreement.

## **SCHEDULE D**

### **Construction Contracts - Required Covenants**

The Municipality shall ensure that each Construction Contract requires the Construction Contractor counterparty to:

1. agree to the Owner having the right to require changes in the work, extra work and additional work, all pursuant to appropriate change order and/or change directive regimes set out in each Construction Contract.
2. conduct or perform the construction and commissioning in accordance with good construction practices and good project management practices, including in compliance with all required regulatory approvals, permits, licences and all applicable standards.
3. take full responsibility for any environmental contamination or hazardous substance that Construction Contractor releases or places in, on, under or through the land upon which the construction work is to be performed up to the Connection Point.
4. rectify deficiencies and provide market standard warranties for defects, latent defects unforeseen circumstances, liens and other similar concepts.
5. agree to a mechanism for liquidated damages to be imposed on the Construction Contractor if the Project is materially delayed or the Construction Contractor fails to complete the Project.
6. require Construction Contractor to provide standard security (i.e. bonds, parent company guarantees, letters and credits, etc.) to secure the Construction Contractor's performance of its obligations under the Construction Contract.
7. provide the policies of insurance required pursuant to each Construction Contract;
8. provide the indemnities required pursuant to each Construction Contract.

**SCHEDULE E**  
**Operating Protocol**

This Operating Protocol addresses the following:

Operating and communication procedures for Drinking Water delivery to Bruce Site including:

- Initial Start Up
- Temporary Shutdown
- Flow or Pressure Reduction
- Uncontrollable Circumstances
- Adverse Test or Condition

The Municipality will be responsible to provide drinking water to the Bruce Site up to the metering station continuously unless another condition listed above exists.

During initial start up, temporary shutdown, flow or pressure reduction, one or more Uncontrollable Circumstances or adverse test/condition, the Municipality will communicate to the Bruce Power Centre of Site (COS) Operations immediately at (519) 361-4551 if Bruce Power Drinking Water system has or may be affected. Bruce Power COS Operations is available 24 hours per day, 7 days per week.

During initial start up, temporary shutdown, flow increase above contractual obligations, one or more Uncontrollable Circumstances or adverse test/condition Bruce Power will communicate to Kincardine Overall Responsible Operator immediately at (519) 396-4660 if Bruce Power demand for Drinking Water has or may be affected.

As long as the condition exists, the respective Parties will provide a daily update before 8 am. Respective Parties will immediately notify the other party when the condition has been resolved.