

SCHEDULE 5

INSURANCE

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SCHEDULE 5

INSURANCE

1. INSURANCE REQUIREMENTS

1.1 Project Specific Construction Period Insurance

During the Construction Period, Project Co will obtain and maintain, or will cause to be obtained and maintained, the following insurances as further described in Appendix 5A [Insurance Requirements]:

- (a) "All Risks" Course of Construction Property, including Boiler and Machinery (the "**Builders Risk Policy**");
- (b) "Wrap-Up" Commercial General Liability and Non-Owned Automobile Liability;
- (c) Project Specific Professional Liability; and
- (d) Project Specific Pollution Liability.

1.2 Additional Construction Period Insurance

During the Construction Period, Project Co will obtain and maintain, or will cause to be obtained and maintained, the following insurances as further described in Appendix 5A [Insurance Requirements]:

- (a) Automobile Liability;
- (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Project Contractor and each of the Sub-Contractors involved in the Construction) with respect to their respective off-site operations and activities;
- (c) Aircraft or Watercraft Liability (if any exposure);
- (d) "All Risks" Marine Cargo (if any exposure);
- (e) "All Risks" Contractors' Equipment;
- (f) Comprehensive Crime; and
- (g) Workers' Compensation, in accordance with Laws and the requirements of any Government Authority.

1.3 Operating Period Insurance Requirements

During the Operating Period Project Co will obtain and maintain, or will cause to be obtained and maintained, the following insurances as further described in Appendix 5A [Insurance Requirements]:

- (a) "All Risks" Property;
- (b) Boiler and Machinery;

- (c) Commercial General Liability and Non-Owned Automobile Liability;
- (d) Environmental Impairment (Pollution) Liability;
- (e) Automobile Liability;
- (f) Comprehensive Crime; and
- (g) Workers' Compensation, in accordance with Laws and the requirements of any Government Authority.

1.4 The Authority to Approve Form and Content

All policies of insurance to be taken out or caused to be taken out by Project Co pursuant to this Agreement will be in form and content satisfactory to the Authority, acting reasonably.

2. GENERAL INSURANCE PROVISIONS

2.1 Insurance Representative

Before commencing any Construction Project Co will appoint an insurance representative who will communicate with the Authority and keep the Authority advised of all material matters of insurance, including claims, possible claims and policy changes or amendments. Project Co will at all times maintain such a representative throughout the Term. Such representative will be an individual located in Canada and Project Co will advise the Authority promptly of any change in such representative during the Term.

2.2 Cooperation with Insurer's Consultant

Project Co will, and will ensure that its insurance representative and all relevant Project Contractors and Subcontractors will:

- (a) cooperate with the insurers and their representatives, including providing them with such information and documentation as they may reasonably require;
- (b) allow the insurers and their representatives to attend meetings between Project Co, the Project Contractors and the Authority; and
- (c) in the case of Project Co and Project Contractors, if reasonably required by an insurer or its representative, allow the insurer and its representative to attending meetings between Project Co and any Project Contractors relating to the review of the performance of this Agreement.

2.3 Insurers and Terms of Policies

Project Co will ensure that all policies for the insurance it is required to obtain pursuant to this Schedule are obtained and maintained with Qualified Insurers licensed in Saskatchewan and, subject to this Schedule, are in such forms and contain such terms and conditions which are equal to or better than those that would be obtained by prudent owners and operators of projects of similar scope and magnitude to the Project and, in addition to the required inclusions or permitted exclusions for each policy specifically

described in this Schedule, include such other inclusions and exclusions as such prudent owner or operator would require or permit.

2.4 Additional Insurance

None of the insurance coverage amounts or sublimits specified in this Schedule 5 or Appendix 5A [Insurance Requirements] limit the liability of Project Co with respect to any obligations of Project Co to the Authority arising under this Agreement. Project Co will obtain and maintain, or cause to be obtained and maintained, at its cost and expense, all such other policies of insurance required by Laws or which Project Co deems necessary having regard for the policies of insurance which prudent owners and operators of projects of similar scope and magnitude to the Project would obtain and maintain, or cause to be obtained and maintained.

2.5 Particular Requirements of Policies

Without limiting the generality of this Schedule and the provisions of Section 6 (Insurance, Damage and Destruction) of this Agreement:

- (a) Except with respect to insurances described in Section 1.2(g) and 1.3(g) of this Schedule, each policy of insurance required under this Agreement will:
 - (1) bear an endorsement to the effect that the insurer will not effect any adverse material change, alteration or amendment to the policy or any cancellation of the policy without first giving at least 90 days prior written notice by registered mail to the Authority and each of the other named insureds and loss payees, provided that the insurances described in Section 1.1 of this Schedule will each bear an endorsement providing that the policy is non-cancellable by the insurer except for the following:
 - (A) non-payment of the premium;
 - (B) bankruptcy or insolvency of the named insured;
 - (C) termination of the Project prior to the expiry date of the policy (termination does not refer to the early completion of the Project); or
 - (D) indefinite suspension of the Project;
 - (2) contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to the Authority and the Senior Lenders' Agent;
 - (3) with respect to Section 1.2(a) and 1.2(f) and Section 1.3(e) and 1.3(f) of this Schedule, require only notice of cancellation;
 - (4) with respect to insurances described in Section 1.1(a), (b), and (d), Section 1.2(b) and (d), and Section 1.3(a), (b), (c) and (d) of this Schedule, contain an

endorsement to the effect that breach of any of the terms or conditions of the policies required to be taken out, or caused to be taken out, by Project Co, or any negligence or wilful act or omission or false representation by any insured under these policies, will not invalidate the insurance with respect to the Authority, the Senior Lenders or any other insured, but only to the extent that such breach is not known to these parties;

- (5) except with respect to Section 1.1(c), Section 1.2(a), 1.2(f) and 1.2(g) and Section 1.3(e), 1.3(f) and 1.3(g) of this Schedule, contain a waiver of subrogation as against the Authority, Affiliates of the Authority and Authority Persons;
- (6) with respect to Section 1.1(b), Section 1.2(b) and Section 1.3(c) of this Schedule, contain a cross liability and severability of interests clause to the effect that Project Co and the Authority and the other insureds will each be entitled to indemnity under such policy as if each were alone insured under such policy and notwithstanding that the claim in respect of which indemnification is sought is made by another insured;
- (7) be primary and not require the sharing of any loss by any insurer of the Authority, the Senior Lenders or any other named insured;
- (8) include Project Co and the Authority as named insureds to the extent specified in Appendix 5A [Insurance Requirements] or as required by contract; and
- (9) include the Authority and the Senior Lenders as additional insured or loss payees, to the extent of their respective insurable interests to the extent specified in Appendix 5A [Insurance Requirements] or as required by contract.

Project Co may arrange the insurance under a single policy, or by a combination of primary, umbrella, or excess policies.

2.6 Evidence of Insurance

- (a) On the Effective Date, Project Co will provide the Authority with:
 - (1) certificates of insurance or certified copies of policies, confirming that the insurance specified in Section 1.1 of this Schedule have been obtained and are in full force and effect; and
 - (2) certificates of insurance or certified copies of policies, confirming that the insurance specified in Section 1.2 have been obtained and are in full force and effect.
- (b) On the Service Commencement Date, Project Co will provide the Authority with:
 - (1) certified copies of the policy, confirming that the insurance specified in Section 1.3(a), (b), (c) and (d) of this Schedule has been obtained and is in full force and effect; and

- (2) certificates of insurance or certified copies of policies, confirming that the insurance specified in each of Section 1.3(e), 1.3(f) and 1.3(g) of this Schedule have been obtained and are in full force and effect.

No review, approval or rejection of, or any comments or amendments required, by the Authority, respecting any insurance certificate or insurance policy will derogate from or diminish the Authority's rights or Project Co's obligations or liabilities under this Agreement.

2.7 Claims

Project Co will:

- (a) maintain a written register of all claims and incidents that might reasonably result in a claim under any of the policies of insurance required by this Agreement (other than the policies described in Sections 1.2(a), (b), (e) or (f) or Sections 1.3(e) or (f) of this Schedule to the extent such claims are unrelated to the Project) and will allow the Authority to inspect such register at any time; and
- (b) notify the Authority within 5 Business Days after making any claim under any of the policies for the insurance required by this Agreement where the value of the claim exceeds _____ or (regardless of the value of the claim) the claim involves personal injury or death, accompanied by full particulars of the incident giving rise to the claim.

2.8 Project Co Deductibles

Subject to Section 2.9 of this Schedule, Project Co will be responsible and liable for the deductible portion of, and any waiting period for, any claim made on any policy of insurance maintained pursuant to this Schedule.

2.9 Authority Deductibles

The Authority will be responsible for the deductible portion of, and any waiting period for, any claim made on any policy of insurance maintained pursuant to this Schedule and made in respect of any Compensation Event.

2.10 No Indemnification for Insured Claims

Subject to Sections 8.3 and 8.4 of this Agreement, Project Co will not be entitled to claim compensation, indemnification or reimbursement from the Authority under this Agreement to the extent that Project Co:

- (a) is entitled to recover any such amounts under any insurance in force at the time of loss; or
- (b) would have been entitled to recover any such amounts under any insurance if it had complied with the obligation to take out and maintain, or cause to be taken out and maintained, insurance in accordance with this Agreement.

2.11 Compliance

- (a) Project Co will comply with the terms, conditions and requirements of all policies for the insurance required by this Schedule and will not do or omit to do, or permit to be done or omitted by any Project Co Person, anything on or with respect to the Facility or the Lands that could reasonably be expected to result in the cancellation of any insurance required by this Schedule, or that would reasonably be expected to entitle any insurer to refuse to pay any claim under the policy for any such insurance.
- (b) The Authority will not do or permit to be done by any Authority Person, anything on or with respect to the Facility or the Lands that could reasonably be expected to result in the cancellation of any insurance required by this Schedule, or that would reasonably be expected to entitle any insurer to refuse to pay any claim under the policy for any such insurance.
- (c) The Authority and Project Co will, and Project Co will cause the Project Contractors and the Sub-Contractors to:
 - (1) comply with all insurance policy warranties made known to them; and
 - (2) take any and all special precautions necessary to prevent fire from occurring in or about the Facility as required by the terms of the Builders Risk Policy.

2.12 Failure to Insure

Subject to Section 6.15 (Consequences of Risks becoming Uninsurable) of this Agreement, if Project Co fails or refuses to obtain or maintain in force any insurance required to be effected by it under this Schedule, or to provide evidence of such insurance and renewals in relation thereto as and when required and in accordance with this Schedule, the Authority may, without prejudice to any of its other rights under this Agreement or otherwise, procure such insurance, in which event any amounts paid by the Authority for that purpose, together with all reasonable costs incurred by the Authority in procuring such insurance, will become due and payable by Project Co to the Authority.

2.13 Increase in Amount of Coverage

Project Co will ensure that, throughout the Operating Period, the amounts of coverage in respect of the policies of insurance required to be obtained and kept in force under Section 1.3 of this Schedule are not less than the greater of the amounts:

- (a) specified in Section 1.3 of this Schedule; and
 - (b) of coverage that would be obtained from time to time by prudent owners and operators of projects of similar scope and magnitude as the Project in respect of such policies of insurance,
- (each a "**Prudent Coverage Amount**").

If, at any time, a party (the “**Notifying Party**”) determines that the amount of coverage then in effect (the “**Actual Coverage Amount**”) in respect of any policy of insurance required to be obtained and kept in force by a party under Section 1.3 of this Schedule, as applicable, is or will be less than the Prudent Coverage Amount, the Notifying Party will notify the other party in writing of such determination and, if both parties agree, or it is determined under the Dispute Resolution Procedure, that the Actual Coverage Amount is or will be less than the Prudent Coverage Amount, the party responsible for effecting and maintaining such policy of insurance will forthwith cause the amount of coverage in respect thereof to be increased to an amount equal to at least the Prudent Coverage Amount.

2.14 Project Co Contractors and Sub-Contractors

Project Co will:

- (a) acting reasonably, determine the applicable insurance coverage to be obtained by Project Contractors and Sub-Contractors in connection with the Project, provided that such insurance coverages will be consistent with insurance that prudent Project Contractors or Sub-Contractors, as applicable, would be required to maintain for projects of similar scope and magnitude to the Project. If Project Co determines that any additional insurances will be required, Project Co will ensure that the relevant Project Contractor or Sub-Contractor, as applicable, promptly obtains and maintains such insurance. All such additional insurance will be at Project Co’s or the relevant Project Contractor’s or Sub-Contractor’s cost and expense. Project Co will be solely responsible and liable for any damages which the Authority may suffer as a result of any failure by Project Co to comply with this Section 2.14(a).
- (b) if Project Co receives notice or otherwise becomes aware that any Sub-Contractor is not covered by any insurance required by this Schedule to be obtained, promptly notify the Authority and:
 - (1) ensure that such insurance coverage is obtained for the relevant Sub-Contractor as soon as possible; or
 - (2) if the relevant Sub-Contractor cannot be covered by a particular policy as required by this Schedule, notify the Authority of such circumstances and, unless the Authority in its discretion otherwise directs Project Co, promptly replace the relevant Sub-Contractor with a properly qualified and experienced Sub-Contractor that can obtain the required insurance coverage,

and with respect to each of Section 2.14(b)(1) and 2.14(b)(2), Project Co will remove the relevant Sub-Contractor from the Site until such insurance coverage is obtained and, with respect to Section 2.14(b)(1), ensure that the relevant Sub-Contractor does not perform any further part of the Design, Construction or Services until after such insurance coverage for such Sub-Contractor is obtained and in effect (and Project Co will provide the Authority with evidence that such insurance has been obtained and is in effect).

3. PAYMENT FOR INSURANCE

3.1 Premiums

Project Co will pay all premiums under the policies of insurance described in this Schedule and all fees, commissions, taxes and other costs and expenses associated with such policies of insurance.

3.2 Adjustment to Service Payment for Operating Period Insurance

In this Section:

“Actual Insurance Cost” means the aggregate of the annual insurance premiums reasonably incurred by Project Co to maintain or cause to be maintained the Operating Period Insurance during the Insurance Review Period, including any increase to any annual insurance premiums owing to an increase in the amount of coverage pursuant to Section 2.13, but excluding:

- (a) any increase in the amount of any insurance premiums reasonably attributable to the acts or omissions of Project Co or any Project Co Person;
- (b) all Taxes; and
- (c) all broker’s fees and commissions;

“Base Insurance Cost” means:

- (a) for the first Insurance Review Period; and,
- (b) thereafter, the aggregate of the annual amounts which were projected (as set out in the Financial Model) to be incurred by Project Co to maintain or cause to be maintained the Operating Period Insurance during the Insurance Review Period, which amounts exclude all Taxes and broker’s fees and commissions;

“Insurance Adjustment” at any time means the Insurance Cost Differential calculated as of the most recent Insurance Review Date;

“Insurance Cost Differential” means an amount, based on the Insurance Cost Report, equal to the Actual Insurance Cost minus the Base Insurance Cost;

“Insurance Review Date” means each anniversary of the Service Commencement Date, except if such date occurs after the end of the Term, in which case the Insurance Review Date will be the last renewal date of the Operating Period Insurance prior to the Expiry Date; and

“Insurance Review Period” means a one year period from the Service Commencement Date and each subsequent one year period commencing on the first anniversary of the Service Commencement Date, except if the end of such period occurs after the end of the Term, in which case the Insurance Review Period will be the period from the final Insurance Review Period to the last day of the Term.

3.3 Insurance Cost Report

No later than 60 days prior to each Insurance Review Date, Project Co will cause its insurance broker to prepare, at the cost of Project Co, a report on behalf of both Project Co and the Authority (the “**Insurance Cost Report**”) that contains the following information for the relevant Insurance Review Period:

- (a) a full breakdown of the Actual Insurance Cost;
- (b) a full breakdown of the Base Insurance Cost;
- (c) an assessment and quantification of any net increase or net decrease in the Actual Insurance Cost relative to the Base Insurance Cost, together with reasons therefor;
- (d) the opinion of Project Co’s insurance broker as to the reasons why the Actual Insurance Cost has varied from the Base Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor;
- (e) the calculation of the Insurance Cost Differential; and
- (f) evidence satisfactory to the Authority, acting reasonably, of any changes to circumstances generally prevailing in the worldwide insurance market that are claimed to account for the Insurance Cost Differential.

3.4 Insurance Adjustment

On the Service Commencement Date, the Service Payments will be subject to an Insurance Adjustment in accordance with Schedule 8 [Payments].

4. INSURANCE TRUST AGREEMENT

On the Effective Date, the parties will, together with the Senior Lenders, appoint a suitably qualified and experienced person to act as the Account Trustee for the purposes of the Insurance Trust Agreement, and will enter into an agreement with such trustee substantially in the form of the Insurance Trust Agreement set out in Appendix 5B [Insurance Trust Agreement].

All insurance proceeds relating to losses under the:

- (a) Builders Risk Policy carried or caused to be carried by Project Co pursuant to Section 1.1(a) of this Schedule;
- (b) the “All Risks” Marine Cargo insurance carried or caused to be carried by Project Co pursuant to Section 1.2(d) of this Schedule;
- (c) the “All Risk” Property insurance carried or caused to be carried by Project Co pursuant to Section 1.3(a) of this Schedule; or
- (d) the Boiler and Machinery insurance carried or caused to be carried by Project Co pursuant to Section 1.3(b) of this Schedule;

which relates to Equipment or other equipment purchased, acquired or paid for by the Authority, including, without limitation, any purchased or acquired by Project Co or any Project Contractor or Sub-Contractor on behalf of the Authority, will, notwithstanding any other provision of this Agreement, be payable solely and directly to the Authority and will not be payable to the Account Trustee, held in the Insurance Account, distributed to any person other than the Authority pursuant to any other provision of the Insurance Trust Agreement or be considered to be held in trust for any person other than the Authority.

5. PERFORMANCE SECURITY REQUIREMENTS

The Authority will be named as a co-obligee on any performance bonds or similar bond required as part of the Senior Financing Agreements. If subcontractor default insurance is required in the Senior Financing Agreements, a financial interest endorsement will be provided in favour of the Authority.

APPENDIX 5A

INSURANCE REQUIREMENTS

[See separate document]

APPENDIX 5B
INSURANCE TRUST AGREEMENT

[See separate document]