

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

---

**SCHEDULE 13D**

Under the Securities Exchange Act of 1934

**Atlantica Yield plc**

---

(Name of Issuer)

**Ordinary Shares, nominal value \$0.10 per share**

---

(Title of Class of Securities)

**G0751N103**

---

(CUSIP Number)

**Chauncey M. Lane  
Husch Blackwell LLP  
2001 Ross Avenue  
Suite 2000  
Dallas, Texas 75201  
(214) 999-6129**

---

(Name, Address and Telephone Number of Persons Authorized to Receive Notices and Communications)

**March 9, 2018**

---

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page

The information required on this cover page shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Act"), or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

---

---

---

<b>1</b>	<b>NAMES OF REPORTING PERSONS:</b> Algonquin Power & Utilities Corp.	
<b>2</b>	<b>CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP:</b> (a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/>	
<b>3</b>	<b>SEC USE ONLY</b>	
<b>4</b>	<b>SOURCE OF FUNDS:</b> BK WC	
<b>5</b>	<b>CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(D) OR 2(E):</b> <input type="checkbox"/>	
<b>6</b>	<b>CITIZENSHIP OR PLACE OF ORGANIZATION:</b> Canada	
<b>NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH</b>	<b>7</b>	<b>SOLE VOTING POWER</b> 16,503,348 (1)
	<b>8</b>	<b>SHARED VOTING POWER</b> 25,054,315
	<b>9</b>	<b>SOLE DISPOSITIVE POWER</b> 16,503,348 (1)
	<b>10</b>	<b>SHARED DISPOSITIVE POWER</b> 25,054,315
<b>11</b>	<b>AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON</b> 41,557,663	
<b>12</b>	<b>CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES:</b> <input type="checkbox"/>	
<b>13</b>	<b>PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):</b> 41.47%	
<b>14</b>	<b>TYPE OF REPORTING PERSON:</b> CO, HC	

(1) Represents ordinary shares of the Issuer underlying options granted under the Option and Right of First Refusal Agreement, which options have not been exercised as of the filing date.

1	<b>NAMES OF REPORTING PERSONS:</b> Algonquin (AY Holdco) B.V.	
2	<b>CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP:</b> (a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/>	
3	<b>SEC USE ONLY</b>	
4	<b>SOURCE OF FUNDS:</b> AF	
5	<b>CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(D) OR 2(E):</b> <input type="checkbox"/>	
6	<b>CITIZENSHIP OR PLACE OF ORGANIZATION:</b> Netherlands	
<b>NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH</b>	7	<b>SOLE VOTING POWER</b> 0
	8	<b>SHARED VOTING POWER</b> 25,054,315
	9	<b>SOLE DISPOSITIVE POWER</b> 0
	10	<b>SHARED DISPOSITIVE POWER</b> 25,054,315
11	<b>AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON</b> 25,054,315	
12	<b>CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES:</b> <input type="checkbox"/>	
13	<b>PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):</b> 25%	
14	<b>TYPE OF REPORTING PERSON:</b> CO, HC	

1	<b>NAMES OF REPORTING PERSONS:</b> AAGES (AY Holdings) B.V.	
2	<b>CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP:</b> (a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/>	
3	<b>SEC USE ONLY</b>	
4	<b>SOURCE OF FUNDS:</b> AF	
5	<b>CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(D) OR 2(E):</b> <input type="checkbox"/>	
6	<b>CITIZENSHIP OR PLACE OF ORGANIZATION:</b> Netherlands	
<b>NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH</b>	7	<b>SOLE VOTING POWER</b> 0
	8	<b>SHARED VOTING POWER</b> 25,054,315
	9	<b>SOLE DISPOSITIVE POWER</b> 0
	10	<b>SHARED DISPOSITIVE POWER</b> 25,054,315
11	<b>AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON</b> 25,054,315	
12	<b>CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES:</b> <input type="checkbox"/>	
13	<b>PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):</b> 25%	
14	<b>TYPE OF REPORTING PERSON:</b> CO	

## **Item 1. Security and Issuer**

This statement on Schedule 13D (the "Schedule 13D") relates to the ordinary shares, nominal value of \$0.10 per share, of Atlantica Yield plc (the "Issuer"), a public limited company incorporated under the laws of England and Wales. The Issuer's principal executive offices are located at Great West House, GW1, 17th Floor, Great West Road, Brentford, United Kingdom TW8 9DF.

As of March 9, 2018, AY Holdco and AY Holdings beneficially owned an aggregate of 25,054,315, representing 25% of the issued and outstanding ordinary shares of the Issuer. Algonquin beneficially owned an aggregate of 41,557,663 ordinary shares of the Issuer (which includes the 25,054,315 also beneficially owned by AY Holdco and AY Holdings plus the 16,503,348 ordinary shares of the Issuer underlying call options), representing approximately 41.47% of the issued and outstanding ordinary shares of the Issuer (collectively, the "Ordinary Shares").

## **Item 2. Identity and Background**

(a), (f) This statement is being filed by:

- (i) Algonquin Power & Utilities Corp., a Canadian corporation ("Algonquin");
- (ii) Algonquin (AY Holdco) B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands ("AY Holdco"); and
- (iv) AAGES (AY Holdings) B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands ("AY Holdings," and together with Algonquin and AY Holdco, the "Reporting Persons").

Set forth on Schedule A to this Schedule 13D and incorporated by reference herein are the names, business addresses, principal occupations or employments, and citizenship of each executive officer and director of the Reporting Persons.

The Reporting Persons have entered into a joint filing agreement, dated as of March 9, 2018, a copy of which is attached hereto as Exhibit 99.1.

(b) The address of the principal business and principal office of Algonquin is 354 Davis Road, Suite 100, Oakville, Ontario, Canada L6J 2X1.

The address of the principal business and principal office of AY Holdco is Atrium Building, 8<sup>th</sup> Floor, Strawinskylaan 3127, 1077 ZX Amsterdam, The Netherlands.

The address of the principal business and principal office of AY Holdings is Atrium Building, 8<sup>th</sup> Floor, Strawinskylaan 3127, 1077 ZX Amsterdam, The Netherlands.

(c) The principal business of Algonquin is to own and operate a diversified portfolio of regulated and non-regulated generation, distribution, and transmission utility assets.

The principal business of AY Holdco is to hold shares of AY Holdings and Abengoa–Algonquin Global Energy Solutions B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands ("AAGES").

The principal business of AY Holdings is to hold shares of the Issuer.

(d), (e) During the last five years, none of the Reporting Persons and none of the persons set forth on Schedule A, (i) has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (ii) was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violations with respect to such laws.

---

### **Item 3. Source and Amount of Funds and other Considerations**

The Reporting Persons obtained funds for the acquisition of the Ordinary Shares from cash on hand and a Term Facility. The Term Facility was established pursuant to a Term Credit Agreement dated December 21, 2017 between Algonquin as borrower and the Bank of Nova Scotia and Canadian Imperial Bank of Commerce as Joint Lead Arrangers and Joint Bookrunners in the principal amount of \$600 million for a term of one year. The facility is conditional upon the fulfillment of certain conditions precedent under the Share Purchase Agreement (as defined below) and can be drawn in a single advance in part or in full.

### **Item 4. Purpose of Transaction**

The Reporting Persons purchased the Ordinary Shares for investment purposes pursuant to a sale and purchase agreement dated November 1, 2017 (the "Share Purchase Agreement"), as amended pursuant to Deed of Amendment No. 1, dated January 31, 2018, Deed of Amendment No. 2, dated February 15, 2018, and Deed of Amendment No. 3, dated February 27, 2018, between ACIL Luxco 1, S.A., a *société anonyme* incorporated under the laws of Luxembourg ("ACIL Luxco 1"), Algonquin, and Abengoa, S.A. ("Abengoa"), as guarantor of ACIL Luxco 1. Pursuant to a sale and purchase agreement dated March 8, 2018 (the "On-Sale SPA"), between Algonquin and AY Holdings, Algonquin transferred the Ordinary Shares it acquired under the Share Purchase Agreement to AY Holdings, which now holds the Ordinary Shares of the Issuer.

On November 1, 2017, Algonquin and Abengoa also entered into an option and right of first refusal agreement with respect to additional Ordinary Shares of the Issuer (the "Option Agreement"). Under the Option Agreement, Algonquin (directly or through an assignee) has the right to acquire from ACIL Luxco 1 additional Ordinary Shares representing a 16.47% aggregate equity interest in the Issuer.

Also on November 1, 2017, Algonquin and Abengoa entered into a memorandum of understanding (the "AAGES MOU"), pursuant to which Algonquin and Abengoa established AAGES, which is a joint venture company owned 50% by Algonquin through AY Holdco and 50% by Abengoa through a subsidiary. The business of AAGES is developing global utility infrastructure projects. In addition, AAGES has formed a subsidiary, AY Holdings, to hold the initial 25% Ordinary Shares of the Issuer. Pursuant to the terms of the articles of association and joint venture agreements of AAGES and AY Holdings, Abengoa and its affiliates have no power to vote or direct the vote of or to dispose or direct the disposal of those Ordinary Shares held by AY Holdings, such power resides with AY Holdco as the holder of preferred shares of AY Holdings. The terms of the AAGES MOU were superseded by the documents governing AAGES and AY Holdings.

The Reporting Persons intend to review their investment in the Issuer on a continuing basis. Depending on various factors and subject to the obligations described herein, including, without limitation, the Issuer's financial position and strategic direction, actions taken by the board, price levels of Ordinary Shares, other investment opportunities available to the Reporting Persons, concentration of positions in the portfolios managed by the Reporting Persons, market conditions and general economic and industry conditions, the Reporting Persons may take such actions with respect to their investments in the Issuer as they deem appropriate, including, without limitation, purchasing additional Ordinary Shares or other financial instruments related to the Issuer or selling some or all of their beneficial or economic holdings, engaging in hedging or similar transactions with respect to the securities relating to the Issuer and/or otherwise changing their intention with respect to any and all matters referred to in Item 4 of Schedule 13D.

Except as otherwise described in this Schedule 13D, none of the Reporting Persons nor, to the best knowledge of the Reporting Persons, any of the persons listed on Schedule A to this Schedule 13D, currently has any plans or proposals that would result in or relate to any of the transactions or changes listed in paragraphs (a) through (j) of Item 4 of Schedule 13D. However, as part of their ongoing evaluation of this investment and investment alternatives, the Reporting Persons may consider such matters and, subject to applicable law, may formulate a plan with respect to such matters, and, from time to time, may hold discussions with or make formal proposals to management or the board of directors of the Issuer, other shareholders of the Issuer or other third parties regarding such matters.

The disclosures in Item 6 are herein incorporated by reference.

### **Item 5. Interest in Securities of the Issuer**

(a) , (b) As of March 9, 2018, AY Holdings is the direct beneficial owner of 25,054,315 Ordinary Shares, which represents 25%, and Algonquin beneficially owns 41,557,663 Ordinary Shares, representing 41.47% (which includes 16,503,348 Ordinary Shares underlying the Option Agreement) based on the shares outstanding as of March 9, 2018. Algonquin and AY Holdco, through their ownership of AY Holdings, may be deemed to share voting and dispositive power over the Ordinary Shares beneficially owned by AY Holdings.

---

(c) Except as disclosed in this Schedule 13D, no Reporting Person has affected any transactions in the Ordinary Shares during the past sixty days.

(d) Other than the Reporting Persons, no person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the Ordinary Shares beneficially owned by the Reporting Persons.

(e) Not applicable.

#### **Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer**

##### *Share Purchase Agreement*

On November 1, 2017, ACIL Luxco 1, Algonquin, and Abengoa, as guarantor of ACIL Luxco 1, entered into the Share Purchase Agreement. Under the Share Purchase Agreement, ACIL Luxco 1 agreed to transfer to Algonquin or its assignee that number of Ordinary Shares of the Issuer (rounded up to the nearest whole number) representing as of the date of completion 25.0%, and not less than 25.0%, of the Issuer's issued share capital. Such transfer was conditional upon, *inter alia*, a waiver from the Department of Energy in respect of minimum ownership provisions for certain electricity infrastructure projects located in the United States, the consent of the Federal Energy Regulatory Commission in respect of the same projects, the release of any encumbrances over the shares subject to the transfer, any required consents from any financing parties, and certain other conditions. Pursuant to the On-Sale SPA, Algonquin agreed to transfer the Ordinary Shares it acquired under the Share Purchase Agreement to AY Holdings. The conditions under the Share Purchase Agreement having been satisfied or waived, the Reporting Persons' 25.0% shareholding in the Issuer was transferred to AY Holdings on March 9, 2018 for a total consideration of \$607,567,139, with additional consideration payable upon the satisfaction of certain events as described in the Share Purchase Agreement and On-Sale SPA.

##### *AAGES MOU*

On November 1, 2017, Algonquin and Abengoa entered into the AAGES MOU. The purpose of the AAGES MOU was to establish AAGES, a joint venture company owned 50% by Algonquin through a subsidiary and 50% by Abengoa through a subsidiary for the purpose of developing global utility infrastructure projects. AAGES was incorporated in the Netherlands on January 31, 2018. The terms of the AAGES MOU were superseded by the governing documents of AAGES and AY Holdings.

Algonquin financed the acquisition of the Ordinary Shares under the Share Purchase Agreement. Pursuant to the governing documents of AAGES and AY Holdings, Algonquin as the provider of funding for such purchase has the sole and exclusive right to exercise any and all rights, assert any and all claims, and exercise and enforce any and all remedies of AY Holdings as the owner of such shares, including the nomination or appointment of any director of the Issuer or the vote on any matter for which AY Holdings is entitled to vote as the holder of such Issuer's securities, and to enter into any agreement on behalf of AY Holdings in relation to the foregoing.

Certain restrictions are in place under the AAGES governing documents relating to the transfer of AAGES shares. A transfer in violation of these restrictions, or insolvency of Algonquin or Abengoa, vests the other with the right to purchase the entirety of the other's ownership interests in AAGES.

##### *Option Agreement*

On November 1, 2017, ACIL Luxco 1, Algonquin, and Abengoa entered into the Option Agreement. Under the Option Agreement, Algonquin (directly or through an assignee) has a right to acquire ACIL Luxco 1's remaining 16.47% aggregate equity interest in the Issuer, subject to the condition that the option be exercised within 60 days after the date of the initial 25.0% transfer.

##### *Atlantica Yield Shareholders Agreement*

Algonquin and AAGES have entered into a Shareholders Agreement with the Issuer (the "AY Shareholders Agreement"), effective March 9, 2018. The AY Shareholders Agreement will terminate when either Algonquin and its affiliates or AAGES and its affiliates (individually, an "Investor", collectively, the "Investors"), holds less than 10% the total voting rights attached to the then outstanding Ordinary Shares of the Issuer. Additionally, Investors may, but are not required to, terminate the agreement if the Issuer's board confirms a dividend policy of less than 80% of cash available for distribution.

---

Pursuant to the AY Shareholders Agreement and in accordance with the articles of association, upon delivery to the Issuer of the resignation of a Resigning Director, as defined in the AY Shareholders Agreement, Algonquin shall appoint a new director nominee. In addition thereafter, if and to the extent provided in the Issuer's Articles of Association, such Investor shall have the right to appoint to the Issuer's board the maximum number of directors that corresponds to such Investor's percentage interest of total voting securities, provided, however, that the maximum number of directors that Investors collectively may appoint is limited to the lesser of (i) such number of directors as corresponds to 41.5% of Ordinary Shares or (ii) no more than 50% less one of the board. In addition, for so long as an Investor and its affiliates hold in aggregate 25% or more of the Ordinary Shares, at least one board member elected by the Investor shall be given the opportunity, and if accepted, shall be elected to a committee of directors.

Under the AY Shareholders Agreement, the Issuer may raise funding by way of issue and allotment of equity securities, loan notes or other borrowing arrangements. Subject to the standstill provision in the Agreement, each Investor has a preemptive right to purchase up to 100% of any proposed allotment or issue of equity securities of the Issuer if certain conditions are met. Pursuant to the standstill provision of the AY Shareholders Agreement, the Investors, in the aggregate cannot hold, greater than 41.5% of Issuer, subject to limited exceptions.

**Item 7. Materials to Be Filed as Exhibits.**

<b>Exhibit No.</b>	<b>Description</b>
<a href="#"><u>99.1</u></a>	Joint Filing Agreement, dated March 9, 2018, among Algonquin Power & Utilities Corp., Algonquin (AY Holdco) B.V. and AAGES (AY Holdings) B.V.
<a href="#"><u>99.2</u></a>	Sale and Purchase Agreement, dated November 1, 2017, between ACIL Luxco 1 S.A., Algonquin Power & Utilities Corp., and Abengoa, S.A., as amended pursuant to Deed of Amendment No. 1, dated January 31, 2018, Deed of Amendment No. 2, dated February 15, 2018, and Deed of Amendment No. 3, dated February 27, 2018.
<a href="#"><u>99.3</u></a>	On-Sale Purchase Agreement, between Algonquin Power & Utilities Corp. and AAGES (AY Holdings) BV, dated March 8, 2018.
<a href="#"><u>99.4</u></a>	Option and Right of First Refusal Agreement, dated November 1, 2017, between ACIL Luxco 1 S.A., Algonquin Power & Utilities Corp., and Abengoa, S.A.
<a href="#"><u>99.5</u></a>	Shareholders Agreement by and among Algonquin Power & Utilities Corp., Abengoa-Algonquin Global Energy Solutions B.V. and Atlantica Yield PLC, dated March 5, 2018.
<a href="#"><u>99.6</u></a>	Term Credit Agreement among Algonquin Power & Utilities Corp., The Bank of Nova Scotia, and Canadian Imperial Bank of Commerce dated December 21, 2017.



**SIGNATURES**

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: March 9th, 2018

ALGONQUIN POWER & UTILITIES CORP.

By: /s/ Ian Robertson  
Name: Ian Robertson  
Title: Chief Executive Officer

By: /s/ Chris Jarratt  
Name: Chris Jarratt  
Title: Vice Chair

ALGONQUIN (AY HOLDCO) B.V.

By: /s/ Ian Robertson  
Name: Ian Robertson  
Title: Managing Director A

By: /s/ Bart van Dijk  
Name: Bart van Dijk  
Title: Managing Director B

AAGES (AY HOLDINGS) B.V.

By: /s/ Ian Robertson  
Name: Ian Robertson  
Title: Managing Director A

By: /s/ Bart van Dijk  
Name: Bart van Dijk  
Title: Managing Director B

---

Schedule A  
DIRECTORS AND EXECUTIVE OFFICERS

The following tables set forth the name, business address, present principal occupation or employment and material occupations, positions, offices or employment of each of the directors and executive officers of the Reporting Persons.

**ALGONQUIN POWER & UTILITIES CORP.**  
**DIRECTORS**

<u>Name</u>	<u>Business Address</u>	<u>Principal Occupation or Employment</u>	<u>Country of Citizenship</u>
Christopher J. Ball	229 Niagara Street Toronto, Ontario M6J 2L5	Executive Vice President, Corpfinance International Limited; President, CFI Capital Inc.	Canada
Christopher K. Jarratt	Suite 100, 354 Davis Road, Oakville, Ontario, L6J 2X1	Vice Chair, Algonquin Power & Utilities Corp.	Canada
D. Randy Laney	Suite 100, 354 Davis Road, Oakville, Ontario, L6J 2X1	Director, Algonquin Power & Utilities Corp.	USA
Kenneth Moore	70 University Ave #1400, Toronto, Ontario M5J 2M4	Managing Partner, NewPoint Capital Partners Inc.	Canada
Ian E. Robertson	Suite 100, 354 Davis Road, Oakville, Ontario, L6J 2X1	Chief Executive Officer, Algonquin Power & Utilities Corp.	Canada
Masheed Saidi	354 Davis Road, Suite 100 Oakville, Ontario, L6J 2X1	Director Algonquin Power & Utilities Corp.	USA
Dilek Samil	Suite 100, 354 Davis Road, Oakville, Ontario, L6J 2X1	Director, Algonquin Power & Utilities Corp.	USA
Melissa Stapleton Barnes	Lilly Corporate Center Indianapolis, Indiana 46285	Senior Vice President, Enterprise Risk Management and Chief Ethics and Compliance Officer, Eli Lilly and Company	USA
George L. Steeves	30 Catherine Avenue Aurora, Ontario, L4G 1K5	Senior Project Manager, True North Energy	Canada

**ALGONQUIN POWER & UTILITIES CORP.**  
**EXECUTIVE OFFICERS**

<u>Name</u>	<u>Business Address</u>	<u>Principal Occupation or Employment</u>	<u>Country of Citizenship</u>
David Bronicheski	Suite 100, 354 Davis Road, Oakville, Ontario, L6J 2X1	Chief Financial Officer, Algonquin Power & Utilities Corp.	Canada
David Pasieka	Suite 100, 354 Davis Road, Oakville, Ontario, L6J 2X1	Chief Operating Officer, APUC's Liberty Utilities Group	Canada
Ian E. Robertson	Suite 100, 354 Davis Road, Oakville, Ontario, L6J 2X1	Chief Executive Officer, Algonquin Power & Utilities Corp.	Canada
Christopher K. Jarratt	Suite 100, 354 Davis Road, Oakville, Ontario, L6J 2X1	Vice Chair, Algonquin Power & Utilities Corp.	Canada
Mike Snow	Suite 100, 354 Davis Road, Oakville, Ontario, L6J 2X1	Chief Operating Officer, APUC's Liberty Power Group	Canada

**ALGONQUIN (AY HOLDCO) B.V.  
DIRECTORS**

<u>Name</u>	<u>Business Address</u>	<u>Principal Occupation or Employment</u>	<u>Country of Citizenship</u>
Ian E. Robertson	Suite 100, 354 Davis Road, Oakville, Ontario, L6J 2X1	Chief Executive Officer, Algonquin Power & Utilities Corp.	Canada
Bart van Dijk	Strawinskylaan 3127, Atrium Building 8 <sup>th</sup> Floor 1077 ZX Amsterdam, The Netherlands	Business Unit Manager Legal, Vistra Netherlands	Netherlands
Laurentius Ireneus Winfridus Klein	Strawinskylaan 3127, Atrium Building 8 <sup>th</sup> Floor 1077 ZX Amsterdam, The Netherlands	Business Unit Manager Finance, Vistra Netherlands	Netherlands

**AAGES (AY HOLDINGS) B.V.  
DIRECTORS**

<u>Name</u>	<u>Business Address</u>	<u>Principal Occupation or Employment</u>	<u>Country of Citizenship</u>
Ian E. Robertson	Suite 100, 354 Davis Road, Oakville, Ontario, L6J 2X1	Chief Executive Officer, Algonquin Power & Utilities Corp.	Canada
Bart van Dijk	Strawinskylaan 3127, Atrium Building 8 <sup>th</sup> Floor 1077 ZX Amsterdam, The Netherlands	Business Unit Manager Legal, Vistra Netherlands	Netherlands
Laurentius Ireneus Winfridus Klein	Strawinskylaan 3127, Atrium Building 8 <sup>th</sup> Floor 1077 ZX Amsterdam, The Netherlands	Business Unit Manager Finance, Vistra Netherlands	Netherlands

## JOINT FILING AGREEMENT

In accordance with Rule 13d-1(k) under the Securities Exchange Act of 1934, as amended, the undersigned agree to the joint filing on behalf of each of them of a Statement on Schedule 13D (including any and all amendments thereto) with respect to the Ordinary Shares, \$0.10, of Atlantica Yield plc, and further agree that this Joint Filing Agreement shall be included as an Exhibit to such joint filings.

The undersigned further agree that each party hereto is responsible for the timely filing of such Statement on Schedule 13D and any amendments thereto, and for the accuracy and completeness of the information concerning such party contained therein; provided, however, that no party is responsible for the accuracy or completeness of the information concerning any other party, unless such party knows or has reason to believe that such information is inaccurate.

This Joint Filing Agreement may be signed in one or more counterparts with the same effect as if the signature on each counterpart were upon the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of March 9, 2018.

ALGONQUIN POWER & UTILITIES CORP.

By: /s/ Ian Robertson  
 Name: Ian Robertson  
 Title: Chief Executive Officer

By: /s/ Chris Jarratt  
 Name: Chris Jarratt  
 Title: Vice Chair

ALGONQUIN (AY HOLDCO) B.V.

By: /s/ Ian Robertson  
 Name: Ian Robertson  
 Title: Managing Director A

By: /s/ Bart van Dijk  
 Name: Bart van Dijk  
 Title: Managing Director B

AAGES (AY HOLDINGS) B.V.

By: /s/ Ian Robertson  
 Name: Ian Robertson  
 Title: Managing Director A

By: /s/ Bart van Dijk  
 Name: Bart van Dijk  
 Title: Managing Director B



HERBERT  
SMITH  
FREEHILLS

**1 November 2017**

**ACIL LUXCO 1, S.A.**

**ALGONQUIN POWER & UTILITIES CORP.**

and

**ABENGOA, S.A.**

---

**SALE AND PURCHASE AGREEMENT  
ATLANTICA YIELD PLC**

---

Herbert Smith Freehills LLP

---

## TABLE OF CONTENTS

<b>Clause</b>	<b>Headings</b>	<b>Page</b>
1.	INTERPRETATION	1
2.	SALE AND PURCHASE	1
3.	CONSIDERATION	2
4.	CONDITIONS	3
5.	INTERIM PERIOD OBLIGATIONS	7
6.	TAXATION	7
7.	COMPLETION	8
8.	SELLER WARRANTIES AND UNDERTAKINGS	8
9.	SELLER LIMITATIONS ON LIABILITY	8
10.	PURCHASER WARRANTIES AND UNDERTAKINGS	10
11.	COVENANT REGARDING SOLICITATION AND HIRING OF EMPLOYEES	10
12.	TERMINATION	11
13.	GUARANTEE	11
14.	MISCELLANEOUS	11
15.	NOTICES	14
16.	GOVERNING LAW	15
17.	DISPUTE RESOLUTION	16
	SCHEDULE 1 DETAILS OF THE COMPANY	17
	SCHEDULE 2 COMPLETION OBLIGATIONS	18
	SCHEDULE 3 SELLER WARRANTIES	20
	SCHEDULE 4 PURCHASER WARRANTIES	23
	SCHEDULE 5 SELLER'S GUARANTOR WARRANTIES	25
	SCHEDULE 6 DEFINITIONS AND INTERPRETATION	28

---

**BETWEEN:**

- (1) ACIL Luxco 1, S.A., a company incorporated in Luxembourg (registered number B212453) and whose registered office is at 48 Boulevard Grande-Duchesse Charlotte, L-1330 Luxembourg (the “**Seller**”);
- (2) Algonquin Power & Utilities Corp., a company incorporated under the federal laws of Canada (corporation number 236237-6) and whose registered office is at 354 Davis Road, Suite 100, Oakville, Ontario, Canada L6J 2X1 (the “**Purchaser**”);
- (3) Abengoa, S.A., a public company with limited liability (sociedad anónima), duly incorporated and existing under the laws of Spain, with registered address at Campus Palmas Altas, Calle Energía Solar, 1, Sevilla (Spain), registered with the Mercantile Registry of Sevilla in Volume 5683, Sheet 62, Page SE-1507 and bearer of Spanish tax identification number A 41002288 (the “**Seller’s Guarantor**” or “**Abengoa**”).

**RECITALS:**

- (A) The Seller holds 41,557,663 of the issued ordinary shares of US\$0.10 each in the share capital of the Company, representing as of the date hereof approximately 41.47% of its issued share capital.
- (B) The Seller has agreed to sell and transfer to the Purchaser that number of issued ordinary shares of US\$0.10 of the Company (rounded up to the nearest whole number) representing as of the date of Completion 25%, and not less than 25%, of the Company’s issued share capital (the “**Shares**”), upon the terms and subject to the conditions set out in this Agreement.
- (C) The Seller has agreed to grant to Purchaser an option and right of first refusal with respect to the remaining shares in the issued share capital of the Company held by Seller as of the date hereof, upon the terms and subject to the conditions set out in that certain Option and Right of First Refusal Agreement, dated as of the date hereof, among Seller, Purchaser, and Seller’s Guarantor (the “**Option Agreement**”).
- (D) Abengoa has agreed to guarantee the performance of the obligations of the Seller hereunder in accordance with the terms set out in Clause 13.1.
- (E) In addition to the above, Purchaser and Abengoa have agreed, pursuant to the provisions of the memorandum of understanding attached as Attachment 1 (the “**MOU**”), and subject to the Completion of the transaction contemplated hereby, to jointly incorporate a global utility infrastructure company (“**AAGES**”) with the purpose of identifying, developing, constructing, owning and operating a portfolio of global utility infrastructure projects, and intend that AAGES or a subsidiary thereof (“**Purchaser Assignee**”) become the acquiring entity of the Company’s shares pursuant to this Agreement.

**IT IS AGREED** as follows:

1. **INTERPRETATION**

- 1.1 The definitions and other interpretative provisions set out in Schedule 6 shall apply throughout this Agreement, unless the contrary intention appears.
- 1.2 In this Agreement, except where the context otherwise requires, any reference to this Agreement includes a reference to the Schedules, each of which forms part of this Agreement for all purposes.

2. **SALE AND PURCHASE**

**Sale and Purchase**

- 2.1 The Seller is the legal and beneficial owner of and shall sell and the Purchaser shall purchase the Shares on the basis that they are sold at Completion with Full Title Guarantee and free from any Encumbrance and together with all rights attached to them at Completion or subsequently becoming attached to them.



### 3. CONSIDERATION

- 3.1 The consideration for the sale of the Shares shall be the payment at Completion to the Seller of an amount in cash (the “**Consideration**”) equal to the product of (a) the number of Shares purchased hereunder, times (b) US\$24.25 per Share, as such per-Share price may be adjusted from time to time in accordance with Clause 3.2.
- 3.2 In the event of any change in the Company’s capital stock by reason of any split-up, reclassification, recapitalization, combination, exchange or similar occurrence, (a) the term “shares” (whether or not capitalized) shall be deemed to refer to and include such shares as well any shares into which or for which any or all of such shares may be changed or exchanged, and (b) any price expressed herein as a per-share amount shall be adjusted so that the amount for a share, and any shares into which or for which such share may be changed or exchanged shall, in the aggregate, equal such per-share amount as existing prior to such split-up, reclassification, recapitalization, combination, exchange or similar occurrence.

#### **Payment of Consideration**

- 3.3 The Consideration shall be paid to the Seller by way of cash payments as follows, provided that if requested by Purchaser or Seller, payment of the Consideration shall be effected through a payment agent reasonably satisfactory to Purchaser and Seller:
- 3.3.1 US\$77,500,000 to the DOE, on behalf of the Seller;
- 3.3.2 US\$5,000,000 to AAGES, at direction of the Seller on behalf of the Seller’s Guarantor, as the Seller’s Guarantor’s equity contribution to the capital thereof; and
- 3.3.3 the outstanding balance of the Consideration (after deducting the amounts set out in Clause 3.3.1 and Clause 3.3.2 above), by electronic transfer to the account of the Seller’s Solicitors (it being understood that the Seller may instruct the Purchaser to pay all or part of such amount to financing parties or other persons in connection with the matters noted in Clause 4.1.3).

#### **Reduction of Consideration**

- 3.4 The Consideration payable to the Seller pursuant to Clause 3.3.3 shall be deemed to be reduced by an amount equal to the aggregate amount (if any) paid by the Seller to the Purchaser pursuant to a Claim or alleged Claim.

#### **Earn-Out Amount**

- 3.5 In addition to the amount specified in Clause 3.1, subject to satisfaction of the conditions specified in Clauses 3.6 and 3.7 below on or prior to the date that is the 24-month anniversary of the Completion Date, the Consideration shall be increased by up to an amount (the “**Baseline Earn-Out Amount**”) equal to the number of Shares purchased under this Agreement, multiplied by the lesser of (a) US\$0.60 per Share and (b) thirty percent (30%) of the amount, if any, by which the average closing market price for a Share over the twenty (20) Business Days prior to (and excluding) the 12-month anniversary of the Completion Date exceeds US\$24.25.
- 3.6 Fifty percent (50%) of the Baseline Earn-Out Amount will be due and payable by Purchaser to Seller five (5) Business Days following the later of (a) the twelve-month anniversary of the Completion Date, and (b) the date, on or prior to the 24-month anniversary of the Completion Date, on which the following conditions have been satisfied:

(i) A3T shall have been sold to and purchased by the Company or a Subsidiary thereof, AAGES or a Subsidiary thereof, or Purchaser or a Subsidiary thereof; or

(ii) (A) Abengoa or an Affiliate thereof shall have solicited from AAGES or the Company an offer to purchase A3T, (B) AAGES or the Company (as applicable) shall have had at least sixty (60) days during which to consider making such an offer, and (C) either (x) AAGES or the Company, as applicable, shall have failed to make such an offer during such sixty-day period, or (y) AAGES or the Company, as applicable, shall have made such an offer and either A3T is not sold or it is sold to a third party for a price in excess of the price offered for A3T by AAGES or the Company, as applicable.

- 3.7 Fifty percent (50%) of the Baseline Earn-Out Amount will be due and payable by Purchaser to Seller five (5) Business Days following the later of (a) the twelve-month anniversary of the Completion Date, and (b) the date, on or prior to the 24-month anniversary of the Completion Date, on which the following conditions have been satisfied: an independent engineer shall have certified to the Company that the Solana Project and the Kaxu Project (i) are then operating in accordance with their respective original expected design output as set out in the Applicable EPC Contract and (ii) subject to normal maintenance and repair, are then reasonably expected to be capable of operating over their respective expected useful lives at the output originally expected based on the original design thereof.
- 3.8 The Purchaser's obligations with respect to either portion of the Baseline Earn-Out Amount shall terminate and expire on the 24-month anniversary of the Completion Date to the extent that any conditions to the payment thereof have not been satisfied on or prior to such date.

#### 4. **CONDITIONS**

##### **Conditions to Completion**

- 4.1 Completion is conditional on the following Conditions being, except to the extent waived by Purchaser:
- 4.1.1 The Seller or the relevant Group Company obtaining, in respect of the Solana Project, a waiver from the DOE in respect of the change of control provisions set out in the Solana Note Purchase Agreement and the Solana Loan Guaranty Agreement, and all conditions to the effectiveness of the waiver shall have been satisfied;
- 4.1.2 The Seller or the relevant Group Company obtaining, in respect of the Mojave Project, a waiver from the DOE in respect of the change of control provisions set out in the Mojave Note Purchase Agreement and the Mojave Loan Guaranty Agreement, and all conditions to the effectiveness of the waiver shall have been satisfied;
- 4.1.3 The Seller and Abengoa receiving the consents from any financing parties or other Persons required to implement the transaction set out in this Agreement including, without limitation, to release any and all Encumbrances over the Shares granted in favour of such financing parties or other Persons.
- 4.1.4 The relevant Group Companies obtaining, in respect of the Mojave Project and the Solana Project, approval of FERC for the disposition of jurisdictional facilities effected by the sale of the Shares, and the Purchaser and Purchaser Assignee obtaining, in respect of the Mojave Project and the Solana Project, approval of FERC for the acquisition of the Shares.

- 4.1.5 Any and all Group Companies having been fully and unconditionally released from any and all guarantees, sureties, and other liability, contingent or otherwise, for any liabilities or obligations of Abengoa or any of its Affiliates.
- 4.1.6 The Group Companies receiving a waiver of any asserted breach, default, acceleration, right to suspend performance, or other material consequence under any financing agreement or other contract material to any facility in which any Group Company holds a significant financial interest, arising as a result of any act, omission, breach or default by Abengoa or any of its Affiliates.
- 4.1.7 The Intercompany Accounts having been settled, discharged, offset, paid, terminated and/or extinguished in full, except for those Intercompany Accounts that (a) are acceptable to Purchaser in its sole discretion, acting reasonably, or (b) to the extent representing obligations of Seller or any of its Affiliates to any Group Company, secured by an irrevocable letter of credit, cash, or other liquid security, in each case acceptable to Purchaser in its sole discretion, acting reasonably.
- 4.1.8 The Option Agreement shall be in full force and effect, and there shall not exist any event or circumstance then outstanding that constitutes, or with the passage of time or giving of notice or both would constitute, a breach or default by Seller thereunder.
- 4.1.9 Purchaser and Abengoa shall have entered into an agreement pursuant to which Abengoa shall pay to Purchaser the amount by which dividends paid by the Company on shares of the Company acquired by Purchaser or Purchaser Assignee from Seller (whether pursuant to this Agreement or the Option Agreement) are less than the amount that such dividends would have been had the Solana Project and the Kaxu Project performed in accordance with their respective original expected design output as set out in the Applicable EPC Contract; provided, that (i) the amount payable by Abengoa pursuant to such agreement shall not exceed an amount equal to US\$0.30 per share multiplied by the number of shares of the Company acquired by Purchaser or Purchaser Assignee from Seller (whether pursuant to this Agreement or the Option Agreement); and (ii) any portion of the Baseline Earn-Out Amount that is not paid due to the failure of any conditions thereto set forth in Clause 3.7 above shall be credited against such payment obligation.

For the purposes above, in the event of any change in the Company's capital stock by reason of any split-up, reclassification, recapitalization, combination, exchange or similar occurrence, the above amount of US\$0.30 per share shall be adjusted so that the amount for a share, and any shares into which or for which such share may be changed or exchanged shall, in the aggregate, equal such per-share amount as existing prior to such split-up, reclassification, recapitalization, combination, exchange or similar occurrence.

- 4.1.10 Purchaser and Abengoa shall have caused Purchaser Assignee to have been formed, each in a jurisdiction acceptable to Purchaser, acting reasonably, and shall have executed and delivered, and otherwise taken such action as necessary to render effective (a) the governing documents thereof, containing the terms and conditions specified therefor in the MOU, and otherwise acceptable to Purchaser and Abengoa, acting reasonably, and (b) any and all corporate or other entity authorizations required for Purchaser Assignee to execute, deliver, perform their respective obligations under, and be legally bound by any agreement required to be entered into by Purchaser Assignee as a condition to the Completion hereunder.
- 4.1.11 AAGES and the Company shall have entered into a Shareholders' Agreement and a Right of First Offer Agreement containing the terms set forth in the term sheet therefor attached as Attachment 2 to this Agreement, and otherwise acceptable to Purchaser, acting reasonably.

4.1.12 Abengoa and the Company shall have entered into a Construction Projects Transfer Agreement containing the terms set forth in the term sheet therefor attached as Attachment 3 to this Agreement, and otherwise acceptable to Purchaser, acting reasonably.

**Waiver**

4.2 The Purchaser may, by written notice to the Seller, waive any of the Conditions of Clauses 4.1.1, 4.1.2 and from 4.1.4 to 4.1.12 in whole or in part at any time prior to the termination of this Agreement, whether following, on or before the Longstop Date (or, if applicable, in relation to Clauses 4.1.1, 4.1.2 and 4.1.4 the Extended Longstop Date).

**Satisfaction of Conditions**

4.3 The Purchaser, the Seller and Abengoa, as applicable, shall use reasonable endeavours to satisfy or procure the satisfaction of each of Conditions 4.1.1 to 4.1.12 not already satisfied or (with the exception of Condition 4.1.3 which cannot be waived) waived as soon as possible and in any event on or before the Longstop Date (or, if applicable, in relation to Clauses 4.1.1, 4.1.2, 4.1.3 and 4.1.4 the Extended Longstop Date).

**Notification of satisfaction of Conditions**

4.4 The Seller shall notify the Purchaser of the satisfaction of Conditions 4.1.1 to 4.1.7, as soon as possible after any such Condition has been satisfied and in any event within five Business Days of such satisfaction.

**Additional Conditions to Completion – Purchaser**

4.5 Completion is further conditional on the following, except to the extent waived in writing by Purchaser:

4.5.1 (a) All Fundamental Warranties, and all warranties of Seller's Guarantor set out in Schedule 5, shall be true and accurate in all material respects (unless such representation or warranty is already qualified by materiality or material adverse effect, in which case it shall be true and correct in all respects) as of the Completion Date, as if made on such date; and (b) all other Seller Warranties shall be true and accurate as of the Completion Date except as would not reasonably be expected to have a material adverse effect on the business, assets, liabilities, results of operations or financial condition of the Group.

4.5.2 Seller and Abengoa shall have complied with the interim period restrictions set out in Clause 5.1 and with its obligations under Clause 5.3.

4.5.3 Seller shall have delivered to Purchaser a certificate executed on behalf of Seller by an authorized officer or representative of Seller, dated as of the Completion Date, representing and certifying the matters set forth in Clause 4.5.1 and Clause 4.5.2.

4.5.4 There shall not have occurred, from the date hereof until the Completion Date, any event or circumstance that has had or would be reasonably likely to have a material adverse effect on (a) the business, assets, liabilities, results of operations or financial condition of the Group, or (d) the ability of Seller or Abengoa to timely perform any of its obligations under this Agreement or any other agreement required to be entered into by Seller or Abengoa as a condition to Completion hereunder.

- 4.5.5 There shall not exist any material breach or material default by any Group Company under, and no facts or circumstances shall exist that give rise to, or with the passage of time and/or delivery of notice would give rise to, a right of termination, cancellation or acceleration of any material obligation under, or the loss of a material benefit under, or any material restriction under, any instrument or material agreement to which any Group Company is a party or by which any Group Company is bound, except (a) as do not restrict the ability of the Company to declare or pay any dividend or distribution and (b) as would not reasonably be expected to have a material adverse effect on the business, assets, liabilities, results of operations or financial condition of the Group.
- 4.5.6 No governmental authority shall have asserted, in writing or otherwise, that the execution and delivery of this Agreement, or the purchase, sale or transfer of the Shares to Purchaser (or its assignee) hereunder impose on Purchaser, any assignee thereof, the Company or any other Person any obligations, restrictions or requirements under any fair price, moratorium, control-share acquisition, affiliated transaction, mandatory purchase offer, or other takeover or antitakeover statute or regulation, including the City Code on Takeovers and Mergers, or any takeover, antitakeover or similar provision of the constitutional documents of any Group Company.

#### **Additional Conditions to Completion – Seller**

- 4.6 Completion is further conditional on the following, except to the extent waived in writing by Seller:
- 4.6.1 All Purchaser Warranties shall be true and accurate in all material respects (unless such representation or warranty is already qualified by materiality or material adverse effect, in which case it shall be true and correct in all respects) as of the Completion Date, as if made on such date.
- 4.6.2 Purchaser shall have delivered to Seller a certificate executed on behalf of Purchaser by an authorized officer or representative of Purchaser, dated as of the Completion Date, representing and certifying the matters set forth in Clause 4.6.1.

#### **Failure to Satisfy Conditions**

- 4.7 If one or more of the Conditions:
- 4.7.1 in relation to Clauses 4.1.1, 4.1.2, 4.1.3 and 4.1.4, remains un-satisfied on the date which is six (6) months following the date hereof, (the “**Extended Longstop Date**”), or in relation to any other Condition in Clause 4.1 remains un-satisfied on 1 February 2018 (or such later date as the Parties may agree) (the “**Longstop Date**”), and in either case has not been waived (other than the Condition stated in Clause 4.1.3, which cannot be waived) by the specified Party; or
- 4.7.2 in relation to Clauses 4.1.1, 4.1.2, 4.1.3 and 4.1.4, becomes impossible to satisfy (or, in the case of clause 4.1.3 the required consents are either refused or not given on terms to the Seller’s reasonable satisfaction), on or before the Extended Longstop Date or, in relation to any other Condition in Clause 4.1 becomes impossible to satisfy on or before the Longstop Date, and in either case, if it is a Condition which can be waived by a Party, has not been waived by such Party within ten Business Days of written notice from the other Party of such Condition becoming impossible to satisfy;

the Seller or the Purchaser may terminate this Agreement by written notice to the other Party; provided, however, that a Party shall not have the right to terminate this Agreement pursuant to the foregoing to the extent that the failure of such Condition to be satisfied, or the impossibility of satisfying such Condition, was a result of such Party’s wilful misconduct or such Party’s breach of or failure to perform any of its covenants, agreements, or obligations under this Agreement.

## 5. INTERIM PERIOD OBLIGATIONS

### Interim Period restrictions

- 5.1 During the Interim Period, without the prior written consent of the Purchaser:
- 5.1.1 The Seller shall not give or agree to give any option, right to acquire or call, or in any way dispose of the shares of the Company being transferred under this Agreement, other than as required pursuant to an Encumbrance contained in the finance documents entered into by the Seller in the context of the restructuring of the Abengoa group, up until the consent set out in Clause 4.1.3 is obtained;
  - 5.1.2 The Seller shall not create any additional Encumbrance over the shares being transferred under this Agreement;
  - 5.1.3 The Seller shall not enter into, and shall not permit any director, officer, employee or other representative of Seller to enter into, any contract or transaction with any Group Company, other than with the prior written consent of Purchaser.
  - 5.1.4 Abengoa shall not enter into, and shall not permit any of its Affiliates, any director, officer, employee or other representative of Abengoa to enter into, any contract or transaction with any Group Company, other than with the prior written consent of Purchaser.

### MOU and Term Sheets

- 5.2 From the date of execution of this Agreement and until Completion, Purchaser and Abengoa agree to use reasonable endeavours to finalize agreement upon and, to the extent a contemplated party thereto, enter into or cause its respective Affiliates to enter into legally binding agreements containing detailed provisions reflecting the terms contemplated in the MOU and any term sheet attached hereto, and into any ancillary documentation which may be required in order to implement the terms contained in the MOU or such legally binding agreements.

### Intercompany Accounts

- 5.3 Seller and the Seller's Guarantor shall cause all Intercompany Accounts to be settled, discharged, offset, paid, terminated and/or extinguished in full prior to Completion, except as otherwise permitted by Clause 4.1.7.

## 6. TAXATION

### Taxation

- 6.1 Any payments made by or due by the Purchaser pursuant to Clause 3 above shall be paid free and clear of all Taxation whatsoever save only for any deductions or withholdings required by law. To the extent that any amounts are so deducted or withheld, the amounts deducted or withheld shall be treated for all purposes of this Agreement as having been paid to Seller.

In the event that any amount that is paid to or as directed by Seller was required by applicable law to have been deducted or withheld and paid to any taxing authority, Seller shall, immediately upon notice thereof from Purchaser or otherwise, remit such amount (together with penalty and interest, if applicable) to the appropriate taxing authority and provide Purchaser prompt notice and evidence of payment, or return such amount (together with penalty and interest, if applicable) to Purchaser to be remitted to such taxing authority by Purchaser.

7. **COMPLETION**

**Completion Date**

- 7.1 Completion shall take place on the Completion Date at the offices of the Seller's Solicitors or at such other place as the Seller and Purchaser shall agree.

**Seller's and Seller's Guarantor Obligations**

- 7.2 At Completion, the Seller and the Seller's Guarantor shall observe and perform all of the provisions of Part 1 of Schedule 2.

**Purchaser's Obligations**

- 7.3 At Completion, the Purchaser shall observe and perform all of the provisions of Part 2 of Schedule 2.

8. **SELLER WARRANTIES AND UNDERTAKINGS**

**Seller Warranties**

- 8.1 Subject to the limitations in Clause 9, the Seller warrants to the Purchaser, as at the date of this Agreement and as at the Completion Date, in the terms of the Seller Warranties.

9. **SELLER LIMITATIONS ON LIABILITY**

**Time limits**

- 9.1 Following Completion, Purchaser shall give written notice to the Seller of any matter or event which may give rise to a Claim as soon as reasonably practicable after the Purchaser becomes aware of such matter or event together with reasonable details of such matter or event then known to the Purchaser; provided, however, that a delay in giving such notice shall not relieve Seller of any liability for such Claim except for the monetary amount by which Seller is prejudiced as a result of such delay.
- 9.2 The Seller shall not be liable for any Claim unless the Purchaser gives written notice containing in reasonable detail of the legal and factual basis of the Claim, including the Purchaser's estimate of the amount of the Claim, to the Seller on or before the date being (a) in the case of any Fundamental Claim, three (3) years from Completion, and (b) in the case of any other Claim, one year from Completion.
- 9.3 To the extent that a Claim arises out of a liability which at the time that it is notified to the Seller is contingent only, the Seller shall not be under any obligation to make any payment to the Purchaser until the liability ceases to be contingent.
- 9.4 A Claim shall not be enforceable against the Seller and shall be deemed to have been withdrawn, and no new Claim may be made in respect of the facts giving rise to such Claim, unless (a) Seller has confirmed in writing its liability for such Claim, or (b) legal proceedings in respect of such Claim are commenced (by being issued and served):
- 9.4.1 within twelve months of such Claim ceasing to be contingent, if the Claim is based upon what, at the time of service of notice of the Claim on the Seller, was a contingent liability; and
- 9.4.2 within twelve months of service of notice of the Claim on the Seller with regard to any Claim other than those Claims described in Clause 9.4.1.

**Monetary limits**

- 9.5 The aggregate amount of the liability of the Seller in respect of the aggregate of all Claims shall not exceed in the aggregate, an amount equal to the Consideration; provided, however, that the aggregate amount of the liability of the Seller in respect of the aggregate of all Claims other than Fundamental Claims shall not exceed, in the aggregate, an amount equal to ten percent (10%) of the Consideration.

### **Provision of information to the Seller**

- 9.6 Upon the Purchaser notifying the Seller of a Claim or a matter or event which may lead to a Claim being made, the Purchaser shall give the Seller and its advisers such access as the Seller reasonably requests to the personnel, records and information in the possession of the Purchaser together with the right to examine and copy or photograph such assets, documents, records and information as the Seller reasonably requires.

### **Information provided by the Seller**

- 9.7 The Seller expressly disclaims all liability and responsibility for any conclusion, opinion, forecast or evaluation contained within or derived or capable of being derived from (a) any investigation carried out or made by or on behalf of the Purchaser in the course of any due diligence or other enquiry prior to the Parties entering into this Agreement or (b) any other data, document, record or information disclosed by the Seller or any Group Company or any employee, agent or adviser of any of them, to the Purchaser or to any person on behalf of the Purchaser. The Purchaser acknowledges that all information disclosed to it (or any person on behalf of the Purchaser) in the course of due diligence, other than the Due Diligence Reports, was provided by the Company and not by the Seller or by Abengoa and that the Due Diligence Reports were prepared by Abengoa's advisors on the basis of information provided by the Company.

### **Mitigation**

- 9.8 Nothing in this Clause 9 restricts or limits the general obligation at law of each of the Purchaser and the Group Companies to mitigate any loss or damage which it may suffer or incur as a consequence of any breach of any Seller Warranty or any other provision of this Agreement or in relation to any other matter, event or circumstance which gives rise to a Claim.

### **No liability to third parties**

- 9.9 No person other than the Purchaser is entitled to make any Claim against the Seller. For the avoidance of doubt the Parties hereby acknowledge and accept that the Seller shall only be liable *vis à vis* the Purchaser for Claims Against the Seller and not in case for Claims Against the Seller's Guarantor.

### **No double recovery**

- 9.10 The Purchaser agrees that it shall not be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity, from Seller, to the extent that any amount thereof would be duplicative of amounts recovered or obtained by Purchaser in respect of any one shortfall, damage, deficiency, breach or other set of circumstances which give rise to one or more Claims. For this purpose, recovery by the relevant Group Company shall be deemed to be recovery by the Purchaser, in the amount by which such recovery by such Group Company reduces or eliminates the loss suffered by Purchaser.

### **General**

- 9.11 This Clause 9 applies notwithstanding any other provision of this Agreement to the contrary and shall not cease to have effect as a consequence of any rescission or termination of any other provisions of this Agreement.
- 9.12 The limitations on the liability of the Seller set out in this Clause 9 shall not apply to the extent that the Claim is in respect of the fraud of the Seller.



## 10. PURCHASER WARRANTIES AND UNDERTAKINGS

### Purchaser Warranties

10.1 The Purchaser warrants and represents to the Seller in the terms of the warranties set out in Schedule 4.

### Purchaser's knowledge and information

10.2 The Purchaser acknowledges that it has been given an opportunity to carry out an investigation into the affairs of each Group Company and warrants to the Seller and the Seller's Guarantor that none of the officers of the Purchaser has actual knowledge of any matter or thing which, at the date of this Agreement is known by such officer to constitute a breach of any representation or warranty given by the Seller pursuant to this Agreement.

### Preservation of information

10.3 The Purchaser undertakes to the Seller that it shall, and shall procure that its group undertakings shall preserve for a period of at least seven years from Completion all books, records and documents of or relating to the Group existing at Completion. The Purchaser shall permit and allow and shall procure that its group undertakings shall permit and allow, upon reasonable notice (and in any event on 7 days' written notice) and during normal business hours, the employees, agents and professional advisers of the Seller access to such books, records and documents and to inspect and make copies of them.

### Provision of information to insurers

10.4 Subject to the following provisions of this Clause, if at any time after the date of this Agreement, the Seller and/or the Seller's Guarantor wishes to insure against its liabilities in respect of any Claims the Purchaser shall and shall procure that each Group Company shall provide such information in relation to this Agreement and the Group Companies as a prospective insurer or insurance broker may require before effecting the insurance. The Seller and/or the Seller's Guarantor, as the case may be, shall bear the reasonable costs of the provision of such information. The Purchaser and each Group Company is under no obligation to provide such information if the insurer or insurance broker has failed to undertake to keep such information confidential or the disclosure of such information is prohibited by law or regulation.

## 11. COVENANT REGARDING SOLICITATION AND HIRING OF EMPLOYEES

### Solicitation and hiring of employees

11.1 Until the date that is five (5) years following Completion, Seller and Abengoa will not, and Abengoa will cause its Affiliates not to, either directly or indirectly (a) solicit, or induce any employee of any Group Company to terminate his or her employment relationship therewith (provided that nothing in this provision shall prohibit Seller or any of its Affiliates from utilizing general solicitations or help-wanted advertising not targeted or directed at employees of any Group Company), or (b) except following the termination of employment of any such person by a Group Company, hire any person that is, or at any time within the prior twelve (12) months was, an employee of any Group Company. Seller and Abengoa acknowledge and agree that breach of the provisions of this Clause 8.2 may cause irreparable injury to Purchaser for which monetary damages are inadequate, difficult to compute, or both and, accordingly, agrees that Purchaser shall be entitled to seek and obtain enforcement of the provisions of this Clause 8.2 by an order of specific performance or injunction, without limiting any other rights or remedies available to Purchaser hereunder or under applicable law.

## 12. TERMINATION

### Effect of termination

12.1 The termination of this Agreement shall not affect:

12.1.1 any rights or obligations which have accrued or become due prior to the date of termination; and

12.1.2 the continued existence and validity of the rights and obligations of the Parties under any provision which is expressly or by implication intended to continue in force after termination (together with those Clauses necessary for their interpretation) including this Clause and Clauses 13, 15, 16 and 17.

## 13. GUARANTEE

### Seller's Guarantor

13.1 The Seller's Guarantor unconditionally and irrevocably guarantees to the Purchaser the punctual discharge by the Seller of its obligations under this Agreement (including its liabilities to pay damages, agreed or otherwise under this Agreement).

13.2 The Seller's Guarantor warrants to the Purchaser in the terms of the warranties set out in Schedule 5. The provisions of Clause 9 shall apply in respect of all the warranties given by the Seller's Guarantor under this Clause and for these purposes, references to "Seller" shall be substituted by "Seller's Guarantor" and "Claim" shall include a claim by the Purchaser against the Seller's Guarantor in respect of these warranties.

## 14. MISCELLANEOUS

### Announcements

14.1 Subject to the remaining provisions of this Clause 14.1, no Party shall release any announcement or despatch any announcement or circular, relating to this Agreement or the transactions contemplated hereby, unless the other Party has been given a reasonable opportunity to comment on the content to be included in such announcement or circular. Nothing in this Clause 14.1 shall prohibit any Party from making any announcement or despatching any circular as required by law or regulation or any regulatory body or the rules of any stock exchange.

14.2 The Purchaser shall at the Seller's request use commercially reasonable efforts to obtain and supply such information and reports concerning any Group Company as may be required by the Seller to comply with any applicable law or regulation or the rules of the Spanish National Securities Market Commission (*Comisión Nacional del Mercado de Valores*), Madrid Stock Exchange (*Bolsa De Madrid*), US Securities and Exchange Commission or NASDAQ as to any continuing obligations or circular to be published by the Seller or any announcement required to be made in relation to this Agreement or any matter contemplated by it.

### Confidentiality

14.3 Each Party undertakes to the other that, subject to Clause 14.4, unless the prior written consent of the other Party shall first have been obtained it shall, and shall procure that its officers, employees, advisers and agents shall keep confidential and shall not by failure to exercise due care or otherwise by any act or omission disclose to any person whatever, or use or exploit commercially for its or their own purposes, any of the confidential information of the other Party. For the purposes of this Clause 14.3, "**Confidential Information**" is the contents of this Agreement and any other agreement or arrangement contemplated by this Agreement and:

- 14.3.1 information of whatever nature concerning the business, finances, assets, liabilities, dealings, transactions, know-how, customers, suppliers, processes or affairs of the other Party, or any of its group undertakings from time to time; and
- 14.3.2 any information which is expressly indicated to be confidential in relation to the Party disclosing it (or in relation to any of its group undertakings from time to time),

which any party may from time to time receive or obtain (verbally or in writing or in disk or electronic form) from any other Party as a result of negotiating, entering into, or performing its obligations pursuant to this Agreement and provided that such information concerning the Group in relation to the period before Completion shall not be Confidential Information of the Seller following Completion and such information concerning the Group in relation to the period after Completion shall be Confidential Information of the Purchaser.

14.4 The consent referred to in Clause 14.3 shall not be required for disclosure by a Party of any Confidential Information:

- 14.4.1 to its officers, employees, advisers and agents, in each case, as may be contemplated by this Agreement or, to the extent required to enable such Party to carry out its obligations under this Agreement and who shall in each case be made aware by such Party of its obligations under this Clause and shall be required by such Party to observe the same restrictions on the use of the relevant information as are contained in Clause 14.3, provided that such Party shall be responsible for any violation of Clause 14.3 by any such officer, employee, adviser or agent;
- 14.4.2 subject to Clause 14.5, to the extent required by applicable law or by the regulations of any stock exchange or regulatory authority to which such Party is or may become subject or pursuant to any order of court or other competent authority or tribunal;
- 14.4.3 to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement by any Party;
- 14.4.4 which is disclosed to such Party by a third party who is not in breach of any undertaking or duty as to confidentiality whether express or implied;
- 14.4.5 which that Party lawfully possessed prior to obtaining it from another, provided that this exception shall not apply to information concerning the Group in relation to the period before Completion;
- 14.4.6 to any professional advisers to the disclosing party who are bound to the disclosing party by a duty of confidence which applies to any information disclosed; or
- 14.4.7 to the other Party to this Agreement or pursuant to its terms.

14.5 If a Party becomes required, in circumstances contemplated by Clause 14.4.2, to disclose any information such Party shall (save to the extent prohibited by law) give to the other Party such notice as is practical in the circumstances of such disclosure and shall co-operate with the other Party, having due regard to the other Party's views, and take such steps as the other Party may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

#### **No partnership**

14.6 Nothing in the Agreement or in any document referred to in it shall constitute the Parties a partner of any other, nor shall the execution, completion and implementation of this Agreement confer on either Party any power to bind or impose any obligations to any third parties on the other Party or to pledge the credit of the other Party.

## **Assignment**

- 14.7 Subject to Clauses 14.8 and 14.9, no Party may assign its rights under this Agreement.
- 14.8 The benefit of this Agreement may be assigned by any Party to its wholly owned subsidiaries provided that:
- (A) the assignor shall remain liable for its obligations under this Agreement; and
  - (B) if at any time such assignee ceases to be a wholly owned subsidiary of the relevant original contracting party then before it ceases to be so, the original contracting Party and the assignee shall each be under a duty to procure an assignment of the benefit of this Agreement back to the original contracting party.
- 14.9 The rights of the Purchaser under this Agreement can be assigned by the Purchaser to AAGES or any direct or indirect subsidiary thereof prior to Completion (without prejudice to the obligation of Purchaser to acquire the shares being transferred under this Agreement from the Seller) provided, however, that no such assignment shall relieve the Purchaser of any of its obligations under this Agreement.

## **Third party rights**

- 14.10 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

## **Entire agreement**

- 14.11 Each of the Parties to this Agreement confirms on behalf of itself and its Affiliates that this Agreement, together with the MOU and each term sheet attached hereto, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.
- 14.12 Each Party confirms on behalf of itself and its group undertakings that:
- 14.12.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement; and
  - 14.12.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement are those pursuant to this Agreement and no Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, or in, this Agreement).

## **Unenforceable provisions**

- 14.13 If any provision or part of this Agreement is void or unenforceable due to any applicable law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

### **Effect of Completion**

14.14 So far as it remains to be performed this Agreement shall continue in full force and effect after Completion. The rights and remedies of the Parties shall not be affected by Completion.

### **Waiver**

14.15 The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

### **Variation**

14.16 No variation of this Agreement (or any of the documents referred to in it) shall be valid unless it is in writing (which, for this purpose, does not include email) and signed by or on behalf of each of the Parties. The expression "variation" includes any variation, supplement, deletion or replacement however effected.

### **Counterparts**

14.17 This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

### **No set-off, deduction or counterclaim**

14.18 Every payment payable by the Purchaser under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable by the Seller under this Agreement.

### **Costs**

14.19 The Parties shall pay their own costs in connection with the preparation and negotiation of this Agreement and any matter contemplated by it.

### **Language**

14.20 This Agreement was negotiated in English and, to be valid, all certificates, notices, communications and other documents made in connection with it shall be in English. If all or any part of this Agreement or any such certificate, notice, communication or other document is for any reason translated into any language other than English the English text shall prevail. Each of the Parties understands English and is content for all communications relating to this Agreement to be served on it in English.

## **15. NOTICES**

15.1 A notice (including any approval, consent or other communication) in connection with this Agreement and the documents referred to in it:

15.1.1 must be in writing;

15.1.2 must be left at or delivered by courier to the address of the addressee or sent by pre-paid recorded delivery (airmail if posted to or from a place outside the country of delivery) to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this Clause in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number or marked for the attention of such other person, as the relevant Party may from time to time specify by notice given in accordance with this Clause.

The relevant details of each Party at the date of this Agreement are:

**Seller**

Address: 48 Boulevard Grande-Duchesse Charlotte  
L-1330, Luxembourg

Facsimile: +352 26 34 36 66

Attention: Mr. Christian Anders Digemose

**With copy to:**

Address: Manuel Pombo Angulo 20  
28050 Madrid

Facsimile:

Attention: Mr. Daniel Alaminos Echarri and Ms. Mercedes Domecq

**Purchaser**

Address: 354 Davis Road, Suite 100  
Oakville, Ontario  
L6J 2X1, Canada

Facsimile: (905) 465-4540

Attention: Chief Executive Officer

15.1.3 must not be sent by electronic mail.

15.2 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 15.3.

15.3 Subject to Clause 15.4, a notice is deemed to be received:

15.3.1 in the case of a notice left at the address of the addressee, upon delivery at that address;

15.3.2 in the case of a posted letter, on the third day after posting or, if posted to or from a place outside the United Kingdom, the seventh day after posting; and

15.3.3 in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

15.4 A notice received or deemed to be received in accordance with Clause 15.1 above on a day which is not a Business Day, or after 5pm on any Business Day, shall be deemed to be received on the next following Business Day.

**16. GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

17. **DISPUTE RESOLUTION**

- 17.1 Each Party irrevocably agrees that the Courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).
- 17.2 Each Party irrevocably waives any right that it may have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- 17.3 Regardless of whether the courts of any country other than England have jurisdiction to consider a dispute falling within Clause 17 each Party irrevocably undertakes that it will neither issue nor cause to be issued originating or other process in respect to such a dispute in any jurisdiction other than England.
- 17.4 In the event that any Party commences an action in the courts of any country other than England (a “foreign action”), the Party which commenced the foreign action shall indemnify the other Party in respect of any and all costs and liabilities which it has incurred in connection with the foreign action, whether or not those costs and liabilities would be recoverable apart from the provisions of this Clause.
- 17.5 Each Party agrees that without preventing any other mode of service, any document in an action (including, a claim form or any other document to be served under the Civil Procedure Rules may be served on any Party by being delivered to or left for that Party at its address for service of notices under Clause 15 and each Party undertakes to maintain such an address at all times in the United Kingdom and to notify the other Parties in advance of any change from time to time of the details of such address in accordance with the manner prescribed for service of notices under Clause 15.

**IN WITNESS** of which the Parties have executed this Agreement on the date first mentioned above.

**SCHEDULE 1  
DETAILS OF THE COMPANY**

Registered number: 08818211

Company status: public limited company

Registered office: Great West House (GW1)  
Great West Road  
Brentford  
Middlesex, Greater London  
United Kingdom  
TW8 9DF

Issued share capital: US\$10,021,726 divided into 100,217,260 shares each with a nominal value of US\$0.10

Directors: Mr Daniel Villalba Vila  
Mr Santiago Seage  
Mr Joaquin Fernandez de Pierola  
Mr María J. Esteruelas  
Mr Jack Robinson  
Mr Robert Dove  
Mr Andrea Brentan  
Mr Francisco J. Martínez

Secretary (if any): Ms Irene M. Hernandez

Auditors: Deloitte LLP

Outstanding charges: 17



COMPLETION OBLIGATIONS

PART 1

SELLER'S AND SELLER'S GUARANTOR OBLIGATIONS

At Completion, the Seller and/or the Seller's Guarantor, as applicable, shall deliver or cause to be delivered to the Purchaser or the Company (as applicable):

1. The Seller shall deliver a copy of or extracts from the minutes of a meeting of the directors of the Seller authorising the Seller to enter into and perform its obligations under this Agreement, certified to be a true and complete copy or extract by a director or the secretary of the Seller.
2. The Seller shall procure that the Shares are credited through the facilities and in accordance with the procedures of DTC to an account or accounts designated by the Purchaser.
3. The Seller's Guarantor shall deliver a counterpart, duly executed by Abengoa, S.A., of each agreement, instrument or document required by the Agreement to be entered into or otherwise executed and delivered by Abengoa, S.A. as a condition to Completion.
4. The Seller's Guarantor shall deliver a counterpart, duly executed by Abengoa, S.A. or a representative thereof, of each agreement, instrument or document required by the Agreement to be entered into or otherwise executed and delivered by AAGES or any subsidiary thereof as a condition to Completion, to the extent that execution of the foregoing by Abengoa, S.A. or a representative thereof is required for the effectiveness thereof.
5. The Seller or the Seller's Guarantor, as the case may be, shall deliver all other documents, instruments and security expressly required by the Agreement to be delivered by Seller or Abengoa, S.A. to Purchaser as a condition to Completion.
6. The Seller shall deliver written evidence, acceptable to Purchaser, of the release of the Shares from any and all Encumbrances, prior to or upon payment of the Consideration by Purchaser in the manner provided in the Agreement.
7. The Seller or the Seller's Guarantor shall deliver the written voluntary resignation of two of the directors of the Company appointed by the Seller's Guarantor, effective at Completion.
8. The Seller shall deliver executed power(s) of attorney in favour of the Purchaser or as it directs in the agreed form, and such duly executed waivers or consents as may be required to give a good title to the Shares to the Purchaser or as it directs and to enable the Purchaser or other such person to be registered as the holder of the Shares and, pending registration, to exercise all voting and other rights attaching to the Shares. For avoidance of doubt, such power of attorney shall not be effective until all Encumbrances on the Shares are released and the Completion has occurred.

PURCHASER'S OBLIGATIONS

At Completion, the Purchaser shall:

1. Deliver to the Seller a copy of or extracts from the minutes of a meeting of the directors of the Purchaser authorising the Purchaser to enter into and perform its obligations under this Agreement, certified to be a true and complete copy or extract by a director or the secretary of the Purchaser as appropriate.
2. Deliver to the Seller a counterpart, duly executed by Purchaser, of each agreement, instrument or document required by the Agreement to be entered into or otherwise executed and delivered by Purchaser as a condition to Completion.
3. Deliver to the Seller a counterpart, duly executed by Purchaser or a representative thereof, of each agreement, instrument or document required by the Agreement to be entered into or otherwise executed and delivered by AAGES or any subsidiary thereof as a condition to Completion, to the extent that execution of the foregoing by Purchaser or a representative thereof is required for the effectiveness thereof.
4. Deliver to the Seller all other documents and instruments expressly required by the Agreement to be delivered by Purchaser to Seller as a condition to Completion.
5. Pay by electronic transfer to the account of the Persons entitled thereto under Clause 3.3 the Consideration before 4:00 p.m. on the date of Completion or such later time as the Seller may agree, which shall constitute a valid discharge of the Purchaser's obligations under Clause 3.3.
6. Deliver to the Company a statement from any individual who, on completion, will become a registrable person in relation to the Company within the meaning of section 790c of the 2006 Act confirming that person's required particulars in accordance with section 790m(9) of the 2006 Act.

## SELLER WARRANTIES

1. **Title to Shares**

The Seller is the legal and beneficial owner of, and will at Completion be entitled to transfer the legal and beneficial title to, the Shares, free from any Encumbrances. None of the Shares are subject to any trust, instrument, agreement or understanding with respect to any purchase, sale, transfer, repurchase, redemption or voting of any of the Shares other than as required pursuant to an Encumbrance pursuant to the finance documents entered into by the Seller in the context of the restructuring of the Abengoa group up until the waiver set out in Clause 4.1.3 is obtained.

2. **Incorporation**

The Seller is duly incorporated, duly organised and validly existing under the laws of its jurisdiction and has full power to conduct its business as conducted at the date of this Agreement.

3. **Corporate power and authority**

The Seller has corporate power and authority to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement and the provisions of this Agreement and any agreement entered into pursuant to the terms of this Agreement, constitute valid and binding obligations on the Seller and are enforceable against the Seller, in accordance with their respective terms.

4. **Due authorisation, execution and delivery**

The Seller has duly authorised, executed and delivered this Agreement and will, at Completion, have authorised, executed and delivered any agreements to be entered into by Seller pursuant to the terms of this Agreement.

5. **No breach**

The execution and delivery by the Seller of, and the performance by the Seller of its obligations under, this Agreement and any agreement entered into pursuant to the terms of this Agreement, and the consummation of the transactions contemplated hereby and thereby, will not, at Completion, once the waiver referred to in Clause 4.1.3 is obtained:

- 5.1 result in a breach of or conflict with any provision of the constitutional documents of the Seller or any Group Company;
- 5.2 result in a material breach of, constitute a material default under, or give rise to a right of termination, cancellation or acceleration of any material obligation, the loss of a material benefit, or any material restriction (including on the ability of any Group Company to declare or pay any dividend or distribution) under, any instrument or material agreement to which Seller or, to the Knowledge of Seller, any Group Company is a party or by which Seller or, to the Knowledge of Seller, any Group Company is bound; or
- 5.3 result in a breach of any applicable laws or regulations or of any order, decree or judgment of any court or any governmental or regulatory authority in any jurisdiction.

6. **Consents**

All consents, permissions, authorisations, approvals and agreements of third parties and all authorisations, registrations, declarations, filings with any governmental department, commission, agency or other organisation having jurisdiction over the Seller which are necessary or desirable for the Seller to obtain in order to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement in accordance with its terms, will be unconditionally obtained in writing at Completion and have been disclosed in writing to the Purchaser.

7. **Proceedings**

There are no:

- 7.1 outstanding judgments, orders, injunctions or decrees of any governmental or regulatory body or arbitration tribunal against or affecting the Seller;
- 7.2 lawsuits, actions or proceedings pending or, to the Knowledge of the Seller, threatened against or affecting the Seller ; or
- 7.3 investigations by any governmental or regulatory body which are pending or threatened against the Seller or any of its group undertakings, so far as the Seller is aware,

which, in each case, relates in any manner to any Group Company or has or could have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement or any other agreements entered into pursuant to the terms of this Agreement.

8. **Solvency**

No order has been made, petition presented or meeting convened for the winding up of the Seller, nor any other action taken in relation to the appointment of an administrator, liquidator, receiver, administrative receiver, compulsory manager or any provisional liquidator (or equivalent in any other jurisdiction) (or other process whereby the business is terminated and the assets of the company concerned are distributed amongst the creditors or shareholders or any other contributors), and there are no proceedings under any applicable insolvency, reorganisation or similar laws in any relevant jurisdiction, and no events have occurred which, under applicable laws, would justify any such proceedings.

9. **No Stamp Duty**

The Shares are held by Seller through Depository Trust Company (“DTC”), DTC has not made an election under section 97A of the Finance Act 1986 that transfers within its clearance service be subject to UK stamp duty or stamp duty reserve tax, and the transfer of the Shares to Purchaser will not be subject to UK stamp duty or stamp duty reserve tax.

10. **Contracts and transactions with any Group Company**

Other than the Shares and the additional shares held by the Seller mentioned in Recital (A), the Seller does not hold any securities of or other ownership interest in any Group Company, or rights (contingent or non-contingent) to acquire any securities of or other ownership interest in any Group Company.

Neither Seller nor any director, officer, employee, or other representative of Seller is a party to any contract or transaction with any Group Company, except for such contracts and transactions entered into following the date of this Agreement with the prior written consent of Purchaser.

11. **Liabilities of Seller and its Affiliates**

No Group Company has guaranteed, undertaken to assume (contingently or non-contingently), or provided any security for any obligation or liability of Seller or any of its Affiliates, other than will be irrevocably terminated and released prior to Completion Date.

12. **Ethical business practices**

The Seller has not violated, nor knowingly permitted any of its representatives to violate, any anti-corruption laws of any applicable jurisdiction in connection with the development or construction of any assets now owned by any Group Company, or otherwise in connection with any Group Company or the business thereof. Without limiting the foregoing, the Seller has not made or gave, nor knowingly permitted any of its representatives to make or give, any payment or anything of value, directly or indirectly, to any government official to influence his, her, or its decision, or to gain any other advantage, in connection with any assets now owned by any Group Company, or otherwise in connection with any Group Company or the business thereof.

13. **Brokers' fees**

The Seller has not engaged any finder, broker or other intermediary in connection with the transactions contemplated by this Agreement, to which Purchaser, any of its Affiliates, or any Group Company could be liable.

14. **Intercompany Accounts**

Seller or the Seller's Guarantor will deliver to the Purchaser within ten (10) days after the date of this Agreement a complete and accurate list and of all Intercompany Accounts as of the date thereof. As of the Completion Date, Seller or the Seller's Guarantor has caused all Intercompany Accounts to be settled, discharged, offset, paid, terminated and/or extinguished in full, except as otherwise permitted by Clause 4.1.7.

## PURCHASER WARRANTIES

1. **Incorporation**

The Purchaser is duly incorporated, duly organised and validly existing under the laws of its jurisdiction and has full power to conduct its business as conducted at the date of this Agreement.

2. **Corporate power and authority**

The Purchaser has corporate power and authority to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement and the provisions of this Agreement and any agreement entered into pursuant to the terms of this Agreement, constitute valid and binding obligations on the Purchaser and are enforceable against the Purchaser, in accordance with their respective terms.

3. **Due authorisation, execution and delivery**

The Purchaser has duly authorised, executed and delivered this Agreement and will, at Completion, have authorised, executed and delivered any agreements to be entered into by Purchaser pursuant to the terms of this Agreement.

4. **No breach**

The execution and delivery by the Purchaser of, and the performance by the Purchaser of its obligations under, this Agreement and any agreement entered into pursuant to the terms of this Agreement will not:

- 4.1 result in a breach of or conflict with any provision of its constitutional documents;
- 4.2 result in a material breach of, or constitute a material default under, any instrument to which it is a party or by which it is bound; or
- 4.3 result in a breach of any applicable laws or regulations or of any order, decree or judgment of any court or any governmental or regulatory authority in any jurisdiction, in each case as applicable to and binding on Purchaser.

5. **Consents**

All consents, permissions, authorisations, approvals and agreements of third parties and all authorisations, registrations, declarations, filings with any governmental department, commission, agency or other organisation having jurisdiction over the Purchaser which are necessary or desirable for the Purchaser to obtain in order to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement in accordance with its terms, have been unconditionally obtained in writing and have been disclosed in writing to the Seller.

6. **Proceedings**

There are no:

- 6.1 outstanding judgments, orders, injunctions or decrees of any governmental or regulatory body or arbitration tribunal against or affecting the Purchaser or any of its Affiliates;
- 6.2 lawsuits, actions or proceedings pending or, to the knowledge of the Purchaser, threatened against or affecting the Purchaser or any of its Affiliates; or

6.3 investigations by any governmental or regulatory body which are pending or threatened against the Purchaser or any of its group undertakings, so far as the Purchaser is aware, which, in each case, has or could have a material adverse effect on the ability of the Purchaser to perform its obligations under this Agreement or any other agreements entered into pursuant to the terms of this Agreement.

7. **Solvency**

No order has been made, petition presented or meeting convened for the winding up of the Purchaser or any of its group undertakings, nor any other action taken in relation to the appointment of an administrator, liquidator, receiver, administrative receiver, compulsory manager or any provisional liquidator (or equivalent in any other jurisdiction) (or other process whereby the business is terminated and the assets of the company concerned are distributed amongst the creditors or shareholders or any other contributors), and there are no proceedings under any applicable insolvency, reorganisation or similar laws in any relevant jurisdiction, and no events have occurred which, under applicable laws, would justify any such proceedings.

## SELLER'S GUARANTOR WARRANTIES

1. **Incorporation**

The Seller's Guarantor is duly incorporated, duly organised and validly existing under the laws of its jurisdiction and has full power to conduct its business as conducted at the date of this Agreement.

2. **Corporate power and authority**

The Seller's Guarantor has corporate power and authority to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement and the provisions of this Agreement and any agreement entered into pursuant to the terms of this Agreement, constitute valid and binding obligations on the Seller's Guarantor and are enforceable against the Seller's Guarantor, in accordance with their respective terms.

3. **Due authorisation, execution and delivery**

The Seller's Guarantor has duly authorised, executed and delivered this Agreement and will, at Completion, have authorised, executed and delivered any agreements to be entered into by Seller's Guarantor pursuant to the terms of this Agreement.

4. **No breach**

The execution and delivery by the Seller's Guarantor of, and the performance by the Seller's Guarantor of its obligations under, this Agreement and any agreement entered into pursuant to the terms of this Agreement will not:

- 4.1 result in a breach of or conflict with any provision of its constitutional documents;
- 4.2 result in a material breach of, or constitute a material default under, any instrument to which it is a party or by which it is bound; or
- 4.3 result in a breach of any applicable laws or regulations or of any order, decree or judgment of any court or any governmental or regulatory authority in any jurisdiction, in each case as applicable to and binding on the Seller's Guarantor.

5. **Consents**

All consents, permissions, authorisations, approvals and agreements of third parties and all authorisations, registrations, declarations, filings with any governmental department, commission, agency or other organisation having jurisdiction over the Seller's Guarantor which are necessary or desirable for the Seller's Guarantor to obtain in order to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement in accordance with its terms, have been unconditionally obtained in writing and have been disclosed in writing to the Purchaser.

6. **Proceedings**

There are no:

- 6.1 outstanding judgments, orders, injunctions or decrees of any governmental or regulatory body or arbitration tribunal against or affecting the Seller's Guarantor or any of its Affiliates;
- 6.2 lawsuits, actions or proceedings pending or, to the Knowledge of the Seller's Guarantor, threatened against or affecting the Seller's Guarantor or any of its Affiliates; or



6.3 investigations by any governmental or regulatory body which are pending or threatened against the Seller's Guarantor or any of its group undertakings, so far as the Seller's Guarantor is aware,

which, in each case, has or could have a material adverse effect on the ability of the Seller's Guarantor to perform its obligations under this Agreement or any other agreements entered into pursuant to the terms of this Agreement.

## 7. **Solvency**

No order has been made, petition presented or meeting convened for the winding up of the Seller's Guarantor or any of its group undertakings, nor any other action taken in relation to the appointment of an administrator, liquidator, receiver, administrative receiver, compulsory manager or any provisional liquidator (or equivalent in any other jurisdiction) (or other process whereby the business is terminated and the assets of the company concerned are distributed amongst the creditors or shareholders or any other contributors), and there are no proceedings under any applicable insolvency, reorganisation or similar laws in any relevant jurisdiction, and no events have occurred which, under applicable laws, would justify any such proceedings.

## 8. **Contracts and transactions with any Group Company**

Other than the Shares and the additional shares held by the Seller mentioned in Recital (A), neither Seller's Guarantor nor any of their Affiliates holds any securities of or other ownership interest in any Group Company, or rights (contingent or non-contingent) to acquire any securities of or other ownership interest in any Group Company.

Neither Seller's Guarantor nor any of its Affiliates nor any director, officer, employee, or other representative of Seller's Guarantor or any of its Affiliates is a party to any contract or transaction with any Group Company (each, an "**Interested Party Contract**"), except for (a) such contracts and transactions specifically disclosed in writing by the Seller's Guarantor to the Purchaser within ten (10) days after the date of this Agreement, and (b) such contracts and transactions entered into following the date of this Agreement with the prior written consent of Purchaser.

Each Interested Party Contract is in full force and effect and is valid, binding, and enforceable in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by equitable principles. None of the Seller's Guarantor or its Affiliates or, to the Knowledge of the Seller's Guarantor, any Group Company is in breach of or default under any Interested Party Contract. The consummation of the transactions contemplated by this Agreement will not constitute a breach of, or give rise to any right to terminate, accelerate or modify any rights or obligations under, any Interested Party Contract.

## 9. **Ethical business practices**

Neither Seller's Guarantor nor any of its Affiliates violated, nor knowingly permitted any of its representatives to violate, any anti-corruption laws of any applicable jurisdiction in connection with the development or construction of any assets now owned by any Group Company, or otherwise in connection with any Group Company or the business thereof. Without limiting the foregoing, neither Seller's Guarantor nor any of its Affiliates made or gave, nor knowingly permitted any of its representatives to make or give, any payment or anything of value, directly or indirectly, to any government official to influence his, her, or its decision, or to gain any other advantage, in connection with any assets now owned by any Group Company, or otherwise in connection with any Group Company or the business thereof.

10. **Brokers' fees**

Neither Seller's Guarantor nor any of its Affiliates nor any Group Company has engaged any finder, broker or other intermediary in connection with the transactions contemplated by this Agreement, to which Purchaser, any of its Affiliates, or any Group Company could be liable.

11. **Defaults by any Group Company**

To the Knowledge of Seller's Guarantor, no Group Company is in material breach of or material default under, and no facts or circumstances exist that presently give rise to, or with the passage of time and/or delivery of notice would give rise to, a right of termination, cancellation or acceleration of any material obligation under, or the loss of a material benefit under, or any material restriction (including on the ability of any Group Company to declare or pay any dividend or distribution) under, any instrument or material agreement to which any Group Company is a party or by which any Group Company is bound, except (a) as of the date hereof, as disclosed in writing by Seller's Guarantor to Purchaser within ten (10) days after the date of this Agreement, and (b) as of the Completion Date, as disclosed in writing by Seller's Guarantor to Purchaser prior to the Completion Date.

## DEFINITIONS AND INTERPRETATION

1. In this Agreement each of the following words and expressions shall have the following meanings:

“**the 2006 Act**” means the Companies Act 2006 to the extent in force at the relevant time;

“**AAGES**” has the meaning given to that term in Recital (E);

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that Person, with the term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”) meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership interests, by contract or otherwise; provided, however, that, for all purposes of this Agreement: (a) Seller shall be deemed to be an Affiliate of Seller’s Guarantor and all of its Affiliates, and vice versa; and (b) no Group Company shall be deemed to be an Affiliate of Seller or of any of its other Affiliates;

“**Applicable EPC Contract**” means (a) with respect to the Kaxu Project, that certain EPC Contract for the Kaxu Solar One Parabolic Trough Power Project among Kaxu Solar One (PTY) Ltd (RF) and Abeinsa EPC Kaxu (PTY) LTD dated on November 4, 2012, and (b) with respect to the Solana Project, Second Amended and Restated Turnkey Engineering, Procurement and Construction Contract among Arizona Sola One LLC, Teyma USA, Inc., Abener Engineering and Construction Services, LLC and Teyma USA & Abener Engineering and Construction Services General Partnership dated on September 30, 2013 and on 30 June 2015.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London;

“**Claim**” (without prejudice to Clauses 14.11 and 14.12) means a Claim Against the Seller or a Claim against the Seller’s Guarantor, as the case may be;

“**Claim Against the Seller**” means a claim against the Seller whether in contract or otherwise in respect of any of the Seller Warranties or due to a breach of the Seller’s obligations under or in connection with this Agreement;

“**Claim Against the Seller’s Guarantor**” means a claim against the Seller’s Guarantor whether in contract or otherwise in respect of any of the Seller’s Guarantor Warranties or due to a breach of the obligations of the Seller’s Guarantor under or in connection with this Agreement;

“**Company**” means Atlantica Yield plc, a company incorporated in England under the 2006 Act with registered number 08818211 further details of which are set out in Schedule 1;

“**Completion**” means completion of the sale and purchase of the Shares in accordance with Clause 7;

“**Completion Date**” means (a) the later of (i) January 3, 2018; and (ii) the tenth (10th) Business Day following satisfaction, or (if capable of waiver) waiver, of all the Conditions (other than Conditions that are capable of being satisfied only at the Completion including those referred to in Clauses 4.1.11 to 4.1.12, provided that such Conditions are satisfied at the Completion), or (b) such other date as the Seller and Purchaser may agree;

“**Conditions**” means the conditions precedent listed in Clause 4.1, Clause 4.5, and Clause 4.6;

“**Confidential Information**” has the meaning given to that term in Clause 14.3;

**“Consideration”** has the meaning given to that term in 3;

**“Disclosure Letter”** means the letter dated the same date as this Agreement from the Seller to the Purchaser in relation to the Seller Warranties;

**“DOE”** means the U.S. Department of Energy;

**“Due Diligence Reports”** means the following (i) the legal due diligence report issued by Herbert Smith Freehills in conjunction with Bourabiat Associates; Hughes & Hughes; Larraín, Rencoret Urzúa; Loyens Loeff; Santamarina Steta; Santivañez Abogados; Manatt, Phels and Phillips, LLP; and Fennemore Craig P.C. dated 21 June 2017; (ii) the technical due diligence report issued by Sargent & Lundy and Altermia dated 13 June 2017; (iii) the tax due diligence report issued by Ernst & Young dated 3 June 2017; and (iv) the financial due diligence report issued by Ernst & Young dated 19 June 2017.

**“Encumbrance”** means any claim, option, charge (fixed or floating), mortgage, lien, pledge, equity, encumbrance, right to acquire, right of pre-emption, right of first refusal, title retention or any other third party right, or other security interest or any agreement or arrangement having a similar effect or any agreement to create any of the foregoing;

**“Extended Longstop Date”** has the meaning given to this term in Clause 4.4;

**“FERC”** means the United States Federal Energy Regulatory Commission;

**“FFB”** means the Federal Financing Bank, a U.S. government corporation by that name;

**“Full Title Guarantee”** means with the benefit of the implied covenants set out in Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 when a disposition is expressed to be made with full title guarantee, provided that section 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not apply for the purpose of this Agreement;

**“Fundamental Claim”** means a claim against the Seller in respect of any of the Fundamental Warranties;

**“Fundamental Warranty”** means any of the warranties given by Seller in Clauses 1 through 9 of Schedule 3;

**“Group”** means the Company and the Subsidiaries;

**“Group Company”** means any one of the Company and the Subsidiaries;

**“Intercompany Accounts”** means all accounts receivable or payable, whether or not due, and any other liabilities, whether liquidated, unliquidated, fixed, contingent, matured, or unmatured, in any case between (a) any Group Company, on the one hand, and (b) Seller or any of its Affiliates, or any of the officers or directors of Seller or any of its Affiliates, on the other hand.

**“Interim Period”** means the period of time from the date of execution of this Agreement to the Completion Date;

**“Kaxu Project”** means the 100 MW gross solar electric generation facility located in Paulputs, Northern Cape Province, South Africa;

**“Knowledge of Seller”** means the actual knowledge of the officers of Seller (with no imputation of the knowledge of any other person) who shall be deemed to have knowledge of such matters as they would have discovered, had they made due and careful inquiry of the matter in question.

**“Knowledge of the Seller’s Guarantor”** means the actual knowledge of the officers of Seller’s Guarantor (with no imputation of the knowledge of any other person) who shall be deemed to have knowledge of such matters as they would have discovered, had they made due and careful inquiry of the matter in question.

**“Mojave Loan Guaranty Agreement”** means the loan guaranty agreement dated 12 September 2011 (as amended) between Mojave Solar, LLC (USA) and DOE (as guarantor and loan servicer);

“**Mojave Note Purchase Agreement**” means the note purchase agreement between Mojave Solar, LLC (USA) and FFB dated 12 September 2011;

“**Mojave Project**” means the 280 MW gross solar electric generation facility located in San Bernardino County, California, U.S.;

“**MOU**” has the meaning given to that term in Recital (E);

“**Party**” or “**Parties**” means the Seller or/and the Purchaser;

“**Person**” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, organization, entity, unincorporated organization, or governmental authority;

“**Seller Warranties**” means the warranties given by the Seller in Schedule 3;

“**Shares**” has the meaning given to that term in Recital (B);

“**Solana Loan Guaranty Agreement**” means the loan guaranty agreement dated 20 December 2010 (as amended) between Arizona Solar One, LLC (USA) and DOE (as guarantor and loan servicer);

“**Solana Note Purchase Agreement**” means the note purchase agreement between FFB and Arizona Solar One, LLC (USA) dated 20 December 2010;

“**Solana Project**” means the 280 MW gross solar electric generation facility located in Maricopa County, Arizona, U.S.;

“**Subsidiaries**” means the subsidiary companies of the Company (with “subsidiary” having the meaning given to that term in section 1159 of the 2006 Act);

“**Taxation**” or “**Tax**” means all forms of taxation, duty, rate, levy or charge or other imposition or withholding in the nature of tax arising whether in the United Kingdom or elsewhere and shall include all fines, interest, surcharges and penalties relating to any tax, duty, rate, charge or other imposition or withholding or levy as hereinbefore mentioned; and

2. In this Agreement, words and expressions defined in the 2006 Act shall bear the same meaning as in that act unless expressly stated otherwise.
3. In this Agreement, except where the context otherwise requires:
  - 3.1 any reference to this Agreement includes the Schedules to it each of which forms part of this Agreement for all purposes;
  - 3.2 a reference to an enactment, EU instrument or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment, EU instrument or statutory provision and is a reference to that enactment, EU instrument, statutory provision or subordinate legislation as from time to time amended or modified and to any enactment, EU instrument, statutory provision or subordinate legislation that from time to time (with or without modifications) re-enacts, replaces, consolidates, incorporates or reproduces it;
  - 3.3 words in the singular shall include the plural and vice versa;
  - 3.4 references to one gender include other genders;
  - 3.5 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual's executors or administrators;
  - 3.6 a reference to a Clause, paragraph, Schedule (other than to a schedule to a statutory provision) shall be a reference to a Clause, paragraph, Schedule (as the case may be) of or to this Agreement;
  - 3.7 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;

- 3.8 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction.
- 3.9 a person shall be deemed to be connected with another if that person is connected with another within the meaning of section 1122 of the Corporation Tax Act 2010;
- 3.10 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;
- 3.11 a reference to a balance sheet or profit and loss account shall include a reference to any note forming part of it;
- 3.12 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 3.13 references to documents "in the agreed terms" or any similar expression shall be to documents agreed between the Parties, annexed to this Agreement and initialled for identification by the Sellers and the Purchaser;
- 3.14 the headings in this Agreement are for convenience only and shall not affect its interpretation; and
- 3.15 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms.

**SIGNED** for and on behalf of  
**ACIL LUXCO 1, S.A.**  
a company incorporated in Luxembourg,  
acting by Christian Anders Digemose,  
who, in accordance with the laws of that  
territory, is acting under the authority of  
the Seller

*/s/ Christian Anders Digemose*  
**(Signature of authorised person)**

**SIGNED BY** Ian Robertson and Chris Jarratt  
for and on behalf of  
**ALGONQUIN POWER & UTILITIES CORP.**

*/s/ Ian Robertson*  
**(Signature of authorised person)**

*/s/ Chris Jarratt*  
**(Signature of authorised person)**

**SIGNED BY** Gonzalo Urquijo and Joaquín Fernández de Piérola  
for and on behalf of  
**ABENGOA, S.A.**

*/s/ Gonzalo Urquijo*  
**(Signature of authorised person)**

*/s/ Joaquín Fernández de Piérola*  
**(Signature of authorised person)**

## DEED OF AMENDMENT NO. 1 TO SALE AND PURCHASE AGREEMENT

This Deed of Amendment No. 1 (the "**Amendment**") to Sale and Purchase Agreement is made on 31 January 2018 (the "**Effective Date**") between

- 1) ACIL Luxco 1, S.A., a company incorporated in Luxembourg (registered number B212453) and whose registered office is at 48 Boulevard Grande-Duchesse Charlotte, L-1330 Luxembourg (the "**Seller**");
- 2) Algonquin Power & Utilities Corp., a company incorporated under the federal laws of Canada (corporation number 236237-6) and whose registered office is at 354 Davis Road, Suite 100, Oakville, Ontario, Canada L6J 2X1 (the "**Purchaser**"); and
- 3) Abengoa, S.A., a public company with limited liability (sociedad anónima), duly incorporated and existing under the laws of Spain, with registered address at Campus Palmas Altas, Calle Energía Solar, 1, Sevilla (Spain), registered with the Mercantile Registry of Sevilla in Volume 5683, Sheet 62, Page SE-1507 and bearer of Spanish tax identification number A 41002288 ("**Abengoa**").

**WHEREAS**, the Parties and Abengoa entered into a Sale and Purchase Agreement dated 1 November 2017 (the "**Existing Agreement**") for the sale and purchase of certain shares of Atlantica Yield plc; and

**WHEREAS**, the Parties and Abengoa desire to amend the Existing Agreement to extend the Longstop Date and modify the definition of "Completion Date", on the terms and subject to the conditions set forth herein; and

**WHEREAS**, pursuant to Clause 14.16, amendments to the Existing Agreement must be contained in a written agreement.

**THIS DEED WITNESSES** as follows:

1. **Definitions.** Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Existing Agreement.

2. **Amendments to the Existing Agreement.** As of the Effective Date, the Existing Agreement is hereby amended or modified as follows:

(a) Clause 4.7.1 of the Existing Agreement is hereby amended by deleting the words "1 February 2018" and substituting in lieu thereof the words "15 February 2018".

(b) The definition of "Completion Date" now appearing in Schedule 6 of the Existing Agreement is hereby amended in its entirety to read as follows:

"**Completion Date**" means (a) the seventh (7<sup>th</sup>) Business Day (or such earlier Business Day as Purchaser may elect by providing at least two (2) Business Days written notice to Seller) following satisfaction, or (if capable of waiver) waiver, of all the Conditions (other than Conditions that are capable of being satisfied only at the Completion including those referred to in Clauses 4.1.11 to 4.1.12, provided that such Conditions are satisfied at the Completion), or (b) such other date as the Seller and Purchaser may agree;

3. **Date of Effectiveness; Limited Effect.** This Amendment will be deemed effective on the Effective Date. Except as expressly provided in this Amendment, all of the terms and provisions of the Existing Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties and Abengoa. On and after the Effective Date, each reference in the Existing Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import, and each reference to the Existing Agreement in any other agreements, documents, or instruments executed and delivered pursuant to, or in connection with, the Existing Agreement, will mean and be a reference to the Existing Agreement as amended by this Amendment.



4. **Representations and Warranties.** Each Party and Abengoa hereby represents and warrants to the others that:

(a) It has the full right, power, and authority to enter into this Amendment and to perform its obligations hereunder and under the Existing Agreement as amended by this Amendment.

(b) The execution of this Amendment by any individual whose signature is set forth at the end of this Amendment on its behalf, and the delivery of this Amendment by it, have been duly authorized by all necessary action by it.

5. **Counterparts.** This Amendment may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

6. **Governing Law.** This Amendment and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

7. **Costs.** The Parties and Abengoa shall pay their own costs in connection with the preparation and negotiation of this Amendment and any matter contemplated by it.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, this Deed has been executed by each of the Parties and Abengoa and is intended to be and is hereby delivered on the date first written above.

**EXECUTED AS A DEED by  
ACIL LUXCO 1, S.A.**

a company incorporated in Luxembourg,  
acting by Christian Anders Digemose and Joost Mees,  
who, in accordance with the laws of that  
territory, are acting under the authority of  
the Seller

*/s/ Christian Anders Digemose*  
**(Signature of authorised person)**

*/s/ Joost Mees*  
**(Signature of authorised person)**

---

**EXECUTED AS A DEED by  
ALGONQUIN POWER & UTILITIES CORP.**

a company incorporated in Canada  
acting by Ian Robertson and Chris Jarratt  
who, in accordance with the laws of that territory,  
are acting under the authority of the Purchaser

*/s/ Ian Robertson*  
**(Signature of authorised person)**

*/s/ Chris Jarratt*  
**(Signature of authorised person)**

**EXECUTED AS A DEED by  
ABENGOA, S.A.**

a company incorporated in Spain  
acting by Gonzalo Urquijo and Joaquín Fernández de Piérola  
who, in accordance with the laws of that territory,  
are acting under the authority of Abengoa, S.A.

*/s/ Gonzalo Urquijo*  
**(Signature of authorised person)**

*/s/ Joaquín Fernández de Piérola*  
**(Signature of authorised person)**

## DEED OF AMENDMENT NO. 2 TO SALE AND PURCHASE AGREEMENT

This Deed of Amendment No. 2 (the “**Amendment**”) to Sale and Purchase Agreement is made on 15 February 2018 (the “**Effective Date**”) between

- 4) ACIL Luxco 1, S.A., a company incorporated in Luxembourg (registered number B212453) and whose registered office is at 48 Boulevard Grande-Duchesse Charlotte, L-1330 Luxembourg (the “**Seller**”);
- 5) Algonquin Power & Utilities Corp., a company incorporated under the federal laws of Canada (corporation number 236237-6) and whose registered office is at 354 Davis Road, Suite 100, Oakville, Ontario, Canada L6J 2X1 (the “**Purchaser**”); and
- 6) Abengoa, S.A., a public company with limited liability (sociedad anónima), duly incorporated and existing under the laws of Spain, with registered address at Campus Palmas Altas, Calle Energía Solar, 1, Sevilla (Spain), registered with the Mercantile Registry of Sevilla in Volume 5683, Sheet 62, Page SE-1507 and bearer of Spanish tax identification number A 41002288 (“**Abengoa**”).

**WHEREAS**, the Parties and Abengoa entered into a Sale and Purchase Agreement dated 1 November 2017 (the “**Original Agreement**”) for the sale and purchase of certain shares of Atlantica Yield plc, which was then amended by a Deed of Amendment No. 1 to Sale and Purchase Agreement dated 31 January 2018 (the Original Agreement, as amended, is referred to as the “**Existing Agreement**”); and

**WHEREAS**, the Parties and Abengoa desire to amend the Existing Agreement to extend the Longstop Date and modify certain other provisions, on the terms and subject to the conditions set forth herein; and

**WHEREAS**, pursuant to Clause 14.16, amendments to the Existing Agreement must be contained in a written agreement.

**THIS DEED WITNESSES** as follows:

8. **Definitions.** Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Existing Agreement.

9. **Amendments to the Existing Agreement.** As of the Effective Date, the Existing Agreement is hereby amended or modified as follows:

(a) Clause 4.7.1 of the Existing Agreement is hereby amended by deleting the words “15 February 2018” and substituting in lieu thereof the words “23 February 2018”.

(b) New Clause 14.21 is hereby added to the Existing Agreement, as follows:

### **Purchaser’s Additional Termination Right**

In the event Completion has not occurred prior to the ex-dividend date with respect to the first calendar 2018 record date established by the Company for determining entitlement to a dividend on the Shares, the Purchaser may terminate this Agreement by written notice to the Seller and Abengoa.

(c) Schedule 2, Part 2, Paragraph 6 of the Existing Agreement (pertaining to registrable person statements) is hereby deleted.

10. **Date of Effectiveness; Limited Effect.** This Amendment will be deemed effective on the Effective Date. Except as expressly provided in this Amendment, all of the terms and provisions of the Existing Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties and Abengoa. On and after the Effective Date, each reference in the Existing Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein,” or words of like import, and each reference to the Existing Agreement in any other agreements, documents, or instruments executed and delivered pursuant to, or in connection with, the Existing Agreement, will mean and be a reference to the Existing Agreement as amended by this Amendment.

11. **Representations and Warranties.** Each Party and Abengoa hereby represents and warrants to the others that:

(a) It has the full right, power, and authority to enter into this Amendment and to perform its obligations hereunder and under the Existing Agreement as amended by this Amendment.

(b) The execution of this Amendment by any individual whose signature is set forth at the end of this Amendment on its behalf, and the delivery of this Amendment by it, have been duly authorized by all necessary action by it.

12. **Counterparts.** This Amendment may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

13. **Governing Law.** This Amendment and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

14. **Costs.** The Parties and Abengoa shall pay their own costs in connection with the preparation and negotiation of this Amendment and any matter contemplated by it.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, this Deed has been executed by each of the Parties and Abengoa and is intended to be and is hereby delivered on the date first written above.

**EXECUTED AS A DEED by  
ACIL LUXCO 1, S.A.**

a company incorporated in Luxembourg,  
acting by Christian Anders Digemose and Joost Mees,  
who, in accordance with the laws of that  
territory, are acting under the authority of  
the Seller

*/s/ Christian Anders Digemose*  
**(Signature of authorised person)**

*/s/ Joost Mees*  
**(Signature of authorised person)**

---

**EXECUTED AS A DEED by**  
**ALGONQUIN POWER & UTILITIES CORP.**  
a company incorporated in Canada  
acting by Ian Robertson and Chris Jarratt  
who, in accordance with the laws of that territory,  
are acting under the authority of the Purchaser

*/s/ Ian Robertson*  
**(Signature of authorised person)**

*/s/ Chris Jarratt*  
**(Signature of authorised person)**



**EXECUTED AS A DEED by  
ABENGOA, S.A.**

a company incorporated in Spain  
acting by Gonzalo Urquijo and Joaquín Fernández de Piérola  
who, in accordance with the laws of that territory,  
are acting under the authority of Abengoa, S.A.

*/s/ Gonzalo Urquijo*  
**(Signature of authorised person)**

*/s/ Joaquín Fernández de Piérola*  
**(Signature of authorised person)**

## DEED OF AMENDMENT NO. 3 TO SALE AND PURCHASE AGREEMENT

This Deed of Amendment No. 3 (the "**Amendment**") to Sale and Purchase Agreement is made on 27 February 2018 (the "**Effective Date**") between

- 7) ACIL Luxco 1, S.A., a company incorporated in Luxembourg (registered number B212453) and whose registered office is at 48 Boulevard Grande-Duchesse Charlotte, L-1330 Luxembourg (the "**Seller**");
- 8) Algonquin Power & Utilities Corp., a company incorporated under the federal laws of Canada (corporation number 236237-6) and whose registered office is at 354 Davis Road, Suite 100, Oakville, Ontario, Canada L6J 2X1 (the "**Purchaser**"); and
- 9) Abengoa, S.A., a public company with limited liability (sociedad anónima), duly incorporated and existing under the laws of Spain, with registered address at Campus Palmas Altas, Calle Energía Solar, 1, Sevilla (Spain), registered with the Mercantile Registry of Sevilla in Volume 5683, Sheet 62, Page SE-1507 and bearer of Spanish tax identification number A 41002288 ("**Abengoa**").

**WHEREAS**, the Parties and Abengoa entered into a Sale and Purchase Agreement dated 1 November 2017 (the "**Original Agreement**") for the sale and purchase of certain shares of Atlantica Yield plc, which was then amended by (i) a Deed of Amendment No. 1 to Sale and Purchase Agreement dated 31 January 2018, and (ii) a Deed of Amendment No. 2 to Sale and Purchase Agreement dated 15 February 2018 (the Original Agreement, as amended, is referred to as the "**Existing Agreement**"); and

**WHEREAS**, the Parties and Abengoa desire to amend the Existing Agreement to extend the Longstop Date; and

**WHEREAS**, pursuant to Clause 14.16, amendments to the Existing Agreement must be contained in a written agreement.

**THIS DEED WITNESSES** as follows:

15. **Definitions.** Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Existing Agreement.
16. **Amendments to the Existing Agreement.** As of the Effective Date, the Existing Agreement is hereby amended or modified as follows:
  - (a) Clause 4.7.1 of the Existing Agreement is hereby amended by deleting the words "23 February 2018" and substituting in lieu thereof the words "7 March 2018".
17. **Date of Effectiveness; Limited Effect.** This Amendment will be deemed effective on the Effective Date. Except as expressly provided in this Amendment, all of the terms and provisions of the Existing Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties and Abengoa. On and after the Effective Date, each reference in the Existing Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import, and each reference to the Existing Agreement in any other agreements, documents, or instruments executed and delivered pursuant to, or in connection with, the Existing Agreement, will mean and be a reference to the Existing Agreement as amended by this Amendment.
18. **Representations and Warranties.** Each Party and Abengoa hereby represents and warrants to the others that:

(a) It has the full right, power, and authority to enter into this Amendment and to perform its obligations hereunder and under the Existing Agreement as amended by this Amendment.

(b) The execution of this Amendment by any individual whose signature is set forth at the end of this Amendment on its behalf, and the delivery of this Amendment by it, have been duly authorized by all necessary action by it.

19. **Counterparts.** This Amendment may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

20. **Governing Law.** This Amendment and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

21. **Costs.** The Parties and Abengoa shall pay their own costs in connection with the preparation and negotiation of this Amendment and any matter contemplated by it.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, this Deed has been executed by each of the Parties and Abengoa and is intended to be and is hereby delivered on the date first written above.

**EXECUTED AS A DEED by  
ACIL LUXCO 1, S.A.**

a company incorporated in Luxembourg,  
acting by Christian Anders Digemose and Joost Mees,  
who, in accordance with the laws of that  
territory, are acting under the authority of  
the Seller

*/s/ Christian Anders Digemose*  
**(Signature of authorised person)**

*/s/ Josst Mees*  
**(Signature of authorised person)**

**EXECUTED AS A DEED by  
ALGONQUIN POWER & UTILITIES CORP.**

a company incorporated in Canada  
acting by Ian Robertson and Chris Jarratt  
who, in accordance with the laws of that territory,  
are acting under the authority of the Purchaser

*/s/ Ian Robertson*  
**(Signature of authorised person)**

*/s/ Chris Jarratt*  
**(Signature of authorised person)**

**EXECUTED AS A DEED by  
ABENGOA, S.A.**

a company incorporated in Spain  
acting by Gonzalo Urquijo and Joaquín Fernández de Piérola  
who, in accordance with the laws of that territory,  
are acting under the authority of Abengoa, S.A.

*/s/ Gonzalo Urquijo*  
**(Signature of authorised person)**

*/s/ Joaquín Fernández de Piérola*  
**(Signature of authorised person)**

ALGONQUIN POWER & UTILITIES CORP.

AND

AAGES (AY HOLDINGS) B.V.

---

SALE AND PURCHASE AGREEMENT

ATLANTICA YIELD PLC

---

## CONTENTS

Clause	Page
1. Interpretation	2
2. Sale and Purchase	4
3. Consideration	4
4. Completion	4
5. Assignment of Certain Rights under ACIL Luxco SPA	4
6. Termination	5
7. Miscellaneous	5
8. Notices	8
9. Governing Law	9
10. Dispute Resolution	9



**BETWEEN:**

- (1) Algonquin Power & Utilities Corp., a company incorporated under the federal laws of Canada (corporation number 236237-6) and whose registered office is at 354 David Road, Suite 100, Oakville, Ontario, Canada L6J 2X1 (the “**Seller**”); and
- (2) AAGES (AY Holdings) B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), having its seat (*zetel*) in Amsterdam, its address at Strawinskylaan 3127, 8th floor, 1077 ZX Amsterdam and registered in the trade register under number 70787255 (the “**Purchaser**”).

**RECITALS:**

- (A) Pursuant to a sale and purchase agreement (the “**ACIL Luxco SPA**”) dated 1 November 2017, as amended, between ACIL Luxco 1, S.A. as seller (“**ACIL Luxco**”), the Seller as purchaser and Abengoa, S.A. as seller’s guarantor, ACIL Luxco agreed to sell and transfer to the Seller that number of issued ordinary shares of US\$0.10 each in the share capital of the Company (rounded up to the nearest whole number) representing as of the date of ACIL Luxco SPA Completion 25 per cent. of the Company’s issued share capital (the “**Shares**”).
- (B) The Seller has agreed to sell the Shares to the Purchaser, conditional on ACIL Luxco SPA Completion occurring.

**THE PARTIES AGREE** as follows:

1. **INTERPRETATION**

1.1 In this Agreement:

“**ACIL Luxco**” has the meaning given to that term in Recital (A);

“**ACIL Luxco SPA**” has the meaning given to that term in Recital (A);

“**ACIL Luxco SPA Completion**” means “Completion” as defined in Schedule 6 to the ACIL Luxco SPA;

“**ACIL Luxco SPA Consideration**” means “Consideration” as defined in clause 3.1 of the ACIL Luxco SPA as increased by the “Baseline Earn-Out Amount” (as defined in clause 3.5 of the ACIL Luxco SPA) in accordance with clauses 3.5 to 3.8 of the ACIL Luxco SPA;

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that Person, with the term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”) meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership interests, by contract or otherwise;

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London;

“**Company**” means Atlantica Yield plc, a company incorporated under the laws of England and Wales (registered number 08818211) and whose registered office is at Great West House (GW1), Great West Road, Brentford, Middlesex, Greater London, TW8 9DF, United Kingdom;

“**Completion**” means completion of the sale and purchase of the Shares in accordance with this Agreement;

“**Confidential Information**” has the meaning given to that term in Clause 7.2 (*Confidentiality*);

“**Consideration**” has the meaning given to that term in Clause 3 (*Consideration*);

“**Encumbrance**” has the meaning given to that term in Schedule 6 to the ACIL Luxco SPA;

“**Full Title Guarantee**” has the meaning given to that term in Schedule 6 to the ACIL Luxco SPA;

“**Group**” has the meaning given to that term in Schedule 6 to the ACIL Luxco SPA;

“**Party**” or “**Parties**” means the Seller and/or the Purchaser, as the context requires;

“**Person**” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, organization, entity, unincorporated organization, or governmental authority; and

“**Shares**” has the meaning given to that term in Recital (A).

1.2 In this Agreement, except where the context otherwise requires:

- 1.2.1 a reference to an enactment, EU instrument or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment, EU instrument or statutory provision and is a reference to that enactment, EU instrument, statutory provision or subordinate legislation as from time to time amended or modified and to any enactment, EU instrument, statutory provision or subordinate legislation that from time to time (with or without modifications) re-enacts, replaces, consolidates, incorporates or reproduces it;
- 1.2.2 words in the singular shall include the plural and vice versa;
- 1.2.3 references to one gender include other genders;
- 1.2.4 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual’s executors or administrators;
- 1.2.5 a reference to a Clause shall be a reference to a Clause of this Agreement;

- 1.2.6 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.7 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- 1.2.8 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;
- 1.2.9 a reference to “includes” or “including” shall mean “includes without limitation” or “including without limitation”;
- 1.2.10 the headings in this Agreement are for convenience only and shall not affect its interpretation; and
- 1.2.11 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms.

## 2. **SALE AND PURCHASE**

- 2.1 Conditional on ACIL Luxco SPA Completion occurring, the Seller shall sell and the Purchaser shall purchase the Shares.

## 3. **CONSIDERATION**

- 3.1 The consideration for the sale of the Shares shall be the payment by the Purchaser to the Seller of an amount in cash equal to the ACIL Luxco SPA Consideration (the “**Consideration**”).

## 4. **COMPLETION**

- 4.1 Completion shall take place immediately following ACIL Luxco SPA Completion.
- 4.2 At Completion the Seller shall direct ACIL Luxco to transfer the Shares to the Purchaser by way of crediting the Shares through the facilities and in accordance with the procedures of Depository Trust Company to an account or accounts designated by the Purchaser.
- 4.3 At Completion or such later time as the Seller may agree, the Purchaser shall pay the Consideration to the Seller or as the Seller directs in writing.

## 5. **ASSIGNMENT OF CERTAIN RIGHTS UNDER ACIL LUXCO SPA**

- 5.1 The Seller hereby assigns to the Purchaser all rights (but not, for the avoidance of doubt, its obligations), other than the right to acquire the Shares from ACIL Luxco, of the Seller under the ACIL Luxco SPA as permitted by clause 14.9 of the ACIL Luxco SPA, and the Seller agrees to notify ACIL Luxco of such assignment.

6. **TERMINATION**

6.1 The termination of this Agreement shall not affect:

6.1.1 any rights or obligations which have accrued or become due prior to the date of termination; and

6.1.2 the continued existence and validity of the rights and obligations of the Parties under any provision which is expressly or by implication intended to continue in force after termination (together with those Clauses necessary for their interpretation) including this Clause and Clauses 8 (*Notices*), 9 (*Governing Law*) and 10 (*Dispute Resolution*).

7. **MISCELLANEOUS**

**Announcements**

7.1 Subject to the remaining provisions of this Clause 7.1, no Party shall release any announcement or despatch any announcement or circular relating to this Agreement or the transactions contemplated hereby, unless the other Party has been given a reasonable opportunity to comment on the content to be included in such announcement or circular. Nothing in this Clause 7.1 shall prohibit any Party from making any announcement or despatching any circular as required by law or regulation or any regulatory body or the rules of any stock exchange.

**Confidentiality**

7.2 Each Party undertakes to the other that, subject to Clause 7.3, unless the prior written consent of the other Party shall first have been obtained it shall, and shall procure that its officers, employees, advisers and agents shall keep confidential and shall not by failure to exercise due care or otherwise by any act or omission disclose to any person whatever, or use or exploit commercially for its or their own purposes, any of the confidential information of the other Party. For the purposes of this Clause 7.2, "**Confidential Information**" is the contents of this Agreement, the ACIL Luxco SPA and any other agreement or arrangement contemplated by this Agreement and:

7.2.1 information of whatever nature concerning the business, finances, assets, liabilities, dealings, transactions, know-how, customers, suppliers, processes or affairs of the other Party, or any of its group undertakings from time to time; and

7.2.2 any information which is expressly indicated to be confidential in relation to the Party disclosing it (or in relation to any of its group undertakings from time to time),

which any party may from time to time receive or obtain (verbally or in writing or in disk or electronic form) from any other Party as a result of negotiating, entering into, or performing its obligations pursuant to this Agreement and provided that such information concerning the Group in relation to the period before Completion shall not be Confidential Information of the Seller following Completion and such information concerning the Group in relation to the period after Completion shall be Confidential Information of the Purchaser.

- 7.3 The consent referred to in Clause 7.2 shall not be required for disclosure by a Party of any Confidential Information:
- 7.3.1 to its officers, employees, advisers and agents, in each case, as may be contemplated by this Agreement or, to the extent required to enable such Party to carry out its obligations under this Agreement and who shall in each case be made aware by such Party of its obligations under this Clause and shall be required by such Party to observe the same restrictions on the use of the relevant information as are contained in Clause 7.2, provided that such Party shall be responsible for any violation of Clause 7.2 by any such officer, employee, adviser or agent;
  - 7.3.2 subject to Clause 7.4, to the extent required by applicable law or by the regulations of any stock exchange or regulatory authority to which such Party is or may become subject or pursuant to any order of court or other competent authority or tribunal;
  - 7.3.3 to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement by any Party;
  - 7.3.4 which is disclosed to such Party by a third party who is not in breach of any undertaking or duty as to confidentiality whether express or implied;
  - 7.3.5 which that Party lawfully possessed prior to obtaining it from another, provided that this exception shall not apply to information concerning the Group in relation to the period before Completion;
  - 7.3.6 to any professional advisers to the disclosing party who are bound to the disclosing party by a duty of confidence which applies to any information disclosed; or
  - 7.3.7 to the other Party to this Agreement or pursuant to its terms.
- 7.4 If a Party becomes required, in circumstances contemplated by Clause 7.3.2, to disclose any information such Party shall (save to the extent prohibited by law) give to the other Party such notice as is practical in the circumstances of such disclosure and shall co-operate with the other Party, having due regard to the other Party's views, and take such steps as the other Party may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

**No partnership**

- 7.5 Nothing in the Agreement or in any document referred to in it shall constitute the Parties a partner of any other, nor shall the execution, completion and implementation of this Agreement confer on either Party any power to bind or impose any obligations to any third parties on the other Party or to pledge the credit of the other Party.

**Assignment**

- 7.6 No Party may assign its rights under this Agreement.

### **Third party rights**

7.7 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

### **Entire agreement**

7.8 Each of the Parties to this Agreement confirms on behalf of itself and its Affiliates that this Agreement represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.

7.9 Each Party confirms on behalf of itself and its group undertakings that:

7.9.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement; and

7.9.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement are those pursuant to this Agreement and no Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, or in, this Agreement).

### **Unenforceable provisions**

7.10 If any provision or part of this Agreement is void or unenforceable due to any applicable law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

### **Effect of Completion**

7.11 So far as it remains to be performed this Agreement shall continue in full force and effect after Completion. The rights and remedies of the Parties shall not be affected by Completion.

### **Waiver**

7.12 The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

### **Variation**

- 7.13 No variation of this Agreement (or any of the documents referred to in it) shall be valid unless it is in writing (which, for this purpose, does not include email) and signed by or on behalf of each of the Parties. The expression "variation" includes any variation, supplement, deletion or replacement however effected.

### **Counterparts**

- 7.14 This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

### **Costs**

- 7.15 The Parties shall pay their own costs in connection with the preparation and negotiation of this Agreement and any matter contemplated by it.

### **Language**

- 7.16 This Agreement was negotiated in English and, to be valid, all certificates, notices, communications and other documents made in connection with it shall be in English. If all or any part of this Agreement or any such certificate, notice, communication or other document is for any reason translated into any language other than English the English text shall prevail. Each of the Parties understands English and is content for all communications relating to this Agreement to be served on it in English.

## **8. NOTICES**

- 8.1 A notice (including any approval, consent or other communication) in connection with this Agreement and the documents referred to in it:

8.1.1 must be in writing;

8.1.2 must be left at or delivered by courier to the address of the addressee or sent by pre-paid recorded delivery (airmail if posted to or from a place outside the country of delivery) to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this Clause in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number or marked for the attention of such other person, as the relevant Party may from time to time specify by notice given in accordance with this Clause.

8.1.3 The relevant details of each Party at the date of this Agreement are:

#### **Seller**

Address: 354 Davis Road, Suite 100  
Oakville, Ontario  
L6J 2X1, Canada

Facsimile: (905) 465-4540

Attention: Chief Executive Officer

**Purchaser**

Address: Atrium Building, 8th Floor  
Strawinskylaan 3127  
1077 ZX Amsterdam  
The Netherlands

Facsimile: 0031 88 560 9960

Attention: Bart van Dijk

8.1.4 must not be sent by electronic mail.

8.2 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 8.3.

8.3 Subject to Clause 8.4, a notice is deemed to be received:

8.3.1 in the case of a notice left at the address of the addressee, upon delivery at that address;

8.3.2 in the case of a posted letter, on the third day after posting or, if posted to or from a place outside the United Kingdom, the seventh day after posting; and

8.3.3 in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

8.4 A notice received or deemed to be received in accordance with Clause 8.1 above on a day which is not a Business Day, or after 5pm on any Business Day, shall be deemed to be received on the next following Business Day.

**9. GOVERNING LAW**

9.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

**10. DISPUTE RESOLUTION**

10.1 Each Party irrevocably agrees that the Courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).

10.2 Each Party irrevocably waives any right that it may have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.



- 10.3 Regardless of whether the courts of any country other than England have jurisdiction to consider a dispute falling within this Clause 10 each Party irrevocably undertakes that it will neither issue nor cause to be issued originating or other process in respect to such a dispute in any jurisdiction other than England.
- 10.4 In the event that any Party commences an action in the courts of any country other than England (a “foreign action”), the Party which commenced the foreign action shall indemnify the other Party in respect of any and all costs and liabilities which it has incurred in connection with the foreign action, whether or not those costs and liabilities would be recoverable apart from the provisions of this Clause.
- 10.5 Each Party agrees that without preventing any other mode of service, any document in an action (including, a claim form or any other document to be served under the Civil Procedure Rules may be served on any Party by being delivered to or left for that Party at its address for service of notices under Clause 8 (*Notices*) and each Party undertakes to maintain such an address at all times in the United Kingdom and to notify the other Parties in advance of any change from time to time of the details of such address in accordance with the manner prescribed for service of notices under Clause 8 (*Notices*).

*[Signature page follows]*

**EXECUTED** by the parties:

Signed by )  
a duly authorised )  
representative of )  
Algonquin Power & )  
Utilities Corp. ) /s/ I. E. Robertson  
Name: I. E. Robertson  
Title: Chief Executive Officer

Signed by )  
duly authorised )  
representatives of )  
AAGES (AY )  
Holdings) B.V. ) /s/ I. E. Robertson  
Name: I. E. Robertson  
Title: Managing Director A

)

)

)

)

) /s/ B. van Dijk

Name: B. van Dijk

Title: Managin Director B

*[Signature page to Sub-Sale SPA]*

---

1 November 2017

ACIL LUXCO 1, S.A.

ALGONQUIN POWER & UTILITIES CORP.

and

ABENGOA, S.A.

---

OPTION AND RIGHT OF FIRST REFUSAL  
AGREEMENT  
ATLANTICA YIELD PLC

---

## TABLE OF CONTENTS

CLAUSE	HEADINGS	PAGE
1.	INTERPRETATION	1
2.	SALE AND PURCHASE	2
3.	CONSIDERATION	3
4.	CONDITIONS	5
5.	INTERIM PERIOD OBLIGATIONS	7
6.	TAXATION	7
7.	COMPLETION	8
8.	SELLER WARRANTIES AND UNDERTAKINGS	8
9.	SELLER LIMITATIONS ON LIABILITY	8
10.	PURCHASER WARRANTIES AND UNDERTAKINGS	10
11.	TERMINATION	10
12.	GUARANTEES	10
13.	MISCELLANEOUS	11
14.	NOTICES	14
15.	GOVERNING LAW	15
16.	DISPUTE RESOLUTION	15
Schedule 1	DETAILS OF THE COMPANY	17
Schedule 2	COMPLETION OBLIGATIONS	18
Schedule 3	SELLER WARRANTIES	20
Schedule 4	PURCHASER WARRANTIES	23
Schedule 5	SELLER'S GUARANTOR WARRANTIES	25
Schedule 6	DEFINITIONS AND INTERPRETATION	28

---

**BETWEEN:**

- (1) ACIL Luxco 1, S.A., a company incorporated in Luxembourg (registered number R.C.S. Luxembourg B212453) and whose registered office is at 48 Boulevard Grande-Duchesse Charlotte, L-1330 Luxembourg (the “**Seller**”);
- (2) Algonquin Power & Utilities Corp., a company incorporated under the federal laws of Canada (corporation number 236237-6) and whose registered office is at 354 Davis Road, Suite 100, Oakville, Ontario, Canada, L6J 2X1 (the “**Purchaser**”)
- (3) Abengoa, S.A., a public company with limited liability (sociedad anónima), duly incorporated and existing under the laws of Spain, with registered address at Campus Palmas Altas, Calle Energía Solar, 1, Sevilla (Spain), registered with the Mercantile Registry of Sevilla in Volume 5683, Sheet 62, Page SE-1507 and bearer of Spanish tax identification number A 41002288 (the “**Seller’s Guarantor**” or “**Abengoa**”).

**RECITALS:**

- (A) The Seller holds 41,557,663 of the issued ordinary shares of US\$0.10 each in the share capital of the Company, representing approximately 41.47% of its issued share capital.
- (B) The Seller has agreed to sell and transfer to the Purchaser that number of issued ordinary shares of US\$0.10 of the Company (rounded up to the nearest whole number) representing as of the date of Completion 25%, and not less than 25%, of the Company’s issued share capital (the “**SPA Shares**”), upon the terms and subject to the conditions set out in that certain Sale and Purchase Agreement, dated as of the date hereof, among Seller, Purchaser, and Seller’s Guarantor (the “**SPA**”).
- (C) The Seller has agreed to grant to the Purchaser an option and right of first refusal with respect to all of the remaining shares of the Company held by the Seller (consisting of 41,557,663 of the issued ordinary shares of US\$0.10 each, minus the number of SPA Shares) (the “**Shares**”) and, subject to the exercise thereof and the satisfaction of the Conditions specified herein, to sell and transfer to the Purchaser up to all of the Shares (representing approximately 16.47% of the issued share capital of the Company), upon the terms and subject to the conditions set out in this Agreement.
- (D) Abengoa has agreed to guarantee the performance of the obligations of the Seller hereunder in accordance with the terms set out in Clause 12.1.
- (E) In addition to the above, Purchaser and Abengoa have agreed, pursuant to the provisions of the memorandum of understanding attached as Attachment 1 (the “**MOU**”), and subject to the Completion of the transaction contemplated by the SPA, to jointly incorporate a global utility infrastructure company (“**AAGES**”) with the purpose of identifying, developing, constructing, owning and operating a portfolio of global utility infrastructure projects, and intend that AAGES or a subsidiary thereof (“**Purchaser Assignee**”) become the acquiring entity of the Company’s shares pursuant to this Agreement.

**IT IS AGREED** as follows:

1. **INTERPRETATION**

- 1.1 The definitions and other interpretative provisions set out in Schedule 6 shall apply throughout this Agreement, unless the contrary intention appears.
- 1.2 In this Agreement, except where the context otherwise requires, any reference to this Agreement includes a reference to the Schedules, each of which forms part of this Agreement for all purposes.

## 2. OPTION AND ROFR; SALE AND PURCHASE

### Option

- 2.1 Pursuant to the terms and subject to the conditions of this Agreement, Seller hereby grants to Purchaser an irrevocable option to purchase all or part of the Shares, at a price per Share equal to the Option Exercise Price, on the terms and conditions set forth herein (the “**Option**”).
- 2.2 The term of the Option (the “**Option Term**”) shall mean the period commencing on the date of this Agreement and continuing until (and including) the date which falls sixty calendar days after the SPA Completion Date.
- 2.3 The Option may be exercised in part or in full, at once or from time to time, for all or any portion of the Shares, at the discretion of the Purchaser at any date during the Option Term by providing written notice of exercise (an “**Exercise Notice**”) to Seller specifying the number of Shares for which the Option is then being exercised (the “**Applicable Option Shares**”); provided, however, that the aggregate number of Shares subjected to exercise in part shall on the date of each such exercise in part represent either (a) not in excess of that percentage of the Company’s issued share capital that would reduce Seller’s holdings to less than twelve and one-half percent (12.5%) of the Company’s issued share capital, or (b) twelve and one-half percent (12.5%) or a greater percentage of the Company’s issued share capital up to the percentage represented by the total number of Shares.
- 2.4 The purchase price payable upon Completion following and as a result of the full or partial exercise of the Option shall be equal to US\$24.25 per Share (as may be adjusted from time to time pursuant to Clause 2.5) (the “**Option Exercise Price**”).
- 2.5 In the event of any change in the Company’s capital stock by reason of any split-up, reclassification, recapitalization, combination, exchange or similar occurrence, (a) the term “shares” (whether or not capitalized) shall be deemed to refer to and include such shares as well any shares into which or for which any or all of such shares may be changed or exchanged, and (b) any price expressed herein as a per-share amount shall be adjusted so that the amount for a share, and any shares into which or for which such share may be changed or exchanged shall, in the aggregate, equal such per-share amount as existing prior to such split-up, reclassification, recapitalization, combination, exchange or similar occurrence.

### Right of First Refusal

- 2.6 As used herein, “**Transfer**” means any sale, assignment, transfer or other disposition of any of the Shares, other than to Purchaser (or its assignee) hereunder.
- 2.7 Prior to the expiration of the Option Term, Seller shall not (a) Transfer any of the Shares, (b) enter into any agreement with respect to any Transfer or proposed Transfer of any of the Shares, or (c) publicly announce or disclose any intention to do any of the foregoing, other than as required pursuant to an Encumbrance contained in the finance documents entered into by the Seller in the context of the restructuring of the Abengoa group, up until the waiver set out in Clause 4.1.3 is obtained.
- 2.8 In addition to and without limiting Clause 2.7, in the event that the Option Term expires prior to March 31, 2018, then until the earlier of the thirtieth (30<sup>th</sup>) day following the expiration of the Option Term or March 31, 2018, Seller shall not (a) Transfer any of the Shares, (b) enter into any agreement, letter of intent, or other binding or non-binding commitment for any Transfer or proposed Transfer of any of the Shares, or (c) publicly announce or disclose any intention to do any of the foregoing, unless each of the following has occurred with respect to such Shares, other than as required pursuant to an Encumbrance contained in the finance documents entered into by the Seller in the context of the restructuring of the Abengoa group, up until the waiver set out in Clause 4.1.3 is obtained:

- 2.8.1 Seller has received a bona fide written offer to purchase all or any portion of such Shares (the “**Applicable ROFR Shares**”), for an all-cash purchase price (the “**Applicable ROFR Price**”);
  - 2.8.2 Seller has delivered written notice and a copy of such written offer to Purchaser, specifically setting forth the Applicable ROFR Price (a “**ROFR Notice**”); and
  - 2.8.3 Purchaser has not delivered to Seller a ROFR Exercise Notice with respect to all, and not less than all, of such Applicable ROFR Shares, within thirty (30) days following the later of (a) the expiration of the Option Term, and (b) delivery to Purchaser of the ROFR Notice (but in no event later than the tenth (10<sup>th</sup>) Business Day after March 31, 2018).
- 2.9 Any delivery of a ROFR Notice by Seller to Purchaser shall constitute the irrevocable grant by Seller to Purchaser of an option to purchase all, and not less than all, of the Applicable ROFR Shares for a price equal to the Applicable ROFR Price (each, a “**ROFR Option**”), exercisable by Purchaser by delivery of written notice of exercise of such ROFR Option by Purchaser to Seller (a “**ROFR Exercise Notice**”). Such ROFR Option shall expire and be deemed waived if Purchaser fails to deliver to Seller a ROFR Exercise Notice within thirty (30) days following the later of (a) the expiration of the Option Term, and (b) delivery to Purchaser of the ROFR Notice (but in no event later than the tenth (10<sup>th</sup>) Business Day after March 31, 2018).

### **Sale and Purchase**

- 2.10 The Seller is the legal and beneficial owner of the Shares and, in the event of the valid exercise by Purchaser of the Option or any applicable ROFR, shall sell and the Purchaser shall purchase the Applicable Option Shares or Applicable ROFR Shares on the basis that they are sold at Completion with Full Title Guarantee and free from any Encumbrance and together with all rights attached to them at Completion or subsequently becoming attached to them.

## **3. CONSIDERATION**

### **Consideration**

The consideration for the sale of the Applicable Option Shares or the Applicable ROFR Shares, as applicable, shall be the payment at Completion to the Seller of an amount in cash (the “**Consideration**”) equal to:

- (a) In the case of and upon Completion following and as a result of the full or partial exercise of the Option, the product of (i) the number of the Applicable Option Shares, times (ii) the Option Exercise Price; or
- (b) In the case of and upon Completion following and as a result of the exercise of the ROFR, the product of (i) the number of the Applicable ROFR Shares, times (ii) the Applicable ROFR Price.

### **Payment of Consideration**

- 3.1 The Consideration shall be paid to the Seller by way of cash payments as follows, provided that if requested by Purchaser or Seller, payment of the Consideration shall be effected through a payment agent reasonably satisfactory to Purchaser and Seller:
- 3.1.1 to the DOE, on behalf of the Seller, any and all amounts required to be paid to the DOE as agreed to the Seller’s reasonable satisfaction in connection with the consents referenced in clause 4.1.1 and 4.1.2, below;

3.1.2 the outstanding balance of the Consideration (after deducting the amounts set out in clause 3.1.1 above), by electronic transfer to the account of the Seller's Solicitors (it being understood that the Seller may instruct the Purchaser to pay all or part of such amount to financing parties or other persons in connection with the matters noted in Clause 4.1.3).

### **Reduction of Consideration**

3.2 The Consideration payable to the Seller pursuant to Clause 3.1. shall be deemed to be reduced by an amount equal to the aggregate amount (if any) paid or by the Seller to the Purchaser pursuant to a Claim or alleged Claim.

### **Earn-Out Amount**

3.3 In addition to the per Share amount specified in Clause 3.1, subject to satisfaction of the conditions specified in Clauses 3.4 and 3.5 below on or prior to the date that is the 24-month anniversary of the SPA Completion Date, the Consideration shall be increased by up to an amount (the "**Baseline Earn-Out Amount**") equal to the number of Applicable Option Shares or Applicable ROFR Shares purchased under this Agreement, multiplied by the lesser of (a) US\$0.60 per Share and (b) thirty percent (30%) of the amount, if any, by which the average closing market price for a Share over the twenty (20) Business Days prior to (and excluding) the 12-month anniversary of the SPA Completion Date exceeds US\$24.25.

3.4 Fifty percent (50%) of the Baseline Earn-Out Amount will be due and payable by Purchaser to Seller five (5) Business Days following the later of (a) the twelve-month anniversary of the SPA Completion Date, and (b) the date, on or prior to the 24-month anniversary of the SPA Completion Date, on which the following conditions have been satisfied:

(i) A3T shall have been sold to and purchased by the Company or a Subsidiary thereof, AAGES or a Subsidiary thereof, or Purchaser or a Subsidiary thereof; or

(ii) (A) Abengoa or an Affiliate thereof shall have solicited from AAGES or the Company an offer to purchase A3T, (B) AAGES or the Company (as applicable) shall have had at least sixty (60) days during which to consider making such an offer, and (C) either (x) AAGES or the Company, as applicable, shall have failed to make such an offer during such sixty-day period, or (y) AAGES or the Company, as applicable, shall have made such an offer and either A3T is not sold or it is sold to a third party for a price in excess of the price offered for A3T by AAGES or the Company, as applicable.

3.5 Fifty percent (50%) of the Baseline Earn-Out Amount will be due and payable by Purchaser to Seller five (5) Business Days following the later of (a) the twelve-month anniversary of the SPA Completion Date, and (b) the date, on or prior to the 24-month anniversary of the SPA Completion Date, on which the following conditions have been satisfied: an independent engineer shall have certified to the Company that the Solana Project and the Kaxu Project (i) are then operating in accordance with their respective original expected design output as set out in the Applicable EPC Contract and (ii) subject to normal maintenance and repair, are then reasonably expected to be capable of operating over their respective expected useful lives at the output originally expected based on the original design thereof.

3.6 Purchaser's obligations with respect to either portion of the Baseline Earn-Out Amount shall terminate and expire on the 24-month anniversary of the SPA Completion Date to the extent that any conditions to the payment thereof have not been satisfied on or prior to such date.



## 4. CONDITIONS

### Conditions to Completion

4.1 Completion is conditional on the following Conditions being, except to the extent waived by Purchaser:

- 4.1.1 The Seller or the relevant Group Company obtaining, in respect of the Solana Project, a waiver from the DOE (on such terms which are agreed to the Seller's reasonable satisfaction) in respect of the change of control provisions set out in the Solana Note Purchase Agreement and the Solana Loan Guaranty Agreement, and all conditions to the effectiveness of the waiver shall have been satisfied;
- 4.1.2 The Seller or the relevant Group Company obtaining, in respect of the Mojave Project, a waiver from the DOE (on such terms which are agreed to the Seller's reasonable satisfaction) in respect of the change of control provisions set out in the Mojave Note Purchase Agreement and the Mojave Loan Guaranty Agreement, and all conditions to the effectiveness of the waiver shall have been satisfied;
- 4.1.3 The Seller and Abengoa receiving the consents from any financing parties or other Persons required to implement the transaction set out in this Agreement including, without limitation, to release any and all Encumbrances over the Applicable Option Shares or Applicable ROFR Shares granted in favour of such financing parties or other Persons.
- 4.1.4 The relevant Group Companies obtaining, in respect of the Mojave Project and the Solana Project, approval of FERC for the disposition of jurisdictional facilities effected by the sale of the Applicable Option Shares or Applicable ROFR Shares, and the Purchaser and Purchaser Assignee obtaining, in respect of the Mojave Project and the Solana Project, approval of FERC for the acquisition of the Applicable Option Shares or Applicable ROFR Shares.
- 4.1.5 The occurrence of the SPA Completion.

### Waiver

4.2 The Purchaser may, by written notice to the Seller, waive any of the Conditions of Clauses 4.1.1, 4.1.2 and 4.1.4 in whole or in part at any time prior to the termination of this Agreement, whether following, on or before the Longstop Date.

### Satisfaction of Conditions

4.3 The Purchaser, the Seller and Abengoa, as applicable, shall use reasonable endeavours to satisfy or procure the satisfaction of each of Conditions 4.1.1 to 4.1.5 not already satisfied or waived (with the exception of Condition 4.1.3 which cannot be waived) as soon as possible and in any event on or before the Longstop Date.

### Notification of satisfaction of Conditions

4.4 The Seller shall notify the Purchaser of the satisfaction of Conditions 4.1.1 to 4.1.4, as soon as possible after any such Condition has been satisfied and in any event within five (5) Business Days of such satisfaction.

### Additional Conditions to Completion – Purchaser

4.5 Completion is further conditional on the following, except to the extent waived in writing by Purchaser:

- 4.5.1 (a) All Fundamental Warranties, and all warranties of Seller's Guarantor set out in Schedule 5, shall be true and accurate in all material respects (unless such representation or warranty is already qualified by materiality or material adverse effect, in which case it shall be true and correct in all respects) as of the Completion Date, as if made on such date; and (b) all other Seller Warranties shall be true and accurate as of the Completion Date except as would not reasonably be expected to have a material adverse effect on the business, assets, liabilities, results of operations or financial condition of the Group.

- 4.5.2 Seller and Abengoa shall have complied with the restrictions set out in Clause 5.1 and with its obligations under Clause 5.3.
- 4.5.3 Seller shall have delivered to Purchaser a certificate executed on behalf of Seller by an authorized officer or representative of Seller, dated as of the Completion Date, representing and certifying the matters set forth in Clause 4.5.1 and Clause 4.5.2.
- 4.5.4 There shall not have occurred, from the date hereof until the Completion Date, any event or circumstance that has had or would be reasonably likely to have a material adverse effect on (a) the business, assets, liabilities, results of operations or financial condition of the Group, or (b) the ability of Seller or Abengoa to timely perform any of its obligations under this Agreement.
- 4.5.5 There shall not exist any material breach or material default by any Group Company under, and no facts or circumstances shall exist that give rise to, or with the passage of time and/or delivery of notice would give rise to, a right of termination, cancellation or acceleration of any material obligation under, or the loss of a material benefit under, or any material restriction under, any instrument or material agreement to which any Group Company is a party or by which any Group Company is bound, except (a) as do not restrict the ability of the Company to declare or pay any dividend or distribution and (b) as would not reasonably be expected to have a material adverse effect on the business, assets, liabilities, results of operations or financial condition of the Group.
- 4.5.6 No governmental authority shall have asserted, in writing or otherwise, that the execution and delivery of this Agreement, or the purchase, sale or transfer of the Applicable Option Shares or Applicable ROFR Shares to Purchaser (or its assignee) hereunder impose on Purchaser, any assignee thereof, the Company or any other Person any obligations, restrictions or requirements under any fair price, moratorium, control-share acquisition, affiliated transaction, mandatory purchase offer, or other takeover or antitakeover statute or regulation, including the City Code on Takeovers and Mergers, or any takeover, antitakeover or similar provision of the constitutional documents of any Group Company.

**Additional Conditions to Completion – Seller**

- 4.6 Completion is further conditional on the following, except to the extent waived in writing by Seller:
- 4.6.1 All Purchaser Warranties shall be true and accurate in all material respects (unless such representation or warranty is already qualified by materiality or material adverse effect, in which case it shall be true and correct in all respects) as of the Completion Date, as if made on such date.
- 4.6.2 Purchaser shall have delivered to Seller a certificate executed on behalf of Purchaser by an authorized officer or representative of Purchaser, dated as of the Completion Date, representing and certifying the matters set forth in Clause 4.6.1.

## **Failure to Satisfy Conditions**

4.7 If one or more of the Conditions:

- 4.7.1 in relation to Clauses 4.1.1, 4.1.2, 4.1.3 and 4.1.4, remains un-satisfied on the date which is six (6) months following delivery of the Exercise Notice or a ROFR Exercise Notice (the “**Longstop Date**”), and in either case has not been waived (other than the Condition stated in Clause 4.1.3, which cannot be waived) by the specified Party; or
- 4.7.2 in relation to Clauses 4.1.1, 4.1.2, 4.1.3 and 4.1.4, becomes impossible to satisfy (or, in the case of clause 4.1.3 the required consents are either refused or not given on terms to the Seller’s reasonable satisfaction) on or before the Longstop Date, and in either case, if it is a Condition which can be waived by a Party, has not been waived by such Party within ten (10) Business Days of written notice from the other Party of such Condition becoming impossible to satisfy;

the Seller or the Purchaser may terminate this Agreement by written notice to the other Party; provided, however, that a Party shall not have the right to terminate this Agreement pursuant to the foregoing to the extent that the failure of such Condition to be satisfied, or the impossibility of satisfying such Condition, was a result of such Party’s wilful misconduct or such Party’s breach of or failure to perform any of its covenants, agreements, or obligations under this Agreement.

## **5. RESTRICTED PERIOD AND INTERIM PERIOD OBLIGATIONS**

### **Restricted Period and Interim Period restrictions**

5.1 During the Restricted Period and any Interim Period, without the prior written consent of the Purchaser:

- 5.1.1 The Seller shall not give or agree to give any option, right to acquire or call, or in any way dispose of the shares of the Company subject to being transferred under this Agreement, other than as required pursuant to an Encumbrance contained in the finance documents entered into by the Seller in the context of the restructuring of the Abengoa group, up until the consent set out in Clause 4.1.3 is obtained; or
- 5.1.2 The Seller shall not create any additional Encumbrance over the shares subject to being transferred under this Agreement.

## **6. TAXATION**

### **Taxation**

6.1 Any payments made by or due by the Purchaser pursuant to Clause 3 above shall be paid free and clear of all Taxation whatsoever save only for any deductions or withholdings required by law. To the extent that any amounts are so deducted or withheld, the amounts deducted or withheld shall be treated for all purposes of this Agreement as having been paid to Seller.

In the event that any amount that is paid to or as directed by Seller was required by applicable law to have been deducted or withheld and paid to any taxing authority, Seller shall, immediately upon notice thereof from Purchaser or otherwise, remit such amount (together with penalty and interest, if applicable) to the appropriate taxing authority and provide Purchaser prompt written notice and evidence of payment, or return such amount (together with penalty and interest, if applicable) to Purchaser to be remitted to such taxing authority by Purchaser.

7. **COMPLETION**

**Completion Date**

7.1 Completion shall take place on the Completion Date at the offices of the Seller's Solicitors or at such other place as the Seller and Purchaser shall agree.

**Seller's and Seller's Guarantor Obligations**

7.2 At Completion, the Seller and the Seller's Guarantor shall observe and perform all of the provisions of Part 1 of Schedule 2.

**Purchaser's Obligations**

7.3 At Completion, the Purchaser shall observe and perform all of the provisions of Part 2 of Schedule 2.

8. **SELLER WARRANTIES AND UNDERTAKINGS**

**Seller Warranties**

8.1 Subject to the limitations in Clause 9, the Seller warrants to the Purchaser, as at the date of this Agreement and as at the Completion Date, in the terms of the Seller Warranties.

9. **SELLER LIMITATIONS ON LIABILITY**

**Time limits**

9.1 Following Completion, Purchaser shall give written notice to the Seller of any matter or event which may give rise to a Claim as soon as reasonably practicable after the Purchaser becomes aware of such matter or event together with reasonable details of such matter or event then known to the Purchaser; provided, however, that a delay in giving such notice shall not relieve Seller of any liability for such Claim except for the monetary amount by which Seller is prejudiced as a result of such delay.

9.2 The Seller shall not be liable for any Claim unless the Purchaser gives written notice containing in reasonable detail of the legal and factual basis of the Claim, including the Purchaser's estimate of the amount of the Claim, to the Seller on or before the date being (a) in the case of any Fundamental Claim, three (3) years from Completion, and (b) in the case of any other Claim, one year from Completion.

9.3 To the extent that a Claim arises out of a liability which at the time that it is notified to the Seller is contingent only, the Seller shall not be under any obligation to make any payment to the Purchaser until the liability ceases to be contingent.

9.4 A Claim shall not be enforceable against the Seller and shall be deemed to have been withdrawn, and no new Claim may be made in respect of the facts giving rise to such Claim, unless (a) Seller has confirmed in writing its liability for such Claim, or (b) legal proceedings in respect of such Claim are commenced (by being issued and served):

9.4.1 within twelve months of such Claim ceasing to be contingent, if the Claim is based upon what, at the time of service of notice of the Claim on the Seller, was a contingent liability; and

9.4.2 within twelve months of service of notice of the Claim on the Seller with regard to any Claim other than those Claims described in Clause 9.4.1.

**Monetary limits**

9.5 The aggregate amount of the liability of the Seller in respect of the aggregate of all Claims shall not exceed in the aggregate, an amount equal to the Consideration; provided, however, that the aggregate amount of the liability of the Seller in respect of the aggregate of all Claims other than Fundamental Claims shall not exceed, in the aggregate, an amount equal to ten percent (10%) of the Consideration.

### **Provision of information to the Seller**

- 9.6 Upon the Purchaser notifying the Seller of a Claim or a matter or event which may lead to a Claim being made, the Purchaser shall give the Seller and its advisers such access as the Seller reasonably requests to the personnel, records and information in the possession of the Purchaser together with the right to examine and copy or photograph such assets, documents, records and information as the Seller reasonably requires.

### **Information provided by the Seller**

- 9.7 The Seller expressly disclaims all liability and responsibility for any conclusion, opinion, forecast or evaluation contained within or derived or capable of being derived from (a) any investigation carried out or made by or on behalf of the Purchaser in the course of any due diligence or other enquiry prior to the Parties entering into this Agreement or (b) any other data, document, record or information disclosed by the Seller or any Group Company or any employee, agent or adviser of any of them, to the Purchaser or to any person on behalf of the Purchaser. The Purchaser acknowledges that all information disclosed to it (or any person on behalf of the Purchaser) in the course of due diligence, other than the Due Diligence Reports, was provided by the Company and not by the Seller or by Abengoa and that the Due Diligence Reports were prepared by Abengoa's advisors on the basis of information provided by the Company.

### **Mitigation**

- 9.8 Nothing in this Clause 9 restricts or limits the general obligation at law of each of the Purchaser and the Group Companies to mitigate any loss or damage which it may suffer or incur as a consequence of any breach of any Seller Warranty or any other provision of this Agreement or in relation to any other matter, event or circumstance which gives rise to a Claim.

### **No liability to third parties**

- 9.9 No person other than the Purchaser is entitled to make any Claim against the Seller. For the avoidance of doubt the Parties hereby acknowledge and accept that the Seller shall only be liable *vis à vis* the Purchaser for Claims Against the Seller and not in case for Claims Against the Seller's Guarantor.

### **No double recovery**

- 9.10 The Purchaser agrees that it shall not be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity, from Seller, to the extent that any amount thereof would be duplicative of amounts recovered or obtained by Purchaser in respect of any one shortfall, damage, deficiency, breach or other set of circumstances which give rise to one or more Claims. For this purpose, recovery by the relevant Group Company shall be deemed to be recovery by the Purchaser, in the amount by which such recovery by such Group Company reduces or eliminates the loss suffered by Purchaser.

### **General**

- 9.11 This Clause 9 applies notwithstanding any other provision of this Agreement to the contrary and shall not cease to have effect as a consequence of any rescission or termination of any other provisions of this Agreement.
- 9.12 The limitations on the liability of the Seller set out in this Clause 9 shall not apply to the extent that the Claim is in respect of the fraud of the Seller.

## 10. PURCHASER WARRANTIES AND UNDERTAKINGS

### Purchaser Warranties

10.1 The Purchaser warrants and represents to the Seller in the terms of the warranties set out in Schedule 4.

### Purchaser's knowledge and information

10.2 The Purchaser acknowledges that it has been given an opportunity to carry out an investigation into the affairs of each Group Company and warrants to the Seller and the Seller's Guarantor that none of the officers of the Purchaser has actual knowledge of any matter or thing which, at the date of this Agreement is known by such officer to constitute a breach of any representation or warranty given by the Seller pursuant to this Agreement.

### Preservation of information

10.3 The Purchaser undertakes to the Seller that it shall, and shall procure that its group undertakings shall preserve for a period of at least seven years from Completion all books, records and documents of or relating to the Group existing at Completion. The Purchaser shall permit and allow and shall procure that its group undertakings shall permit and allow, upon reasonable notice (and in any event on 7 days' written notice) and during normal business hours, the employees, agents and professional advisers of the Seller access to such books, records and documents and to inspect and make copies of them.

### Provision of information to insurers

10.4 Subject to the following provisions of this Clause, if at any time after the date of this Agreement, the Seller and/or the Seller's Guarantor wishes to insure against its liabilities in respect of any Claims the Purchaser shall and shall procure that each Group Company shall provide such information in relation to this Agreement and the Group Companies as a prospective insurer or insurance broker may require before effecting the insurance. The Seller and/or the Seller's Guarantor, as the case may be, shall bear the reasonable costs of the provision of such information. The Purchaser and each Group Company is under no obligation to provide such information if the insurer or insurance broker has failed to undertake to keep such information confidential or the disclosure of such information is prohibited by law or regulation.

## 11. TERMINATION

### Effect of termination

11.1 The termination of this Agreement shall not affect:

11.1.1 any rights or obligations which have accrued or become due prior to the date of termination; and

11.1.2 the continued existence and validity of the rights and obligations of the Parties under any provision which is expressly or by implication intended to continue in force after termination (together with those Clauses necessary for their interpretation) including this Clause and Clauses 12, 14, 15 and 16.

## 12. GUARANTEE

### Seller's Guarantor

12.1 The Seller's Guarantor unconditionally and irrevocably guarantees to the Purchaser the punctual discharge by the Seller of its obligations under this Agreement (including its liabilities to pay damages, agreed or otherwise under this Agreement).

12.2 The Seller's Guarantor warrants to the Purchaser in the terms of the warranties set out in Schedule 5. The provisions of Clause 9 shall apply in respect of all the warranties given by the Seller's Guarantor under this Clause and for these purposes, references made to "Seller" shall be substituted by "Seller's Guarantor" and "Claim" shall include a claim by the Purchaser against the Seller's Guarantor in respect of these warranties.

13. MISCELLANEOUS

**Announcements**

- 13.1 Subject to the remaining provisions of this Clause 13.1, no Party shall release any announcement or despatch any announcement or circular, relating to this Agreement or the transactions contemplated hereby, unless the other Party has been given a reasonable opportunity to comment on the content to be included in such announcement or circular. Nothing in this Clause 13.1 shall prohibit any Party from making any announcement or despatching any circular as required by law or regulation or any regulatory body or the rules of any stock exchange.
- 13.2 The Purchaser shall at the Seller's request use commercially reasonable efforts to obtain and supply such information and reports concerning any Group Company as may be required by the Seller to comply with any applicable law or regulation or the rules of the Spanish National Securities Market Commission (*Comisión Nacional del Mercado de Valores*), Madrid Stock Exchange (*Bolsa De Madrid*), US Securities and Exchange Commission or NASDAQ as to any continuing obligations or circular to be published by the Seller or any announcement required to be made in relation to this Agreement or any matter contemplated by it.

**Confidentiality**

- 13.3 Each Party undertakes to the other that, subject to Clause 13.4, unless the prior written consent of the other Party shall first have been obtained it shall, and shall procure that its officers, employees, advisers and agents shall keep confidential and shall not by failure to exercise due care or otherwise by any act or omission disclose to any person whatever, or use or exploit commercially for its or their own purposes, any of the confidential information of the other Party. For the purposes of this Clause 13.3, "**Confidential Information**" is the contents of this Agreement and any other agreement or arrangement contemplated by this Agreement and:
- 13.3.1 information of whatever nature concerning the business, finances, assets, liabilities, dealings, transactions, know-how, customers, suppliers, processes or affairs of the other Party, or any of its group undertakings from time to time; and
- 13.3.2 any information which is expressly indicated to be confidential in relation to the Party disclosing it (or in relation to any of its group undertakings from time to time),

which any party may from time to time receive or obtain (verbally or in writing or in disk or electronic form) from any other Party as a result of negotiating, entering into, or performing its obligations pursuant to this Agreement and provided that such information concerning the Group in relation to the period before Completion shall not be Confidential Information of the Seller following Completion and such information concerning the Group in relation to the period after Completion shall be Confidential Information of the Purchaser.

- 13.4 The consent referred to in Clause 13.3 shall not be required for disclosure by a Party of any Confidential Information:
- 13.4.1 to its officers, employees, advisers and agents, in each case, as may be contemplated by this Agreement or, to the extent required to enable such Party to carry out its obligations under this Agreement and who shall in each case be made aware by such Party of its obligations under this Clause and shall be required by such Party to observe the same restrictions on the use of the relevant information as are contained in Clause 13.3, provided that such Party shall be responsible for any violation of Clause 13.3 by any such officer, employee, adviser or agent;

- 13.4.2 subject to Clause 13.5, to the extent required by applicable law or by the regulations of any stock exchange or regulatory authority to which such Party is or may become subject or pursuant to any order of court or other competent authority or tribunal;
- 13.4.3 to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement by any Party;
- 13.4.4 which is disclosed to such Party by a third party who is not in breach of any undertaking or duty as to confidentiality whether express or implied;
- 13.4.5 which that Party lawfully possessed prior to obtaining it from another, provided that this exception shall not apply to information concerning the Group in relation to the period before Completion;
- 13.4.6 to any professional advisers to the disclosing party who are bound to the disclosing party by a duty of confidence which applies to any information disclosed; or
- 13.4.7 to the other Party to this Agreement or pursuant to its terms.
- 13.5 If a Party becomes required, in circumstances contemplated by Clause 13.4.2, to disclose any information such Party shall (save to the extent prohibited by law) give to the other Party such notice as is practical in the circumstances of such disclosure and shall co-operate with the other Party, having due regard to the other Party's views, and take such steps as the other Party may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

**No partnership**

- 13.6 Nothing in the Agreement or in any document referred to in it shall constitute the Parties a partner of any other, nor shall the execution, completion and implementation of this Agreement confer on either Party any power to bind or impose any obligations to any third parties on the other Party or to pledge the credit of the other Party.

**Assignment**

- 13.7 Subject to Clauses 13.8 and 13.9, no Party may assign its rights under this Agreement.
- 13.8 The benefit of this Agreement may be assigned by any Party to its wholly owned subsidiaries provided that:
- (A) the assignor shall remain liable for its obligations under this Agreement; and
- (B) if at any time such assignee ceases to be a wholly owned subsidiary of the relevant original contracting party then before it ceases to be so, the original contracting Party and the assignee shall each be under a duty to procure an assignment of the benefit of this Agreement back to the original contracting party.



- 13.9 The rights of the Purchaser under this Agreement can be assigned by the Purchaser to AAGES or any direct or indirect subsidiary thereof prior to Completion (without prejudice to the obligation of Purchaser to acquire the shares being transferred under this Agreement from the Seller) provided, however, that no such assignment shall relieve the Purchaser of any of its obligations under this Agreement.

### **Third party rights**

- 13.10 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

### **Entire agreement**

- 13.11 Each of the Parties to this Agreement confirms on behalf of itself and its Affiliates that this Agreement, together with the SPA and the agreements referenced therein, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.

- 13.12 Each Party confirms on behalf of itself and its group undertakings that:

13.12.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement; and

13.12.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement are those pursuant to this Agreement and no Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, or in, this Agreement).

### **Unenforceable provisions**

- 13.13 If any provision or part of this Agreement is void or unenforceable due to any applicable law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

### **Effect of Completion**

- 13.14 So far as it remains to be performed this Agreement shall continue in full force and effect after Completion. The rights and remedies of the Parties shall not be affected by Completion.

### **Waiver**

- 13.15 The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

### **Variation**

- 13.16 No variation of this Agreement (or any of the documents referred to in it) shall be valid unless it is in writing (which, for this purpose, does not include email) and signed by or on behalf of each of the Parties. The expression "variation" includes any variation, supplement, deletion or replacement however effected.

## Counterparts

13.17 This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

## No set-off, deduction or counterclaim

13.18 Every payment payable by the Purchaser under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable by the Seller under this Agreement.

## Costs

13.19 The Parties shall pay their own costs in connection with the preparation and negotiation of this Agreement and any matter contemplated by it.

## Language

13.20 This Agreement was negotiated in English and, to be valid, all certificates, notices, communications and other documents made in connection with it shall be in English. If all or any part of this Agreement or any such certificate, notice, communication or other document is for any reason translated into any language other than English the English text shall prevail. Each of the Parties understands English and is content for all communications relating to this Agreement to be served on it in English.

## 14. NOTICES

14.1 A notice (including any approval, consent or other communication) in connection with this Agreement and the documents referred to in it:

14.1.1 must be in writing;

14.1.2 must be left at or delivered by courier to the address of the addressee or sent by pre-paid recorded delivery (airmail if posted to or from a place outside the country of delivery) to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this Clause in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number or marked for the attention of such other person, as the relevant Party may from time to time specify by notice given in accordance with this Clause.

The relevant details of each Party at the date of this Agreement are:

### **Seller**

Address: 48 Boulevard Grande-Duchesse Charlotte  
L-1330, Luxembourg

Facsimile: +352 26 34 36 66

Attention: Mr. Christian Anders Digemose

### **With a copy to:**

Address: Manuel Pombo Angulo 20  
28050 Madrid

Facsimile:

Attention: MR. Daniel Alaminos Echarri and Ms. Mercedes Domecq

**Purchaser**

Attention: 354 Davis Road, Suite 100  
Oakville, Ontario  
L6J 2X1, Canada

Facsimile: (905) 465-4540

Attention: Chief Executive Officer

14.1.3 must not be sent by electronic mail.

14.2 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 14.3.

14.3 Subject to Clause 14.4, a notice is deemed to be received:

14.3.1 in the case of a notice left at the address of the addressee, upon delivery at that address;

14.3.2 in the case of a posted letter, on the third day after posting or, if posted to or from a place outside the United Kingdom, the seventh day after posting; and

14.3.3 in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

14.4 A notice received or deemed to be received in accordance with Clause 14.1 above on a day which is not a Business Day, or after 5pm on any Business Day, shall be deemed to be received on the next following Business Day.

**15. GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

**16. DISPUTE RESOLUTION**

16.1 Each Party irrevocably agrees that the Courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).

16.2 Each Party irrevocably waives any right that it may have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.

16.3 Regardless of whether the courts of any country other than England have jurisdiction to consider a dispute falling within Clause 16 each Party irrevocably undertakes that it will neither issue nor cause to be issued originating or other process in respect to such a dispute in any jurisdiction other than England.

16.4 In the event that any Party commences an action in the courts of any country other than England (a "foreign action"), the Party which commenced the foreign action shall indemnify the other Party in respect of any and all costs and liabilities which it has incurred in connection with the foreign action, whether or not those costs and liabilities would be recoverable apart from the provisions of this Clause.

16.5 Each Party agrees that without preventing any other mode of service, any document in an action (including, a claim form or any other document to be served under the Civil Procedure Rules may be served on any Party by being delivered to or left for that Party at its address for service of notices under Clause 14 and each Party undertakes to maintain such an address at all times in the United Kingdom and to notify the other Parties in advance of any change from time to time of the details of such address in accordance with the manner prescribed for service of notices under Clause 14.

**IN WITNESS** of which the Parties have executed this Agreement on the date first mentioned above.

## SCHEDULE 1

### DETAILS OF THE COMPANY

Registered number: 08818211

Company status: public limited company

Registered office: Great West House (GW1)  
Great West Road  
Brentford  
Middlesex, Greater London  
United Kingdom  
TW8 9DF

Issued share capital: US\$10,021,726 divided into 100,217,260 shares each with a nominal value of US\$0.10

Directors: Mr Daniel Villalba Vila

Mr Santiago Seage  
Mr Joaquin Fernandez de Pierola  
Mr María J. Esteruelas  
Mr Jack Robinson  
Mr Robert Dove  
Mr Andrea Brentan  
Mr Francisco J. Martínez

Secretary (if any): Ms Irene M. Hernandez

Auditors: Deloitte LLP

Outstanding charges: 17

## SCHEDULE 2

### COMPLETION OBLIGATIONS

#### PART 1

##### SELLER'S OBLIGATIONS

At Completion, the Seller and/or the Seller's Guarantor, as applicable, shall deliver or cause to be delivered to the Purchaser or the Company (as applicable):

1. The Seller shall deliver a copy of or extracts from the minutes of a meeting of the directors of the Seller authorising the Seller to enter into and perform its obligations under this Agreement, certified to be a true and complete copy or extract by a director or the secretary of the Seller.
2. The Seller shall procure that the Applicable Option Shares or Applicable ROFR Shares are credited through the facilities and in accordance with the procedures of DTC to an account or accounts designated by the Purchaser.
3. The Seller shall deliver written evidence, acceptable to Purchaser, of the release of the Applicable Option Shares or Applicable ROFR Shares from any and all Encumbrances, prior to or upon payment of the Consideration by Purchaser in the manner provided in the Agreement.
4. If the aggregate number shares purchased under this Agreement represents at least twelve and one-half percent (12.5%) of the Company's issued share capital, the Seller or the Seller's Guarantor shall deliver the written voluntary resignation of the appointee from the board of directors of the Company appointed by the Seller's Guarantor, effective at Completion.
5. The Seller shall deliver executed power(s) of attorney in favour of the Purchaser or as it directs in the agreed form, and such duly executed waivers or consents as may be required to give a good title to the Applicable Option Shares or Applicable ROFR Shares to the Purchaser or as it directs and to enable the Purchaser or other such person to be registered as the holder of the Applicable Option Shares or Applicable ROFR Shares and, pending registration, to exercise all voting and other rights attaching to the Applicable Option Shares or Applicable ROFR Shares. For avoidance of doubt, such power of attorney shall not be effective until all Encumbrances on the Applicable Option Shares or Applicable ROFR Shares are released and the Completion has occurred.

#### PART 2

##### PURCHASER'S OBLIGATIONS

At Completion, the Purchaser shall:

1. Deliver to the Seller a copy of or extracts from the minutes of a meeting of the directors of the Purchaser authorising the Purchaser to enter into and perform its obligations under this Agreement, certified to be a true and complete copy or extract by a director or the secretary of the Purchaser as appropriate.

2. Pay by electronic transfer to the account of the Persons entitled thereto under clause 3.1 the Consideration before 4:00 p.m. on the date of Completion or such later time as the Seller may agree, which shall constitute a valid discharge of the Purchaser's obligations under Clause 3.1.
3. Deliver to the Company a statement from any individual who, on completion, will become a registrable person in relation to the Company within the meaning of section 790c of the 2006 Act confirming that person's required particulars in accordance with section 790M(9) of the 2006 Act.

## SELLER WARRANTIES

**1. Title to Shares**

The Seller is the legal and beneficial owner of, and will at Completion be entitled to transfer the legal and beneficial title to, the Shares, free from any Encumbrances. None of the Shares are subject to any trust, instrument, agreement or understanding with respect to any purchase, sale, transfer, repurchase, redemption or voting of any of the Shares, other than as required pursuant to an Encumbrance contained in the finance documents entered into by the Seller in the context of the restructuring of the Abengoa group, up until the waiver set out in Clause 4.1.3 is obtained.

**2. Incorporation**

The Seller is duly incorporated, duly organised and validly existing under the laws of its jurisdiction and has full power to conduct its business as conducted at the date of this Agreement.

**3. Corporate power and authority**

The Seller has corporate power and authority to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement and the provisions of this Agreement and any agreement entered into pursuant to the terms of this Agreement, constitute valid and binding obligations on the Seller and are enforceable against the Seller, in accordance with their respective terms.

**4. Due authorisation, execution and delivery**

The Seller has duly authorised, executed and delivered this Agreement and will, at Completion, have authorised, executed and delivered any agreements to be entered into by Seller pursuant to the terms of this Agreement.

**5. No breach**

The execution and delivery by the Seller of, and the performance by the Seller of its obligations under, this Agreement and any agreement entered into pursuant to the terms of this Agreement, and the consummation of the transactions contemplated hereby and thereby, will not, at Completion, once the waiver referred to in Clause 4.1.3 is obtained:

5.1 result in a breach of or conflict with any provision of the constitutional documents of the Seller or any Group Company;

5.2 result in a material breach of, constitute a material default under, or give rise to a right of termination, cancellation or acceleration of any material obligation, the loss of a material benefit, or any material restriction (including on the ability of any Group Company to declare or pay any dividend or distribution) under, any instrument or material agreement to which Seller or, to the Knowledge of Seller, any Group Company is a party or by which Seller or, to the Knowledge of Seller, any Group Company is bound; or

5.3 result in a breach of any applicable laws or regulations or of any order, decree or judgment of any court or any governmental or regulatory authority in any jurisdiction.

**6. Consents**

All consents, permissions, authorisations, approvals and agreements of third parties and all authorisations, registrations, declarations, filings with any governmental department, commission, agency or other organisation having jurisdiction over the Seller which are necessary or desirable for the Seller to obtain in order to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement in accordance with its terms, will be unconditionally obtained in writing at Completion and have been disclosed in writing to the Purchaser.



7. **Proceedings**

There are no:

- 7.1 outstanding judgments, orders, injunctions or decrees of any governmental or regulatory body or arbitration tribunal against or affecting the Seller;
- 7.2 lawsuits, actions or proceedings pending or, to the Knowledge of the Seller, threatened against or affecting the Seller; or
- 7.3 investigations by any governmental or regulatory body which are pending or threatened against the Seller or any of its group undertakings, so far as the Seller is aware,

which, in each case, relates in any manner to any Group Company or has or could have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement or any other agreements entered into pursuant to the terms of this Agreement.

8. **Solvency**

No order has been made, petition presented or meeting convened for the winding up of the Seller, nor any other action taken in relation to the appointment of an administrator, liquidator, receiver, administrative receiver, compulsory manager or any provisional liquidator (or equivalent in any other jurisdiction) (or other process whereby the business is terminated and the assets of the company concerned are distributed amongst the creditors or shareholders or any other contributors), and there are no proceedings under any applicable insolvency, reorganisation or similar laws in any relevant jurisdiction, and no events have occurred which, under applicable laws, would justify any such proceedings.

9. **No Stamp Duty**

The Shares are held by Seller through Depository Trust Company (“DTC”), DTC has not made an election under section 97A of the Finance Act 1986 that transfers within its clearance service be subject to UK stamp duty or stamp duty reserve tax, and the transfer of the Shares to Purchaser will not be subject to UK stamp duty or stamp duty reserve tax.

10. **Contracts and transactions with any Group Company**

Other than the Shares and, prior to the SPA Completion, the additional shares held by the Seller mentioned in Recital (A), the Seller does not hold any securities of or other ownership interest in any Group Company, or rights (contingent or non-contingent) to acquire any securities of or other ownership interest in any Group Company.

Neither Seller nor any director, officer, employee, or other representative of Seller is a party to any contract or transaction with any Group Company, except for such contracts and transactions entered into following the date of this Agreement with the prior written consent of Purchaser.

11. **Liabilities of Seller and its Affiliates**

No Group Company has guaranteed, undertaken to assume (contingently or non-contingently), or provided any security for any obligation or liability of Seller or any of its Affiliates, other than will be irrevocably terminated and released prior to Completion Date.

12. **Ethical business practices**

The Seller has not violated, nor knowingly permitted any of its representatives to violate, any anti-corruption laws of any applicable jurisdiction in connection with the development or construction of any assets now owned by any Group Company, or otherwise in connection with any Group Company or the business thereof. Without limiting the foregoing, the Seller has not made or gave, nor knowingly permitted any of its representatives to make or give, any payment or anything of value, directly or indirectly, to any government official to influence his, her, or its decision, or to gain any other advantage, in connection with any assets now owned by any Group Company, or otherwise in connection with any Group Company or the business thereof.

13. **Brokers' fees**

The Seller has not engaged any finder, broker or other intermediary in connection with the transactions contemplated by this Agreement, to which Purchaser, any of its Affiliates, or any Group Company could be liable.

14. **Intercompany Accounts**

Seller or the Seller's Guarantor will deliver to the Purchaser within ten (10) days after the date of this Agreement a complete and accurate list and of all Intercompany Accounts as of the date thereof. As of the Completion Date, Seller or the Seller's Guarantor has caused all Intercompany Accounts to be settled, discharged, offset, paid, terminated and/or extinguished in full, except as otherwise permitted by Clause 4.1.7.

## PURCHASER WARRANTIES

**1. Incorporation**

The Purchaser is duly incorporated, duly organised and validly existing under the laws of its jurisdiction and has full power to conduct its business as conducted at the date of this Agreement.

**2. Corporate power and authority**

The Purchaser has corporate power and authority to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement and the provisions of this Agreement and any agreement entered into pursuant to the terms of this Agreement, constitute valid and binding obligations on the Purchaser and are enforceable against the Purchaser, in accordance with their respective terms.

**3. Due authorisation, execution and delivery**

The Purchaser has duly authorised, executed and delivered this Agreement and will, at Completion, have authorised, executed and delivered any agreements to be entered into by Purchaser pursuant to the terms of this Agreement.

**4. No breach**

The execution and delivery by the Purchaser of, and the performance by the Purchaser of its obligations under, this Agreement and any agreement entered into pursuant to the terms of this Agreement will not:

- 4.1 result in a breach of or conflict with any provision of its constitutional documents;
- 4.2 result in a material breach of, or constitute a material default under, any instrument to which it is a party or by which it is bound; or
- 4.3 result in a breach of any applicable laws or regulations or of any order, decree or judgment of any court or any governmental or regulatory authority in any jurisdiction, in each case as applicable to and binding on Purchaser.

**5. Consents**

All consents, permissions, authorisations, approvals and agreements of third parties and all authorisations, registrations, declarations, filings with any governmental department, commission, agency or other organisation having jurisdiction over the Purchaser which are necessary or desirable for the Purchaser to obtain in order to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement in accordance with its terms, have been unconditionally obtained in writing and have been disclosed in writing to the Seller.

**6. Proceedings**

There are no:

- 6.1 outstanding judgments, orders, injunctions or decrees of any governmental or regulatory body or arbitration tribunal against or affecting the Purchaser or any of its Affiliates;
- 6.2 lawsuits, actions or proceedings pending or, to the knowledge of the Purchaser, threatened against or affecting the Purchaser or any of its Affiliates; or
- 6.3 investigations by any governmental or regulatory body which are pending or threatened against the Purchaser or any of its group undertakings, so far as the Purchaser is aware, which, in each case, has or could have a material adverse effect on the ability of the Purchaser to perform its obligations under this Agreement or any other agreements entered into pursuant to the terms of this Agreement.

7. **Solvency**

No order has been made, petition presented or meeting convened for the winding up of the Purchaser or any of its group undertakings, nor any other action taken in relation to the appointment of an administrator, liquidator, receiver, administrative receiver, compulsory manager or any provisional liquidator (or equivalent in any other jurisdiction) (or other process whereby the business is terminated and the assets of the company concerned are distributed amongst the creditors or shareholders or any other contributors), and there are no proceedings under any applicable insolvency, reorganisation or similar laws in any relevant jurisdiction, and no events have occurred which, under applicable laws, would justify any such proceedings.

## SELLER'S GUARANTOR WARRANTIES

**1. Incorporation**

The Seller's Guarantor is duly incorporated, duly organised and validly existing under the laws of its jurisdiction and has full power to conduct its business as conducted at the date of this Agreement.

**2. Corporate power and authority**

The Seller's Guarantor has corporate power and authority to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement and the provisions of this Agreement and any agreement entered into pursuant to the terms of this Agreement, constitute valid and binding obligations on the Seller's Guarantor and are enforceable against the Seller's Guarantor, in accordance with their respective terms.

**3. Due authorisation, execution and delivery**

The Seller's Guarantor has duly authorised, executed and delivered this Agreement and will, at Completion, have authorised, executed and delivered any agreements to be entered into by Seller's Guarantor pursuant to the terms of this Agreement.

**4. No breach**

The execution and delivery by the Seller's Guarantor of, and the performance by the Seller's Guarantor of its obligations under, this Agreement and any agreement entered into pursuant to the terms of this Agreement will not:

- 4.1 result in a breach of or conflict with any provision of its constitutional documents;
- 4.2 result in a material breach of, or constitute a material default under, any instrument to which it is a party or by which it is bound; or
- 4.3 result in a breach of any applicable laws or regulations or of any order, decree or judgment of any court or any governmental or regulatory authority in any jurisdiction, in each case as applicable to and binding on the Seller's Guarantor.

**5. Consents**

All consents, permissions, authorisations, approvals and agreements of third parties and all authorisations, registrations, declarations, filings with any governmental department, commission, agency or other organisation having jurisdiction over the Seller's Guarantor which are necessary or desirable for the Seller's Guarantor to obtain in order to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement in accordance with its terms, have been unconditionally obtained in writing and have been disclosed in writing to the Purchaser.

**6. Proceedings**

There are no:

- 6.1 outstanding judgments, orders, injunctions or decrees of any governmental or regulatory body or arbitration tribunal against or affecting the Seller's Guarantor or any of its Affiliates;
- 6.2 lawsuits, actions or proceedings pending or, to the Knowledge of the Seller's Guarantor, threatened against or affecting the Seller's Guarantor or any of its Affiliates; or
- 6.3 investigations by any governmental or regulatory body which are pending or threatened against the Seller's Guarantor or any of its group undertakings, so far as the Seller's Guarantor is aware, which, in each case, has or could have a material adverse effect on the ability of the Seller's Guarantor to perform its obligations under this Agreement or any other agreements entered into pursuant to the terms of this Agreement.

7. **Solvency**

No order has been made, petition presented or meeting convened for the winding up of the Seller's Guarantor or any of its group undertakings, nor any other action taken in relation to the appointment of an administrator, liquidator, receiver, administrative receiver, compulsory manager or any provisional liquidator (or equivalent in any other jurisdiction) (or other process whereby the business is terminated and the assets of the company concerned are distributed amongst the creditors or shareholders or any other contributors), and there are no proceedings under any applicable insolvency, reorganisation or similar laws in any relevant jurisdiction, and no events have occurred which, under applicable laws, would justify any such proceedings.

8. **Contracts and transactions with any Group Company**

Other than the Shares and, prior to the SPA Completion, the additional shares held by the Seller mentioned in Recital (A), neither Seller's Guarantor nor any of their Affiliates holds any securities of or other ownership interest in any Group Company, or rights (contingent or non-contingent) to acquire any securities of or other ownership interest in any Group Company.

Neither Seller's Guarantor nor any of its Affiliates nor any director, officer, employee, or other representative of Seller's Guarantor or any of its Affiliates is a party to any contract or transaction with any Group Company (each, an "**Interested Party Contract**"), except for (a) such contracts and transactions specifically disclosed in writing by the Seller's Guarantor to the Purchaser within ten (10) days after the date of this Agreement, and (b) such contracts and transactions entered into following the date of this Agreement with the prior written consent of Purchaser.

Each Interested Party Contract is in full force and effect and is valid, binding, and enforceable in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by equitable principles. None of the Seller's Guarantor or its Affiliates or, to the Knowledge of the Seller's Guarantor, any Group Company is in breach of or default under any Interested Party Contract. The consummation of the transactions contemplated by this Agreement will not constitute a breach of, or give rise to any right to terminate, accelerate or modify any rights or obligations under, any Interested Party Contract.

9. **Ethical business practices**

Neither Seller's Guarantor nor any of its Affiliates violated, nor knowingly permitted any of its representatives to violate, any anti-corruption laws of any applicable jurisdiction in connection with the development or construction of any assets now owned by any Group Company, or otherwise in connection with any Group Company or the business thereof. Without limiting the foregoing, neither Seller's Guarantor nor any of its Affiliates made or gave, nor knowingly permitted any of its representatives to make or give, any payment or anything of value, directly or indirectly, to any government official to influence his, her, or its decision, or to gain any other advantage, in connection with any assets now owned by any Group Company, or otherwise in connection with any Group Company or the business thereof.

10. **Brokers' fees**

Neither Seller's Guarantor nor any of its Affiliates nor any Group Company has engaged any finder, broker or other intermediary in connection with the transactions contemplated by this Agreement, to which Purchaser, any of its Affiliates, or any Group Company could be liable.

**Defaults by any Group Company**

To the Knowledge of Seller's Guarantor, no Group Company is in material breach of or material default under, and no facts or circumstances exist that presently give rise to, or with the passage of time and/or delivery of notice would give rise to, a right of termination, cancellation or acceleration of any material obligation under, or the loss of a material benefit under, or any material restriction (including on the ability of any Group Company to declare or pay any dividend or distribution) under, any instrument or material agreement to which any Group Company is a party or by which any Group Company is bound, except (a) as of the date hereof, as disclosed in writing by Seller's Guarantor to Purchaser within ten (10) days after the date of this Agreement, and (b) as of the Completion Date, as disclosed in writing by Seller's Guarantor to Purchaser prior to the Completion Date.

## DEFINITIONS AND INTERPRETATION

1. In this Agreement each of the following words and expressions shall have the following meanings:

“**the 2006 Act**” means the Companies Act 2006 to the extent in force at the relevant time;

“**AAGES**” has the meaning given to that term in Recital (E);

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that Person, with the term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”) meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership interests, by contract or otherwise; provided, however, that, for all purposes of this Agreement: (a) Seller shall be deemed to be an Affiliate of Seller’s Guarantor and all of its Affiliates, and vice versa; and (b) no Group Company shall be deemed to be an Affiliate of Seller or of any of its other Affiliates;

“**Applicable EPC Contract**” means (a) with respect to the Kaxu Project, that certain EPC Contract for the Kaxu Solar One Parabolic Trough Power Project among Kaxu Solar One (PTY) Ltd (RF) and Abeinsa EPC Kaxu (PTY) LTD dated on November 4, 2012, and (b) with respect to the Solana Project, Second Amended and Restated Turnkey Engineering, Procurement and Construction Contract among Arizona Sola One LLC, Teyma USA, Inc., Abener Engineering and Construction Services, LLC and Teyma USA & Abener Engineering and Construction Services General Partnership dated on September 30, 2013 and on 30 June 2015.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London;

“**Claim**” (without prejudice to Clauses 13.11 and 13.12) means a claim against the Seller or a claim against the Seller’s Guarantor, as the case may be;

“**Claim Against the Seller**” means a claim against the Seller whether in contract or otherwise in respect of any of the Seller Warranties or due to a breach of the Seller’s obligations under or in connection with this Agreement;

“**Claim Against the Seller’s Guarantor**” means a claim against the Seller’s Guarantor whether in contract or otherwise in respect of any of the Seller’s Guarantor Warranties or due to a breach of the obligations of the Seller’s Guarantor under or in connection with this Agreement;

“**Company**” means Atlantica Yield plc, a company incorporated in England under the 2006 Act with registered number 08818211 further details of which are set out in Schedule 1;

“**Completion**” means completion of the sale and purchase of the Applicable Option Shares or Applicable ROFR Shares in accordance with Clause 7;

“**Completion Date**” means (a) the tenth (10th) Business Day following satisfaction, or (if capable of waiver) waiver, of all the Conditions (other than Conditions that are capable of being satisfied only at the Completion, provided that such Conditions are satisfied at the Completion), or (b) such other date as the Seller and Purchaser may agree;

“**Conditions**” means the conditions precedent listed in Clause 4.1, Clause 4.5, and Clause 4.6;

“**Confidential Information**” has the meaning given to that term in Clause 13.3;

“**Consideration**” has the meaning given to that term in Clause 3;



“**DOE**” means the U.S. Department of Energy;

“**Due Diligence Reports**” means the following (i) the legal due diligence report issued by Herbert Smith Freehills in conjunction with Bourabiat Associates; Hughes & Hughes; Larraín, Rencoret Urzúa; Loyens Loeff; Santamarina Steta; Santivañez Abogados; Manatt, Phelps and Phillips, LLP; and Fennemore Craig P.C. dated 21 June 2017; (ii) the technical due diligence report issued by Sargent & Lundy and Altermia dated 13 June 2017; (iii) the tax due diligence report issued by Ernst & Young dated 3 June 2017; and (iv) the financial due diligence report issued by Ernst & Young dated 19 June 2017.

“**Encumbrance**” means any claim, option, charge (fixed or floating), mortgage, lien, pledge, equity, encumbrance, right to acquire, right of pre-emption, right of first refusal, title retention or any other third party right, or other security interest or any agreement or arrangement having a similar effect or any agreement to create any of the foregoing;

“**FERC**” means the United States Federal Energy Regulatory Commission;

“**FFB**” means the Federal Financing Bank, a U.S. government corporation by that name;

“**Full Title Guarantee**” means with the benefit of the implied covenants set out in Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 when a disposition is expressed to be made with full title guarantee, provided that section 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not apply for the purpose of this Agreement;

“**Fundamental Claim**” means a claim against the Seller in respect of any of the Fundamental Warranties;

“**Fundamental Warranty**” means any of the warranties given by Seller in Clauses 1 through 9 of Schedule 3;

“**Group**” means the Company and the Subsidiaries;

“**Group Company**” means any one of the Company and the Subsidiaries;

“**Intercompany Accounts**” means all accounts receivable or payable, whether or not due, and any other liabilities, whether liquidated, unliquidated, fixed, contingent, matured, or unmatured, in any case between (a) any Group Company, on the one hand, and (b) Seller or any of its Affiliates, or any of the officers or directors of Seller or any of its Affiliates, on the other hand.

“**Interim Period**” means the period of time from delivery of an Exercise Notice or a ROFR Exercise Notice to the Completion Date;

“**Knowledge of Seller**” means the actual knowledge of the officers of Seller (with no imputation of the knowledge of any other person) who shall be deemed to have knowledge of such matters as they would have discovered, had they made due and careful inquiry of the matter in question.

“**Knowledge of the Seller’s Guarantor**” means the actual knowledge of the officers of Seller’s Guarantor (with no imputation of the knowledge of any other person) who shall be deemed to have knowledge of such matters as they would have discovered, had they made due and careful inquiry of the matter in question.

“**Mojave Loan Guaranty Agreement**” means the loan guaranty agreement dated 12 September 2011 (as amended) between Mojave Solar, LLC (USA) and DOE (as guarantor and loan servicer);

“**Mojave Note Purchase Agreement**” means the note purchase agreement between Mojave Solar, LLC (USA) and FFB dated 12 September 2011;

“**Mojave Project**” means the 280 MW gross solar electric generation facility located in San Bernardino County, California, U.S.;

“**MOU**” has the meaning given to that term in Recital (E);

“**Party**” or “**Parties**” means the Seller or/and the Purchaser;

**“Person”** means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, organization, entity, unincorporated organization, or governmental authority;

**“Restricted Period”** means the period of time from the date of this Agreement to and including March 31, 2018.

**“Seller Warranties”** means the warranties given by the Seller in Schedule 3;

**“Shares”** has the meaning given to that term in Recital (C);

**“Solana Loan Guaranty Agreement”** means the loan guaranty agreement dated 20 December 2010 (as amended) between Arizona Solar One, LLC (USA) and DOE (as guarantor and loan servicer);

**“Solana Note Purchase Agreement”** means the note purchase agreement between FFB and Arizona Solar One, LLC (USA) dated 20 December 2010;

**“Solana Project”** means the 280 MW gross solar electric generation facility located in Maricopa County, Arizona, U.S.;

**“SPA Completion”** means the “Completion” under, and as defined in, the SPA;

**“SPA Completion Date”** means the “Completion Date” under, and as defined in, the SPA;

**“SPA Shares”** has the meaning given to that term in Recital (B);

**“Subsidiaries”** means the subsidiary companies of the Company (with “subsidiary” having the meaning given to that term in section 1159 of the 2006 Act); and

**“Taxation”** or **“Tax”** " means all forms of taxation, duty, rate, levy or charge or other imposition or withholding in the nature of tax arising whether in the United Kingdom or elsewhere and shall include all fines, interest, surcharges and penalties relating to any tax, duty, rate, charge or other imposition or withholding or levy as hereinbefore mentioned.

2. In this Agreement, words and expressions defined in the 2006 Act shall bear the same meaning as in that act unless expressly stated otherwise.
3. In this Agreement, except where the context otherwise requires:
  - 3.1 any reference to this Agreement includes the Schedules to it each of which forms part of this Agreement for all purposes;
  - 3.2 a reference to an enactment, EU instrument or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment, EU instrument or statutory provision and is a reference to that enactment, EU instrument, statutory provision or subordinate legislation as from time to time amended or modified and to any enactment, EU instrument, statutory provision or subordinate legislation that from time to time (with or without modifications) re-enacts, replaces, consolidates, incorporates or reproduces it;
  - 3.3 words in the singular shall include the plural and vice versa;
  - 3.4 references to one gender include other genders;
  - 3.5 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual's executors or administrators;
  - 3.6 a reference to a Clause, paragraph, Schedule (other than to a schedule to a statutory provision) shall be a reference to a Clause, paragraph, Schedule (as the case may be) of or to this Agreement;
  - 3.7 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;

- 3.8 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction.
- 3.9 a person shall be deemed to be connected with another if that person is connected with another within the meaning of section 1122 of the Corporation Tax Act 2010;
- 3.10 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;
- 3.11 a reference to a balance sheet or profit and loss account shall include a reference to any note forming part of it;
- 3.12 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 3.13 references to documents "in the agreed terms" or any similar expression shall be to documents agreed between the Parties, annexed to this Agreement and initialled for identification by the Sellers and the Purchaser;
- 3.14 the headings in this Agreement are for convenience only and shall not affect its interpretation; and
- 3.15 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms.

**SIGNED** for and on behalf of  
**ACIL LUXCO 1, S.A.**  
a company incorporated in Luxembourg,  
acting by Christian Anders Digemose,  
who, in accordance with the laws of that  
territory, is acting under the authority of  
the Seller

*/s/ Christian Anders Digemose*  
**(Signature of authorised person)**

**SIGNED BY** Ian Robertson and Chris Jarratt  
for and on behalf of  
**ALGONQUIN POWER & UTILITIES CORP.**

*/s/ Ian Robertson*  
**(Signature of authorised person)**

**SIGNED BY** Gonzalo Urquijo and  
Joaquín Fernández de Piérola  
for and on behalf of  
**ABENGOA, S.A.**

*/s/ Chris Jarratt*  
**(Signature of authorised person)**

*/s/ Gonzalo Urquijo*  
**(Signature of authorised person)**

*/s/ Joaquín Fernández de Piérola*  
**(Signature of authorised person)**

**SHAREHOLDERS AGREEMENT**

**– by and among –**

**ALGONQUIN POWER & UTILITIES CORP.**

**ABENGOA-ALGONQUIN GLOBAL ENERGY SOLUTIONS B.V.**

**– and –**

**ATLANTICA YIELD PLC**

**dated as of 5 March 2018**

---

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>ARTICLE 1 INTERPRETATION</b>	<b>1</b>
<b>ARTICLE 2 GOVERNANCE; DIVIDENDS</b>	<b>6</b>
<b>ARTICLE 3 CERTAIN ACQUISITIONS OF COMPANY SECURITIES</b>	<b>8</b>
<b>ARTICLE 4 STANDSTILL</b>	<b>11</b>
<b>ARTICLE 5 SUPPORTING COMMITMENTS</b>	<b>13</b>
<b>ARTICLE 6 INFORMATION RIGHTS</b>	<b>14</b>
<b>ARTICLE 7 INVESTOR PARTY REPRESENTATIVE</b>	<b>14</b>
<b>ARTICLE 8 TERM AND TERMINATION</b>	<b>15</b>
<b>ARTICLE 9 CONFIDENTIALITY</b>	<b>17</b>
<b>ARTICLE 10 MISCELLANEOUS</b>	<b>17</b>

## SHAREHOLDERS AGREEMENT

This SHAREHOLDERS AGREEMENT (this “**Agreement**”) is made on 5 March 2018 by and among ALGONQUIN POWER & UTILITIES CORP. (“**AQN**”), a company incorporated under the federal laws of Canada, ABENGOA-ALGONQUIN GLOBAL ENERGY SOLUTIONS B.V. (“**AAGES**”), a private company with limited liability incorporated under the laws of the Netherlands, and ATLANTICA YIELD PLC (the “**Company**” or “**AY**”), a public limited company incorporated and registered in England and Wales. Each of AQN, AAGES and the Company are referred to herein as a “**Party**,” and together as the “**Parties**”.

### RECITALS

- A. AAGES is a global utility infrastructure company jointly owned by a Subsidiary of AQN and a Subsidiary of Abengoa, S.A. (“**ABG**”).
- B. As of the Effective Date, a Subsidiary of AAGES shall acquire from ACIL Luxco 1, S.A., a company incorporated in Luxembourg (“**ABG Seller**”), and shall own that number of issued ordinary shares of US\$0.10 each in the capital of the Company representing twenty-five per cent (25%) of the Company’s issued share capital (collectively, the “**Initial Shares**”).
- C. AQN holds an option and right of first refusal pursuant to which it (or its assignee) may acquire from ABG Seller any or all additional issued ordinary shares of US\$0.10 each in the capital of the Company owned by ABG Seller as of the date hereof, which as of the date hereof represent approximately sixteen point forty seven per cent (16.47%) of the Company’s issued share capital, together with any shares into which or for which any or all of such shares may be changed or exchanged in connection with any change in the Company’s capital stock by reason of any split-up, reclassification, recapitalization, combination, exchange or similar occurrence (collectively, the “**Option Shares**”).
- D. Upon the date hereof an effective upon the Effective Date, each of AQN and AAGES is entering into a separate right of first offer agreement with the Company, pursuant to which AQN and AAGES are granting to the Company certain rights with respect to certain infrastructure assets constructed from time to time by AQN or its Subsidiaries (other than AAGES and its Subsidiaries) or AAGES or its Subsidiaries, respectively, and in connection with the foregoing, the Parties desire to set forth certain additional agreements as to the relationship between AQN, AAGES, and their respective Subsidiaries, on the one hand, and the Company, on the other hand.
- E. In connection with the foregoing, the Parties desire to set forth certain rights and obligations of the Parties. The Parties acknowledge and agree that it is not the purpose of this Agreement or the rights contemplated hereby to grant, nor the intent of the Investor Parties to acquire (individually or collectively) pursuant to such rights, directly or indirectly, Control over the Company.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

### ARTICLE 1 INTERPRETATION

**1.1 Definitions.** For purposes of this Agreement, the following terms used herein will have the following meanings when used with initial capitalization, whether singular or plural:

“**80% Pay-Out Ratio**” has the meaning set forth in Clause 2.2(a).

“AAGES” has the meaning assigned in the preamble, and includes a permitted successor and assignee thereof under [Clause 10.8](#).

“AAGES ROFO Agreement” means that certain Right of First Offer Agreement dated as of the date hereof and effective upon the Effective Date, pursuant to which AAGES has granted to the Company certain rights with respect to the direct or indirect acquisition of certain assets and/or interests in certain assets of AAGES and its Subsidiaries, as such agreement may be amended, supplemented, amended and restated, or replaced from time to time.

“AAGES ROFO Interest” means any asset and/or direct or indirect interest in any asset that may be acquired by the Company or any Subsidiary thereof under the AAGES ROFO Agreement.

“ABG” has the meaning assigned in the recitals.

“ABG ROFO Agreement” means that certain Right of First Offer Agreement dated December 9, 2014, as amended, pursuant to which ABG has granted to the Company certain rights with respect to the direct or indirect acquisition of certain assets and/or interests in certain assets of ABG and its Subsidiaries, as such agreement may be further amended, supplemented, amended and restated, or replaced from time to time.

“ABG ROFO Interest” means any asset and/or direct or indirect interest in any asset that may be acquired by the Company or any Subsidiary thereof under the ABG ROFO Agreement.

“ABG Seller” has the meaning assigned in the recitals.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls or is Controlled by such Person, or is under common Control of a third Person, provided that (a) neither the Company nor any of its Subsidiaries shall be deemed to be an Affiliate of any Investor Party, nor vice versa, and (b) AQN and each of its Affiliates shall be deemed to be Affiliates of AAGES and each of its Subsidiaries, and vice versa, so long as AQN and its Affiliates in the aggregate (i) own or have the right to exercise at least fifty per cent (50%) of the total voting rights attached to Equity Securities of AAGES, or (ii) hold rights to appoint at least fifty per cent (50%) of the positions then authorized to constitute the board or similar governing body of AAGES (in each case whether pursuant to relevant constitutional documents, contract or otherwise).

“Agreement” has the meaning assigned in the preamble.

“Applicable Exchange” means NASDAQ or any other stock exchange on which the Shares are then listed and traded; provided, however, that in the event that the Shares are then listed and traded on more than one such stock exchange, the Applicable Exchange shall mean the stock exchange having the highest average trading volume for the Shares over the Trading Period.

“Appointing Party” has the meaning set forth in [Clause 7.1](#).

“AQN” has the meaning assigned in the preamble.

“AQN ROFO Agreement” means that certain Right of First Offer Agreement dated as of the date hereof and effective upon the Effective Date, pursuant to which AQN has granted to the Company certain rights with respect to the direct or indirect acquisition of certain assets and/or interests in certain assets of AQN and its Subsidiaries (other than AAGES and its Subsidiaries), as such agreement may be amended, supplemented, amended and restated, or replaced from time to time.

“AQN ROFO Interest” means any asset and/or direct or indirect interest in any asset that may be acquired by the Company or any Subsidiary thereof under the AQN ROFO Agreement.



“**AY**” has the meaning assigned in the preamble.

“**AY Articles**” means the articles of association of the Company, as amended and in effect from time to time.

“**AY Board**” means the board of directors of the Company.

“**AY Voting Securities**” means (a) the Shares and (b) any other Equity Securities of the Company that at such time give the holder thereof a non-contingent right to vote at general meetings of the Company with respect to all, or substantially all, matters, including the election of Directors.

“**Business Day**” means any day other than any Saturday, any Sunday or any legal holiday during which banks in London, United Kingdom are obligated or permitted to close for business.

“**Cash Available for Distribution**” or “**CAFD**” means, for any period, (a) all cash distributions received by the Company from its Subsidiaries during such period, minus (b) all cash expenses of the Company, including debt service and general and administrative expenses, due and/or payable by the Company during such period.

“**Change of Control**” means a transaction, event or series of transactions or events by which any Person (or Persons Acting In Concert) who did not previously exercise Control over AQN acquires or otherwise becomes able to exercise such Control.

“**Closing Price**” means, with respect to any Equity Security that is then listed and traded on any stock exchange, the U.S. dollar price of the last transaction of such Equity Security completed during regular trading hours on the day to which such price relates, as derived from the website of such stock exchange on which such Equity Securities are listed and traded or, if not available on such website, from Bloomberg.

“**Confidential Information**” means information relating to (i) this Agreement and (ii) a Party or any Affiliate thereof of a confidential nature that is obtained in connection with this Agreement or any transaction contemplated hereby, or that is otherwise expressly designated in writing by such party as confidential; provided, however, that Confidential Information shall not include: (a) any information that is contained in public records, public filings or is otherwise publicly disclosed or available other than as the result of a breach of this Agreement; or (b) any information disclosed to the applicable Party on a non-confidential basis from a source independent of the other Party, its Affiliates, and their respective representatives, who such Party reasonably believes obtained and disclosed such information without breach of any obligation of confidentiality.

“**Control**” or “**control**” means, with respect to a Person, where another Person (or Persons Acting In Concert), possesses, directly or indirectly, whether pursuant to relevant constitutional documents, contract or otherwise, (a) the power to exercise at least a majority of the ordinary voting rights in such Person, or (b) the power to appoint a majority of the members of the board of directors or other governing body of such Person.

“**Director**” means a director of the Company.

“**Effective Date**” means the date on which the sale and purchase of the Initial Shares is completed.

“**Equity Securities**” means “equity securities” as defined in the Companies Act 2006 (as amended from time to time).

“**Initial Funding Commitment**” has the meaning set forth in Clause 3.6.

**“Initial Funding Commitment Amount”** means US\$100,000,000.

**“Initial Shares”** has the meaning assigned in the recitals.

**“Investor”** means any of: (a) AQN, so long as AQN and its Affiliates in the aggregate hold at least ten per cent (10%) of the total voting rights attached to all AY Voting Securities; and (b) AAGES, so long as AAGES and its Affiliates in the aggregate hold at least ten per cent (10%) of the total voting rights attached to all AY Voting Securities, and **“Investors”** means both of them.

**“Investor Nominee”** means, with respect to any Investor, a Director appointed by such Investor or by any Affiliate of such Investor.

**“Investor Party”** means an Investor and each of its Affiliates (which, for the avoidance of doubt, shall not include the Company or any of its Subsidiaries), and **“Investor Parties”** means each Investor and each of their Affiliates taken together.

**“Investor Party Designees”** means the individuals so named on Schedule 2.1.

**“Investor Party Representative”** has the meaning set forth in Clause 7.1.

**“Investor Shareholder”** means an Investor or its Affiliate which holds AY Voting Securities.

**“Option Shares”** has the meaning assigned in the recitals.

**“Party”** has the meaning assigned in the recitals.

**“Percentage Interest”** means, with respect to any class or classes of AY Voting Securities, and as to any Investor Party as of any date of determination, the quotient (represented as a percentage) obtained by dividing (a) the number of voting rights attached to the AY Voting Securities then held by such Investor Party and its Affiliates by (b) the number of total voting rights attached to all AY Voting Securities then outstanding.

**“Person”** means any natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, governmental authority or other legal entity of any kind.

**“Persons Acting In Concert”** means, in relation to a Person, the Persons which actively cooperate through the acquisition by them of shares in that Person or a holding company of that Person, pursuant to an agreement or understanding (whether formal or informal), with a view to obtaining or consolidating Control of that Person.

**“Relevant Portion”** means the individuals so named on Clause 4.2(b).

**“Required Funding Amount”** has the meaning set forth in Clause 3.6.

**“Resigning Directors”** means the individuals so named on Schedule 2.1.

**“Shares”** means ordinary shares in the share capital of the Company.

**“Standstill Percentage”** means:

(a) if and so long as AAGES is an Affiliate of AQN or the Agreement terminates with respect to either AQN or AAGES, forty-one and a half per cent (41.5%); or

(b) if and so long as AAGES is not an Affiliate of AQN and each of them remains an Investor hereunder (by virtue of each, together with its respective Affiliates, then holding in aggregate at least ten per cent (10%) of the total voting rights attached to then outstanding AY Voting Securities):

(i) unless the notice referred to in paragraph (ii) below of this definition is delivered to the Company, such fraction of forty-one and a half per cent (41.5%) which is (A) the result of forty-one and a half per cent (41.5%) being divided up between AQN and AAGES in the proportion that the number of voting rights attached to the AY Voting Securities held by an Investor Party and its Affiliates immediately following the time AAGES ceased to be an Affiliate of AQN bears to the total number of voting rights attached to the AY Voting Securities held by all Investor Parties at such time and (B) applicable to AQN or AAGES respectively; or

(ii) such fraction of forty-one and a half per cent (41.5%) which is (A) the result of forty-one and a half per cent (41.5%) being divided up between AQN and AAGES as may be agreed in writing at any time, on one or more occasions, between AQN and AAGES, with written notice of the foregoing delivered promptly by the Investors to the Company and (B) applicable to AQN or AAGES respectively,

and for the avoidance of doubt, in no case shall the aggregate Standstill Percentage of the Investors exceed forty-one and a half per cent (41.5%) except by prior written agreement of the Company.

**“Standstill Period”** means, with respect to any Investor and its Affiliates, the period commencing on the Effective Date and ending the earliest of (a) delivery of a notice by such Investor under Clause 2.1(d), 2.2(b), or 3.5(a), (b) termination of this Agreement pursuant to Clause 8.2(a), and (c) termination of the rights and obligations under this Agreement as between the Company and such Investor and its Affiliates pursuant to Clause 8.2(b).

**“Subsidiary”** means, with respect to any Person, an Affiliate thereof that is Controlled by such Person.

**“Trading Period”** has the meaning set forth in Clause 3.4(a).

**1.2 Gender and Number.** Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine gender and words importing individuals shall include all Persons and vice versa.

**1.3 Subdivisions and Headings.** The division of this Agreement into Articles, Clauses, Schedules and other subdivisions and the inclusion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer. Unless something in the subject matter or context is inconsistent therewith, references herein to an Article, Clause or Schedule are to the applicable article, clause or schedule of this Agreement.

**1.4 Words of Inclusion.** Wherever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

**1.5 Joint and Several Liability.** Any provision of this Agreement which is expressed to bind an Investor or any Affiliate thereof shall bind such Investor and all of its Affiliates jointly and each of them severally.

**1.6 Documents.** References to any document (including this Agreement) or to a provision in a document, shall be construed as a reference to such document or provision as amended, supplemented, modified, restated or novated from time to time.

**1.7 Legal Terms.** References to any English legal term shall, in respect of any jurisdiction other than England, be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction.

**1.8 Affiliates.** Where any provision of this Agreement is expressed to or purports to impose any obligation on any Affiliate of any Investor, then such provision shall be construed as requiring such Investor to procure that its Affiliate complies with the relevant obligation. Where any provision of this Agreement is expressed to or purports to confer any right on any Affiliate of any Investor, then such right shall be enforceable by such Investor on the same basis as if such right were expressed to be conferred on such Investor.

**1.9 Effectiveness of Agreement.** This Agreement shall be valid and binding on the Parties upon execution and delivery of this Agreement by each Party; provided, however, that the provisions of this Agreement shall be effective only upon the Effective Date. In the event that the Effective Date has not occurred on or prior to 16 March 2018 (or such later date as may be agreed in writing by the Parties), this Agreement shall be terminated automatically without action by any Party and shall be void and of no effect, without liability to any Party.

## **ARTICLE 2 GOVERNANCE; DIVIDENDS**

### **2.1 Appointment of Directors.**

(a) Upon delivery to the Company of the resignation of a Resigning Director or the effectiveness of any removal of such Resigning Director from the AY Board, the Investor Shareholder that then holds at least twenty-five per cent (25%) of the Shares shall appoint the Investor Party Designee set forth opposite such Resigning Director's name on Schedule 2.1 to fill the vacancy created by the resignation of such Resigning Director.

(b) From and after the Effective Date, if and to the extent provided in the AY Articles in effect from time to time, each Investor Shareholder that then holds AY Voting Securities shall have the right to appoint to the AY Board the maximum number of Directors that corresponds to such Investor Shareholder's Percentage Interest of the total voting rights attached to the then outstanding AY Voting Securities; provided, however, that the maximum number of Directors that any and all Investor Parties, in the aggregate, shall have the right to appoint to the AY Board pursuant to the AY Articles shall be limited in any event to the lesser of (i) such number of Directors as corresponds to forty-one and a half per cent (41.5%) of AY Voting Securities and (ii) no more than fifty per cent (50%) of the AY Board less one, provided, however, that in each case where fifty per cent (50%) of the AY Board is not a whole number, such number shall be rounded up to the next nearest whole number.

(c) Subject to applicable law, the AY Articles and such conflict of interest policies and rules as may be adopted by the AY Board with respect to matters in which a conflict of interest reasonably may be determined to exist:

(i) all information provided to any Director by or on behalf of the Company shall be disseminated among all Directors in a non-discriminatory manner, without prejudice to the Investor Nominees, and each Investor Nominee shall be entitled to receive all information regarding the Company and its Subsidiaries that is otherwise available to other Directors;

(ii) at all times during which an Investor and/or its Affiliates hold in aggregate twenty-five per cent (25%) or more of the AY Voting Securities and such Investor or its Affiliate has appointed (and continues to have the right to appoint) one or more Directors, at least one Investor Nominee of such Investor shall be given an opportunity to be, and, if he/she accepts such opportunity, shall be, elected to any committee of Directors (except for the audit committee and related party transaction committee); provided that ownership of less than twenty-five per cent (25%) of the AY Voting Securities shall not preclude any Investor Nominee from serving on any committee of Directors, and any such Investor Nominees shall be given the same consideration in relation to serving on any such committee as is given to Directors generally;

(iii) no action of the AY Board shall be taken by Directors' written resolution unless all of the Investor Nominees who would have been entitled to vote on such resolution if it had been proposed at a meeting of the Directors have: (A) signed one or more copies of it; or (B) otherwise indicated their agreement to it in writing; and

(iv) if, for any reason, and so long as an Investor or its Affiliate has the right to appoint one or more Directors but no such Director is then serving on the AY Board, such Investor shall be entitled to designate one individual to attend all meetings of the AY Board which a Director would have been entitled to vote at if he/she had been appointed by such Investor and of any committee thereof (except for the audit committee and related party transaction committee) as an observer and receive copies of all materials provided to Directors with respect to any such meeting or any written consent or resolution in lieu of such a meeting, further provided that such observer signs customary confidentiality undertakings and complies with the Company's policies and procedures as and in the manner the Company may request acting reasonably.

(d) Subject to Clause 2.1(e), any Investor shall have the right to terminate the obligations and restrictions applicable to such Investor and its Affiliates under this Agreement, without liability to any Party, immediately upon written notice to other Parties, if at any time:

(i) the AY Articles are amended in a manner that adversely affects the rights of such Investor (or any Affiliate thereof) to appoint Directors, as such rights exist under the AY Articles as of the Effective Date, unless such Investor or any Affiliate thereof voted in favor of such amendment; or

(ii) except to the extent necessary to comply with applicable law or any order, decree, decision or judgment of any court, tribunal, arbitrator, governmental agency or regulatory body, or where the AY Articles are amended upon a valid proposal made by a shareholder of the Company, the Company or the AY Board takes any action in violation or contravention of the rights of such Investor (or any Affiliate thereof) specified in Clause 2.1(c), provided that such Investor gives notice to the Company reasonably requiring it to remedy such violation or contravention and the Company or AY Board fails to remedy such violation or contravention within twenty (20) Business Days of the Company receiving such notice.

(e) Termination of the obligations and restrictions applicable to an Investor and its Affiliates in accordance with Clause 2.1(d) shall not release such Investor and its Affiliates from any liability which at the time of termination has already accrued to another Party or which thereafter may accrue in respect of any act or omission prior to such termination.

## 2.2 Dividends.

(a) The AY Board by resolution adopted in January 2018 confirmed that it is the objective of the Company to pay dividends on the Shares in an amount equal to eighty per cent (80%) of CAFD (the "**80% Pay-Out Ratio**"), and prior to the Effective Date has not rescinded, replaced or otherwise modified such resolution.

(b) Subject to Clause 2.2(c), any Investor shall have the right to terminate the obligations and restrictions applicable to such Investor and its Affiliates under this Agreement, without liability to any Party, immediately upon written notice to the Company, if at any time:

(i) the AY Board confirms by resolution, public announcement or otherwise, a pay-out ratio objective that is lower than the 80% Pay-Out Ratio; or

(ii) the AY Board does not confirm any pay-out ratio objective, as a percentage of CAFD, by resolution at least once during any period of more than fourteen (14) consecutive months; or

(iii) the Company or the AY Board, other than reasonably in accordance with its ordinary course practices with respect to stated dividends or reasonably in accordance with principles of prudent management with respect to the Company's existing business, takes or omits to take any action that is reasonably within its control, and such action or omission prevents the Company from lawfully declaring dividends substantially in accordance with the 80% Pay-Out Ratio, and the Company or the AY Board, as applicable, fails to remedy such occurrence within sixty (60) days following receipt by the Company of written notice thereof from an Investor.

(c) Termination of the obligations and restrictions applicable to an Investor and its Affiliates in accordance with Clause 2.2(b) shall not release such Investor Parties from any liability which at the time of termination has already accrued to another Party or which thereafter may accrue in respect of any act or omission prior to such termination.

### ARTICLE 3 CERTAIN ACQUISITIONS OF COMPANY SECURITIES

#### 3.1 Acknowledgement of Company Funding Rights.

(a) The Parties acknowledge that the Company may from time to time raise funding by way of issue and allotment of Equity Securities or loan notes, commercial borrowing arrangements or other borrowing or financing arrangements, as, and on such terms and conditions as, the Company may determine at its sole discretion, subject to applicable law, the AY Articles, and this Agreement.

(b) For the avoidance of doubt, the foregoing does not constitute consent to any matter by any Party (or of any of its Affiliates) as a shareholder of the Company or otherwise.

#### 3.2 Preemptive Rights.

(a) Subject to applicable law and the AY Articles, and subject to Clause 3.2(b) and Article 4, if the Company proposes allotment and issue of Equity Securities:

(i) AQN and/or any Affiliate thereof designated in writing by AQN (collectively, in such proportions as determined by AQN) shall have and are hereby granted the right (but not the obligation) to subscribe in cash, in each case at the per Equity Security subscription price determined pursuant to Clause 3.4 (subject to the conditions set out at Clause 3.4), for Equity Securities of the Company in the amount of up to one hundred per cent (100%) of any proposed allotment or issue of Equity Securities of the Company (or applicable portion thereof), if the purpose of such allotment or issue (or any portion thereof) is to fund the acquisition of an AQN ROFO Interest (in accordance with the terms and conditions of the AQN ROFO Agreement) by the Company or any of its Subsidiaries;

(ii) AAGES and/or any Affiliate thereof designated in writing by AAGES (collectively, in such proportions as determined by AAGES) shall have and are hereby granted the right (but not the obligation) to subscribe in cash, in each case at the per Equity Security subscription price determined pursuant to Clause 3.4 (subject to the conditions set out at Clause 3.4), for:

(A) Equity Securities of the Company in the amount of up to one hundred per cent (100%) of any proposed allotment or issue of Equity Securities of the Company (or applicable portion thereof), if the purpose of such allotment or issue (or any portion thereof) is to fund the acquisition of an AAGES ROFO Interest by the Company or any of its Subsidiaries; and/or

(B) Equity Securities of the Company in the amount of up to sixty-six per cent (66%) of any proposed allotment or issue of Equity Securities of the Company (or applicable portion thereof) if the purpose of such allotment or issue (or any portion thereof) is to fund the acquisition of an ABG ROFO Interest by the Company or any of its Subsidiaries; and

(iii) in relation to any proposed allotment or issue of Equity Securities of the Company or portion thereof not described in Clause 3.2(a)(i) or Clause 3.2(a)(ii), any Investor Shareholder and/or any Affiliate thereof designated in writing by the Investor whose Affiliate such Investor Shareholder is (collectively, in such proportions or other matter as determined by such Investor) shall have and are hereby granted the right (but not the obligation) to subscribe in cash, in each case at the per Equity Security subscription price determined pursuant to Clause 3.4(b), for Equity Securities of the Company in the amount equal to the total amount of such allotment or issue multiplied by such Investor Party's Percentage Interest.

(b) Clause 3.2(a) shall not apply to:

(i) any allotment or issue of Equity Securities proposed to be made by the Company to directors, an employee or proposed employee;

(ii) any allotment or issue of Equity Securities proposed to be made by the Company to direct payment of a dividend in whole or in part ("distribution in specie"); or,

(iii) any allotment or issue of Equity Securities which are to be issued and allotted in connection with any merger, consolidation or amalgamation of the Company which has been approved by the shareholders of the Company.

(c) The rights of the Investors and their Affiliates to subscribe for and purchase Equity Securities of the Company pursuant to Clause 3.2(a), and the limitations on such rights specified in Clause 3.2(a), apply to such Investors and their Affiliates collectively, such that:

(i) if and for so long as AAGES is an Affiliate of AQN, any one or more of such Investors may exercise the collective rights of the Investor Parties in full, but the total Equity Securities of the Company to be subscribed and purchased by all of the Investor Parties pursuant to the exercise of such rights shall not in the aggregate exceed the limitations specified in Clause 3.2(a); or

(ii) if and for so long as AAGES is not an Affiliate of AQN, the relevant Investor may exercise the rights of such Investor and its Affiliates, but the total Equity Securities of the Company to be subscribed and purchased by such Investor and its Affiliates pursuant to the exercise of such rights shall not in the aggregate exceed the limitations specified in Clause 3.2(a) with respect to such Investor.

(d) For the avoidance of doubt, but subject always to the Investor Parties' rights under Clause 3.2(a), in connection with each proposed allotment or issue of Equity Securities by the Company, the AY Board may decide, in its sole discretion, whether to offer the Investor Parties or any of them the ability to subscribe for and purchase more than (i) their collective Percentage Interest of the proposed allotment, if AAGES is an Affiliate of AQN or (ii) AQN's or AAGES's Percentage Interest of the proposed allotment, if AAGES is not an Affiliate of AQN.

### 3.3 Notice Requirements.

(a) To the extent permitted by applicable law, the Company shall give the applicable Investors specified in Clause 3.2(a) written notice of any proposed offering of Equity Securities by the Company no less than twenty (20) calendar days prior to the earlier of the funding thereof and the execution of any subscription agreement with respect thereto, which notice shall include, to the extent available and applicable:

(i) in the case of a registered public offering, a draft copy of the prospectus included in the registration statement or similar offering documents to be filed in respect of such offering or, in the case of an offering exempt from registration, the draft private placement memorandum or similar offering documents in respect of such offering;

(ii) a description of the anticipated amount of Equity Securities, the price thereof, and all other material terms upon which the Company offers to sell such Equity Securities; and

(iii) the number of Equity Securities that such Investor is entitled to purchase pursuant to Clause 3.2(a).

(b) An Investor (or its Affiliate designee) shall give the Company written notice of its election to subscribe for any such Equity Securities, and the amount thereof, within ten (10) calendar days after the date of the Investor's receipt of written notice of such proposed offering, including the price thereof, pursuant to Clause 3.3(a).

### 3.4 Subscription Price.

(a) If any Investor or its Affiliate designee notifies the Company that such Investor and/or any of its Affiliates in the aggregate intend to subscribe pursuant to Clause 3.2(a)(i) or Clause 3.2(a)(ii) (as applicable) for fifty per cent (50%) or more of an offering of Equity Securities that are then listed and traded on a stock exchange, the price per Equity Security for all Persons that participate in such offering (including such Investor and its Affiliates) will be equal to ninety-seven per cent (97%) of the U.S. dollar volume-weighted average Closing Price per Equity Security on the Applicable Exchange over the twenty (20) Applicable Exchange trading days immediately preceding the date of such Investor's receipt of notice of such proposed offering (the "Trading Period"). If a Closing Price, as derived from the website of the Applicable Exchange or Bloomberg (as applicable) is not in U.S. dollars, the Closing Price shall be converted into U.S. dollars at the exchange rate displayed on the website of the Applicable Exchange (or, if not available on such website, from Bloomberg) as at close of business on the last day of the Trading Period (or if such rate is not displayed on such day, on the immediately preceding day on which such rate is displayed).

(b) Other than as set out at Clause 3.4(a), the price per Equity Security for all Persons that participate in such offering, including such Investor and its Affiliates, will be determined by the Company at its absolute discretion and will be the same for all such Persons.

### 3.5 Authorizing Action.

(a) The Parties acknowledge that the currently effective disapplication to the Company of pre-emption rights under Section 561(1) of the Companies Act 2006 is limited in amount and time and that, under the AY Articles and applicable law, the rights of the Investors under Clauses 3.2(a)(i) and 3.2(a)(ii) are subject to such limitations. Notwithstanding the foregoing, and subject to Article 4, if at any time the Company allots or issues Equity Securities and, as a result of limitations imposed by applicable law or the AY Articles (including as a result of any failure to have disappplied pre-emption rights during such time period and sufficient in amount), any Investor or Affiliate thereof is unable to fully exercise the rights under Clauses 3.2(a)(i) and 3.2(a)(ii) that such Investor or Affiliate thereof would be entitled to exercise in the absence of such limitations, such Investor shall have the right to terminate the obligations and restrictions applicable to such Investor and its Affiliates under this Agreement, without liability to any Party, immediately upon written notice to the Company.



(b) Termination pursuant to Clause 3.5(a) of the obligations and restrictions applicable to an Investor and its Affiliates shall not release such Investor Parties from any liability which at the time of termination has already accrued to another Party or which thereafter may accrue in respect of any act or omission prior to such termination.

### **3.6 Initial Funding Commitment.**

Subject to Clause 4.2(b), if:

(a) AAGES is an Affiliate of AQN, then, subject to the approval of the board of directors of AQN to provide such funding to AAGES, AAGES hereby undertakes to provide (itself or through a Subsidiary), or

(b) AAGES is not an Affiliate of AQN, then, subject to the approval of the board of directors of AQN to provide such funding to the Company, AQN hereby undertakes to provide (itself or through a Subsidiary),

and the Company undertakes to accept, funding required by the Company for the acquisition of assets and/or interests therein by the Company or its Subsidiaries in one or more transactions during 2018 and 2019 (the “**Required Funding Amount**”) up to the Initial Funding Commitment Amount (the “**Initial Funding Commitment**”) by way of subscription for Shares (or other Equity Securities agreed by AAGES or AQN, as applicable) of the Company in accordance with the provisions of Clause 3.2(a), including the obligation to subscribe for any portion of the offered Shares or other agreed Equity Securities that have not been accepted by any other shareholder of the Company and participation in each round of offering of Shares or other agreed Equity Securities until the amount funded by AAGES or AQN, as applicable (or their Subsidiaries) reaches the lesser of (A) the Required Funding Amount and (B) the Initial Funding Commitment Amount.

## **ARTICLE 4 STANDSTILL**

### **4.1 Standstill.**

(a) During the Standstill Period, except as provided in Clause 4.2, no Investor shall, and each Investor shall procure that no Affiliate of such Investor shall, directly or indirectly and either alone or together, by any manner acquire or seek to acquire (or agree to, offer to, accept an option or offer to, or enter into any discussions or agreements to, acquire), whether by purchase, contract or otherwise, any ownership interests or voting rights (or rights or options to acquire such interests or rights) in any AY Voting Securities if the acquisition of the number of the voting rights attached to such AY Voting Securities by such Investor and/or any of its Affiliates, directly or indirectly, when added to the number of the voting rights attached to all AY Voting Securities then held by such Investor and/or its Affiliates, in the aggregate, would result in such Investor and/or its Affiliates holding, directly or indirectly, in the aggregate more than the Standstill Percentage of the total voting rights attached to all then outstanding AY Voting Securities.

(b) Notwithstanding the foregoing, any Investor Party may at any time acquire (and agree to, offer to, accept an option or offer to, or enter into any discussions or agreements to, acquire), whether by purchase, contract or otherwise, from any other Investor Party any ownership interests or voting rights (or rights or options to acquire such interests or rights) in any AY Voting Securities, so long as (i) the aggregate Percentage Interest of all Investor Parties, collectively, does not exceed forty-one and a half per cent (41.5%), except as provided in Clause 4.2, and (ii) promptly following such acquisition, the Investors deliver to the Company written notice of any reallocation between them of the aggregate Standstill Percentage of forty-one and a half per cent (41.5%) as may be required such that no Investor Party is in violation of Clause 4.1(a) as a result of such acquisition.

(c) In no case shall the existence of any option or agreement to acquire all or any portion of the Option Shares, or any discussion of any of the foregoing, constitute a violation of this Agreement.

#### 4.2 Temporary Limited Exceptions.

(a) Subject to Clause 4.2(b), in the event that as a result:

- (i) the acquisition of all or any portion of the Option Shares or of any voting rights attached to any Option Shares; and
- (ii) the exercise of subscription rights as part of the Initial Funding Commitment,

an Investor and/or its Affiliates hold in the aggregate more than the Standstill Percentage of the total voting rights attached to all then outstanding AY Voting Securities, such Investor will not be in breach of Clause 4.1(a), but until the aggregate Percentage Interest of such Investor and its Affiliates of the total voting rights attached to all then outstanding AY Voting Securities is again equal to or below the Standstill Percentage, such Investor shall not, and such Investor shall procure that its Affiliates shall not, directly or indirectly, acquire any additional AY Voting Securities, whether through subscription from the Company, open market purchases, or any other transaction, other than as described in subclauses (i) and (ii) of this Clause 4.2(a).

(b) If the exercise of the rights of an Investor and its Affiliates to subscribe for AY Voting Securities as part of the Initial Funding Commitment may result in such Investor and/or its Affiliates holding in the aggregate more than the Standstill Percentage of the total voting rights attached to all AY Voting Securities outstanding immediately following the allotment or issue, the Company may give notice to such Investor that such Investors and their Affiliates may subscribe for up to such portion of AY Voting Securities (the “**Relevant Portion**”) that would be necessary to procure that the number of the voting rights attached to AY Voting Securities that would be held by the Investors and their Affiliates, in the aggregate, immediately following such allotment or issue would not exceed forty six per cent (46%) of the total voting rights attached to all AY Voting Securities that would be outstanding immediately following such allotment or issue. Upon receipt of such notice such Investor shall not, and shall procure that its Affiliates shall not, subscribe for more than the Relevant Portion.

(c) If AAGES is not an Affiliate of AQN, the exception set forth in Clause 4.2(a) and the further limitation set forth in Clause 4.2(b) applies:

- (i) if the acquisition of all or any portion of the Option Shares occurred prior to AAGES ceasing to be an Affiliate of AQN, to all Investors; or
- (ii) if the acquisition of all or any portion of the Option Shares occurred after, but not prior to, AAGES ceasing to be an Affiliate of AQN, to AAGES or AQN which, or the Affiliate of which, holds the Option Shares (as applicable).

(d) Notwithstanding Clause 4.1(a), in the event that the Company takes any action that reduces the number of the then outstanding AY Voting Securities and, as a result of such action, an Investor and/or its Affiliates then hold in the aggregate more than the Standstill Percentage of the total voting rights attached to all then outstanding AY Voting Securities, such Investor will not be in breach of Clause 4.1(a); provided, however, that until the aggregate Percentage Interest of such Investor and its Affiliates of the total voting rights attached to all then outstanding AY Voting Securities is again equal to or below the Standstill Percentage, such Investor shall not, and such Investor shall procure that its Affiliates shall not, directly or indirectly, acquire any additional AY Voting Securities, whether through subscription from the Company, open market purchases, or any other transaction, other than as described in subclauses (i) and (ii) of Clause 4.2(a).

#### 4.3 Additional Terms.

(a) This Agreement does not restrict the ability of any Investor Party to acquire additional Equity Securities of the Company from any third party, through the public markets or otherwise, so long as such acquisition is not in breach of Clauses 4.1 and 4.2.

(b) Other than limitations set forth in Clause 2.1(b) on the rights of the Investor Parties to appoint Directors to the AY Board pursuant to the AY Articles and subject to Clause 4.3(c), nothing in this Agreement shall be deemed to prohibit or restrict in any way the rights of any Investor or any Affiliate thereof to exercise any and all rights and privileges as a holder of any Equity Securities of the Company (and of voting rights attached to AY Voting Securities) that such Investor and its Affiliates are permitted to hold pursuant to Clauses 4.1 and 4.2, and the existence or exercise of such rights shall not be deemed to constitute Control, including the right to: (i) vote such AY Voting Securities in any manner in the sole and absolute discretion of such Investor or Affiliate thereof, on any and all matters; (ii) make any director nomination or shareholder proposal or support in any manner any director nomination or shareholder proposal made by any other Person; (iii) seek to have called any meeting of the shareholders of the Company; (iv) sell, transfer or exchange, or elect not to sell, transfer or exchange, any Equity Securities of the Company to any Person in any transaction whatsoever, including any merger with or tender, exchange or other offer or proposal by any Person, and encourage or discourage, or support or oppose, any such transaction or offer (other than any transaction with or offer by any Investor Party that would result in a violation of Clause 4.1 by any Investor Party); and (v) communicate in any manner with other holders of any Equity Securities of the Company.

(c) If any Investor or its Affiliates acquire (whether through subscription, open market purchase or any other transaction) any AY Voting Securities or voting rights in breach of Clause 4.1 (subject to Clause 4.2), neither such Investor nor its Affiliates shall be able to exercise that portion of voting rights attached to AY Voting Securities (whether or not such AY Securities themselves are held by such Investor or its Affiliates) that exceeds the voting rights that such Investor and its Affiliates are permitted to hold pursuant to Clauses 4.1 and 4.2. This Clause 4.3(c) and the rights of the Company to terminate this Agreement under Clause 8.2 shall be the sole and exclusive remedies for any breach by any Investor or its Affiliates of Clause 4.1.

(d) For the avoidance of doubt, the obligations and limitations set forth in this Article 4 apply to an Investor and each of its Affiliates both individually and collectively, and to their aggregate holdings of the voting rights attached to AY Voting Securities, such that all voting rights attached to AY Voting Securities acquired or held by an Investor or Affiliate thereof are deemed for purposes of the limitations specified in this Article 4 to be acquired or held by such Investor and each and every Affiliate of such Investor.

(e) This Agreement supersedes any “standstill” or similar provisions between the Company and AQN or any Affiliates thereof under any prior agreement, including those set forth in that certain Non-Disclosure Agreement between the Company and Algonquin Power Co. dated 15 June 2017, as amended on 3 July 2017 and as further amended effective on 15 December 2017, which the Parties agree shall be terminated in its entirety promptly following execution and delivery of this Agreement.

#### ARTICLE 5 SUPPORTING COMMITMENTS

**5.1 Impediments.** No Party shall enter into any agreement or arrangement with any Person that would prohibit, restrict, or otherwise impair the exercise of any rights or performance of any obligations of the Company or any Investor Party under this Agreement.

## 5.2 Certain Approvals.

(a) In the event that the approval of any governmental, regulatory or self-regulatory securities authority is required in connection with the exercise of any Party's rights under this Agreement, then upon written request and notice provided by such Party, the other Parties shall reasonably cooperate with the requesting Party in its efforts to obtain such approval as soon as reasonably practical to the extent such cooperation is reasonably required in order to submit any application, request, information or response that is necessary to obtain such approval.

(b) In the event that the approval of any governmental, regulatory or self-regulatory securities authority is required in connection with the performance of any Party's obligations under this Agreement, that Party shall use its commercially reasonable efforts to obtain all such approvals so as to permit the timely performance of such obligations.

## ARTICLE 6 INFORMATION RIGHTS

**6.1 Financial Information.** To the extent that the disclosure of such information is not prohibited by applicable law or the AY Articles, upon a reasonable written request of any Investor the Company shall provide such Investor with such financial statements, reports and other information that are customarily disclosed by the Company to its other shareholders, except where such information may, in the reasonable opinion of the AY Board, reasonably give rise to an actual or potential, direct or indirect, conflict of interest between the Company, on the one hand, and such Investor or its Affiliates (or any investor therein), on the other hand or the AY Board designates any such information as "commercially sensitive" or, in the reasonable opinion of the AY Board, the information is likely to cause damage to the Company or any of its Subsidiaries. In the event of a conflict of interest, the Company will be entitled to undertake any procedure for managing such conflicts of interest or in connection with the situation or matter in question in accordance with the AY Articles and applicable law.

### 6.2 Tax Information.

(a) Subject to Clause 6.2(b), the Company shall provide to the Investors:

(i) any documents and information reasonably necessary for the Investors to calculate taxes levied by applicable taxing authorities and to file any required tax returns as required by applicable law; and

(ii) reasonable, non-legal advice and assistance with respect to the calculation of such taxes and filing of any applicable tax returns, in each case without any cost on the Company (other than reasonable printing and/or photocopying costs).

(b) The Company shall not be required by Clause 6.2(a) to take any action which it considers to be materially prejudicial to its tax affairs or the tax affairs of any of its Subsidiaries.

## ARTICLE 7 INVESTOR PARTY REPRESENTATIVE

**7.1 Appointment.** Each Investor or Investor Shareholder (any of the foregoing, an "**Appointing Party**") may from time to time by written notice to the Company constitute and appoint any other Investor or Investor Shareholder as the attorney-in-fact and agent of such Appointing Party and/or of any Affiliate of such Appointing Party hereunder (each, an "**Investor Party Representative**"). An Investor Party Representative so appointed shall have full power and authority to act hereunder for and in the name of each Investor Party for which such appointment is made and to do and perform every act and thing required or permitted to be done by such Investor Party in connection with this Agreement, as fully to all intents and purposes as such Investor Party might or could do in person, including taking any and all action on behalf of such Investor Party from time to time as contemplated hereunder. Each such appointment shall remain valid and effective until such appointment is revoked by the Appointing Party by delivery of written notice thereof to the Company.

**7.2 Reliance.** The Company shall be entitled to rely, without inquiry whatsoever, on any action taken, or the failure to take any action, by the Investor Party Representative hereunder, on behalf of an Investor Party for which such Investor Party Representative has been appointed. Any such action taken by the Investor Party Representative shall be binding on the applicable Investor as fully as if such Investor had itself taken such action directly.

## **ARTICLE 8 TERM AND TERMINATION**

**8.1 Term.** Subject to Clause 8.2, the term of this Agreement shall commence on the Effective Date and shall continue in full force and effect so long as any Investor and its Affiliates continue to hold in aggregate at least ten per cent (10%) of the total voting rights attached to then outstanding AY Voting Securities.

### **8.2 Termination.**

(a) This Agreement shall terminate in its entirety immediately upon:

(i) the written consent of all Parties to such termination, at any time; or

(ii) the termination of this Agreement as to each Investor pursuant to Clause 8.2(b); or

(iii) the termination of this Agreement as between the Company and an Investor pursuant to Clause 8.2(b) provided that at the time of such termination AAGES is an Affiliate of AQN.

(b) All rights and obligations under this Agreement as between the Company and an Investor (and all Affiliates of such Investor) shall terminate immediately:

(i) if such Investor and/or its Affiliates cease to hold in aggregate at least ten per cent (10%) of the total voting rights attached to then outstanding AY Voting Securities; or

(ii) if such Investor has delivered to the Company any notice described in Clause 2.1(d), 2.2(b) or 3.5(a);

(iii) upon mutual written consent of such Investor and the Company to such termination;

(iv) upon written notice from the Company to such Investor if:

(A) the Company is not then in material breach of any provisions of this Agreement and there has been a material breach of this Agreement by such Investor or any Affiliate thereof, and such breach has not been cured by such Investor or Affiliate thereof within forty (40) Business Days after such Investor's receipt of written notice of such breach from the Company; or

(B) with respect to AQN and its Affiliates only, a Change of Control occurs; or

(C) provided that the Company has complied with its notice and other obligations set forth in Article 3 related to such allotment and except as required by Clause 4.2(a) or Clause 4.2(d), on three (3) occasions (whether or not consecutive and whether it is related to a failure to subscribe or purchase and pay) either (x) neither such Investor nor any Affiliate(s) thereof subscribed for Equity Securities, offered to be allotted by the Company, in the amount of at least the then-existing aggregate Percentage Interest of such Investor and its Affiliates of such allotment, or (y) such Investor or the applicable Affiliate thereof did not purchase or fully pay for when due Equity Securities of the Company for which such Investor or Affiliate thereof subscribed; or

(v) upon written notice from such Investor to the Company if such Investor and its Affiliates are not then in material breach of any provisions of this Agreement and there has been a material breach of this Agreement by the Company, and such breach has not been cured by the Company within forty (40) Business Days after the Company's receipt of written notice of such breach from such Investor.

(c) All rights and obligations under this Agreement as between the Company and AQN shall terminate upon written notice from the Company to AQN at any time following the termination of the AQN ROFO Agreement pursuant to the terms of the AQN ROFO Agreement, other than any such termination resulting from a breach of the AQN ROFO Agreement by the Company.

### **8.3 Effect of Termination.**

(a) In the event of termination of this Agreement in its entirety as to each Party in accordance with Clause 8.2(a), this Agreement shall forthwith become void and there shall be no liability on the part of any Party except as set forth in this Article 8 and Article 9 hereof; provided, however, that termination of this Agreement shall not relieve any Party from liability for any breach of this Agreement by such Party prior to such expiration or termination.

(b) In the event of a termination of this Agreement as to only one Investor in accordance with Clause 8.2(b) or with Clause 8.2(c):

(i) this Agreement shall forthwith become void solely as between such Investor (and its Affiliates) and the Company and there shall be no liability on the part of such Investor to the Company, or on the part of the Company to such Investor, except as set forth in this Article 8 and Article 9 hereof; provided, however, that termination of this Agreement as to an Investor shall not relieve such Investor or the Company from liability for any breach of this Agreement by such Party prior to such expiration or termination; and

(ii) this Agreement shall remain in full force and effect as between the other Investor (and its Affiliates) and the Company.

### **8.4 Effect of Ownership through Affiliates.**

(a) An Investor shall be bound by its liability and obligations hereunder and shall be entitled to exercise its rights hereunder regardless of whether such Investor holds any Equity Securities of the Company directly or through its Affiliates, provided that such Investor or one or more Persons that are then Affiliates of such Investor hold in aggregate at least ten per cent (10%) of the total voting rights attached to then outstanding AY Voting Securities. If any Investor transfers Equity Securities of the Company to any Affiliate, or designates any Affiliate of such Investor to subscribe for and purchase Equity Securities of the Company pursuant to Clause 3.2(a), such Investor shall remain party to this Agreement as an Investor and the liability and obligations of such Investor hereunder shall not be affected, impaired, reduced or released by such transfer or designation.

(b) All references in this Agreement to an Affiliate of a Party (or of another Person) shall be deemed to refer to a Person who at such time is an Affiliate of such Party (or of such other Person). In the event that at any time a Person ceases to be an Affiliate of an Investor, the ownership of Equity Securities of the Company by such Person shall cease to be attributed to such Investor (and vice versa), and any rights and obligations of such Person hereunder as an Affiliate of such Investor, or of such Investor as an Affiliate of such Person, shall terminate.

## ARTICLE 9 CONFIDENTIALITY

**9.1 Restrictions.** The Parties acknowledge that, from time to time, they may receive Confidential Information from or regarding another Party or its Affiliates in connection with this Agreement or any of the transactions contemplated hereby. Each Party shall hold such Confidential Information in trust and confidence and shall not disclose any such Confidential Information to any Person except as may be authorized by written consent of such other Party. Notwithstanding the preceding to the contrary, each Party shall be authorized to disclose such Confidential Information on a need to know basis, to (a) its Affiliates and to its and their respective advisors, accountants, attorneys, officers, directors, employees, and agents who are under an obligation not to disclose such information; and (b) any Persons providing financing to such Party, provided that such Person has agreed in writing to maintain the confidentiality thereof materially in accordance with the terms of this Agreement; provided, that in the case of each of the foregoing, the Party disclosing such Confidential Information shall be responsible and liable hereunder for any breach of the confidentiality terms of this Agreement by any Person to which such Confidential Information is disclosed.

**9.2 Permitted Disclosures.** Notwithstanding the provisions of Clause 9.1, a Party and its Affiliates may disclose Confidential Information of another Party to the extent required by applicable law, regulation, legal process, or stock exchange rules; provided that such Party shall use commercially reasonable efforts to notify the other Party of such requirement, if permitted by applicable law or governmental authority, prior to disclosure so that such other Party may seek an appropriate protective order or other remedy.

**9.3 Enforcement.** Without prejudice to any other rights or remedies which a Party may have under this Agreement, the Parties acknowledge and agree that damages would not be an adequate remedy for any breach of this Article 9 and the remedies of injunction, specific performance and other equitable relief are appropriate for any threatened or actual breach of any such provision and no proof of special damages shall be necessary for the enforcement of the rights under this Article 9.

## ARTICLE 10 MISCELLANEOUS

### 10.1 Warranties.

(a) Each Investor warrants to the Company, and the Company warrants to the Investors that, as at the date of this Agreement:

(i) it is a company validly existing and is a company duly incorporated, organised and registered under the law of its jurisdiction of incorporation;

(ii) it has the legal right and full power and authority to enter into and perform this Agreement; and

(iii) this Agreement, when executed, constitutes valid and binding obligations on it in accordance with its terms.

(b) The Investors further warrant to the Company that, as at the Effective Date:

(i) A Subsidiary of AQN is the sole legal and beneficial owner of 25,054,315 Shares; and

(ii) A Subsidiary of AQN is the sole legal and beneficial owner of fifty per cent (50%) of the Equity Securities of AAGES.

**10.2 Entire Agreement.** Each of the Parties to this Agreement confirms on behalf of itself and its Affiliates that this Agreement, together with the AQN ROFO Agreement and the AAGES ROFO Agreement, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.

**10.3 Waiver.** The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

**10.4 Variation.** No variation of this Agreement (or any of the documents referred to in it) shall be valid unless it is in writing (which, for this purpose, does not include email) and signed by or on behalf of each of the Parties. The expression "variation" includes any variation, supplement, deletion or replacement however effected.

**10.5 Counterparts.** This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

**10.6 Costs.** Each Party shall pay its own costs and expenses in connection with the preparation and negotiation of this Agreement and any matter contemplated by it.

**10.7 Language.** This Agreement was negotiated in English and, to be valid, all certificates, notices, communications and other documents made in connection with it shall be in English. If all or any part of this Agreement or any such certificate, notice, communication or other document is for any reason translated into any language other than English the English text shall prevail. Each of the Parties understands English and is content for all communications relating to this Agreement to be served on it in English.

**10.8 Assignment.** Except as otherwise expressly provided in this Agreement, none of the Parties may without the prior written consent of the others, assign, grant any security interest over, hold on trust or otherwise transfer the benefit of the whole or any part of this Agreement. This Agreement shall be binding on the Parties and their respective successors and assignees. Subject to the prior written consent of the Company which shall not be unreasonably withheld or delayed, AAGES may assign its rights and transfer its obligations hereunder to the successor to all of the assets and liabilities of AAGES pursuant to a corporate reorganization if (a) immediately following such reorganization, the ownership interests in such successor entity are held by the same Persons (or, in each case, an Affiliate thereof), and in the same proportions, as the ownership interests in AAGES were held immediately prior to such reorganization; and (b) such successor expressly agrees in writing for the benefit of the Company to be bound by this Agreement and to assume all of AAGES's rights and obligations hereunder.

**10.9 Invalidity/severance.** If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties. To the extent it is not possible to delete or modify the provision, in whole or in part, under this Clause 10.9, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under this Clause 10.9, not be affected.



**10.10 Notices.**

(a) A notice (including any approval, consent or other communication) in connection with this Agreement and the documents referred to in it:

(i) must be in writing; and

(ii) must be delivered by hand, registered post, courier using an internationally recognised courier company or pre-paid recorded delivery to the address of the addressee or sent by email to the email address of the addressee in each case which is specified in this Clause 10.10(a) in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or email address or marked for the attention of such other person, as the relevant Party may from time to time specify by notice given in accordance with this Clause 10.10(a). The Party, the address or email address of which has been changed, shall notify the other Parties of that change as soon as reasonably practicable.

The relevant details of each Party at the date of this Agreement are:

**1. Company:**

Address: Atlantica Yield plc  
Great West House, 17th Floor. GW1 Great West Road  
Brentford – TW8 9DF (United Kingdom)

email: santiago.seage@atlanticayield.com

Attention: Chief Executive Officer

**With a copy (which shall not constitute notice) to:**

Address: Atlantica Yield plc  
Great West House, 17th Floor. GW1 Great West Road  
Brentford – TW8 9DF (United Kingdom)

Email: irene.hernandez@atlanticayield.com

Attention: Chief Legal Officer

**2. AQN and AAGES (for so long as AAGES is an Affiliate of AQN):**

Address: Algonquin Power & Utilities Corp.  
354 Davis Road, Suite 100  
Oakville, Ontario L6J 2X1  
Canada

email: Ian.Robertson@APUCorp.com

Attention: Chief Executive Officer

**With a copy (which shall not constitute notice) to:**

Address: Algonquin Power & Utilities Corp.  
354 Davis Road, Suite 100  
Oakville, Ontario L6J 2X1  
Canada

Email: Jennifer.Tindale@APUCorp.com

Attention: Chief Legal Officer

**And to:**

Address: Husch Blackwell LLP  
4801 Main Street, Suite 1000  
Kansas City, MO 64112  
United States of America

Email: jim.goettsch@huschblackwell.com

Attention: James G. Goettsch

**3. AAGES (if AAGES is not an Affiliate of AQN):**

such details as AAGES notifies each other Party, and until such notice is given the details set out at paragraph 2 of this Clause 10.10(a) shall be deemed to be the details of AAGES.

(b) In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with the following, subject to Clause 10.10(c):

(i) in the case of a notice delivered by hand or courier, upon delivery at that address;

(ii) in the case of a posted letter, on the third day after posting or, if posted to or from a place outside the United Kingdom, the seventh day after posting or at the time recorded by the delivery service; and

(iii) in the case of email, at the time of sending provided that receipt shall not occur if the sender receives an automated message indicating that the message has not been delivered to the recipient.

(c) A notice received or deemed to be received in accordance with Clause 10.10(b) above on a day which is not a Business Day, or after 5:00 pm on any Business Day, shall be deemed to be received on the next following Business Day.

**10.11 Conflicts.** Nothing in this Agreement shall be construed as requiring the Company to act, or refrain from acting, in breach of the AY Articles or applicable law.

**10.12 Third Party Rights.** A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, this Agreement.

**10.13 Governing Law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

**10.14 Jurisdiction.**

(a) Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).

(b) Each Party irrevocably waives any right that it may have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.

(c) Regardless of whether the courts of any country other than England have jurisdiction to consider a dispute falling within Clause 10.14(a), each Party irrevocably undertakes that it will neither issue nor cause to be issued originating or other process in respect to such a dispute in any jurisdiction other than England.

(d) Each Party agrees that without preventing any other mode of service, any document in an action (including, a claim form or any other document to be served under the Civil Procedure Rules may be served on any Party by being delivered to that Party at its address for service of notices under Clause 10.10.

*[Signature page follows.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

**SIGNED BY** Daniel Villalba and Santiago Seage  
for and on behalf of  
**ATLANTICA YIELD PLC**

*/s/ Daniel Villalba*  
**(Signature of authorised person)**

*/s/ Santiago Seage*  
**(Signature of authorised person)**

**SIGNED BY** Ian Robertson and Chris Jarratt  
for and on behalf of  
**ALGONQUIN POWER & UTILITIES CORP.**

*/s/ Ian Robertson*  
**(Signature of authorised person)**

*/s/ Chris Jarratt*  
**(Signature of authorised person)**

**SIGNED BY** J. Fernandez De Pierola  
and B. van Dijk for and on behalf of  
**ABENGOA-ALGONQUIN**  
**GLOBAL ENERGY SOLUTIONS B.V.**

*/s/ J. Fernanded De Pierola*  
**(Signature of authorised person)**

*/s/ B. van Dijk*  
**(Signature of authorised person)**

---

Schedule 2.1

Resigning Directors and Investor Party Designees

<u>Resigning Directors</u>	<u>Investor Party Designees</u>
Joaquin Fernandez de Piérola Marin	Ian E. Robertson
Santiago Seage	Christopher K. Jarratt

---

**ALGONQUIN POWER & UTILITIES CORP.**

*as Borrower*

- and -

**THE FINANCIAL INSTITUTIONS LISTED**

**ON THE SIGNATURE PAGES**

*as Lenders*

- and -

**THE BANK OF NOVA SCOTIA**

*as Administrative Agent*

Financing Arranged by

**THE BANK OF NOVA SCOTIA and CANADIAN IMPERIAL BANK OF COMMERCE**

*as Joint Lead Arrangers and Joint Bookrunners*

**TERM CREDIT AGREEMENT**

Dated as of December 21, 2017

---

# TABLE OF CONTENTS

	<b>Page</b>
<b>ARTICLE I DEFINITIONS</b>	<b>1</b>
Section 1.01	1
Section 1.02	12
Section 1.03	12
Section 1.04	13
Section 1.05	13
Section 1.06	13
Section 1.07	13
<b>ARTICLE II TERM CREDIT FACILITY</b>	<b>13</b>
Section 2.01	13
Section 2.02	14
Section 2.03	14
Section 2.04	15
Section 2.05	15
Section 2.06	15
Section 2.07	16
Section 2.08	16
Section 2.09	16
Section 2.10	17
Section 2.11	17
Section 2.12	18
Section 2.13	18
Section 2.14	19
Section 2.15	20
Section 2.16	21
Section 2.17	21
<b>ARTICLE III REPRESENTATIONS AND WARRANTIES</b>	<b>22</b>
Section 3.01	22
Section 3.02	23
Section 3.03	23
Section 3.04	23
Section 3.05	23
Section 3.06	23
Section 3.07	24
Section 3.08	24
Section 3.09	24
Section 3.10	24
Section 3.11	25
Section 3.12	25
Section 3.13	25
Section 3.14	25

# TABLE OF CONTENTS

	<b>Page</b>	
Section 3.15	Expropriation	25
Section 3.16	Subsidiaries	25
Section 3.17	Collective Bargaining	25
Section 3.18	Pension Plans	26
<b>ARTICLE IV CONDITIONS PRECEDENT</b>		<b>26</b>
Section 4.01	Effective Date	26
Section 4.02	Drawdown Date	27
<b>ARTICLE V AFFIRMATIVE COVENANTS</b>		<b>27</b>
Section 5.01	Financial Statements; Ratings Change and Other Information	27
Section 5.02	Notices of Material Events	29
Section 5.03	Existence; Conduct of Business	29
Section 5.04	Payment of Obligations	29
Section 5.05	Maintenance of Properties; Insurance	29
Section 5.06	Books and Records; Inspection Rights	29
Section 5.07	Compliance with Laws	30
Section 5.08	Use of Proceeds	30
Section 5.09	Accuracy Of Information	30
Section 5.10	Debt to Capitalization Ratio	30
<b>ARTICLE VI NEGATIVE COVENANTS</b>		<b>30</b>
Section 6.01	Secured Indebtedness	30
Section 6.02	Fundamental Changes	31
Section 6.03	Business	31
Section 6.04	Swap Agreements	31
Section 6.05	Restricted Payments	32
Section 6.06	Transactions with Affiliates	32
Section 6.07	Disposition of Property	32
<b>ARTICLE VII EVENTS OF DEFAULT</b>		<b>32</b>
Section 7.01	Default	32
Section 7.02	Remedies	35
<b>ARTICLE VIII THE AGENT AND THE LENDERS</b>		<b>35</b>
Section 8.01	Authorization and Action	35
Section 8.02	No Liability	36
Section 8.03	Accommodations by Administrative Agent	37
Section 8.04	Payments	37
Section 8.05	Credit Decisions	37
Section 8.06	Indemnification	37
Section 8.07	No Implied Liability to Other Lenders	38
Section 8.08	Successor Administrative Agents	38



# TABLE OF CONTENTS

	<b>Page</b>
<b>ARTICLE IX MISCELLANEOUS</b>	<b>38</b>
Section 9.01	38
Section 9.02	40
Section 9.03	40
Section 9.04	41
Section 9.05	44
Section 9.06	45
Section 9.07	45
Section 9.08	45
Section 9.10	46
Section 9.11	46
Section 9.12	47
Section 9.13	47
<b>SCHEDULE 1.01(A) – COMMITMENTS</b>	<b>1</b>
<b>SCHEDULE 1.01(B) – LIST OF MATERIAL SUBSIDIARIES</b>	<b>2</b>
<b>SCHEDULE 3.06 – DISCLOSED MATTERS</b>	<b>3</b>
<b>SCHEDULE 3.16 – ALGONQUIN ORGANIZATION CHART</b>	<b>4</b>
<b>EXHIBIT A – FORM OF BORROWING REQUEST</b>	<b>5</b>
<b>EXHIBIT B – FORM OF COMPLIANCE CERTIFICATE</b>	<b>7</b>
<b>EXHIBIT C – FORM OF CONVERSION/CONTINUATION NOTICE</b>	<b>9</b>
<b>EXHIBIT D – FORM OF ASSIGNMENT AND ASSUMPTION</b>	<b>11</b>

## TERM CREDIT AGREEMENT

Term Credit Agreement made as of December 21, 2017 between (i) The Bank of Nova Scotia, as “**Administrative Agent**”, (ii) the financial institutions listed on the signature pages, as “**Lenders**”, and (iii) Algonquin Power & Utilities Corp., a Canada corporation, as “**Borrower**”.

For valuable consideration, the parties hereto agree as follows:

### ARTICLE I

#### Definitions

**Section 1.01**      **Defined Terms.** As used in this Agreement, the following terms have the meanings specified below:

“**2016 Convertible Debentures**” means the convertible unsecured subordinated debentures issued by the Borrower in the aggregate principal amount of up to CDN \$1,150,000,000 (including such amounts received from the exercise of an over-allotment option of up to a maximum of CDN \$150,000,000) to its wholly-owned subsidiary, Liberty Utilities (Canada) Corp., on or about March 1, 2016, and the subsequent secondary public offering by Liberty Utilities (Canada) Corp. on or about March 1, 2016 of such convertible debentures by way of instalment receipts.

“**Accumulated Other Comprehensive Income**” means those items classified as accumulated other comprehensive income on the consolidated balance sheet of the Borrower and its subsidiaries as required by GAAP.

“**Administrative Agent**” and “**Agent**” means The Bank of Nova Scotia, as administrative agent for the Lenders under this Agreement and any successor appointed pursuant to Section 8.08.

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Applicable Rate**” means, for any day, with respect to any Loan or the Standby Fee, the applicable rate per annum, expressed in basis points, set forth below under the caption applicable to the respective type of borrowing, as the case may be, based upon the ratings by each of the Rating Agencies that are applicable on such date to the senior long term debt of the Borrower:

---

Senior Debt Rating (S&P / DBRS)	U.S. Base Rate Loan	LIBOR Loan	Standby Fee
> A- / A (low)	0 bps	80 bps	16 bps
BBB+ / BBB (high)	0 bps	100 bps	20 bps
BBB / BBB	20 bps	120 bps	24 bps
BBB- / BBB (low)	45 bps	145 bps	29 bps
<BBB- / BBB (low)	100 bps	200 bps	40 bps

For purposes of the foregoing table: (i) if, at any time, neither Rating Agency is providing a Senior Debt Rating, the Applicable Rate shall be based on the lowest Senior Debt Rating band in the table, (ii) if the Senior Debt Ratings provided by the Rating Agencies are in different Senior Debt Rating bands, the Applicable Rate shall be based on the higher of the two Senior Debt Rating bands, unless one of the two Senior Debt Ratings is two or more levels lower than the other, in which case the Applicable Rate shall be determined by reference to the Senior Debt Rating band immediately below the band in which the higher of the two Senior Debt Ratings is located, and (iii) if, at any time, a Senior Debt Rating changes (other than as a result of a change in rating system), any corresponding change in the Applicable Rate shall become effective as of the date on which such change is first announced by the applicable Rating Agency, irrespective of when notice of such change is furnished to the Borrower or the Administrative Agent.

“**Applicable Laws**” means, in respect of any Person, property, transaction or event, all applicable federal, provincial, state, local, municipal and regional laws, statutes, ordinances, rules, by-laws, policies, guidelines, treaties and all applicable regulations, guidelines, directives, standards, requirements, judgments, orders, decisions, rulings, permits, authorizations, injunctions, awards and decrees of any Governmental Authority and all applicable common laws and laws of equity.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent, in substantially the form attached hereto as Exhibit D or any other form approved by the Administrative Agent.

“**Atlantica Acquisition**” means the acquisition by the Borrower, directly or indirectly, of a 25% equity interest in Atlantica Yield plc pursuant to the Atlantica Purchase Agreement.

“**Atlantica Holdco**” means the subsidiary of the Borrower that acquires, directly or indirectly, a 25% equity interest in Atlantica Yield plc pursuant to the Atlantica Purchase Agreement.

“**Atlantica Purchase Agreement**” means the sale and purchase agreement dated November 1, 2017 between the Borrower, ACIL Luxco 1, S.A. and Abengoa, S.A., as the same may be amended or supplemented from time to time.

“**Availability Period**” means the period from and including the Effective Date to the earlier of (i) June 30, 2018, and (ii) the date on which the Borrower elects to terminate the Atlantica Acquisition.

“**Bankruptcy Event**” means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment; provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof; provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“**basis points**” or “**bps**” means individually 1/100th of 1%.

“**Borrower**” means Algonquin Power & Utilities Corp., a Canada corporation.

“**Borrowing Request**” means a written request from a Financial Officer of the Borrower substantially in the form attached hereto as Exhibit A.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in Toronto, Ontario are authorized or required by law to remain closed.

“**Canadian Dollars**” and “**CDN \$**” means lawful money of Canada.

“**Capital Lease**” means, for any Person, any payment obligation of such Person under an agreement for the lease, license or rental of, or providing such person with the right to use, property that, in accordance with GAAP, is required to be capitalized and such agreement exists as of the date hereof or is hereafter created or assumed by that Person to finance the cost, in whole or in part, of the acquisition, construction, or installation of or improvements to any property.

“**Capital Lease Obligations**” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**“Change in Control”** means the occurrence of any one of: (a) the Borrower has ceased to own or control, directly or indirectly, 100% of the equity interests of either Liberty Utilities Co. or Algonquin Power Co. or their respective successors, or (b) any person or group acquires greater than or equal to 50% of the outstanding equity interests of the Borrower, or (c) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by persons who were (i) not nominated by the board of directors of the Borrower, or (ii) not appointed by directors so nominated.

**“Change in Law”** means the occurrence after the date of this Agreement of any of the following: (a) the adoption of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority, or (c) compliance by the Lenders with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority), or Canadian or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law” regardless of the date enacted, adopted, issued or implemented.

**“Claim”** means any claim of any nature whatsoever including any demand, cause of action, suit or proceeding.

**“Commitment”** means, with respect to each Lender, the maximum term loan amount to be provided by such Lender to the Borrower as set out in Schedule 1.01(A), as adjusted from time to time in accordance with the provisions of this Agreement.

**“Compliance Certificate”** means a certificate of a Financial Officer of the Borrower substantially in the form attached hereto as Exhibit B.

**“Consolidated Indebtedness”** means, at any time, the Indebtedness of the Borrower and its subsidiaries, calculated on a consolidated basis, but excluding the aggregate principal amount of the 2016 Convertible Debentures.

**“Consolidated Net Worth”** means, as at any date, the sum of all amounts that would, in conformity with GAAP, be included on a consolidated balance sheet of the Borrower and its subsidiaries under stockholders’ Equity Interests at such date, but excluding Accumulated Other Comprehensive Income.

**“Consolidated Total Capitalization”** means, as at any time as of which the amount thereof is to be determined, the sum of Consolidated Indebtedness plus Consolidated Net Worth.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

**“Conversion/Continuation Notice”** means a written notice from a Financial Officer of the Borrower substantially in the form attached hereto as Exhibit C.

**“DBRS”** means DBRS Limited and its successors.

**“Default”** means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

**“Defaulting Lender”** means any Lender that has wrongfully refused to make available its rateable portion of any Loan.

**“Disqualified Stock”** means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part.

**“Disclosed Matters”** means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

**“dollars”** or **“\$”** refers to lawful money of Canada or the United States of America, as specified or required by the context.

**“Effective Date”** means the date on which the conditions specified in Section 4.01 are satisfied or waived in accordance with Section 9.02.

**“Eligible Assignee”** means any Person, other than an individual, the Borrower, any Affiliate of the Borrower, or, prior to an Event of Default that is continuing, any competitor of the Borrower or any Affiliate of any competitor of the Borrower.

**“Environmental Laws”** means all applicable laws pertaining to environmental or occupational health and safety matters, in effect as at the date hereof and as may be brought into effect or amended at any time hereafter, including, without limitation, those pertaining to reporting, licensing, permitting, investigation, remediation and clean-up in connection with any presence or release of a Hazardous Material or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation or handling of a Hazardous Material.

**“Environmental Liability”** means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“Equity Interests”** means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

**“Event of Default”** has the meaning assigned to such term in Article VII.

**“Excluded Taxes”** means any Taxes now or hereafter imposed, levied, collected, withheld or assessed by Canada or any political subdivision of Canada on any Lender as a result of the Lender: (i) carrying on or having carried on a trade or business in Canada, or being or having been deemed to do so, or having a permanent establishment in Canada, (ii) being or having been organized under the laws of Canada or any political subdivision of Canada, or (iii) being or having been resident or deemed to be resident in Canada for income tax purposes; but does not include any sales, goods or services tax payable under the laws of Canada or any political subdivision of Canada with respect to any goods or services made available by a Lender to the Borrower under this Agreement.

**“Federal Funds Effective Rate”** means, for any day, the rate calculated by the Federal Reserve Bank of New York (NYFRB) based on such day’s federal funds transactions by depository institutions (as determined in such manner as the NYFRB shall set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate; provided that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

**“Financial Officer”** means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

**“Fiscal Quarter”** means any of the quarterly accounting periods of the Borrower, ending on December 31, March 31, June 30 and September 30 of each year.

**“Fiscal Year”** means any of the annual accounting periods of the Borrower ending on December 31 of each year. As an example, reference to the 2017 Fiscal Year shall mean the Fiscal Year ending December 31, 2017.

**“GAAP”** means generally accepted accounting principles in the United States.

**“Governmental Authority”** means any government, parliament, legislature or commission or board of government, parliament or legislature, or any political subdivision thereof, or any quasi-governmental authority, or any court or, without limitation of the foregoing, any other law, regulation or rule-making entity, including, any central bank, fiscal or monetary authority or authority regulating financial institutions, having or purporting to have jurisdiction in the relevant circumstances, or any Person acting or purporting to act under the authority of any of the foregoing, including, any arbitrator, or any other authority charged with the administration or enforcement of applicable laws.

**“Guarantee”** of or by any Person (the **“guarantor”**) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the **“primary obligor”**) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

**“Hazardous Materials”** means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

**“Indebtedness”** of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Off-Balance Sheet Liabilities of such Person, (h) all obligations under any Disqualified Stock of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all Capital Lease Obligations of such Person, and (k) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent that the terms of such Indebtedness provide that such Person is not liable therefor. Any obligations under Swap Agreements shall be excluded from Indebtedness. In determining the amount of Indebtedness outstanding, there shall be deducted therefrom the amount of cash deposits, cash collateral and the letters or credit held by or issued in favor of the holder of such Indebtedness as a security therefor.

**“Indemnified Taxes”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by the Borrower under any Loan Document, and (b) to the extent not otherwise described in (a), Other Taxes.

**“Intangible Assets”** means, at any time, the intangible assets of the Borrower and its subsidiaries determined on a consolidated basis (including, without limitation, goodwill).



**“Interest Payment Date”** means (i) for U.S. Base Rate Loans, the 22nd day of the month in each month, provided that if the Interest Payment Date is a day other than a Business Day, such Interest Payment Date shall mean the Business Day preceding the 22nd day of such month, and (ii) for each LIBOR Loan, the last day of the Interest Period for such LIBOR Loan.

**“Interest Period”** means, with respect to any LIBOR Loan, the period commencing on the date of such Loan and ending on the numerically corresponding day in the calendar month that is one, two, three, six or nine months thereafter, as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Loan initially shall be the date on which such Loan is made and, thereafter, shall be the effective date of the most recent conversion or continuation of such Loan.

**“Lenders”** means the Persons from time to time parties to this Agreement as Lenders, including The Bank of Nova Scotia in its capacity as a Lender, together with its successors and assigns in such capacities.

**“LIBO Rate”** means, with respect to any LIBOR Loan for any Interest Period, the rate published by ICE Benchmark Administration Limited (or any successor to, or substitute for, such service, providing rate quotations comparable to those currently provided by ICE Benchmark Administration Limited, as determined by the Agent from time to time for purposes of providing quotations of interest rates applicable to U.S. Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for U.S. Dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the **“LIBO Rate”** with respect to such LIBOR Loan for such Interest Period shall be the rate at which U.S. Dollar deposits in amounts and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that, in no event shall the LIBO Rate for any Interest Period be less than 0% per annum.

**“LIBOR Loan”** means a Loan denominated in U.S. Dollars which bears interest at a rate based upon the LIBO Rate.

**“Lien”** means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“**Loan**” means an advance made to the Borrower by a Lender pursuant to this Agreement by way of a LIBOR Loan or U.S. Base Rate Loan under the Term Credit Facility.

“**Loan Documents**” means this Agreement, any promissory note and any other agreement, instrument or other document executed in connection therewith and any related amendment, waiver or consent.

“**Loss**” means any loss whatsoever, whether direct or indirect, including expenses, costs, damages, judgments, penalties, awards, assessments, fines and any and all reasonable fees, disbursements and expenses of counsel, experts and consultants.

“**Majority Lenders**” at any particular time means one or more Lenders (other than Defaulting Lenders) whose aggregate Commitments are more than 66 2/3% of the aggregate of all Commitments.

“**Material Adverse Effect**” means a material adverse effect on (a) the business, assets, operations or financial condition of the Borrower and its subsidiaries taken as a whole, (b) the ability of the Borrower to perform any of its obligations under this Agreement or any other Loan Document, or (c) the rights of or benefits available to the Lenders under this Agreement or any other Loan Document.

“**Material Subsidiary**” means Algonquin Power Co., Liberty Utilities Co. and any other subsidiary of the Borrower, the assets of which are equal to or in excess of 5% of the gross book value, before depreciation, of the consolidated property, plant and equipment (before depreciation) of the Borrower as of the time of calculation, and “**Material Subsidiaries**” means all of them. Schedule 1.01(B), which lists the Material Subsidiaries as of the date hereof, shall be updated by the Borrower on an annual basis and delivered with the Compliance Certificate for the audited annual financial statements of the Borrower referred to in Section 5.01(a).

“**Maturity Date**” means December 21, 2018.

“**Non-Recourse Debt**” means any Indebtedness of a subsidiary of the Borrower used to finance the creation, development, acquisition, construction, operation, maintenance and/or expansion of (a) any Power Generation Facility, or (b) any assets used in connection with the business and operation of Liberty Utilities Co. and its subsidiaries as currently conducted (collectively, the “**APUC Non-Recourse Assets**”), including any operating financing provided in conjunction therewith; provided that (i) recourse and security with respect to such Indebtedness shall be limited solely to the assets comprising the applicable APUC Non-Recourse Assets and a pledge of any Equity Interests of the subsidiary of the Borrower that directly owns such APUC Non-Recourse Assets, and (ii) no guarantees shall be provided by the Borrower or any other subsidiary of the borrower in connection with such Indebtedness.

“**Non-Recourse Entity**” means a corporation, partnership or other entity in which the Borrower or any of its subsidiaries holds an Equity Interest and which is formed solely for the purpose of developing, acquiring, constructing, operating, maintaining and/or owning specific assets that are financed by way of Non-Recourse Debt.

**“Obligations”** means all unpaid principal and accrued and unpaid interest on the Loans, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of the Borrower to the Lenders arising under the Loan Documents.

**“Off-Balance Sheet Liability”** of a Person means (i) any obligation under a sale and leaseback transaction which is not a Capital Lease Obligation, (ii) any so-called “synthetic lease” or “tax ownership operating lease” transaction entered into by such Person, (iii) the amount of obligations outstanding under the legal documents entered into as part of any asset securitization or similar transaction on any date of determination that would be characterized as principal if such asset securitization or similar transaction were structured as a secured lending transaction rather than as a purchase, or (iv) any other transaction (excluding operating leases for purposes of this clause (iv)) which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person; in all of the foregoing cases, calculated based on the aggregate outstanding amount of obligations outstanding under the legal documents entered into as part of any such transaction on any date of determination that would be characterized as principal if such transaction were structured as a secured lending transaction, whether or not shown as a liability on a consolidated balance sheet of such Person, in a manner reasonably satisfactory to the Administrative Agent.

**“Other Taxes”** means any present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, or from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Taxes imposed with respect to an assignment.

**“Person”** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**“Plan”** means any employee pension benefit plan for employees of the Borrower or any of its subsidiaries that is subject to the funding requirements of applicable pension legislation in Canada, the United States or other jurisdiction.

**“Power Generation Facility”** means a power generation facility located in any OECD country, Argentina or Brazil, and any ancillary transmission assets.

**“Rating Agencies”** means S&P and DBRS, or such other rating agency or agencies as the Borrower and the Administrative Agent may agree upon, and **“Rating Agency”** means any one of the Rating Agencies.

**“Related Parties”** means (i) all Affiliates of the Borrower, and (ii) any directors, officers, employees, agents or advisors of any Person described in (i).

**“Restricted Payment”** means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in the Borrower or any option, warrant or other right to acquire any Equity Interests in the Borrower.

“**S&P**” means Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies Inc. and its successors.

“**Senior Debt Rating**” means, on any day, the rating by a Rating Agency, in effect at the end of the day, of the Borrower’s senior long-term debt which is not secured or supported by a guarantee, letter of credit or other form of credit enhancement. If a Rating Agency is replaced with another Rating Agency or changes its system of classifications after the date hereof, the determination of the Applicable Rate shall be determined by reference to the new classifications most closely corresponding to the classifications previously used to determine the Applicable Rate.

“**Standby Fee**” has the meaning assigned to it in Section 2.10.

“**subsidiary**” means, with respect to any Person (the “**parent**”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“**Subsidiary**” means each subsidiary of the Borrower, other than Liberty Utilities Co., Algonquin Power Co., Atlantica Holdco, and their respective subsidiaries.

“**Swap Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or any of its subsidiaries shall be a Swap Agreement.

“**Taxes**” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Term Credit Facility**” means the term credit facility made available by the Lenders to the Borrower pursuant to the terms of this Agreement.

“**Total Commitment**” means the maximum total Commitments to be provided by the Lenders to the Borrower amount thereof as set out in Section 2.01 (with each such Lender’s Commitment set out in Schedule 1.01(A)), as reduced from time to time in accordance with the provisions of this Agreement.

“**Transactions**” means the execution, delivery and performance by the Borrower of this Agreement, the borrowing of Loans and the use of the proceeds thereof.

“**Type**”, when used in reference to any Loan advanced pursuant to this Agreement, refers to a LIBOR Loan or a U.S. Base Rate Loan.

“**U.S. Base Rate**” means, on any day, the interest rate expressed as a percentage rate per annum calculated on the basis of a 365 day year, equal to the greater of:

(a) the rate per annum announced by the Administrative Agent on that day as its reference rate of interest for the determination of the interest rates that it will charge to customers of varying degrees of creditworthiness in Canada for U.S. Dollar commercial loans made by it in Canada, and

(b) the sum of: (i) the Federal Funds Effective Rate, and (ii) 1.00% per annum, in each case adjusted automatically with each announced, displayed or quoted change in such rate without the necessity of notice to the Borrower or any other Person,

provided that, if at any time the U.S. Base Rate determined as above would be less than zero, the U.S. Base Rate shall be deemed to be equal to zero.

“**U.S. Base Rate Loan**” means a Loan in U.S. Dollars bearing interest based on the U.S. Base Rate and includes availments that are deemed to be U.S. Base Rate Loans hereunder.

“**U.S. Dollars**” and “**U.S. \$**” mean lawful money of the United States of America.

**Section 1.02 Classification of Loans.** For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “U.S. Base Rate Loan” advance).

**Section 1.03 Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, paragraphs, Exhibits and Schedules shall be construed to refer to Articles, Sections and paragraphs of, and Exhibits and Schedules to, this Agreement, and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

**Section 1.04 Accounting Terms; GAAP.** Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Administrative Agent requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any of its subsidiaries at "fair value", as defined therein. For purposes of any covenants hereunder, any acquisition or any sale or other disposition outside the ordinary course of business by the Borrower or any of its subsidiaries of any asset or group of related assets in one or a series of related transactions, the net proceeds from which exceed CDN \$1,000,000, including the incurrence of any Indebtedness and any related financing or other transactions in connection with any of the foregoing, occurring during the period for which such ratios are calculated shall be deemed to have occurred on the first day of the relevant period for which such ratios were calculated on a pro forma basis acceptable to the Administrative Agent.

**Section 1.05 Currency.** All Loans that are U.S. Base Rate Loans or LIBOR Loans in U.S. Dollars shall only be or remain denominated in U.S. Dollars; and any Loans denominated in U.S. Dollars shall be repayable, and all interest and fees in respect thereof or in connection therewith shall accrue and be payable, by the Borrower in U.S. Dollars.

**Section 1.06 Time is of the Essence.** Time shall be on the essence in this Agreement.

**Section 1.07 Schedules and Exhibits.** The Schedules and Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

## ARTICLE II

### Term Credit Facility

**Section 2.01 Total Commitment.** Subject to the terms and conditions set forth herein, each Lender severally (and not jointly or jointly and severally) agrees to make Loans rateably to the Borrower in accordance with its Commitment in an aggregate principal amount of up to U.S. \$600,000,000.

**Section 2.02** Loans. The Lenders agree to make Loans to the Borrower in accordance with the following:

- (a) The Loans shall be made in a single advance during the Availability Period. Upon the expiry of the Availability Period, any undrawn portion of the Commitments shall be automatically cancelled.
- (b) Loans may be converted or continued by the Borrower prior to the Maturity Date, but Loans that are repaid may not be re-borrowed.
- (c) All outstanding Loans and all other unpaid Obligations shall be paid in full by the Borrower on the Maturity Date.
- (d) Loans may be U.S. Base Rate Loans or LIBOR Loans, as selected by the Borrower.
- (e) U.S. Base Rate Loans shall continue as U.S. Base Rate Loans unless and until such U.S. Base Rate Loans are either converted into LIBOR Loans or are repaid.
- (f) Each Loan made as a LIBOR Loan shall be in the minimum aggregate amount of \$1,000,000 (and in multiples of \$100,000 if in excess thereof).
- (g) In accordance with Section 2.09 and subject to Section 2.14 in the case of LIBOR Loans, the Borrower may from time to time prepay, without penalty or premium, any outstanding Loan. The Borrower shall provide to the Administrative Agent three (3) Business Days advance notice of prepayment.
- (h) Each U.S. Base Rate Loan shall bear interest on the outstanding principal amount thereof, for each day from and including the date such Loan is made or is converted to a LIBOR Loan but excluding the date it becomes due or is converted, at a rate per annum equal to the sum of the U.S. Base Rate plus the Applicable Rate for such day. Changes in the rate of interest on that portion of any Loan maintained as a U.S. Base Rate Loan will take effect simultaneously with each change in the U.S. Base Rate.
- (i) All payments of the Obligations hereunder shall be made, without setoff, deduction, or counterclaim, in immediately available funds to the Administrative Agent at the Administrative Agent's address specified herein, by 12:00 noon (Toronto time) on the date when due.
- (j) The Borrower shall not be entitled to request, or to elect to convert or continue, any Loan if the Interest Period requested with respect thereto would end after the Maturity Date.

**Section 2.03** Request for Loans. To request the advance of the Loans, the Borrower shall submit a duly completed Borrowing Request (a) in the case of LIBOR Loans, by not later than 11:00 a.m., Toronto time, three (3) Business Days before the date of the proposed advance, or (b) in the case of U.S. Base Rate Loans, by not later than 11:00 a.m., Toronto time, one (1) Business Day before the date of the proposed advance. The Borrowing Request shall be irrevocable. The Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of the requested Loans;
- (ii) the date of advance of the requested Loans, which shall be a Business Day;
- (iii) the Type of Loans requested;
- (iv) in the case of LIBOR Loans, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (v) the location and number of the Borrower's account to which funds are to be disbursed.

If no election as to the Type of Loan is specified, then the requested Loans shall be a U.S. Base Rate Loans. If no Interest Period is specified with respect to any requested LIBOR Loans, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

**Section 2.04** [Intentionally Deleted]

**Section 2.05** [Intentionally Deleted]

**Section 2.06** **Conversion/Continuation of Loans.**

(a) Each Loan initially shall be of the Type specified in the Borrowing Request. Thereafter, the Borrower may elect to convert such Loan to a different Type or to continue such Loan, all as provided in this Section 2.06. The Borrower may elect different options with respect to different portions of the affected Loan.

(b) To make an election pursuant to this Section 2.06, the Borrower shall notify the Administrative Agent of such election by delivery of a duly completed Conversion/Continuation Notice by not later than 1:00 p.m. (Toronto time) at least three (3) Business Days prior to the date of the requested conversion or continuation. Each such Conversion/Continuation Notice shall be irrevocable.

(c) If the Borrower fails to deliver a timely Conversion/Continuation Notice with respect to a LIBOR Loan prior to the end of the Interest Period applicable thereto, then, unless such Loan is repaid as provided herein, at the end of such Interest Period such Loan shall be converted to a U.S. Base Rate Loan. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Loan may be converted to or continued as a LIBOR Loan, and (ii) unless repaid, each LIBOR Loan shall be converted to a U.S. Base Rate Loan at the end of the Interest Period applicable thereto.



**Section 2.07 Termination and Reduction of Total Commitment/ Increase of Total Commitment.**

(a) Unless previously terminated, the commitment to provide the Term Credit Facility shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Total Commitment; provided that each reduction of the Total Commitment shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Total Commitment under this Section 2.07(b) at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by the Borrower pursuant to this Section 2.07 shall be irrevocable. Any termination or reduction of the Total Commitment shall be permanent.

**Section 2.08 Repayment of Loans; Evidence of Debt.**

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent the then unpaid principal amount of each Loan on the Maturity Date plus any accrued and unpaid interest thereon.

(b) The Administrative Agent shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the Lenders resulting from each Loan made by the Lenders, including the amounts of principal and interest payable and paid to the Administrative Agent from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to the Administrative Agent hereunder, and (iii) the amount of any sum received by the Administrative Agent hereunder.

(d) The entries made in the accounts maintained pursuant to Section 2.08(b) or Section 2.08(c) shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

**Section 2.09 Prepayment of Loans.**

(a) The Borrower shall have the right at any time and from time to time, without penalty or premium, to prepay any outstanding Loan in whole or in part, subject to prior notice in accordance with Section 2.09(b) below and, if applicable, the payment of the break fees contemplated by Section 2.14 in the case of LIBOR Loans.

(b) The Borrower shall notify the Administrative Agent in writing of any prepayment hereunder (i) in the case of prepayment of a LIBOR Loan, not later than 11:00 a.m., Toronto time, three (3) Business Days before the date of prepayment, (ii) in the case of prepayment of a U.S. Base Rate Loan, not later than 11:00 a.m., Toronto time, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Loan or portion thereof to be prepaid. Each partial prepayment of any Loan shall be in an amount that would be permitted in the case of an advance of a Loan of the same Type as provided in Section 2.02. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.11. In the event of a partial prepayment of the Loans, such funds shall be applied (i) first, towards the payment of the principal then due under all U.S. Base Rate Loans, (ii) second, towards payment of interest and fees then due under all U.S. Base Rate Loans, (iii) third, towards payment of principal then due under all LIBOR Loans, and (iv) fourth, towards payment of interest and fees then due under all LIBOR Loans.

**Section 2.10 Fees.**

(a) The Borrower agrees to pay to the Administrative Agent, for the rateable benefit of the Lenders, a standby fee, which shall accrue at the Applicable Rate on the daily amount of the undrawn Total Commitment during the period commencing 60 days after the Effective Date and ending on the date on which the Loans are advanced pursuant to the Borrowing Request (the “**Standby Fee**”). Any accrued Standby Fee shall be payable in arrears on the date of advance of the Loans. The Standby Fee shall be computed on the basis of a year of 365 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay to the Administrative Agent, for its own account, any fees payable in the amounts and at the times agreed upon between the Borrower and the Administrative Agent.

(c) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent. Fees paid shall not be refundable under any circumstances.

**Section 2.11 Interest.**

(a) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Total Commitment; provided that (i) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (ii) in the event of any conversion of any LIBOR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(b) The U.S. Base Rate shall be computed on the basis of a year of 365/366 days. The LIBO Rate shall be calculated on the basis of a year of 360 days.

(c) For purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest specified in this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

(d) If any provision of this Agreement would oblige the Borrower to make any payment of interest or other amount payable to the Administrative Agent or any Lender in an amount or calculated at a rate which would be prohibited by applicable law or would result in a receipt by the Administrative Agent or any Lender of "interest" at a "criminal rate" (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by the Administrative Agent or any Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows: (i) first, by reducing the amount or rate of interest required to be paid to the Administrative Agent and the Lenders, and (ii) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the Administrative Agent and the Lenders that would constitute interest for purposes of section 347 of the Criminal Code (Canada).

(e) If any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall, at the option of the Majority Lenders, bear interest, after as well as before judgment, at a rate per annum equal to 2% plus the rate otherwise applicable.

**Section 2.12 Alternate Rate of Interest.** If, prior to the commencement of any Interest Period for a LIBOR Loan, the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBOR Rate or the market for so ascertaining or issuing LIBOR Loans is disrupted for such Interest Period, then the Administrative Agent shall give notice thereof to the Borrower as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower that the circumstances giving rise to such notice no longer exist, (i) any Conversion/Continuation Notice that requests the conversion of any Loan to, or continuation of any Loan as, a LIBOR Loan shall be ineffective, and (ii) if the Borrowing Request requests a LIBOR Loan, such Loan shall be made as an U.S. Base Rate Loan.

**Section 2.13 Increased Costs.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, the Lenders; or

(ii) subject the Lenders or the Administrative Agent to any Taxes (other than Indemnified Taxes and Excluded Taxes) on its loans, loan principal, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on the Administrative Agent, the Lenders or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Loans made by the Lenders or participation therein,

and the result of any of the foregoing shall be to increase the cost to any Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by the Administrative Agent or Lenders hereunder (whether of principal, interest or otherwise), then the Borrower will pay to the Administrative Agent such additional amount or amounts as will compensate the Administrative Agent or Lenders for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lenders' capital as a consequence of this Agreement or the Loans made by the Lenders to a level below that which the Lenders' could have achieved but for such Change in Law (taking into consideration the Lenders' policies with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to the Lenders such additional amount or amounts as will compensate the Lenders for any such reduction suffered.

(c) A certificate of the relevant Lender setting forth the amount or amounts necessary to compensate the Lender as specified in Section 2.13(a) or Section 2.13(b) shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the relevant Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of a Lender to demand compensation pursuant to this Section 2.13 shall not constitute a waiver of any Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.13 for any increased costs or reductions incurred prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor.

**Section 2.14 Break Funding Payments.** In the event of (a) the payment of any principal of any LIBOR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any LIBOR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any LIBOR Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any LIBOR Loan other than on the last day of the Interest Period applicable thereto in accordance with Section 9.04, then, in any such event, the Borrower shall compensate the Administrative Agent, for the rateable benefit of the Lenders, for the loss, cost and expense attributable to such event. In the case of a LIBOR Loan, such loss, cost or expense to the Lenders shall be deemed to include an amount determined by the Administrative Agent to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Administrative Agent would bid were it to bid, at the commencement of such period, for U.S. Dollar of a comparable amount and period from other banks in the LIBOR market. A certificate of the Administrative Agent setting forth any amount or amounts that the Administrative Agent for the rateable benefit of the Lenders is entitled to receive pursuant to this Section 2.14 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Administrative Agent the amount shown as due on any such certificate within 10 days after receipt thereof.

**Section 2.15 Taxes.**

(a) Withholding Taxes; Gross-Up. Each payment by the Borrower under any Loan Document shall be made without withholding for any Taxes, unless such withholding is required by law. If it is required to withhold Taxes, then the Borrower may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by the Borrower shall be increased as necessary so that net of such withholding (including withholding applicable to additional amounts payable under this Section 2.15) the applicable permitted assignee (in accordance with Section 9.04) receives the amount it would have received had no such withholding been made.

(b) Payment of Other Taxes by the Borrower. The Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Evidence of Payment. As soon as practicable after any payment of Indemnified Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Borrower. The Borrower shall indemnify the Lenders for any Indemnified Taxes that are paid or payable by the Lenders in connection with any Loan Document (including amounts paid or payable under this Section 2.15(d) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 2.15(d) shall be paid within ten (10) days after the Administrative Agent delivers to the Borrower a certificate stating the amount of any Indemnified Taxes so paid or payable by the Lenders and describing the basis for the indemnification claim. Such certificate shall be conclusive of the amount so paid or payable absent manifest error.

**Section 2.16 Payments Generally.**

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, or of amounts payable under Section 2.13, Section 2.14 or Section 2.15, or otherwise) prior to 12:00 noon, Toronto time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent, for the rateable benefit of the Lenders, unless otherwise required by the Administrative Agent, via wire transfer to an account designated by the Administrative Agent. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in U.S. Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, and (ii) second, towards payment of principal then due hereunder.

(c) The Administrative Agent shall distribute all amounts due and payable to each Lender promptly upon receipt of payment. Any amount received by the Administrative Agent for the account of the Lenders shall be held in trust for their benefit pending distribution and shall bear interest at the interbank rate from and after the date of receipt by the Administrative Agent.

(d) No Lender shall be responsible for any default by any other Lender to make Loans to the Borrower nor shall the Commitment of any Lender be increased as a result of any such default.

**Section 2.17 [Intentionally Deleted]**

**Section 2.18 Rateable Loans and Payments.** Each Lender shall endeavour to make its rateable portion of the Loan available to the Administrative Agent immediately upon receipt of the notice specified in Section 2.18(c), but in any event no later than 12:00 noon, Toronto time, on the requested date of advance specified in the Borrowing Request. Unless the Administrative Agent receives notice from a Lender prior to the date of a Loan that the Lender will not make its rateable portion of the Loan available to the Administrative Agent, the Administrative Agent may assume that the Lender has made its portion available to the Administrative Agent on the date of the Loan prior to 12:00 noon, Toronto time, and the Administrative Agent may, in reliance upon such assumption, make a corresponding amount available to the Borrower on such date. If and to the extent the Lender has not made its rateable portion available to the Administrative Agent, the Lender shall pay the corresponding amount to the Administrative Agent immediately upon demand. If the Lender pays the corresponding amount to the Administrative Agent, the amount so paid shall constitute the Lender's part of the Loan for purposes of this Agreement. If the Lender does not pay the amount to the Administrative Agent upon demand and such amount has been made available to the Borrower, the Borrower shall pay the corresponding amount to the Administrative Agent upon demand and agrees that any such amount received and so reimbursed would not and shall not constitute a Loan. The Administrative Agent shall be entitled to recover interest on the corresponding amount from the Borrower from the date the amount was made available to the Borrower until the date it is repaid to the Administrative Agent at the U.S. Base Rate plus the Applicable Rate. A Lender who defaults in the payment of any corresponding amount to the Administrative Agent under this Section 2.18 shall pay (as compensation to the Administrative Agent for the additional services required of the Administrative Agent as a result of the Lender's default) interest to the Administrative Agent at the interbank rate on the corresponding amount from the date that the amount was made available to the Borrower by the Administrative Agent until the date it is repaid to the Administrative Agent. Nothing in this Section 2.18 shall affect any Commitment of any Lender to the Borrower.

(a) Unless the Administrative Agent receives notice from the Borrower prior to the date on which any payment is due to the Lenders with respect to the principal amount of any Loan and any interest thereon that the Borrower will not make the payment in full, the Administrative Agent may assume that such Borrower has made such payment in full on that date and the Administrative Agent may, in reliance upon that assumption, distribute to each Lender on the due date an amount equal to the amount with respect thereto then due to the Lender. If and to the extent the Borrower has not made such a payment in full, each Lender shall repay to the Administrative Agent upon demand the amount distributed to it together with interest at the interbank rate from the date such amount was distributed to the Lender until the date the Lender repays it to the Administrative Agent.

(b) References in this Agreement to a Lender's rateable portion of Loan, rateable share of payments of principal, interest, fees or any other amount, shall mean and refer to a rateable portion or share as nearly as may be rateable in the circumstances, as determined in good faith by the Administrative Agent. Each such determination by the Administrative Agent shall be prima facie evidence of such rateable share.

(c) The Administrative Agent shall give each Lender prompt notice of (i) receipt of the Borrowing Request from the Borrower and of each Lender's rateable portion of the requested Loans, and (ii) any other written notice received by it under this Agreement.

### ARTICLE III

#### **Representations and Warranties**

The Borrower represents and warrants to the Administrative Agent and each Lender that:

**Section 3.01 Organization; Powers.** The Borrower and each of its Material Subsidiaries are duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

**Section 3.02 Authorization; Enforceability.** The Transactions are within the Borrower's corporate powers and have been duly authorized by all necessary corporate action, this Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**Section 3.03 Governmental Approvals; No Conflicts.** The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any applicable law or regulation or the articles, by-laws or other organizational documents of the Borrower or any order of any Governmental Authority, and (c) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its subsidiaries.

**Section 3.04 Financial Condition; No Material Adverse Change.**

(a) The Borrower has heretofore furnished to the Administrative Agent its consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the Fiscal Quarter and the portion of the Fiscal Year ended September 30, 2017, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower as of such dates and for such periods in accordance with GAAP.

(b) Since December 31, 2016, there has been no material adverse change in the business, assets, operations or financial condition of the Borrower and its subsidiaries taken as a whole.

**Section 3.05 Properties.**

(a) The Borrower and each of its Material Subsidiaries have good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes and encumbrances, and no Material Subsidiary is in default under its encumbrances related to it, except to the extent that such default would not, in the aggregate, have a Material Adverse Effect.

(b) The Borrower and each of its Subsidiaries own, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and each of its Material Subsidiaries do not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**Section 3.06 Litigation and Environmental Matters.**

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Material Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters), or (ii) that involve this Agreement or the Transactions.



(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, the Borrower and each of its subsidiaries (i) have not failed to comply with any Environmental Laws or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) have not become subject to any Environmental Liability, (iii) have not received notice of any claim with respect to any Environmental Liability, or (iv) have no knowledge of any basis for any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

**Section 3.07 Compliance with Laws.** The Borrower and each of its subsidiaries are in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**Section 3.08 Taxes.** The Borrower and each of its Material Subsidiaries have timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or applicable Subsidiary has set aside on its books adequate reserves, or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

**Section 3.09 Disclosure.** The Borrower has disclosed to the Administrative Agent all agreements, instruments and corporate or other restrictions to which it and its subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the other reports, financial statements, certificates or other information furnished by or on behalf of the Borrower to the Administrative Agent in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

**Section 3.10 Patriot Act, Etc.** To the extent applicable, the Borrower and each of its Material Subsidiaries are in compliance, in all material respects, with the (a) *Trading with the Enemy Act*, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the *USA Patriot Act*. No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the *United States Foreign Corrupt Practices Act* of 1977, as amended, or any Canadian legislation having similar effect in whole or in part.

**Section 3.11 Requirements of Law.** The business and assets of the Borrower and each of its Material Subsidiaries are being operated in substantial compliance with applicable requirements of law where failure to so operate would result in a Material Adverse Effect; to the best of its knowledge, after reasonable inquiry, there are no breaches thereof and no enforcement actions in respect thereof are threatened or pending to this Agreement, which, in any such case, would reasonably be expected to result in a Material Adverse Effect.

**Section 3.12 GAAP.** All accounting systems are maintained and financial records of the Borrower and each of its subsidiaries are prepared in accordance with GAAP.

**Section 3.13 Insurance.** The Borrower and each of its subsidiaries maintain with responsible and reputable insurers, insurance in respect of its business and properties against such casualties and contingencies, including without limitation, public liability and business interruption, and in such types and in such amounts and with such deductibles and other provisions, as are customarily maintained by persons engaged in the same or similar businesses in the same jurisdictions under similar conditions.

**Section 3.14 Solvency.** The Borrower and each of its subsidiaries maintain sufficient capital such that its capital would not at any time be considered an unreasonably small capital, and the Borrower and each of its Subsidiaries is not insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada).

**Section 3.15 Expropriation.** Except as occurs and is disclosed to the Agent in writing after the date hereof, neither the Borrower nor any of its Material Subsidiaries is the subject of an expropriation, at present, or to the knowledge of the Borrower threatened, with regard to any of its properties and is not aware of any basis upon which expropriation can or would be asserted with regard to any its properties.

**Section 3.16 Subsidiaries.** Attached hereto as Schedule 3.16 is a true and correct chart setting out, as of the date hereof, the ownership of each subsidiary of the Borrower.

**Section 3.17 Collective Bargaining.** As of the date hereof, the Borrower is not bound by or a party to or has any obligations under any collective bargaining agreement, and no trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent: (i) holds bargaining rights with respect to any of its employees by way of certification, interim certification, voluntary recognition, designation or successor rights; (ii) has applied to be certified as the bargaining agent of any of its employees; or (iii) has applied to have it declared a related employer pursuant to Section 1(4) of the *Labour Relations Act* (Ontario) or any equivalent requirement of law of any other jurisdiction; and there is no strike, labour dispute, work slowdown or stoppage pending, or to the best of its knowledge threatened, against it; there is no organizing activity involving the Borrower by any labour union or group of employees except as described above.

**Section 3.18 Pension Plans.** As to all Plans and benefit plans maintained by the Borrower and its subsidiaries: (i) all contributions (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all applicable laws and the terms of each Plan have been made in accordance with all applicable laws and the terms of each Plan, (ii) all liabilities under each Plan are funded, on a going concern and solvency basis, in accordance with the terms of the respective Plans, the requirements of applicable pension benefits laws and of applicable regulatory authorities and the most recent actuarial report filed with respect to the Plan, and (iii) no event has occurred and no conditions exist with respect to any Plan that has resulted or could reasonably be expected to result in any Plan having its registration revoked or refused for the purposes of any administration of any relevant pension benefits regulatory authority or being required to pay any taxes or penalties under any applicable pension benefits or tax laws, except for any exceptions to clauses (ii) through (iii) above that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

#### ARTICLE IV

##### **Conditions Precedent**

**Section 4.01 Effective Date.** The obligation of the Lenders to make Loans hereunder shall not become effective until the date on which each of the following conditions are satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party, or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received a favorable written opinion of counsel for the Borrower, substantially in form satisfactory to the Administrative Agent (or its counsel), and covering such other matters relating to the Borrower, this Agreement or the Transactions as the Administrative Agent shall reasonably request. The Borrower hereby requests such counsel to deliver such opinion.

(c) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Borrower, and any other legal matters relating to the Borrower and this Agreement, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(d) The Lenders shall have completed their due diligence on (i) the corporate structure of the Borrower and its subsidiaries, (ii) the Atlantica Acquisition; (iii) corporate and material governmental and other required third party approvals and consents for the Atlantica Acquisition; and (iv) the proposed sources and uses of funds for the Atlantica Acquisition.

(e) The Lenders shall have received a pro forma financial forecast for the Borrower for each of the 2018, 2019, 2020, 2021 and 2022 Fiscal Years.

(f) The Lenders shall have received a certificate of the Borrower, dated as of the Effective Date, demonstrating that, on a pro forma basis, after advance of the full amount of the Total Commitment and completion of the Atlantica Acquisition, the Borrower will be in compliance with the financial covenant set out in Section 5.10 (Debt to Capitalization Ratio) of this Agreement.

(g) The Administrative Agent shall have received, for the rateable benefit of the Lenders, a U.S. \$100,000 work fee, and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all legal fees and out of pocket expenses required to be reimbursed or paid by the Borrower hereunder

**Section 4.02 Drawdown Date.** The obligation of the Lenders to advance the Loans to the Borrower shall not become effective until the date (during the Availability Period) on which each of the following conditions are satisfied (or waived in accordance with Section 9.02):

(a) The Borrower shall have delivered a duly completed Borrowing Request to the Administrative Agent.

(b) The Lenders shall have received a certificate of the Borrower, dated the date of the Borrowing Request, (i) confirming that the Atlantica Acquisition shall be consummated concurrently with the advances of the Loans in accordance with the Atlantica Purchase Agreement, and (ii) demonstrating that, on a pro forma basis, after advance of the full amount of the Total Commitment and completion of the Atlantica Acquisition, the Borrower will be in compliance with the financial covenant set out in Section 5.10 (Debt to Capitalization Ratio) of this Agreement.

## ARTICLE V

### Affirmative Covenants

Until the commitment to provide the Term Credit Facility has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full, the Borrower covenants and agrees in favour of the Lenders and the Administrative Agent that:

**Section 5.01 Financial Statements; Ratings Change and Other Information.** The Borrower will furnish to the Administrative Agent:

(a) within one hundred twenty (120) days after the end of each Fiscal Year of the Borrower, commencing with the 2017 Fiscal Year, the audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous Fiscal Year (commencing with the audit for the 2017 Fiscal Year), all reported on by an independent public accountant of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower on a consolidated basis in accordance with GAAP consistently applied;

(b) within sixty (60) days after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Borrower, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such Fiscal Quarter and the then elapsed portion of the Fiscal Year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a Compliance Certificate of a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with the financial covenant contained in Section 5.10, and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) promptly after the same has been filed, and is not otherwise publicly available, a notification that periodic and other reports, proxy statements and other materials have been filed by the Borrower with any securities commission or with any national securities exchange in the United States or Canada;

(e) promptly upon receipt of confirmation of same, written notice of any credit rating changes of any externally rated subsidiaries;

(f) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent may reasonably request;

(g) promptly following any request therefor, such additional information on the status, timing, structure, consents, approvals and documentation for the Atlantica Acquisition as the Administrative Agent may reasonably request;

(h) promptly following the execution and delivery thereof, a true and complete copy of any amendment to the Atlantica Purchase Agreement; and

(i) within three (3) days following the consummation of the Atlantica Acquisition, a copy of the consent(s) and/or waiver(s) from the U.S. Department of Energy approving the change of control of each of the Solana and Mojave solar projects (as each such project is described in Atlantica Yield plc's Form 6-K for the month of November, 2017 with Commission File Number 001-36487).

**Section 5.02 Notices of Material Events.** The Borrower will furnish to the Administrative Agent prompt written notice of the following, each of which shall be a material event:

- (a) the occurrence of any Default;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any of its subsidiaries that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;
- (c) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect; or
- (d) if the Borrower elects to terminate the Atlantica Acquisition.

Each notice delivered under this Section 5.02 shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

**Section 5.03 Existence; Conduct of Business.** The Borrower and each of its Material Subsidiaries will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that the foregoing shall not prohibit any amalgamation, merger, consolidation, liquidation or dissolution permitted under Section 6.02.

**Section 5.04 Payment of Obligations.** The Borrower and each of its subsidiaries will pay its obligations, including tax liabilities, that, if not paid before the same shall become delinquent or in default, could result in a Material Adverse Effect, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or applicable subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

**Section 5.05 Maintenance of Properties; Insurance.** The Borrower and each of its subsidiaries will (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

**Section 5.06 Books and Records; Inspection Rights.** The Borrower and each of its subsidiaries will keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower and each of its subsidiaries will permit any representatives designated by the Administrative Agent, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

**Section 5.07 Compliance with Laws.** The Borrower and each of its subsidiaries will comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**Section 5.08 Use of Proceeds.** The proceeds of the Loans will be used only in connection with the financing of the Atlantica Acquisition, including satisfaction of the purchase price in accordance with the terms of the Atlantica Purchase Agreement.

**Section 5.09 Accuracy Of Information.** The Borrower will ensure that any information, including financial statements or other documents, furnished to the Administrative Agent in connection with this Agreement or any amendment or modification hereof or waiver hereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and the furnishing of such information shall be deemed to be representation and warranty by the Borrower on the date thereof as to the matters specified in this Section 5.09.

**Section 5.10 Debt to Capitalization Ratio.** The Borrower will not permit the ratio of Consolidated Indebtedness to Consolidated Total Capitalization to be greater than 0.70 to 1.00 as of (i) the end of any Fiscal Quarter, and (ii) as of any date on which a Restricted Payment is made. For purposes of the foregoing clause (ii), the financial covenant under this Section 5.10 shall be calculated giving pro forma effect to the applicable Restricted Payment in a manner acceptable to the Administrative Agent.

## ARTICLE VI

### Negative Covenants

Until the Term Credit Facility has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full, the Borrower covenants and agrees in favour of the Lenders and the Administrative Agent that:

#### **Section 6.01 Secured Indebtedness.**

(a) The Borrower and each of its Subsidiaries will not, directly or indirectly, create, incur, assume, guarantee or otherwise become directly or indirectly liable with respect to Indebtedness for borrowed money that is secured by a Lien on the property of the Borrower or its Subsidiaries unless and until (i) a Lien on the same property is granted to the Administrative Agent, and (ii) the Borrower or applicable Subsidiary obtains the agreement of the holder(s) of such Indebtedness for borrowed money (or by an agent or trustee acting on behalf of such holder(s)) that such Liens shall rank pari passu; provided that, for certainty, the foregoing obligation will not apply with respect to any Capital Lease entered into by the Borrower or applicable Subsidiary; and further provided that, such obligation will not apply to, or restrict, the assignment by the Borrower or applicable Subsidiary of its rights under any letter of credit under which it is the beneficiary.

(b) The Borrower's subsidiaries will not, directly or indirectly, create, incur, assume, guarantee or otherwise become directly or indirectly liable with respect to Indebtedness for borrowed money that is secured by a Lien on the property of the Borrower or any of its subsidiaries in excess of CDN \$280,000,000 in the aggregate at any time; provided that, for certainty, the foregoing obligation will not apply with respect to (i) any Capital Lease entered into by the Borrower or applicable Subsidiary, (ii) any collateral delivered by the Borrower or applicable Subsidiary under any Swap Agreement, (iii) Indebtedness for borrowed money of any entity acquired by the Borrower or any of its subsidiaries after the date hereof that is secured by a Lien on the property of such entity (or of any subsidiary or affiliate of such entity that is acquired in the same transaction), or (iv) Non-Recourse Debt incurred by Non-Recourse Entities up to a maximum aggregate amount of the Equivalent Amount in Canadian Dollars of U.S. \$625,000,000.

**Section 6.02 Fundamental Changes.**

(a) Neither the Borrower nor any of its Material Subsidiaries will amalgamate with, merge into, or consolidate with any other Person, or permit any other Person to amalgamate with, merge into, or consolidate with it, unless (i) the surviving entity will remain fully liable for the obligations of the Borrower or applicable Material Subsidiary under the Loan Documents, and (ii) at the time thereof, and immediately after giving effect thereto, no Default shall have occurred and be continuing.

(b) Neither the Borrower nor any of its Material Subsidiaries will liquidate or dissolve itself without the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld.

**Section 6.03 Business.** Neither the Borrower nor any of its subsidiaries will engage to any material extent in any business other than businesses of the type conducted by the Borrower and its subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto, including the nature and kind of material contracts related thereto.

**Section 6.04 Swap Agreements.** Neither the Borrower nor any of its subsidiaries will enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or applicable subsidiary has actual exposure (other than those in respect of Equity Interests of the Borrower or any of its subsidiaries), (b) Swap Agreements entered into by a subsidiary of the Borrower in the normal course of its business, and not for speculative purposes, whether resulting from a regulatory requirement or otherwise, or (c) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or applicable subsidiary.



**Section 6.05 Restricted Payments.** The Borrower will not declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment unless, immediately before and after giving effect to such Restricted Payment, no Default exists or would exist.

**Section 6.06 Transactions with Affiliates.** Neither the Borrower nor any of its Subsidiaries will sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except in the ordinary course of business at prices and on terms and conditions not less favourable to the Borrower or applicable Subsidiary than could be obtained on an arm's length basis from unrelated third parties.

**Section 6.07 Disposition of Property.** The Borrower will not, except with the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld, directly or indirectly, dispose of, in one transaction or a series of transactions, all or substantially all of its property, nor permit any of its Material Subsidiaries to directly or indirectly, dispose of, in one transaction or a series of transactions, all or substantially all of its property; provided that such consent shall not be required for any disposition of property having a net book value of less than the greater of (i) CDN \$250,000,000 or (ii) an amount equal to 2.5% of the total value of the assets of the Borrower and its subsidiaries on a consolidated basis (as confirmed in each reporting required pursuant to Section 5.01(a) and Section 5.01(b)).

## ARTICLE VII

### Events of Default

**Section 7.01 Default.** If any of the following events ("**Events of Default**") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any of its subsidiaries in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, shall prove to have been incorrect in any material respect or, with respect to any representation or warranty which is already qualified as to materiality or by reference to Material Adverse Effect, shall prove to have been incorrect in any respect, when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, Section 5.03 or Section 5.08 or the Borrower or any of its subsidiaries shall fail to observe or perform any covenant contained in Article VI;

(e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after written notice thereof from the Administrative Agent to the Borrower;

(f) an event of default shall occur under any agreement, under which the Borrower or any of its subsidiaries has outstanding Indebtedness for borrowed money in excess of CDN \$25,000,000, that results in such Indebtedness being declared due and payable by the holder(s) thereof (or by an agent or trustee acting on behalf of such holder(s)) or becoming subject to a requirement to repay, repurchase, redeem (excluding any redemption of the 2016 Convertible Debentures) or defease such Indebtedness; provided that, if such event of default is cured or waived at any time, then the Event of Default created hereunder will be deemed to be cured;

(g) a termination amount in excess of CDN \$25,000,000 becomes due and payable under any Swap Agreement to which the Borrower or any of its subsidiaries is a party;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its Material Subsidiaries, or its debts, or of a substantial part of its assets, under any bankruptcy, insolvency, receivership or similar law now or hereafter in effect, or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any of its Material Subsidiaries, or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any of its Material Subsidiaries shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any applicable bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for it or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any of its Material Subsidiaries shall become unable, admit in writing its inability, or fail generally, to pay its debts as they become due;

(k) one or more judgments for the payment of money or claim to seize assets in lien or satisfaction thereof, in an aggregate amount in excess of CDN \$25,000,000 shall be rendered against the Borrower or any of its subsidiaries (which judgments are not covered by insurance policies as to which liability has been accepted by the insurance carrier) and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or applicable subsidiary to enforce any such judgment; or

(l) a Change in Control shall occur,

then, and in every such event (other than an event with respect to the Borrower or any of its Material Subsidiaries described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, upon the instructions of the Majority Lenders, by notice to the Borrower, take the actions set out in Section 7.02; and in case of any event with respect to the Borrower or any of its Material Subsidiaries described in clause (h) or (i) of this Article, the Term Credit Facility shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

Notwithstanding anything to the contrary contained in this Article VII, in the event that the Borrower fails to comply with the requirements of Section 5.10 as of the last day of any Fiscal Quarter, at any time after the beginning of such Fiscal Quarter until the expiration of the 10th day subsequent to the date on which the financial statements with respect to such Fiscal Quarter (or the Fiscal Year ended on the last day of such Fiscal Quarter) are required to be delivered pursuant to Section 5.01(a) or Section 5.01(b), as applicable, the Borrower shall have the right to issue Equity Interests (other than Disqualified Stock) for cash on terms and conditions reasonably acceptable to the Majority Lenders (collectively, the “**Cure Right**”), and upon the receipt by the Borrower of the cash proceeds of such equity issuance (the “**Cure Amount**”) Section 5.10 shall be recalculated giving effect to the following pro forma adjustment: if, after giving effect to the foregoing pro forma adjustment (without giving effect to any repayment of any Indebtedness with any portion of the Cure Amount or any portion of the Cure Amount on the balance sheet of the Borrower, in each case, with respect to such Fiscal Quarter only), the Borrower shall then be in compliance with the requirements of Section 5.10, the Borrower shall be deemed to have satisfied the requirements of Section 5.10 as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of Section 5.10 that had occurred shall be deemed cured for the purposes of this Agreement; provided that the Borrower shall have notified the Administrative Agent of the exercise of such Cure Right within five (5) Business Days of the issuance of such Equity Interests for cash. Notwithstanding anything herein to the contrary, (i) in each four consecutive Fiscal Quarter period of the Borrower there shall be at least three Fiscal Quarters in which the Cure Right is not exercised, (ii) during the term of this Agreement, the Cure Right shall not be exercised more than one time, (iii) the Cure Amount shall be no greater than the amount required for purposes of complying with Section 5.10 and any amounts in excess thereof shall not be deemed to be a Cure Amount, and (iv) upon receipt by the Administrative Agent of written notice, prior to the expiration of the 10th Business Day subsequent to the due date for delivery of the relevant financial statements pursuant to Section 5.01(a) or Section 5.01(b) (the “**Anticipated Cure Deadline**”) that the Borrower intends to exercise the Cure Right, the Lenders shall not be permitted to instruct the Administrative Agent to accelerate the Loans or otherwise exercise the remedies described in Section 7.02 on the basis of a failure to comply with the requirements of the covenant set forth in Section 5.10 until such failure is not cured pursuant to the exercise of the Cure Right on or prior to the Anticipated Cure Deadline.

**Section 7.02 Remedies.** Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived by the Majority Lenders or cured to the satisfaction of the Majority Lenders, the Administrative Agent may, upon the instructions of the Majority Lenders, by written notice to the Borrower, take any of the following actions:

- (a) declare the rights of the Borrower to access the Term Credit Facility pursuant to the terms of this Agreement terminated, whereupon such rights shall be immediately terminated;
- (b) declare the unpaid principal of, and any accrued interest in respect of, all Loans, and any and all other Obligations of any and every kind owing by the Borrower to the Lenders hereunder to be due, whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower;
- (c) take such steps and actions as shall be available to the Administrative Agent, on behalf of the Lenders, as creditor of the Borrower, with or without notice, and on the basis that the rights and remedies of the Administrative Agent are cumulative and in addition to, and not in substitution for, any other rights or remedies.

## **ARTICLE VIII**

### **The Agent and the Lenders**

#### **Section 8.01 Authorization and Action.**

(a) Each Lender irrevocably appoints and authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement as are delegated to it by the terms of this Agreement, and such other powers as are reasonably incidental thereto which may be necessary for the Administrative Agent to exercise in order for the provisions of the Loan Documents to be carried out. As to any matters not expressly provided for by this Agreement, the Administrative Agent shall act or refrain from acting (and shall be fully protected in so doing) upon the joint instructions of the Majority Lenders which instructions shall be binding upon all Lenders. The Administrative Agent shall not be required to take any action pursuant to such instructions or otherwise which (i) exposes it to personal liability, (ii) is contrary to this Agreement or Applicable Laws, (iii) would require the Administrative Agent to become registered to do business in any jurisdiction, or (iv) would subject the Administrative Agent to taxation. Each Lender acknowledges and agrees that, prior to the termination of the Commitments and the repayment in full of all Obligations, no Lender may take independent legal action to enforce any obligation of the Borrower (any such action to be taken by the Administrative Agent upon the decision of the Majority Lenders). Each Lender hereby acknowledges that, prior to the termination of the Commitments and the repayment in full of all Obligations and to the extent permitted by Applicable Law, the Loan Documents and the remedies provided thereunder to the Lenders are for the benefit of the Administrative Agent and Lenders collectively and acting together and not severally, and further acknowledges that, prior to the termination of the Commitments and the repayment in full of all Obligations, each Lender's rights hereunder and under the Loan Documents are to be exercised collectively, not severally, by the Administrative Agent upon the decision of the Majority Lenders.

(b) The Administrative Agent has no duties or obligations other than as expressly set out in this Agreement. Nothing contained herein shall be construed or is intended to impose any other duties (including fiduciary duties) or obligations on the Administrative Agent. The Administrative Agent may execute or perform, and may delegate the execution and performance of, any of its powers, rights, duties or discretion under the Loan Documents through or to any Persons designated by it and references in any Loan Document to the Administrative Agent shall be deemed to include any such Persons.

(c) The Administrative Agent is not obliged to (i) take or refrain from taking any action or exercise or refrain from exercising any right or discretion under the Loan Documents, or (ii) incur or subject itself to any cost in connection with the Loan Documents, unless it is first specifically indemnified or furnished with security by the Lenders on a rateable basis, in form and substance satisfactory to the Administrative Agent (which may include further agreements of indemnity or the deposit of funds or security).

(d) The Administrative Agent shall promptly deliver to each Lender any notices, reports or other communications contemplated under this Agreement and intended for the benefit of the Lenders.

**Section 8.02 No Liability.** Neither the Administrative Agent nor its directors, officers, agents or employees shall be liable to any Lender for any action taken or omitted to be taken by it or them in connection with the Loan Documents except for its or their own gross negligence or wilful misconduct. Without limiting the generality of the foregoing, the Administrative Agent (i) may treat any Lender as the payee of amounts attributable to the Lender's Commitments unless and until the Administrative Agent receives an agreement in the form contemplated in Section 8.04, (ii) may consult with legal counsel (including legal counsel for the Borrower), independent accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in accordance with their advice, (iii) makes no representation or warranty to any Lender and shall not be responsible to any Lender for the form, substance, accuracy or completeness of any Loan Document or any other documents or information made available to the Lenders, or for any statements, representations or warranties made in connection with this Agreement or any other Loan Documents, (iv) has no duty to inspect the property (including books and records) of the Borrower or any other Person, (v) has no duty to ascertain or enquire as to the existence of a Default or an Event of Default or the observance of any of the terms or conditions of the Loan Documents, (vi) is not responsible to any Lender for the execution, validity, enforceability, genuineness, sufficiency or value of any of the Loan Documents, and (vii) shall incur no liability by acting upon any notice, consent, certificate or other instrument believed by it to be genuine and signed or sent by the proper Person.

**Section 8.03 Accommodations by Administrative Agent.** With respect to its Commitment and the Loans made by it in its capacity as a Lender, the Administrative Agent has the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not the Administrative Agent. The term “Lender” or “Lenders” shall, unless otherwise expressly indicated, include the Administrative Agent in its individual capacity. The Administrative Agent and its Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with the Borrower, any Related Parties or any Person who may do business with or own securities of such Persons, all as if it were not the Administrative Agent and without any duty to account to the Lenders.

**Section 8.04 Payments.** If any Lender obtains any payment (whether voluntary, involuntary or through the exercise of any right of set-off or realization of any Loan Documents) on account of Loans made by the Lender (other than amounts paid pursuant to Section 9.03) in excess of its rateable share of payments obtained by all the Lenders, the Lender shall account to and pay over to the other Lenders their rateable share and shall, upon request, immediately purchase from the other Lenders such participations in the Loans made by the other Lenders as shall be necessary to cause the purchasing Lender to share the excess payment rateably with the other Lenders. If all or any portion of the excess payment is recovered from the purchasing Lender, the purchase price shall be rescinded and each Lender shall repay to the purchasing Lender the purchase price to the extent of the recovery together with an amount equal to the Lender’s rateable share (according to the proportion that the amount the Lender’s required repayment bears to the total amount recovered from the purchasing Lender) of any interest or other amount paid by the purchasing Lender in respect of the total amount recovered. The Lender purchasing a participation from another Lender pursuant to this Section 8.04 may, to the fullest extent permitted by law, but subject to Section 9.08, exercise all of its rights of payment (including any right of set-off) with respect to such participation as fully as if the Lender were a direct creditor of the Borrower in the amount of the participation and the Borrower expressly acknowledges the creation of such right.

**Section 8.05 Credit Decisions.** Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

**Section 8.06 Indemnification.** Each Lender shall indemnify and save the Administrative Agent harmless (to the extent not reimbursed by the Borrower) rateably from any Claim or Loss suffered by, imposed upon or asserted against the Administrative Agent as a result of, or arising out of, the Loan Documents or any action taken or omitted by the Administrative Agent under the Loan Documents; provided that, no Lender shall be liable for any part of a Claim or Loss resulting from the gross negligence or wilful misconduct of the Administrative Agent, in its capacity as agent. Without limiting the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its rateable share of any out-of-pocket expenses incurred by the Administrative Agent in connection with the preparation, execution, administration or enforcement of, or legal advice in respect of any rights or responsibilities under the Loan Documents (to the extent not reimbursed by the Borrower).

**Section 8.07 No Implied Liability to Other Lenders.** Except as otherwise expressly provided in this Agreement, none of the Lenders has or shall have any duty or obligation, or shall in any way be liable to any other Lenders in respect of any Loan Documents or any actions taken or omitted to be taken in connection therewith.

**Section 8.08 Successor Administrative Agents.** The Administrative Agent may resign at any time by giving written notice to the Lenders and the Borrower, such resignation to be effective upon the appointment of a successor Administrative Agent. Upon notice of a resignation, the Majority Lenders shall have the right to appoint a successor Administrative Agent from among the Lenders. If no successor Administrative Agent is appointed or has accepted the appointment within thirty days after the retiring Administrative Agent's notice of resignation, then the retiring Administrative Agent shall, on behalf of the Lenders, appoint a bank, chartered under the *Bank Act* (Canada) and having a branch in Toronto, Ontario, as the successor Administrative Agent, unless an Event of Default has occurred and is continuing, in which case, the retiring Administrative Agent may appoint any Person as the successor Administrative Agent. Upon the acceptance by a successor Administrative Agent of its appointment, the successor Administrative Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Administrative Agent's resignation, the provisions of this Article shall enure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement.

## ARTICLE IX

### Miscellaneous

#### **Section 9.01 Notices.**

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to Section 9.01(b)) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(A) if to the Borrower:

Address: Algonquin Power & Utilities Corp.  
345 Davis Road, Suite 100  
Oakville, Ontario L6H 7H7

Attention: General Counsel

Telecopy No.: (905) 465-4540

(B) if to the Administrative Agent:

(i) With respect to the Borrowing Request and notices under Section 2.06 or Section 2.07:

Address: The Bank of Nova Scotia  
Global Wholesale Services - Loan Administration  
720 King Street West, 2nd Floor  
Toronto, Ontario M5V 2T3

Attention: Team Leader or Senior Loan Officer

Telecopy No.: (416) 866-5991

(ii) With respect to all other notices and communications:

Address: The Bank of Nova Scotia  
Corporate Banking - Power & Utilities, Global Banking and Markets 40 King Street West, Scotia Plaza  
55<sup>th</sup> Floor  
Toronto, Ontario M5H 1H1

Attention: Director

Telecopy No.: (416) 350-1161

Telephone: (416) 866-6911

and if to a Lender, to the Lender at the address shown on the signature page of this Agreement.

(b) Notices and other communications to the Administrative Agent and the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent or the applicable Lender; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent. The Administrative Agent, the Lenders or the Borrower may, in their discretion, agree to accept notices and other communications hereunder by electronic communications pursuant to procedures approved by them; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.



**Section 9.02 Waivers; Amendments.**

(a) No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that the Administrative Agent and Lenders would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 9.02(b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or the Lenders may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower, the Administrative Agent and the Majority Lenders. Only written amendments, waivers or consents signed by all of the Lenders shall (i) extend the Maturity Date, (ii) increase a Lender's Commitment (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the Commitments shall not constitute an increase of the Commitment of any Lender, and that an increase in the available portion of any Commitment of any Lender shall not constitute an increase of the Commitment of such Lender) or subject any Lender to any additional obligation, (iii) reduce the principal or amount of, or interest on, the Loan or any fees payable by the Borrower under this Agreement, (iv) postpone any date fixed for any payment of principal or interest on the Loan or fees payable by the Borrower under this Agreement, (v) change the currency or types of financial accommodations available under the Term Credit Facility, (vi) change the percentage of the Commitments or the number or percentage of Lenders required for any of the Lenders or the Administrative Agent to take any action, or (vii) amend this Section 9.02.

**Section 9.03 Expenses; Indemnity; Damage Waiver.**

(a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the preparation and administration of this Agreement or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Administrative Agent and the Lenders including the fees, charges and disbursements of any counsel for the Administrative Agent and the Lenders in connection with the enforcement or protection of their rights in connection with this Agreement, including their rights under this Section 9.03, or in connection with the Loans made, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) The Borrower shall indemnify the Administrative Agent and each Lender and its directors, officers, employees, agents and professional advisors (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the preparation, execution or delivery of, preservation of rights under, enforcement of, and refinancing, renegotiation, or restructuring the Loan Documents, the performance by the parties hereto of their respective obligations hereunder or any other transactions contemplated hereby, (ii) a default (whether or not constituting a Default or an Event of Default) by the Borrower under any Loan Document, (iii) any Loan or the use of the proceeds therefrom, (iv) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its subsidiaries, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the negligence or willful misconduct of such Indemnitee. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-tax claim.

(c) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan, or the use of the proceeds thereof.

(d) All amounts due under this Section 9.03 shall be payable promptly after written demand therefor, subject to receipt of a written undertaking by the Indemnitee in favor of the Borrower to return such amount if it is ultimately determined by a court of competent jurisdiction by a final and non-appealable judgment that such Indemnitee was not entitled to such indemnification under this Section 9.03.

#### **Section 9.04 Successors and Assigns.**

(a) **Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and the Lenders (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 9.04(b), (ii) by way of participation in accordance with the provisions of Section 9.04(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 9.04(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 9.04(d) and, to the extent expressly contemplated by Section 9.03, the Indemnitees, and the Affiliates of the Lenders and the Administrative Agent ) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignment by Lenders.**

(i) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it), provided that:

(ii) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than U.S. \$10,000,000 (and in excess thereof shall be in multiples of U.S. \$5,000,000), unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents to a lower amount (each such consent not to be unreasonably withheld or delayed);

(iii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iv) any assignment of a Commitment must be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) unless the Person that is the proposed assignee is itself already a Lender;

(v) any assignment must be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) unless:

(A) the proposed assignee is itself already a Lender, or

(B) the proposed assignee is a bank whose senior, unsecured, non-credit enhanced, long term debt is rated at least A3, A- or A low by at least two Rating Agencies, respectively;

(vi) any assignment must be approved by the Borrower (such approval not to be unreasonably withheld or delayed) unless the proposed assignee is itself already a Lender or an Event of Default has occurred and is continuing; and

(vii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of U.S. \$5,000 and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in the form required by the Administrative Agent.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 9.04(c), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 9.03 and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.04(d). Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower or a new Loan to the Borrower.

(c) **Register.** The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in Toronto, Ontario a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, principal amounts (and stated interest) and Types of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding any notice to the contrary. The Register shall be available for inspection by any Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations.**

(i) Subject to the following sentence, any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (each, a "**Participant**") in any rights or obligations of the Lender under this Agreement (including any of its Commitment or any Loans owing to it), provided that (i) the Lender's obligations under this Agreement shall remain unchanged, (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement. The sale of a participation at a time when no Event of Default has occurred and is continuing shall require the consent of, and notice to, the Borrower and the Administrative Agent, unless the Participant is a bank or other financial institution. Any payment by a Participant to a Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrower or a new Loan to the Borrower.

(ii) Subject to Section 9.04(e), the Borrower agrees that each Participant shall be entitled to the benefits of Section 9.03 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.04(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 8.04 as though it were a Lender.

(iii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it shall enter the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"), provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, or its other Obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other Obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement, notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining any Participant Register.

(e) **Limitations upon Participant Rights.** A Participant shall not be entitled to receive any greater payment under Section 2.13 than the relevant Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(f) **Certain Pledges.** Any Lender may at any time pledge all or any portion of its rights under this Agreement to secure obligations of the Lender, but no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

**Section 9.05 Survival.** All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or the Lenders may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Term Credit Facility has not expired or terminated. The provisions of Section 2.13, Section 2.14, Section 2.15, Section 8.02, Section 8.06, Section 8.07, Section 9.01, Section 9.03, Section 9.08 and Section 9.10 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Term Credit Facility or the termination of this Agreement or any provision hereof.

**Section 9.06 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by each of the Lenders and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement.

**Section 9.07 Severability.** Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**Section 9.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, the Administrative Agent and each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by the Administrative Agent or such Lender to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by the Administrative Agent or such Lender, irrespective of whether or not the Administrative Agent or such Lender shall have made any demand for payment in accordance with this Agreement and although such obligations may be unmatured. The rights of the Administrative Agent and the Lenders under this Section 9.08 are in addition to other rights and remedies (including other rights of setoff) which the Administrative Agent and the Lenders may have.

**Section 9.09 Governing Law; Jurisdiction; Consent to Service of Process.**

(a) This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of the Province of Ontario, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in Ontario or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

**Section 9.10 WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 9.10.

**Section 9.11 Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**Section 9.12 Confidentiality.**

(a) The Administrative Agent and each of the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 9.12, to any assignee of any of its rights or obligations under this Agreement, (vii) with the consent of the Borrower, or (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section 9.12, or (B) becomes available to the Administrative Agent or a Lender on a non-confidential basis from a source other than the Borrower. For the purposes of this Section 9.12, "Information" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent or a Lender on a non-confidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) THE ADMINISTRATIVE AGENT AND THE LENDERS EACH ACKNOWLEDGE THAT INFORMATION AS DEFINED IN Section 9.12(a) FURNISHED TO THEM PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS AFFILIATES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING APPLICABLE SECURITIES LAWS.

**Section 9.13 USA PATRIOT Act.** If the Administrative Agent or any Lender is subject to the requirements of the *USA Patriot Act* (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) the Borrower is hereby notified that pursuant to the requirements of the *USA Patriot Act*, such Person is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Person to identify the Borrower in accordance with the *USA Patriot Act*.

[signatures on next following pages]





**THE BANK OF NOVA SCOTIA, as Administrative Agent**

By: /s/ Kirt Millwood

Name: Kirt Millwood  
Title: Managing Director

By: /s/ Matthew Hartnoll

Name: Matthew Hartnoll  
Title: Director

The Bank of Nova Scotia  
Corporate Banking - Power &  
Utilities, Global Banking and  
Markets 40 King Street West,  
Scotia Plaza  
55<sup>th</sup> Floor  
Toronto, Ontario M5H 1H1

Attention: Director  
Telecopy No.: (416) 350-1161

**THE BANK OF NOVA SCOTIA, as Lender**

By: /s/ Kirt Millwood

Name: Kirt Millwood  
Title: Managing Director

By: /s/ Matthew Hartnoll

Name: Matthew Hartnoll  
Title: Director

[Signature Page – APUC Term Credit Agreement]

---

Canadian Imperial Bank of Commerce  
Corporate Banking, Project Finance,  
Infrastructure, Power & Utilities  
161 Bay Street, 8th Floor  
Toronto, ON M5J 2T3

Attention: Siddharth Samarth  
Telecopy No.: (416) 956-3870

**CANADIAN IMPERIAL BANK OF  
COMMERCE, as Lender**

By: /s/ Peter A. Mastromarini  
Name: Peter A. Mastromarini  
Title: Managing Director

By: /s/ Viktorlya Gruzylska  
Name: Viktorlya Gruzylska  
Title: Executive Director

[Signature Page – APUC Term Credit Agreement]

---

**Schedule 1.01(A) – Commitments**

The Bank of Nova Scotia	U.S. \$300,000,000
Canadian Imperial Bank of Commerce	U.S. \$300,000,000

---



**Schedule 3.06 – Disclosed Matters**

None

---

**Schedule 3.16 – Algonquin Organization Chart**

---

**Exhibit A – Form of Borrowing Request**

The Bank of Nova Scotia  
Global Wholesale Services – Loan Administration  
720 King Street West, 2nd Floor  
Toronto, Ontario M5V 2T3

Attention: Team Leader or Senior Loan Officer  
Facsimile: (416) 866-5991

Reference is made to the Term Credit Agreement made as of December 21, 2017 between (i) The Bank of Nova Scotia, as Administrative Agent, (ii) the financial institutions listed on the signature pages thereto, as Lenders, and (iii) Algonquin Power & Utilities Corp., a Canada corporation, as Borrower (the “**Term Credit Agreement**”). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Term Credit Agreement.

In accordance with Section 2.02 of the Term Credit Agreement, the Borrower hereby requests the following advance:

- (a) The requested date of advance is [ ], which is the scheduled closing date for the Atlantica Acquisition.
- (b) The account of the Borrower to which the funds are to be disbursed is [ ]
- (c) The advance is to consist of:
  - [ ] U.S. Base Rate Loans aggregating U.S. \$ [ ]
  - [ ] LIBOR Loans aggregating U.S. \$ [ ], the LIBOR Period for which will be [ ] months with a maturity date of [ ]

The Borrower hereby certifies that (i) the representations and warranties of the Borrower set forth in Article III of the Term Credit Agreement are and will be true and correct in all material respects (except that any representation or warranty which is already qualified as to materiality or by reference to Material Adverse Effect shall be true and correct in all respects) on the date hereof and at the time of and immediately after giving effect to the requested advance (unless such representations and warranties expressly refer to a different date), (ii) no Default or Event of Default has occurred and is continuing on the date hereof, or will result from the requested advance, and (iii) no Material Adverse Effect has occurred and is continuing as of the date hereof.

[signature page follows]

---



Dated as of the date first written above.

**ALGONQUIN POWER & UTILITIES CORP.**

By:

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

By:

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

\_\_\_\_\_

**Exhibit B – Form of Compliance Certificate**

**TO:** The Bank of Nova Scotia (the “**Administrative Agent**”)

**RE:** Term Credit Agreement made as of December 21, 2017 between (i) The Bank of Nova Scotia, as Administrative Agent, (ii) the financial institutions listed on the signature pages thereto, as Lenders, and (iii) Algonquin Power & Utilities Corp., a Canada corporation, as Borrower (the “**Term Credit Agreement**”). Capitalized terms used herein and not otherwise defined herein shall have the meaning assigned to such terms in the Term Credit Agreement.

**DATE:** [ ]

The undersigned, the [ ] of the Borrower, hereby certifies, in that capacity and not personally and without personal liability, as follows:

1. I have read and am familiar with the provisions of the Term Credit Agreement and I have made such examinations and investigations, including a review of the financial statements of the Borrower and the applicable books and records of the Borrower as I have deemed necessary, to enable me to express an informed opinion as to the matters set out herein.
2. As of [ ], the Borrower is in compliance with the Consolidated Indebtedness to Consolidated Total Capitalization ratio set out in Section 5.10 of the Term Credit Agreement, as demonstrated in the attached worksheet.
3. Each of the representations and warranties of the Borrower set forth in Article III of the Term Credit Agreement is true and correct in all material respects (except that any representation or warranty which is already qualified as to materiality or by reference to Material Adverse Effect shall be true and correct in all respects) on the date hereof as if made on the date hereof (unless such representations and warranties expressly refer to a different date).
4. No Default or Event of Default has occurred and is continuing on the date hereof.
5. Since the date of the last Compliance Certificate, no event has occurred for which notice is required to be provided but has not been provided to the Lender in accordance with the terms of Section 5.02.
6. Attached hereto is an updated Schedule 3.16 (Algonquin Organization Chart).
7. [Attached hereto is an updated Schedule 1.01(B) (Material Subsidiaries).] [Note: To be included with Compliance Certificate for audited annual financial statements only.]

This certificate is delivered to you pursuant to Section 5.01(c) of the Term Credit Agreement.

[signature page follows]

---

Dated as of the date first written above.

**ALGONQUIN POWER & UTILITIES CORP.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page – Compliance Certificate (APUC Term Credit Agreement)]

---

**Exhibit C – Form of Conversion/Continuation Notice**

The Bank of Nova Scotia  
Global Wholesale Services – Loan Administration  
720 King Street West, 2nd Floor  
Toronto, Ontario M5V 2T3

Attention: Team Leader or Senior Loan Officer  
Facsimile: (416) 866-5991

Reference is made to the Term Credit Agreement made as of December 21, 2017 between (i) The Bank of Nova Scotia, as Administrative Agent, (ii) the financial institutions listed on the signature pages thereto, as Lenders, and (iii) Algonquin Power & Utilities Corp., a Canada corporation, as Borrower (the “**Term Credit Agreement**”). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Term Credit Agreement.

In accordance with Section 2.06 of the Term Credit Agreement, the Borrower hereby requests the following conversion/continuation:

- (a) The date for the conversion/continuation is to be [ ]
- (b) The conversion/continuation is to be:
  - [ ] a conversion of U.S. Base Rate Loans in the aggregate amount of U.S. \$ [ ] into LIBOR Loans, for which the LIBOR Period shall be [ ] months with a maturity date of [ ];
  - [ ] a continuation of LIBOR Loans in the aggregate amount of U.S.\$ [ ] having a current maturity date of [ ], for which the new LIBOR Period shall be [ ] months with a maturity date of [ ];
  - [ ] a conversion of LIBOR Loans in the aggregate amount of U.S. \$ [ ] into U.S. Base Rate Loans.

The Borrower hereby certifies that no Default or Event of Default exists as of the date hereof.

[signature page follows]

---

Dated as of the date first written above.

**ALGONQUIN POWER & UTILITIES CORP.**

By:

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

By:

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

\_\_\_\_\_

**Exhibit D – Form of Assignment and Assumption**

This assignment and assumption agreement (the “**Assignment and Assumption**”) is dated as of the Effective Date set out below and is entered into by and between [*Insert name of Assignor*] (the “**Assignor**”) and [*Insert name of Assignee*] (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Term Credit Agreement identified below (as amended, supplemented, restated or replaced from time to time, the “**Term Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set out in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set out herein in full.

For good and valuable consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Term Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (a) all of the Assignor’s rights and obligations in its capacity as a Lender under the Term Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the term credit facility identified below, and (b) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Term Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) above (the rights and obligations sold and assigned pursuant to clauses (a) and (b) above being referred to herein collectively as the “**Assigned Interest**”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

- 1. Assignor: \_\_\_\_\_
  - 2. Assignee: \_\_\_\_\_
  - 3. Borrower: Algonquin Power & Utilities Corp.
  - 4. Administrative Agent: The Bank of Nova Scotia
  - 5. Term Credit Agreement: Term Credit Agreement made as of December 21, 2017 between (i) The Bank of Nova Scotia, as “Administrative Agent”, (ii) the financial institutions listed on the signature pages, as “Lenders”, and (iii) Algonquin Power & Utilities Corp., a Canada corporation, as “Borrower”.
-

6. Assigned Interest:

Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans <sup>1</sup>
Term Credit Facility	\$	\$	%

Effective Date: \_\_\_\_\_, 20\_\_ *[To be inserted by Administrative Agent and which shall be the effective date of recordation of transfer in the register therefor.]*

The terms set out in this Assignment and Assumption are hereby agreed to:

**[NAME OF ASSIGNOR]**

By: \_\_\_\_\_  
Name:  
Title:

**[NAME OF ASSIGNEE]**

By: \_\_\_\_\_  
Name:  
Title:

**[Consented to and]**<sup>2</sup> Accepted:

**THE BANK OF NOVA SCOTIA**, as  
Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

<sup>1</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

<sup>2</sup> To be retained if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

**STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION**

1. **Assignor.** The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby, and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Term Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents, (iii) the financial condition of the Borrower, any of its subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Borrower, any of its subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document. Upon request, the Assignor shall, at the expense of the Administrative Agent (for reimbursement by the Borrower), as promptly as practical, execute and deliver to the Administrative Agent, all such other and further documents, agreements and instruments as the Administrative Agent may reasonably request in order to effect the transfer of the Assigned Interest.

2. **Assignee.** The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Term Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Term Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Term Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, and (iv) it has received a copy of the Term Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender; and (b) agrees that (i) it shall, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it shall perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

---



3. **Payments.** From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to the Effective Date or accrued subsequent to the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for the periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

4. **General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

---