

SCHEDULE "A"

2015 Facility Renewal and Energy Retrofit Program Services Agreement

This 2015 Facility Renewal and Energy Retrofit Program Services Agreement ("FR&ERPSA") is made as of _____, 2015 by and between AMERESCO CANADA INC., a Canadian corporation with offices at 90 Sheppard Avenue East, 7th Floor, Toronto, Ontario, M2N 6X3 ("Ameresco"), and The Corporation of the City of London with offices at 300 Dufferin Ave., London, ON, N6A 4L9 ("Customer"). Ameresco and Customer are hereinafter sometimes referred to individually as "Party" and collectively as "Parties". This FR&ERPSA includes general terms and conditions ("GT&C") that are attached hereto or included herewith as **Appendix A** and each other supplement, exhibit, appendix and other attachment hereto. The "Execution Date" of this FR&ERPSA is the date written above.

SECTION 1 Identification of Projects

1.1 Measure Report. For each proposed Measure in Customer's facilities identified in **Exhibit 1** hereto (the "Facilities"), Ameresco will conduct an engineering, site evaluation study and financial analysis ("Measure Report") to identify cost reduction and efficiency projects ("Measures"). The Measures shall consist of the related engineering, design and construction services, equipment, devices, and software that Ameresco will install and implement in the Customer's Facilities to achieve energy and operational cost reductions, increased efficiencies and productivity improvements under this FR&ERPSA. (Equipment installed as part of or incorporated into the Measures is referred to as the "Equipment.") The results of the Measure Report for a Facility have been or will be delivered to Customer in a report ("Measure Report") that includes the following:

- (i) A description of the existing conditions and costs of energy consumption and operation at the Facility;
- (ii) A description of the specific Measures recommended by Ameresco for installation and implementation at the Facility; and
- (iii) An estimate of the energy and operating costs that will be saved and/or efficiencies that will be gained by the Measures.

1.2 Identification of the Measure. The Measure Report describes specific Measures to be provided under this FR&ERPSA via a project summary (a "Project Summary") which is attached to this FR&ERPSA as **Exhibit 2**. The Project Summary may be adjusted by the Design Documents Package (defined in Section 2.1) which adjustment must be approved by the Customer in writing and will be subject to the terms of this FR&ERPSA, including the terms in the Project Summary and final Design Documents Package. Ameresco agrees to provide, and Customer agrees to accept the approved Customer Measures. The cost of the Measures will be as stated in the Project Summary and/or the final Design Documents package and will be paid by Customer on the terms stated therein and in accordance with this FR&ERPSA and its attachments.

SECTION 2 Scope of Work and Ameresco' Responsibilities

2.1 Measure Implementation. Measure installation and implementation work (the "Work") shall be completed by Ameresco and any third-party contractor (and subcontractors thereof) retained by Ameresco to perform the Work (the "Implementation Contractors"). All Implementation Contractors must be approved in writing by the Customer. In the event that an Implementation Contractor is not approved by the Customer, Ameresco will procure an alternative Implementation Contractor for the Customer to review and approve. Ameresco, acting by itself and in conjunction with or through its Implementation Contractors, shall perform the following tasks:

- (a) Consult with Customer's Facility staff to coordinate Work, responsibilities, subcontractor selection and schedule.
- (b) Execute Measure final design, including final sizing and selection of Equipment and components associated with installation.
- (c) Prepare written technical specifications for the Measure. Prepare diagrammatic mechanical, electrical, and other drawings illustrating the proposed scope of Work.
- (d) Review design documents package ("Design Documents Package") with Customer. Modify design documents as necessary, based on this review.
- (e) Prepare a final Design Documents Package. The final Design Documents Package will include technical and diagrammatic mechanical, electrical, and other drawings as necessary to illustrate the scope of Measure installation Work. The Design Documents Package shall be the basis for bidding or negotiation of prices for construction labor and materials required for the Work.
- (f) Review the bid or negotiated prices received from the Implementation Contractors for the Work.
- (g) Present the final Design Documents Package and the Implementation Contractors and materials vendor selections to Customer, and obtain the approval of Customer to commence the Work. Customer acknowledges that the pricing presented in the final Design Documents Package is only valid for a period of thirty (30) days from the date of issuance and if Ameresco does not receive approval to commence the Work in such timeframe, the pricing may vary.

- (h) Upon Customer's approval of the final Design Documents Package, execute contracts with the selected Implementation Contractors and vendors. Prepare final Measure construction schedule and review same with Customer, Implementation Contractors, and material vendors in construction startup meeting.
- (i) Review shop drawings and other submissions for major pieces of Equipment prior to installation.
- (j) Manage construction labor and materials delivery and construct the Measures utilizing the Implementation Contractors. Conduct periodic construction progress meetings and prepare and submit monthly construction progress reports, which will include a progress report, a narrative description of the Measure installation Work completed during the previous month and an estimate of percentage completion of Measure installation.
- (k) Review and submit any change order requests for approval by Customer pursuant to Section 5.1 hereof.
- (l) Prepare and submit a list of remaining Work at substantial completion of Measure construction.
- (m) Conduct commissioning of Measure Equipment at final construction completion.
- (n) Prepare operation and maintenance manuals, as-built drawings, and train personnel for operation and maintenance of the Equipment.
- (o) Apply, obtain and pay for all permits
- (p) Update City of London Asset registry

2.2 Measure Completion. When the Measure Work is completed, Ameresco shall prepare and deliver to Customer a "Project Completion Report" for all buildings covered under the Measure. The Project Completion Report shall not be issued until all work required to be done by the Design Documents Package, as amended from time to time, has been completed, a deficiency list has been created and all deficiencies contained in the deficiency list have been completed. The Project Completion Report shall include:

- (a) A description of the procedures used and results of Measure commissioning.
- (b) Final Measure economics of any change orders approved during construction.
- (c) A final invoice for the Measure and data supporting the invoiced amount.

Upon delivery of the Project Completion Report and upon the Approval of the Customer of the Project Completion Report the Work shall be deemed completed and Customer shall be deemed to have accepted the Work (the "Acceptance"). At all times the Customer shall have the right to an inspection or the right to challenge the validity of the Project Completion Report.

2.3 Liens. Ameresco shall indemnify, hold harmless, and defend Customer from and against any and all loss, costs, damages and expense arising out of or in connection with any and all liens filed in connection with the Work, including, without limitation, all reasonable expenses and reasonable attorney's fees incurred in discharging any liens or similar encumbrances. If Ameresco shall fail to discharge promptly any lien or claim upon the Measure, any interest therein, or upon any materials, equipment or structures encompassed therein, or upon the Facilities, Customer shall notify Ameresco in writing and Ameresco shall then satisfy or defend any lien or claims. If Ameresco either does not promptly satisfy such liens or claims or does not give reasons in writing satisfactory to Customer for not causing the release of such liens or paying such claims, Customer shall have the right, at its option, upon the giving of written notification to Ameresco, to cause the release of, pay or settle such liens or claims. Ameresco shall have the right to contest any such lien provided it first provides a bond or other assurance of payment reasonably satisfactory to Customer, in the amount and in such form and substance to satisfy such lien.

2.4 Customer's Facility; Concealed Conditions. Neither Ameresco nor its Implementation Contractors assume any responsibility or liability for the existing status and/or condition of Customer's Facility. To the extent that Ameresco or the Implementation Contractors discover that, as an incidence to the performance of services hereunder, the Facility or any existing equipment therein must be modified to bring it into compliance with applicable codes, it shall be the sole responsibility of Customer to arrange to have the necessary work done in a timely manner at Customer's expense so as not to unduly delay Ameresco's performance. Ameresco shall not have control or charge of and shall not be responsible for the acts or omissions of Customer, or for delays or cost increases due to concealed conditions or Customer-caused delays.

2.4.1 Specific Facilities. In the event that the Customer determines that concealed conditions in any specific location of the Customer are such that the costs of remediation are in the sole discretion of the Customer excessive or unreasonable under the circumstances, the Customer may notify Ameresco in writing of such circumstances and in such event the Customer shall be entitled to terminate this Agreement as to that specific location and in such instance the compensation to be paid by the Customer to Ameresco for such location would be reduced by an amount of the costs allocated to such location adjusted for Work done by Ameresco up to the termination date for that specific location.

2.5 Standards of Performance; Warranties

- (a) Ameresco warrants that its services including the services of their Implementation Contractors will be performed with professional thoroughness and competence of the engineering profession and contracting industry, that materials and Equipment incorporated in the Measure will be new unless otherwise specified, and that the Work will be of good and workmanlike quality, and in conformance with the final Design Documents Package. There is no other warranty or representation, whether statutory, expressed or implied. The sole liability of Ameresco relating to its services shall be limited to performing at Ameresco's expense any services performed by Ameresco which have failed to meet the above warranties, if such failure is promptly reported to Ameresco no later than 365 days following the Acceptance (the "Warranty Period").

The foregoing remedy shall be Customer's sole remedy for any failure of Ameresco to comply with its warranty obligations, and Customer releases from all further liability for its warranty obligations. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AMERESCO SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

- (b) Ameresco shall provide to the Customer where applicable, the Manufacturer's Warranty and the Installation Subcontractors' Warranty for deficiencies in materials and workmanship. Ameresco shall have no obligations or liability with respect to any defects in the materials or Equipment.
- (c) Ameresco shall, at the request of the Customer, during the term when any manufacturer's warranty and/or installation subcontractor's warranty for deficiencies in materials and workmanship is in effect, assist the Customer in dealing with any such manufacturer and/or installation subcontractor.
- (d) The Parties acknowledge that the terms of this Agreement together with any documentation referred to in this Agreement constitute the entire relationship between the Parties and that there are no representations and warranties by either Party except as expressed in this Agreement or in any document referred to in this Agreement

2.6 Implementation Contractors. The Construction services shall be performed by Ameresco, Implementation Contractors and Ameresco suppliers acting in Ameresco's interest. Such Implementation Contractors and suppliers shall be paid by Ameresco. Nothing contained herein shall create any professional obligation or contractual relationship between Customer and Ameresco's Implementation Contractors and suppliers. The Implementation Contractors and suppliers shall at all times remain independent contractors. Ameresco shall also require its Implementation Contractors to secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured or are legally required at the time the final Design Documents Package is submitted. Ameresco shall require its Implementation Contractors to correct Work which does not conform to the final Design Documents Package.

2.7 Additional Services. The following services are not included in Ameresco's services under this FR&ERPSA, but can be performed as additional services subject to mutual agreement of the Parties as to scope and compensation. Such services include but are not necessarily limited to the following:

- (a) Preparing to serve or serving as a witness in connection with any public hearing, arbitration proceeding or legal proceeding at the request of Customer, except where Ameresco is a party to such activity.
- (b) Providing services after delivery of the Project Completion Report.

SECTION 3 Customer's Responsibilities

3.1 Customer's Responsibilities. In connection with the Measures and the Work, Customer shall have the following responsibilities:

- (a) Customer shall assist Ameresco in the coordination and approval of the Work and shall provide full information regarding its requirements and shall designate a person with authority to act on its behalf with respect to all matters concerning the Facility upon which Ameresco shall have the right to rely.
- (b) Customer shall provide access to existing plans, blue prints or schematics, and equipment related operational records/information for the Facility as needed for the performance of the Work hereunder.
- (c) Customer shall provide Ameresco and its Implementation Contractors appropriate access and rights to occupy and work upon the Customer Facility, including access and rights to use various utilities available at the Facility in order to undertake the services called for under this FR&ERPSA.
- (d) Customer shall provide any information concerning any concealed or latent conditions, which are of an unusual nature that affects the performance of the Work and vary from those indicated by the Final Design Documents. To the extent Customer observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the final design or construction documents, Customer shall give prompt written notice thereof to Ameresco.
- (e) The services, information, access, and assistance required by paragraphs (a) through (d) above shall be furnished at the expense of Customer, and Ameresco shall be entitled to rely on the completeness and accuracy thereof. Unexcused nonperformance of any of these obligations shall relieve Ameresco of its obligations to perform hereunder to the extent that it prevents Ameresco or its Implementation Contractors from performing. Nonperformance by Customer shall be excused when caused by an act or omission of Ameresco. Customer shall, at the request of Ameresco, endeavor to assist Ameresco in obtaining from Customer all services, information, access, and assistance as expeditiously as possible for the orderly progress of Ameresco's services.

SECTION 4 Time

4.1 Time. Ameresco shall provide all services under this FR&ERPSA as expeditiously as is consistent with reasonable skill and care and the orderly progress of design and construction; provided that all services to be performed by Ameresco pursuant to this Agreement shall be completed within 18 months of the date of execution of this Agreement, subject to the satisfaction by Customer of its responsibilities, failing which any services not yet performed by

Ameresco may at the option of the Customer be terminated and cancelled and the Agreement shall thereupon proceed with respect only to those services which have in fact been performed and completed by Ameresco.

SECTION 5 Changes in the Work

5.1 Change Orders.

- (a) In the event the cost and/or time of a Measure is impacted by changes in the Work not caused by the fault of Ameresco or its Implementation Contractors or delays resulting from acts or neglect of Customer or events of Force Majeure, the contract time and contract price shall be reasonably adjusted by change order ("Change Order"). The Parties must agree in writing upon changes in the Work consisting of additions, deletions or other revisions. Ameresco may however, make changes in the Work within the general scope of this FR&ERPSA without the issuance of and consent to a Change Order, so long as the changes do not adversely affect the contract price or time, and Customer is notified before any such changes are made.
- (b) If Customer requests Ameresco or its Implementation Contractors to submit a proposal for a change in the Work and then elects not to proceed with the change, a Change Order shall be issued to reimburse Ameresco for all internal and third party costs incurred or committed by Ameresco in performing this additional work, plus fifteen per cent (15%) as compensation for Ameresco.
- (c) Cost or credit to Customer resulting from a change in the Work shall be determined in one or more of the following ways:
 - i. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - ii. by unit prices stated in the Project Summary of final Design Documents Package or subsequently agreed upon;
 - iii. by cost to be determined in a manner agreed upon by the parties with a mutually acceptable fixed or percentage fee.

5.2 Concealed Conditions. If concealed or unknown conditions of an unusual nature that affect the performance of the Work and vary from those indicated by this FR&ERPSA are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in work of the character provided for, notice by the observing Party shall be given promptly to the other Party, and in no event later than twenty-one (21) days after first observance of the conditions. The contract price shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either Party made within twenty-one days after the claimant becomes aware of the conditions.

5.3 Regulatory Changes. Ameresco and its Implementation Contractors shall be compensated an additional amount in accordance with the provisions of this FR&ERPSA, for changes in the Work necessitated by the enactment or revision of codes, laws or regulations subsequent to the submission of the final Design Documents Package. Such changes shall be made by way of Change Order.

SECTION 6 Compensation

6.1 Compensation.

- (a) During the Measure implementation, Ameresco shall invoice the Customer monthly based upon progress billings on a percentage completion basis, including external costs and mark-ups as described in **Exhibit 2** attached hereto. Customer shall pay Ameresco all reasonable amounts invoiced by subcontractors and approved by Ameresco, and Ameresco' related costs, within thirty (30) days of the date of Ameresco invoice.
- (b) Customer shall pay Ameresco for its services under this FR&ERPSA an upset limit fee of One Million Nine Hundred Seven Thousand, Three Hundred Thirty Eight Dollars (\$1,907,338) excluding any applicable taxes for the Services described in **Exhibit 2** attached hereto.
- (c) The above compensation fee described in 6.1 (b) includes the following service fee percentages:
 - 1. Overhead & Profit: Mark-up of 11.5% on all third party costs.
 - 2. Engineering: 7% mark-up on all third party costs.
 - 3. Project Management: 7.5% mark-up on all 3rd party costs.

SECTION 7 Term

7.1 Term. The term of this FR&ERPSA will be for a period commencing on the Execution Date and continuing until expiration of the Warranty Period.

SECTION 8 Discovery and Disposal of Hazardous Substances

8.1 Representation of Customer. Customer has informed Ameresco that to the best of its knowledge, there do not exist any asbestos, asbestos containing material, formaldehyde, refrigerant fluid, mercury, PCBs or other toxic or hazardous substance (each a "Hazardous Substance") at the Facilities that could create an unsafe condition where the Measures are to be performed. Customer agrees to notify Ameresco as soon as Customer becomes aware of any such Hazardous Substances at the Facilities that have not yet been reported to Ameresco.

8.2 Identification; Removal. Ameresco shall not be obligated to test for or identify Hazardous Substances and assumes no responsibility for such testing or identification under this FR&ERPSA. If any Hazardous Substance is discovered at the Facilities that may adversely affect or interfere with the Measures or create potential liability to Customer or Ameresco in connection with the Projects, Ameresco will have the right to suspend the Projects until Customer, at its expense, as appropriate, tests, abates, encapsulates, cleans up, removes and disposes of such Hazardous Substance. In the event Customer decides not to remove such Hazardous Substances or such Hazardous Substances have not been removed within sixty (60) days of notice by Ameresco, or Customer fails to retain Ameresco to remove such Hazardous Substances through a Change Order to this Agreement, the affected Measures will be deemed terminated and Customer will pay Ameresco in accordance with Section 9.1 hereof.

8.3 Assistance. Upon Customer's request, Ameresco will assist Customer by providing Customer a list of qualified disposal companies, or arranging for contracts between Customer and a qualified disposal company to coordinate the disposal, clean-up and related activities concerning Hazardous Substances. In the event costs for such arranging services by Ameresco have not been included in the Project Summary and a provision for payment to Ameresco included therein and Customer wishes to retain Ameresco to perform such services, Customer will compensate Ameresco for such additional services at a mutually agreeable rate. Customer will be solely responsible for contracts with and payments to disposal companies.

SECTION 9 Termination

9.1 Termination and Payment. If at any time after delivery to Customer of the Project Summary Customer elects not to proceed with a Measure, terminates a Measure or suspends performance of a Measure for a period longer than thirty (30) days, Customer shall promptly pay to Ameresco 100% of all direct and indirect including overhead and a 15% mark-up for internal and third party costs incurred or committed by Ameresco in performing and preparing to perform and in uninstalling and otherwise demobilizing the Measures. Upon such termination, any Equipment remaining in Customer's Facility shall be deemed abandoned by Ameresco and Customer agrees to accept title to such Equipment on an AS IS, WHERE IS BASIS without recourse to or warranty from Ameresco, express or implied and indemnify Ameresco against any and all claims, obligations or liabilities arising from such Equipment after such date.

9.2 Failure of Acceptance. If Customer fails to make any final payment to Ameresco upon Acceptance or otherwise fails to accept a Measure, Customer shall be liable to pay Ameresco the higher of the remaining price of the Measure or the termination price calculated pursuant to Section 9.1.

SECTION 10 Ownership of Documents

10.1 Ownership of Documents. All drawings, plans, specifications, studies, reports, photographs, recordings, and documentation, and all copies thereof, furnished or prepared by Ameresco and or its Implementation Contractors as part of Ameresco' services under this FR&ERPSA, upon receipt of all amounts due, shall be the property of Customer to use in any way it sees fit and disclose to others in connection with such use. Ameresco and its Implementation Contractors shall not be responsible for changes made in its materials or documents or for the use of said materials or documents by Customer or any third party without the participation of Ameresco. Customer agrees to defend, indemnify, and hold harmless Ameresco and its Implementation Contractors against all claims and liability arising out of such unauthorized uses of its materials and documents.

SECTION 11 General Terms and Conditions

11.1 Incorporation of General Terms and Conditions. The Parties acknowledge that the GT&C attached hereto or incorporated herewith are a part of this FR&ERPSA as if fully set forth herein. The GT&C shall be construed in combination with the foregoing sections of this FR&ERPSA, provided that in the event of any direct conflict between the foregoing sections and the GT&C, the terms of the foregoing sections shall control.

IN WITNESS WHEREOF, the Parties hereto have executed this Contractor Services Agreement by and through their duly authorized representatives as of the Execution Date.

The Corporation of the City of London

AMERESCO CANADA INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Addresses for notices:

Telephone: () _____
Facsimile: () _____

90 Sheppard Avenue East, 7th Floor
Toronto, ON M2N 6X3

(647) 788-6000
(416) 218-2288

Appendix A – General Terms and Conditions

The following General Terms and Conditions (the “GT&C”) shall apply to all Services by Ameresco to Customer under, and are incorporated by reference into, the agreement between Ameresco and Customer (the “Services Agreement”) to which the GT&C are attached as an appendix. In the event of any conflict between any term in the GT&C and any term in the Services Agreement, the terms in such Services Agreement shall govern and control. Customer and Ameresco are each referred to as a “Party” and collectively as “the Parties” hereunder.

SECTION 1. DEFINITIONS AND INTERPRETATIONS.

1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings ascribed to such terms in the Services Agreement, in this Section 1, and otherwise in the GT&C, unless the context of their use requires otherwise:

“Affiliate” shall mean, with respect to any Person, another Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such first Person. For purposes of this definition, “control” of a Person, including the terms “controls,” “is controlled by,” and “under common control with,” means ownership of a voting interest of fifty percent (50%) or more.

“Agreement” shall mean the Services Agreement effective as of the Effective Date between Ameresco and Customer (including the GT&C incorporated therein by reference), as amended, supplemented or otherwise modified from time to time after the Effective Date in accordance with the terms hereof.

“Business Day” shall mean a Day on which both Parties are open for business on the same calendar Day.

“Confidential Information” shall mean any information that is disclosed by one Party to the other Party in connection with the Agreement, including (a) technical and financial information relating to the Services (including Customer’s utility bills and the pricing of the Services) and (b) correspondence, proposals and other documents, including the terms and conditions of the Agreement, generated in connection with the Services; provided, however, “Confidential Information” does not include any such information that: (i) is or becomes publicly known other than through a breach of Section 3 hereof by the receiving Party; (ii) is already known to the receiving Party at the time of disclosure; (iii) is lawfully received by the receiving Party from a third party without breach of Section 3 hereof or, to the receiving Party’s knowledge, breach of any other agreement between the disclosing Party and such third party; (iv) is independently developed by the receiving Party without use, directly or indirectly, of Confidential Information received from the disclosing Party; (v) is furnished to a third party by the disclosing Party without restriction on the third party’s rights to disclose; or (vi) is authorized in writing by the disclosing Party to be released from the confidentiality obligations in Section 3 hereof.

“Day” shall mean a period of 24 consecutive hours as defined by (i) the calendar, (ii) the Gas Industry Standards Board, or (iii) the North American Electric Reliability Council, as required by the context of the Agreement.

“Force Majeure” shall mean acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemy; wars; blockades; insurrections; riots; epidemics; landslides; earthquakes; fires; storms (including hurricanes or hurricane warnings, tornado or tornado warnings); crevasses; floods; washouts; arrests and restraints of the government; necessity for compliance with any court order or Law; freezing or failure of oil or gas wells or oil or gas pipelines; and, to the extent beyond the reasonable control of the Party claiming suspension of its duties hereunder, breakage or accident or necessity of repairs to machinery, equipment, pipelines, or power plants; curtailment of supply or unavailability of materials or equipment; and any other causes or events, whether of the kind herein enumerated or otherwise, not reasonably within the control of the Party claiming suspension of its duties hereunder.

“Governmental Authority” shall mean, with respect to any Person, entity, or property, any national, federal, state, provincial, local, county, department, city, or other political subdivision that exercises jurisdiction over such Person, entity, or property, and any court, agency, department, commission, board, bureau, or instrumentality, whether civil or military, of any of them.

“Implementation Contractor” shall mean any third-party contractor, and subcontractor thereof, retained by Ameresco to perform work related to the Services on Ameresco’s behalf.

“Interest Rate” shall mean for any date, the then effective prime rate of interest for large Canadian Schedule “A” banks, published by The Globe & Mail; provided that in no event shall such rate exceed the maximum non-usurious rate under applicable Law.

“Law” shall mean any constitutional provision, statute, act, code, regulation, rule, ordinance, order, decree, directive, ruling, proclamation, resolution, judgment, decision, declaration, or other official interpretation thereof by an applicable Governmental Authority; and a reference to a Law shall be deemed to refer to such Law as it may be amended from time to time, including any successor legislation thereof.

“Person” shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, or unincorporated organization.

1.2 Terminology. Except where the context otherwise requires in the Agreement, (a) words imparting the singular number shall include the plural number, and vice versa, and shall be construed to be of such gender or number as the context requires; (b) the words “herein,” “hereof,” “hereunder” and words of similar import when used in the Agreement refer to the Agreement as a whole, and not to any particular section or subsection; (c) any reference to Section shall mean such Section of the Services Agreement or the GT&C, as the context requires; (d) pronouns shall

include natural persons, corporations and associations of every kind and character; (e) the gender of all words used herein shall include the masculine, feminine and neuter; (f) the words "include(s)" or "including" shall be deemed to be followed by ", without limitation,"; and (g) all references to "dollars," "\$" and "CDN.. Dollars" shall refer to legal currency of the Canada.

SECTION 2. INFORMATION AND ACCESS.

The Parties recognize that it is essential for Ameresco's performance of the Services that Ameresco has reasonable access to, and information about, the Facilities. Customer shall provide Ameresco (including its Implementation Contractors, if any) with reasonable access to each Facility to enable Ameresco to perform all Services. Customer shall comply with all reasonable requests by Ameresco for information concerning each Facility. Ameresco shall not be liable to the extent it acts on information provided by Customer that is incorrect, misleading, or inaccurate. Ameresco and its Implementation Contractors shall observe all of Customer's safety and security procedures at a Facility which have been communicated in advance to Ameresco, and shall seek to minimize any disruption or interruption to Customer's operations at such Facility.

2.1 WORKPLACE SAFETY AND INSURANCE BOARD

.1 Ameresco will submit evidence of compliance with all of the requirements of the Workplace Safety and Insurance Board in Ontario, R.S.O/80 Chapter 539 as amended, including payments due thereunder.

.2 Ameresco shall furnish to the Customer, prior to the contract award and prior to final payment a Certificate of Clearance clearly identifying Ameresco's Workplace Safety and Insurance Board account number and date.

.3 Ameresco agrees to comply with all requirements of the latest edition of the Occupational Health and Safety Act, and Regulations for Construction Projects and Industrial Establishments and any other applicable Safety Regulations relating to the performance of this project and agrees to provide a safe environment for all occupants, workers and the general public. The Customer has the right to cancel the contract for Ameresco's failure to comply with these and any other applicable safety regulation. A copy of all applicable Regulations should be on the job site at all times.

.4 No work will be permitted unless Ameresco and/or one of its contractors has on hand a complete set of unexpired Materials Safety Data Sheets relating to the W.H.I.M.S controlled products that are being used in the performance of this project. This information is expected to be produced by Ameresco upon request by the Customer or one of its authorized agents able to make such a request.

.5 Should there be an accident/incident, Ameresco is responsible to notify the appropriate authorities and submit all required reports and documentation. Ameresco is to provide a copy of all reports and correspondence regarding the incident to both the Customer and any of its associated contractors.

2.2 ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT.

.1 Ameresco shall ensure that all its employees, agents, volunteers or others for whom Ameresco is legally responsible receive training regarding the provision of goods and services contemplated herein to persons with disabilities in accordance with Section 6 of Ontario Regulation 429/01 (the Regulation) made under the Accessibility for Ontarians with Disabilities Act, 2005, as amended, the "Act". Ameresco shall ensure that such training includes without limitation, a review of the purposes of the Act and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. Ameresco shall submit to the Customer, as required from time to time, documentation describing its customer service training policies, practices and procedures, and a summary of its training program, together with a record of the dates on which training was provided and a list of the employees, agents, volunteers and/or others who received such training. Customer reserves the right to require Ameresco to amend its training policies to meet the requirements of the Act and the Regulations.

SECTION 3. CONFIDENTIALITY.

3.1 Non-Disclosure. During the term of the Agreement and surviving the expiration or termination of the Agreement for a period of one year, each Party shall maintain the confidentiality of Confidential Information and to limit its disclosure to such of its directors, officers, employees, agents, advisors or Affiliates as have a need to know such Confidential Information in order that the objectives of the Agreement can be achieved. The receiving Party shall be responsible for the compliance by such directors, officers, employees, agents, advisors or Affiliates with the provisions of this Section 3.

3.2 Use of Confidential Information. Any Confidential Information shall be used by the receiving Party only for the purposes of performing its obligations under the Agreement and enforcing its rights thereunder; provided that Ameresco (i) may use the form of the Services Agreement and the GT&C in contracting to provide services to third parties, and (ii) may aggregate and utilize information obtained from Customer in connection with the Agreement and/or obtained from Ameresco's other customers in proposing to provide, or providing, services to Customer and/or others so long as such information is maintained in an anonymous format.

3.3 Legally Required Disclosure. If the receiving Party becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information of the disclosing Party, the receiving Party will provide the disclosing Party with prompt written notice so the disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 3. In the event such protective order or other remedy is not obtained, or the disclosing Party waives compliance with the provisions of this Section 3, the receiving Party will furnish only that Confidential Information which is legally required and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

3.4 Return of Confidential Information. Upon the expiration or termination of the Agreement, or upon the earlier request of the disclosing Party in writing, the receiving Party shall, at its own expense, either promptly return to the disclosing Party all originals and copies of the writings and hardware in its possession which contain Confidential Information of the disclosing Party or by written notice, executed by an officer of the receiving Party, certify that such writings or hardware have been destroyed or that all Confidential Information contained therein have been permanently deleted.

3.5 Marketing. Notwithstanding anything in this Section 3 to the contrary, the Parties agree that Ameresco may identify Customer as a recipient of the Services in any advertisement or marketing materials published or distributed by Ameresco; provided that such identification shall not disclose any Confidential Information regarding Customer.

SECTION 4. DOCUMENTS AND DATA.

4.1 Ownership Rights. The Parties agree that:

(a) Customer shall maintain its right, title, and interest in all proprietary data furnished to Ameresco pursuant to the Agreement ("Customer Works"); and

(b) Ameresco shall maintain its right, title, and interest in all proprietary documentation, formulas, methods, techniques, devices and software (including analytical models and tools) used by Ameresco or furnished to Customer pursuant to the Agreement ("Ameresco Works").

4.2 Custom Works. If any material enhancement, modification, or customization of the Ameresco Works is undertaken by the Parties jointly ("Custom Works"), prior to the development of such Custom Works, the Parties shall agree, in a writing separate from the Agreement, on the terms governing the ownership and licensing of such Custom Works. In the absence of such written agreement:

(a) any Custom Works so developed shall be owned by Ameresco and licensed to Customer solely for the purpose of using such Custom Works in support of Customer's internal business activities, but not for the purpose of providing services to third parties; and Customer shall not sell, license or otherwise transfer such Custom Works to any Person not an Affiliate of Customer without the advance written consent of Ameresco; and

(b) any Customer Works used in conjunction with any Custom Works shall remain the sole and exclusive property of Customer, and any Custom Works may be used by Ameresco in its business activities so long as Ameresco complies with Sections 3.1 and 3.2 in its handling of the Customer Works related thereto.

SECTION 5. REPRESENTATIONS AND WARRANTIES.

Each Party hereby represents and warrants to the other Party as of the Effective Date of the Agreement as follows:

(a) The Party is an entity that is duly organized, validly existing, and in good standing under the Laws of its state of organization and has all requisite statutory power and authority to carry on its business as now conducted.

(b) All requisite organizational authorizations for the execution, delivery, and performance by the Party of the Agreement have been obtained, and no further organizational action shall be necessary on the part of the Party with respect to the execution, delivery, and performance of the Agreement. Upon the execution and delivery by the Party of the Agreement, such agreement will constitute a legal, valid, and binding obligation, enforceable against such Party in accordance with its terms, except as limited by Laws affecting the enforceability of creditors' rights generally and equitable principles.

(c) Neither the execution, delivery, nor performance of the Agreement or any other documents that may be required thereunder to be executed, delivered, and performed by the Party shall result in a violation of any term or provision of, or constitute a default or accelerate the performance required under, any contract or agreement to which such Party is a party or by which such Party or any of its properties is bound, or violate any order, writ, injunction, or decree of any court, administrative agency, or other Governmental Authority binding on such Party.

(d) There are no actions, suits or proceedings pending or, to the Party's knowledge, threatened against the Party that could have an adverse effect on the validity or enforceability of the Agreement or the ability of the Party to perform its obligations thereunder.

SECTION 6. INSURANCE.

6.1 Insurance to be Maintained by Ameresco and Customer. At all times that Ameresco is performing Services under the Agreement at any Facility, each of Ameresco and Customer shall separately purchase and maintain the following insurance, which shall include the minimum coverages and limits set forth herein. All policies of insurance shall comply with the insurance requirements of the Customer.

- (A) Comprehensive commercial general liability insurance, providing bodily injury and property damage coverage with a limit of not less than \$5,000,000 per occurrence; and
- (B) Errors and Omission insurance coverage limit of not less than \$2,000,000 per occurrence.

The foregoing insurance policies shall be issued by insurers of recognized responsibility, provided that Ameresco may provide part or all of such insurance through self insurance. Neither Customer nor Ameresco shall provide the other with, unemployment, medical, dental, worker's compensation, and/or disability insurance.

6.2 Waiver of Subrogation. Each Party hereby waives, and shall to the extent possible cause its insurance carrier to waive, all claims, rights of recovery and causes of action that such Party or any party claiming by, through or under such Party may now or hereafter have by subrogation or otherwise against the other Party or against any of the other Party's Affiliates (or the respective officers, directors, shareholders, partners or employees of any of them) for any loss or damage that may occur to the assets of such Party by reason of fire or other casualty, or by reason of any other cause except gross negligence or willful misconduct (thus including simple negligence of the Parties hereto or their officers, directors, shareholders, partners or employees), that could have been insured against under the terms of standard fire and extended coverage insurance policies available in the state where the assets are located at the time of the casualty. This provision shall have no effect if it would invalidate or otherwise limit the insurance coverage of a Party. This clause is subject to the approval of the Customer's insurers from time to time.

SECTION 7. LIMITATION OF LIABILITY.

In no event shall any party be liable to another party for special, consequential, incidental, punitive, exemplary or indirect damages in tort, for contract or otherwise in connection with the Agreement, even if such party has been advised of the possibility of such damages.

SECTION 8. INDEMNIFICATION.

Subject to Section 6 and any limitations of Law, each Party shall indemnify, defend and hold harmless the other Party and its Affiliates, and their directors, officers, agents and employees from and against all liability, damage, loss, claims, demands, judgments, and actions of any nature, including the reasonable legal fees and other costs incident thereto, which any such indemnified Person may suffer or incur arising primarily out of the tortious, reckless or negligent conduct of such indemnifying Party or its employees, agents or independent contractors in connection with the performance of such Party's obligations under the Agreement; provided, however, that the foregoing indemnification shall not apply to the extent that any liability, damage, loss, claim, demand, judgment or action result from the tortious, reckless or negligent conduct of the indemnified Person. This indemnity obligation extends only to claims made by third parties against an indemnified Party arising from without limitation, all losses on account of property damage, bodily injury, death, or personal injury. This indemnity obligation shall not be construed to eliminate or reduce any other indemnification right which either Party has under Law, the FR&ERPSA or any other agreement.

SECTION 9. BILLING AND PAYMENT.

9.1 Billing. Unless otherwise provided in the Services Agreement, Ameresco shall monthly submit to Customer an invoice setting forth the actual payment due to Ameresco for the Services provided by Ameresco under such Agreement during the prior month. Customer shall pay all invoices within 30 Days of receipt of the invoice or, if such Day is not a Business Day, the next Business Day (the "Due Date").

9.2 Late Payment; Suspension of Services. In absence of a timely notice of billing dispute in accordance with Section 9.3, amounts not paid on or before the Due Date shall be payable with interest at the Interest Rate from the Due Date until payment is received. In absence of a timely notice of billing dispute in accordance with Section 9.3, if a Customer has not paid an invoice (or undisputed portion thereof) by the date that is 60 Days after the Due Date, Ameresco may elect to suspend further provision of any or all Services to Customer.

9.3 Billing Disputes. In the event that Customer disputes any invoice or portion thereof, Customer must provide Ameresco within 20 Business Days of receipt of the invoice (the "Dispute Date"), written notice of the disputed amounts, together with a statement of the particulars of the dispute, including the calculations with respect to any errors or inaccuracies claimed. Should Customer fail to provide timely evidence of the invoice errors claimed on or before the Dispute Date, the disputed amounts shall be owed with interest at the Interest Rate from the Due Date until payment is received. Should Customer provide the required information on or before the Dispute Date, Ameresco shall make a determination on the dispute no later than 30 Days from the Dispute Date. Based on the determination by Ameresco, (a) if Customer has under-paid the amount actually due, Customer shall remit any amount due plus interest at the Interest Rate from the Dispute Date until paid within 5 Days after receipt of the determination from Ameresco, or (b) if Customer has over-paid the amount actually due, Ameresco shall remit to Customer any refund within 5 Days after determination of such over-payment plus interest at the Interest Rate on such refund from the date Ameresco received the over-payment until refunded. Notwithstanding any disputed invoice or portion thereof, Customer shall nevertheless pay when due any undisputed amount of such invoice to Ameresco.

SECTION 10. EVENTS OF DEFAULT AND DEFAULT REMEDIES.

10.1 Events of Default. Subject to Section 14 hereof, in addition to any events of default set forth in the Services Agreement, the occurrence of any of the following events or conditions shall constitute an event of default (together with the events of default in the Services Agreement, an "Event of Default"):

(a) Involuntary Proceedings. (i) A receiver, custodian, liquidator, or trustee of a Party, or of the property of a Party, is appointed by court order and such order is consented to by such Party or remains in effect for more than 90 Days after the commencement of such action; (ii) an order for relief under any bankruptcy Law is entered with respect to a Party or such Party is adjudicated a bankrupt or insolvent; or (iii) a petition is filed against a Party under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation Law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 90 Days after such filing.

(b) Voluntary Petitions. A Party files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation Law of any

jurisdiction, whether now or hereafter in effect, or consents to the filing of or any order to relief under any petition against it under any such Law.

(c) Material Breach. A Party breaches any of its material obligations under the Agreement and such breach is not cured within 30 Days after notice from the non-defaulting Party specifying the nature of the breach, unless such breach is not capable of being cured within 30 Days, in which event, the breaching Party must commence to cure within such 30 Days and thereafter diligently proceed to cure such breach.

(d) Failure to Pay. A Party fails to pay any amount due under the Agreement within 60 Days after the date due.

(e) Misrepresentation. A representation or warranty made by a Party in the Agreement shall be untrue in any material respect as of the date made.

10.2 Default Remedies. Upon the occurrence of an Event of Default, the non-defaulting Party may, with or without terminating the Agreement and without waiving any other remedy available to the non-defaulting Party, do any one or more of the following in addition to exercising any other remedies set forth in the Agreement or otherwise available under applicable Law:

(a) Declare immediately due and payable all sums accrued but unpaid under the Agreement through such date of declaration;

(b) Recover compensation for actual damages suffered by the non-defaulting Party, including reasonable expenses (i) incurred in canceling and demobilizing work previously undertaken for the defaulting Party, and (ii) incurred in connection with the enforcement or preservation of its rights and remedies (including reasonable legal fees);

(c) Repossess and sell or otherwise dispose of in a commercially reasonable manner any property, including equipment, in which the non-defaulting Party has a security or ownership interest and, in the sole discretion of the non-defaulting Party, dispose of such property by sale, lease or otherwise;

(d) Suspend further performance of the Services in case Customer is the defaulting Party, or suspend further payments due under the Agreement in case Ameresco is the defaulting Party; and

(e) By notice of the non-defaulting Party to the defaulting Party, terminate the Agreement.

No remedy referred to in this Section is intended to be exclusive, but shall be cumulative and in addition to any other remedy available to the non-defaulting Party.

10.3 Survival. Upon termination of the Agreement, all rights and obligations of the Parties under the Agreement shall immediately cease and terminate, except for the following which shall survive such termination: (i) the rights and obligations pursuant to Sections 3, 4, 7, 8, 14, 15.3, 15.7, 15.8 and 15.11 of the GT&C, (ii) the rights and obligations in the Services Agreement that expressly provides that they will survive termination of the Agreement, and (iii) Customer's obligations to compensate Ameresco for Services accrued and unpaid as of the date of termination, which shall be paid by Customer to Ameresco within thirty (30) days of the date of termination.

SECTION 11. FORCE MAJEURE.

11.1 Force Majeure. Except as otherwise expressly provided in the Agreement, neither Ameresco nor Customer shall be considered to be in default in the performance of its obligations under the Agreement, except obligations to make payments with respect to amounts already accrued, to the extent that performance of any such obligation is prevented or delayed because of an event of Force Majeure. If a Party is prevented or delayed in the performance of any such obligation by an event of Force Majeure, such Party shall provide notice in writing or by telephone within a reasonable time after the occurrence of such event with a description of the circumstances preventing or delaying performance and the expected duration thereof.

11.2 Strikes and Lockouts. The Parties agree that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty and that the requirement in Section 11.3 below that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of an opposing party when such course is inadvisable in the discretion of the Party having the difficulty.

11.3 Limitations. The suspension of performance shall be of no greater scope and no longer duration than is required by the applicable event of Force Majeure. An event of Force Majeure that affects the performance of a Party hereunder shall not relieve such Party of liability (i) in the event such Force Majeure was attributable solely to such Party's gross negligence or willful misconduct, or (ii) to the extent of such Party's failure to use its commercially reasonable efforts to remedy its inability to perform with all reasonable dispatch.

SECTION 12. ASSIGNMENT AND SUBCONTRACTORS.

The Agreement shall be binding upon, and inure to the benefit of, the Parties and their successors and assigns. The Agreement shall not be assignable by either Party, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that each Agreement may be assigned by Ameresco, in whole, but not in part, without such consent to one of its Affiliates. Any purported assignment contrary to the terms of this Section 12 shall be null, void and of no force and effect. In no event shall any transfer or assignment of the Agreement relieve the transferring or assigning Party of liability hereunder. Ameresco shall have the right to retain one or more subcontractors to perform any or all of its obligations under the Agreement.

SECTION 13. NOTICES.

Except as provided otherwise in the Agreement, every notice, request or other statement to be made or delivered by a Party to the other Party pursuant to the Agreement shall be directed to such other Party at the address or facsimile number given immediately below such other Party's signature on the Services Agreement or to such other address or facsimile number as the Party may designate in writing from time to time in accordance with this Section 13. Each Party, by written notice to the other Party, shall have the right to specify one additional address to which copies of notices shall be sent. Except as provided otherwise in the Agreement, any notice, request, statement, payment or other communication (including by facsimile) shall be deemed to have been given on the date on which it is received by the recipient.

SECTION 14. DISPUTE RESOLUTION.

14.1 Informal Dispute Resolution. If during the term of the Agreement any issue, dispute, claim or controversy should arise out of or in connection with the Agreement ("Dispute") and the Parties are unable to resolve the Dispute on or before the 30th Day following written notice of such Dispute, which notice describes in reasonable detail the nature of the Dispute and the facts and circumstances relating thereto, each Party shall nominate a member of its senior management team for the purpose of meeting at a mutually agreeable time and place to resolve such Dispute. Such meeting shall take place on or before forty-five (45) Days following the date of the notice of the Dispute, and if the Dispute has not been resolved within fifteen (15) Days following such meeting (or if a Party fails to designate a member of its senior management team), any Party may commence legal proceedings or submit such Dispute to mediation.

14.2 Preservation of Remedies. Notwithstanding the provisions in this Section 14, the Parties agree to preserve, without diminution, certain remedies that the Parties may employ or exercise freely, independently or in connection with an arbitration proceeding or after an arbitration action is brought. Each Party shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies: (i) all rights to obtain possession of property; (ii) all rights to foreclose against any property or other security by exercising a power of sale granted under the Agreement or under applicable Law or by a judicial foreclosure and sale; (iii) all rights of self-help including set-off and peaceful possession of personal property; and (iv) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of a receiver and filing an involuntary bankruptcy proceeding. Preservation of these remedies does not limit the power of the arbitrators to grant similar remedies.

SECTION 15. MISCELLANEOUS.

15.1 Headings. The subject headings of the Sections of the Agreement are inserted for the purpose of convenient reference and are not intended to be part of the Agreement nor to be considered in any interpretation of the same.

15.2 Entire Agreement; Amendment. The Agreement (including the Services Agreement, the GT&C and each appendix, exhibit or attachment thereto) contains the entire understanding and agreement between the Parties with respect to the applicable subject matter and supersedes all previous communications, negotiations, and agreements, whether oral or written, between the Parties with respect to such subject matter. No amendment or modification of the Agreement will be valid and binding unless set forth in a written instrument signed by the Party sought to be bound thereby.

15.3 Waiver. No waiver by either Party, either express or implied, of any one or more defaults by the other Party in the performance of any provisions of the Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or different character. Failure by a Party to enforce any of the terms, covenants, conditions, remedies or other provisions of the Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce strict compliance with every such term, covenant, condition, remedy or provision in the Agreement, notwithstanding any course of dealing or custom of the trade.

15.4 Preparation. The Parties and their legal counsel have cooperated in the drafting of the Agreement, and such Agreement shall therefore be deemed their joint work product and not be construed against either Party by reason of such preparation.

15.5 Exclusion of Third Party Rights. The provisions of the Agreement shall not impart rights enforceable by any Person not a Party or bound as a Party unless such Person or organization is a permitted successor or assignee of a Party bound by the Agreement.

15.6 Severability. If any provision of the Agreement or the application thereof to any Party or circumstance shall be unenforceable to any extent, the remainder of the Agreement shall not be affected thereby, so long as the material purposes of such remainder can be determined and effectuated.

15.7 Applicable Law. The Agreement and the rights and duties of the parties thereunder shall be interpreted, performed and enforced in accordance with the Laws of the Province of Ontario, without regard to principles of conflicts of law thereof.

15.8 Consent to Jurisdiction. The Parties irrevocably agree that any suit, action or proceeding relating to or arising out of the Agreement may be brought in the courts of the Province of Ontario. The Parties irrevocably submit to the jurisdiction of such Courts. The Parties irrevocably waive any objections which they may have now or hereafter to the venue of any proceedings brought in the Courts, or that such proceedings have been brought in a non-convenient forum.

15.9 Counterparts. The Agreement may be signed in any number of counterparts, and each counterpart shall be deemed an original, but all of which shall constitute one and the same instrument.

15.10 Mutual Cooperation. The Parties shall (a) cooperate with each other to effectuate the purposes of the Agreement, (b) execute and deliver any and all additional documents or take such additional action as may be reasonably necessary or appropriate to that end as the other Party shall deem necessary to enforce its obligations and enjoy its material rights and benefits hereunder or to otherwise effectuate the purposes of the Agreement, and (c) cooperate in obtaining any necessary consents, permits, licenses, or other authorizations from Governmental Authorities having jurisdiction of the Agreement or any Service or obligation thereunder.

15.11 Employee Non-Solicitation. No Party shall during the term of the Agreement and the period of two years thereafter, either directly or indirectly, on its own behalf or in the service of or on behalf of others, divert, solicit or hire away, or attempt to divert, solicit or hire away, any person employed by the other Party, except (i) with the prior written consent of the other Party, or (ii) in so far that such employee responds to a bona fide public job advertisement made by such Party (whether posted on a public site on the internet or in a newspaper, magazine or other publication of general circulation), or if such employee initiates contacts regarding employment with such Party on his or her own volition.

15.12 No Partnership or Joint Venture. The Parties agree that nothing in the Agreement shall serve to create any agency, employment or other master and servant relationship, partnership or joint venture relationship, or fiduciary relationship between Ameresco and Customer. Customer shall not withhold any federal, provincial or local income, unemployment or other taxes with respect to the Services rendered by Ameresco hereunder.