



Whitby Hydro
 Energy Services Corporation

FACTORY PROTECTION PLAN – END USER AGREEMENT

Agreement Number WHFS-18-12-TIL		Agreement Execution Date March 21, 2019	
Purchaser Company Name (Bill-To) Town of Tillsonburg		Purchaser Contact Name (Bill-To) Accounts Payable	Phone Number 905.688.3009
Address (Bill-To) 200 Broadway, Suite 204., Tillsonburg, Ontario N4G 5A7			
Name (Site Contact) Rick Cox		Company (Site Contact) Town of Tillsonburg	Phone Number 905.688-3009
Address (Turbine Location) 45 Hardy Ave, Tillsonburg, Ontario			
Total Number Of: Turbines: 3 Gas Packs/Air Packs: 3			

A. Factory Protection Plan Types and Optional Services

Factory Protection Plan Type ¹		Price
<input type="checkbox"/> Plan A – 5 year or 39,999 trh, ² Parts ONLY, NO Overhaul	<input type="checkbox"/> <4000 hrs/yr <input type="checkbox"/> 4000-6000 hrs/yr <input type="checkbox"/> >6000 hrs/yr	\$
<input type="checkbox"/> Plan B – 5 year or 39,999 trh, Parts & Labor, NO Overhaul	<input type="checkbox"/> <4000 hrs/yr <input type="checkbox"/> 4000-6000 hrs/yr <input type="checkbox"/> >6000 hrs/yr	\$
<input checked="" type="checkbox"/> Plan C – 9 year or 79,999 trh, Parts ONLY, with Overhaul	<input type="checkbox"/> <4000 hrs/yr <input type="checkbox"/> 4000-6000 hrs/yr <input checked="" type="checkbox"/> >6000 hrs/yr	\$ 359,784
<input type="checkbox"/> Plan D – 9 year or 79,999 trh, Parts & Labor, with Overhaul	<input type="checkbox"/> <4000 hrs/yr <input type="checkbox"/> 4000-6000 hrs/yr <input type="checkbox"/> >6000 hrs/yr	\$
<input type="checkbox"/> Other – Description: X (See also checked items in column "OTHER" in Section B below.)	<input type="checkbox"/> X hrs/yr	\$

¹ See Section B below for description of included services for each type of Factory Protection Plan.

² Turbine run hours (trh)



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Optional Services	Price
<input checked="" type="checkbox"/> VPSN – Vergent Power Service Network Remote Monitoring Service, Subscription ONLY ³	\$Incl
<input checked="" type="checkbox"/> Upgrades – Description: Any and all as made available by Capstone	\$Incl
<input type="checkbox"/> Commissioning or <input type="checkbox"/> Re-commissioning	\$
Total Price	\$ 359,784

³ VPSN Remote Monitoring equipment must be purchased separately.



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B. Description of Factory Protection Plan Services

FACTORY PROTECTION PLAN, Included Services	Plan A	Plan B	Plan C	Plan D	Site
Maintenance Parts:					
➤ Scheduled maintenance parts as needed pursuant to the then current Capstone Standard Maintenance Schedule (Capstone document number 440000 for Model C30 or Model C60, or Capstone User Manual for Model C65 or C200).	✓	✓	✓	✓	<input checked="" type="checkbox"/>
➤ Unscheduled maintenance parts as needed, including:					
• Engine assembly (Engine/Generator)	✓	✓	✓	✓	<input checked="" type="checkbox"/>
• All power electronics components	✓	✓	✓	✓	<input checked="" type="checkbox"/>
• All fuel system components	✓	✓	✓	✓	<input checked="" type="checkbox"/>
• Optional/Accessory equipment (if installed)					
- Main battery pack	✓	✓	✓	✓	<input checked="" type="checkbox"/>
- Heat Recovery Module (HRM) coil	✓	✓	✓	✓	<input checked="" type="checkbox"/>
- Capstone Logic Controller (CLC)	✓	✓	✓	✓	<input type="checkbox"/>
- Dual Mode System Controller (DMSC)	✓	✓	✓	✓	<input type="checkbox"/>
- External Fuel Filter	✓	✓	✓	✓	<input type="checkbox"/>
- External Regulator	✓	✓	✓	✓	<input type="checkbox"/>
Maintenance Labor: ⁴					

⁴ Normal Whitby Hydro Energy Services Corporation (WHESC) service hours are 8:00 am to 4:30 pm local time weekdays, excluding holidays.



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FACTORY PROTECTION PLAN, Included Services	Plan A	Plan B	Plan C	Plan D	Site
➤ Scheduled maintenance labor.	No	✓	No	✓	<input type="checkbox"/>
➤ Unscheduled maintenance labor.	No	✓	No	✓	<input type="checkbox"/>
Engine Overhaul at 40,000 trh	No	No	✓	✓	<input checked="" type="checkbox"/>
Additional Services:					
➤ Access to WHESC's Technical Support.	✓	✓	✓	✓	<input type="checkbox"/>
➤ Priority response to unscheduled maintenance service requests.	No	✓	No	✓	<input type="checkbox"/>
➤ System software upgrades as released by Capstone.	✓	✓	✓	✓	<input checked="" type="checkbox"/>
➤ Installation of system software upgrades.	No	✓	No	✓	<input type="checkbox"/>
➤ Other – Description:					<input type="checkbox"/>
➤ Other – Description: THIRD PARTY METERING EQUIPMENT, NOT INCLUDED					<input type="checkbox"/>

C. Service Conditions

1. Sites must be clean, free of debris and any other obstructions, well lit, and operating in an environment that will not cause excessive usage, or need for replacement, of consumables and filters outside the parameters of Capstone's standard service intervals.
2. Sites must be installed in accordance with all Capstone/WHESC/Vergent Power installation requirements.
3. Sites must be commissioned in accordance with Capstone/WHESC/Vergent Power specifications and Capstone/WHESC/Vergent Power must have an approved Commissioning Checklist on file.
4. If VPSN is checked in Section A above, then Purchaser is responsible for providing Vergent Power with a dedicated internet connection for VPSN starting on the Start of Services Date and terminating on the End of Services Date (see Section D below).



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D. Term of Agreement

1. **Start of Services:** The Agreement and Services shall commence ☐ Upon the Date of Commissioning, which shall occur no later than ☐; or ☒ Agreement Execution Date.
2. **End of Services:** The Agreement and Services shall expire ☐ 5 years from Start of Services or 39,999 trh, whichever comes first; or ☒ 9 years from Start of Services or 79,999 trh, whichever comes first; or ☐ Other (specify: ☒.
3. **Labour:** Customers shall have access to WHESC Authorized Service Provider (ASP) technicians and will be charged at a rate of \$145/hour/ASP CAD including driving time, upon request.

E. Payment Terms

1. Payment for the Service Agreement will be made in ☐ Upfront; equal ☒ Annual; or ☐ Other (specify: ☒ installment(s) of \$39,976.00 plus HST).
2. Unless otherwise provided for in the payment descriptions above, payments for Services are due 30 calendar days from date of invoicing, are stated in Canadian dollars and include any fees, licenses and permits required for the performance of the Services, and exclude sales and other taxes.
3. Overdue payments shall be subject to a late charge, calculated from the date of invoice to the date of payment, equal to Eighteen Percent (18%) per annum calculated monthly. The foregoing shall in no way limit any other remedy that may be available to WHESC.
4. Purchaser's obligations to WHESC to pay in full all amounts owed to WHESC as of the termination or expiration of this Agreement shall survive the termination for any reason or expiration of this Agreement.
5. Pricing is based off an exchange rate of 1.34 UDS to 1.00 CAD. If the actual exchange rate at the time of transaction is different than this rate, a credit or debit will be issued in order to correct to the actual exchange rate for each transaction.

F. Excluded Services

The following are specifically excluded from the Agreement:

1. Changes to the original design and configuration (alterations from "as commissioned").
2. Application engineering and installation; correction of latent or discovered defects or equipment failure due to application engineering, installation, settings and/or connections.



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3. Operation of Covered Equipment on a day-to-day basis.
4. Usage/consumption of consumables outside the parameters of Capstone's/WHESC's standard service intervals, unless otherwise specified in Exhibit 1.
5. Operation of Covered Equipment on a day-to-day basis.
6. Emissions testing or testing of exhaust gas.
7. Fuel analysis or laboratory analysis to confirm fuel composition.
8. Operator classroom training.
9. City, state, and/or federal permits, rebates, or incentive applications or filings.
10. Balance of plant equipment: WHESC will provide Services for the Covered Equipment listed in Exhibit 1 only, as may be amended by the parties from time to time in writing.
11. Using the VPSN, Vergent Power may provide remote monitoring service diagnostics as a courtesy to the customer. The VPSN equipment is capable of monitoring additional Balance of Plant equipment (i.e., anything outside of the housing and not included in the definition of "Covered Equipment" set forth below), which may impact the successful operation of the Covered Equipment under this Agreement. Under no circumstances is WHESC obligated to provide any Services for Balance of Plant equipment or any other equipment that is not listed as Covered Equipment.
12. Internet connection, service, maintenance, or hardware related fees.
13. Certain tooling required to support performing Services on the Covered Equipment, e.g. assistive lifting devices, trucks, crane or forklift rentals, etc.
14. Any expenses resulting from failure to meet, or incurred as a result of correcting deficiencies in order to meet, Service Conditions specified in Section C above.
15. Any expenses resulting from improper operation of Covered Equipment.
16. Any expenses resulting from Force Majeure events.
17. Any expenses resulting from power quality disturbances (e.g. sags, surges, and harmonics) in grid-connected operation.
18. Any services requested by Purchaser which are determined, in WHESC sole discretion, to be outside the scope of this Agreement.



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Pursuant to this Services Agreement (the “Agreement”), Purchaser hereby authorizes Whitby Hydro Energy Services Corporation (“WHESC”) to provide the services described above (the “Services”), including the provision of any necessary parts (the “Parts”), on the Capstone Turbine generator systems, controls and/or accessories identified above (the “Covered Equipment”) in accordance with and subject to the terms and conditions described above and on the pages attached hereto.

1. Price of the Services, Payment Terms and Scope of Services. The price, payment terms and scope of services for each of the Services (the “Scope of Services”) are set forth on the cover pages of this Agreement. If repairs or additional labor outside of the applicable Scope of Services are determined to be necessary and the required repairs are authorized by Purchaser, then (i) additional labor and other costs and expenses will be billed by WHESC to Purchaser at the then effective Factory Protection Plan Service Flat Rate Schedule and the then effective WHESC Service Rates, as such terms and provisions are revised by WHESC from time to time, and (ii) Parts will be billed at the then prevailing WHESC List Price, and (iii) mobilization costs and expenses will be without charge so long as the labor is performed at the same time scheduled maintenance is performed. If labor is not performed at the same time of scheduled maintenance, mobilization charges will be as described in WHESC’s Service Rates.

2. Term. This Agreement shall continue in effect for the term indicated in Section D of this Agreement unless WHESC or Purchaser terminates this Agreement by delivering to the other party written notice in the event of: (i) Purchaser’s breach of any material term or condition of this Agreement; or (ii) Purchaser’s failure to pay when due any amount owed by

Purchaser to WHESC under this Agreement, within fifteen (15) days of when such payment is due under the Agreement, and Purchaser fails to cure such default within seven (7) days after receiving written notification of default. If Purchaser fails to pay when due any amount owed by Purchaser to WHESC and this Agreement is not terminated immediately by WHESC, WHESC may delay or cease performance of Services under this Agreement until payment in full is received or other payment arrangements are agreed to, at WHESC’s sole discretion. The foregoing does not limit or restrict in any way WHESC’s right to terminate this Agreement at any time following an event described in this Section. In the event of a termination by WHESC, Purchaser will forfeit all amounts paid at the time of termination as a true measure of the damages and not as a penalty. Purchaser reserves the right to terminate this Agreement without cause, and in such event shall pay WHESC for all services performed through the date of termination or forfeit all amounts paid at the time of termination, whichever is greater as a true measure of the damages and not as a penalty. If this agreement is terminated by Purchaser between years Five (5) through Nine (9), there will be a charge to Purchaser for the engine



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replacement that was performed during the 40,000 hour service at current market value.

3. WHESC's Services; Warranty. WHESC agrees that it will comply with applicable laws and regulations relating to its provision of the Services and such Services will be provided in a professional and workmanlike manner consistent with the applicable Scope of Services and with generally accepted industry standards and practices with regard to the type of services provided hereunder. WHESC and Capstone provide the warranties with respect to Parts and labor provided by WHESC and Capstone for the applicable Covered Product (the "**Service-Related Warranties**"). Notwithstanding any term contained in a Service-Related Warranty or this Agreement to the contrary, any and all Service-Related Warranties expire upon the completion of the Services.

4. Purchaser's Representations. Purchaser represents, warrants, and covenants that: (i) it has the right, power, and authority to enter into this Agreement and to perform fully its obligations hereunder; (ii) the making of this Agreement does not violate any agreement existing between it and any other person or entity; (iii) it has obtained or will obtain all licenses and permits necessary for WHESC to perform the Services; (iv) all information provided by Purchaser to WHESC related to the Services and its ability to pay for the Services is complete and accurate; (v) it will arrange for WHESC's access to the facilities where the Covered Equipment is located as needed to perform the Services; and (vi) it will perform all of its obligations under this Agreement to the reasonable satisfaction of WHESC.

5. Purchaser's Obligations. In addition to all other obligations stated in this Agreement, when requested, Purchaser shall provide WHESC with: (i) records and information concerning the Covered Equipment; and (ii) any special tools or instruments needed for the Covered Equipment which Purchaser already possesses. **Purchaser shall designate an authorized representative who shall be available to WHESC at all times while WHESC is performing the Services on Purchaser's premises.** Purchaser agrees that the Scope of Services excludes all trade labor work and any supervision, management or regulation of Purchaser's employees, agents or contractors and work related thereto, and it does not include responsibility for planning, scheduling, monitoring or management of the work to be performed by Purchaser. Purchaser agrees that any written or oral reports and advice provided by WHESC to Purchaser in connection with the provision of Services shall be utilized solely by Purchaser and shall not be used or conveyed by Purchaser to any third party.

6. Disclaimer. EXCEPT AS SET FORTH IN SECTION 3, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY ARE GIVEN FOR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE AND INCLUDES ANY IMPLIED WARRANTIES UNDER THE SALE OF GOODS ACT AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.

7. Limitation of Liability in General.

7.1 WHESC and the Purchaser shall each indemnify and hold harmless the other party



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(inclusive of its respective elected members of council, employees, servants and agents) from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect of losses suffered by them or in respect to claims by third parties that arise out of, or attributable in any respect to their involvement as parties to this Agreement, provided that such claims are not caused by: (1) the negligent acts or omissions of the party seeking indemnity or anyone for whose acts or omissions that party is liable, or (2) a failure of the party to the Agreement from whom indemnification is sought to fulfill its obligations in the Agreement.

7.2 This Section shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising this Agreement or any other document issued by Purchaser hereto or in any conflicting or inconsistent statement made by any representative of the parties.

7.3 The limitations of WHESC and/or Capstone's obligations and Purchaser's remedies, as provided for in this Section, shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising this Agreement or any other document issued by Purchaser hereto or in any conflicting or inconsistent statement made by any representative of WHESC and/or Capstone, except to the extent that such provision or statement further limits WHESC and/or Capstone's liability.

7.4 The rights, remedies and obligations of the Parties set forth in this Agreement, together with the attached exhibits, are the exclusive rights, remedies and obligations of the Parties hereunder and are in lieu of any other right,

remedy, or obligation available at law or in equity.

8. Dispute Resolution. Any disputes and claims arising out of this Agreement or any document referenced herein shall be settled by negotiation between the Parties. If such negotiations are unsuccessful, the matters in dispute shall be settled by arbitration. Such arbitration shall be conducted by a single arbitrator in accordance with the Arbitrations Act. The award of the arbitrator shall be final and binding on the Parties. The arbitrator shall be entitled to fix and determine expenses and legal costs in favour of the successful Party. The arbitration shall be held at the Town of Whitby.

9. Confidential Information, Intellectual Property Rights. Purchaser shall not, directly or indirectly, modify or disassemble for the purpose of reverse engineering any Covered Equipment or components thereof. All intellectual property rights and confidential information relating to the Covered Equipment, and any information provided by Capstone/WHESC to Purchaser under this Agreement, shall remain the property of Capstone/WHESC.

The parties and its respective directors, officers, employees, agents and contractors during the term of this Agreement shall treat as confidential and secure all of the Purchaser's Confidential Information, meaning all confidential or proprietary written, recorded, electronic or oral information, knowledge, data or materials provided (whether or not such confidentiality or proprietary status is indicated orally, or whether or not the specific words "confidential" or "proprietary" are used) (the "Confidential Information") to the other party.



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The parties acknowledge that a breach of its confidentiality obligations will cause irreparable damage and monetary damages are an inadequate remedy. In the event of a breach or threatened breach of the confidentiality obligations set out in this section, the party alleging the breach against the other party shall be entitled to temporary and permanent injunctive relief for the protection of its confidential information.

The parties acknowledge that this Agreement and any materials or information provided to the Town through the performance of this Agreement may be subject to disclosure by the Purchaser pursuant to the Municipal Freedom of Information and Protection of Privacy Act.

10. Miscellaneous.

10.1 Governing Law. This Agreement is governed by the laws of the Province of Ontario (as such laws are applied to contracts made and performed entirely within Ontario, without regard to Ontario's conflicts of laws provisions) and federal laws applicable to patents and trademarks. The Parties agree that any claim or proceeding arising out of this Agreement shall be commenced in the City of Oshawa, Ontario.

10.2 Survival. All provisions of this Agreement will survive its termination to the fullest extent necessary to give the Parties the full benefit of the bargain expressed in this Agreement. Notwithstanding the foregoing, Purchaser agrees that upon completion of the Services, any and all Service-Related Warranties shall expire as of such date.

10.3 Assignment. This Agreement may not be assigned by Purchaser without the prior written

consent of Capstone/WHESC. WHESC may assign this Agreement to an entity wholly-owned by WHESC without the consent of Purchaser.

10.4 Severability. If any provision of this Agreement or the terms and conditions set forth herein is declared or found to be illegal, unenforceable, or void, the remaining provisions of this Agreement shall remain in full force and effect, subject to the immediately following provisions. In the event any provision of this Agreement is declared or found to be illegal, unenforceable or void, the Parties agree to negotiate in good faith a substitute provision that is legal and enforceable and is as nearly as possible consistent with the intentions underlying the original provision. If the remainder of the Agreement is not materially affected by such declaration or finding and is capable of substantial performance, then such remainder will be enforced to the extent permitted by law.

10.5 Independent Review and Advice. Each Party has full knowledge of the contents of this Agreement, its legal consequences and any and all rights which each may have with respect to one another. Each Party has had the opportunity to receive independent legal advice with respect to this Agreement and each Party enters into this Agreement of its own free will. The Parties expressly agree that there are no expectations contrary to the Agreement and no usage of trade or regular practice in the industry shall be used to modify any of the terms and provisions of the Agreement.

10.6 Entire and Sole Agreement. This Agreement constitutes the complete agreement with respect to the Services and supersedes all prior or



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contemporaneous proposals, agreements, representations, discussions and literature, written or oral, concerning the Services. This Agreement is not intended to change or alter any of the rights, duties, obligations, liabilities or limitations set forth in any other agreements between the Parties. The Parties' obligations with respect to confidential information, reverse engineering and/or trade secrets shall be governed by, if applicable, the Direct Sales Agreement, the End User License, or any confidentiality agreements the Parties have entered into.

10.7 Amendments. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each Party.

10.8 Force Majeure. Each Party's performance shall be suspended (other than the obligation to pay monies due) for so long as such performance is hindered by events beyond its reasonable control ("**Force Majeure**"), such as, but not limited to, riots, labor disputes of a general nature, national or civil wars, insurrections, rebellions, terrorist acts, embargoes, civil disturbances, earthquakes, dispositions or orders of governmental authority, acts of civil or military authority, fires, strikes, delays in transportation, inability to obtain necessary labor, manufacturing facilities or materials from usual sources and acts of God. Any delays resulting from a Force Majeure shall extend the time for performance correspondingly. If a failure to perform results from a governmental law, rule, regulation, disposition or order and the affected Party is unable to perform, after making reasonable efforts to comply, the matter shall be deemed a Force Majeure.

10.9 No Third Party Beneficiaries. None of the terms of this Agreement are intended to confer to or benefit any person or entity other than the Parties to this Agreement any rights, remedies or other benefits under or by reason of this Agreement.

10.10 Waiver. No waiver by either Party of any term contained herein (or any breach thereof) shall be effective unless it is in writing executed by the party waiving such term (or any breach thereof). No waiver shall be deemed or construed as a further or continuing waiver of any such term (or any breach thereof) on any other occasion or as a waiver of any other term (or any breach thereof) on the same or any other occasion. The delay or failure of any Party in providing written notice hereunder shall not constitute a waiver by such Party of any default or any further default under the Agreement.



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Whitby Hydro Energy Services Corporation
(WHESC):

Purchaser: Town of Tillsonburg

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: Stephen B. Molnar

Title: Mayor

Date: _____

By: _____

Name: Donna Wilson

Title: Clerk

Date: _____



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Whitby Hydro Energy Services Corporation
100 Taunton Road East, PO Box 59 • Whitby • ON L1N 5R8
Phone: (905) 668-5878 • Email: info@whesc.ca
Web: www.whesc.ca

Exhibit 1

Site Name / Location	Description	Manufacturer	Model / Configuration or Part Number	Serial Number	Starting TRH
Town of Tillsonburg Community Centre	Three (3) C65 ICHP GC with Gaspaks	Capstone Turbine	C65 HPNG GC ICHP GP	9644, 9645, 9646	Approx 5,300