

## ATTACHMENT 1

**TERM SHEET  
for  
WASTEWATER THERMAL ENERGY AGREEMENT  
between  
the CITY OF TORONTO  
and NOVENTA ENERGY**

This term sheet (the “**Term Sheet**”) is a summary of the principal terms and conditions of a proposed arrangement between the City of Toronto and Noventa Energy. This Term Sheet is meant for discussion purposes only and is not an exhaustive summary of the terms and conditions upon which the Parties would enter into a binding transaction. This Term Sheet does not constitute an offer or a commitment by either Party to enter into this transaction or any other transaction. Except as provided in Section 17(3), this Term Sheet is not intended to and does not create any binding obligations between the Parties. For greater clarity, other than as provided in Section 17(3), the Term Sheet does not constitute a legally binding or enforceable agreement.

### SECTION 1. PARTIES AND DEFINED TERMS

#### **Parties:**

**Noventa:** Noventa Toronto Western L.P., a limited partnership formed under the laws of the Province of Ontario. The sole limited partner of Noventa is Noventa Energy Partners Inc., a corporation incorporated under the laws of the Province of Ontario. The sole general partner of Noventa is Noventa Hospital 1 G.P. Inc., a corporation incorporated under the laws of the Province of Ontario. Noventa Hospital 1 G.P. Inc. is a wholly-owned subsidiary of Noventa Energy Partners Inc.

**City:** City of Toronto, a municipal corporation existing under the laws of the Province of Ontario.

#### **Defined Terms:**

In addition to the terms defined above and elsewhere herein, the following capitalized terms will have the meanings set forth below when used in this Term Sheet:

“**City Agreements**” means the Wastewater Thermal Energy Agreement and any agreements or permits that the City may require that Noventa obtain from the City in order for Noventa to gain access, use and/or occupation of City-owned property, including, without limitation, the City’s public highways, for the Project, collectively.

“**City Approvals**” means all Toronto City Council authorizations required for City staff to enter into and perform the City’s obligations in the City Agreements.

**“City Council”** means the Council of the City of Toronto.

**“Claims”** or **“Claim”** means any and all actual, threatened or potential claims, demands, proceedings, complaints, grievances, actions, adjudications, litigation, applications, suits, causes of action, orders, charges, arbitrations or other similar process, of whatsoever kind or nature (whether civil, administrative, regulatory, arbitral or otherwise).

**“Commencement Date”** means the date on which the commissioning provided for in Section 8 is completed, the certificate contemplated therein is delivered to the City and Noventa is able to begin to deliver chilled water and hot water to TWH. It is expected that the Commencement Date will occur on or about March 31, 2022.

**“Construction Completion Date”** means the date on which construction of the Noventa System is sufficiently completed for commissioning to occur.

**“CPI”** means the Consumer Price Index for all items for Toronto published by Statistics Canada, or if such Index is discontinued, such replacement index intended to measure inflation in the City of Toronto as Noventa and the City may agree upon, both acting reasonably and in good faith.

**“Effective Date”** means the date on which all conditions precedent to the Wastewater Thermal Energy Agreement and agreements ancillary thereto have been satisfied by the Parties and the City Agreements are executed and delivered by the Parties.

**“Encroachment Agreement”** has the meaning ascribed in **Error! Reference source not found..**

**“Environmental Attributes”** has the meaning ascribed in Section 13.

**“ETF”** has the meaning ascribed in Section 5.

**“Extended Term”** has the meaning ascribed in Section 6.

**“Force Majeure”** means any cause beyond the reasonable control of and without the fault, negligence or wilful misconduct of the party claiming Force Majeure including, without limitation: (i) acts of God, fires, floods resulting from natural causes, storms, hurricanes, natural disasters, strikes, labour disputes, epidemics, pandemics, quarantines, riots, insurrections, rebellions, revolutions, acts of war (including, without limitation cyber-war and whether declared or otherwise) and terrorism; (ii) inability to obtain and maintain permits, licences and other authorizations or real property interests from any local, provincial or federal government, agency, instrumentality or other person required to supply, install, construct, maintain, repair or replace the Noventa System or to provide service contemplated herein; (iii) inability to procure gas, water, electricity, oil or other supplies because of third party Force Majeure; and (iv) material change in applicable statutory, regulatory, administrative or other relevant law or government directive, other than same made by the City or its agencies or instrumentalities, which prohibits the operation of the Noventa System or the ability of either Noventa or the City, as the case may be, to perform its respective obligations hereunder. Notwithstanding the foregoing, Force Majeure does not include: (i) equipment failure due to normal wear and tear or failure due to improper maintenance of equipment; or (ii) unavailability of funds or financing or lack of credit.

**"GHGs"** means greenhouse gases.

**"Guarantee"** means the guarantee provided by Noventa Energy Partners Inc. of the obligations of Noventa under the Wastewater Thermal Energy Agreement for the period from the Effective Date until the first anniversary of the Commencement Date.

**"Indemnitee"** has the meaning ascribed in Section 9(3).

**"Indemnitor"** has the meaning ascribed in Section 9(3).

**"Interconnection Point"** has the meaning ascribed in Section 4.

**"Lease Agreement"** has the meaning ascribed in **Error! Reference source not found.**

**"Losses"** means damages, fines, penalties, deficiencies, losses, liabilities (whether accrued, actual, contingent, latent or otherwise), costs, fees and expenses (including, without limitation, interest, court costs and reasonable fees and expenses of lawyers, accountants and other experts and professionals).

**"Main"** has the meaning ascribed in Section 3(1)(a).

**"MFIPPA"** means the *Municipal Freedom of Information and Protection of Privacy Act*, RSO, 1990, c M-56.

**"Noise By-law"** means the Toronto Municipal Code, Chapter 591, Noise.

**"Noventa Approvals"** means all licenses, consents, permits and approvals required in connection with the Project (other than the City Approvals and the UHN Approvals) and including, but not limited to, the approval of the Project by the board of directors of Noventa Energy Partners Inc.

**"Noventa System"** has the meaning ascribed in Section 3 of this Agreement.

**"Operating Year"** means, following the Commencement Date, each 12 month period beginning on January 1 and ending on December 31 of the same year, except that the initial Operating Year will begin on the Commencement Date and the final Operating Year will end on the date on which the Wastewater Thermal Energy Agreement either terminates or expires in accordance with its terms.

**"Parties"** means Noventa and the City of Toronto, and **"Party"** means either of them.

**"Project"** has the meaning ascribed in Section 2.

**"Reporting Period"** means the period commencing on the Construction Completion Date and ending on the second anniversary of the Construction Completion Date.

**"Sewage Works"** means any of the City's works for the collection, transmission, treatment and disposal of wastewater, or any part of such works.

**"Technology"** has the meaning ascribed in Section 2.

**"Term"** has the meaning ascribed in Section 6.

**“Toronto Water”** means Toronto Water, a division of the City.

**“TWH”** means Toronto Western Hospital.

**“UHN”** means University Health Network, a public hospital within the meaning of the *Public Hospitals Act*, RSO 1990, c P-40.

**“UHN Approvals”** means all licences, permits, consents and approvals required for UHN to enter into the UHN Thermal Energy Agreement.

**“UHN Thermal Energy Services Agreement”** means the Thermal Energy Services Agreement to be entered into between Noventa and UHN for the supply by Noventa to TWH of thermal energy from the Noventa System.

**“Wastewater Thermal Energy Agreement”** means the agreement to be entered into between Noventa and the City as contemplated in this Term Sheet.

## SECTION 2. PROJECT

Noventa has an exclusive licence to distribute and install the Huber ThermWin® wastewater heat recovery system in North America (the **“Technology”**) and wishes to use the Technology to extract thermal energy from or reject thermal energy to the City’s wastewater and then to supply such thermal energy to TWH pursuant to the UHN Thermal Energy Services Agreement. Noventa intends to undertake a project comprised of (i) the design, construction, financing, ownership, operation and maintenance by Noventa of the Noventa System; (ii) the use of the Noventa System to generate thermal energy from the City wastewater pursuant to the Wastewater Thermal Energy Agreement; and (iii) the provision by Noventa, making use of the Noventa System, of thermal energy derived from the City wastewater, to UHN (for use in TWH) pursuant to the UHN Thermal Energy Services Agreement, all as more particularly described in the Agreements referred to herein.

Noventa acknowledges and agrees that the City’s proper management, operation, and maintenance of the Sewage Works takes priority over the Project. As such, the City’s decision-making with respect to the Sewage Works, while being mindful of the Project and its requirements, will be made having regard to that priority as determined solely by the General Manager of Toronto Water, acting reasonably, and in accordance with the terms of the Wastewater Thermal Energy Agreement. Except as otherwise expressly provided in the City Agreements, Noventa agrees that the City will not have any liability for any Claims, Losses, and/or adverse impacts (including, without limitation, financial impacts and impacts to infrastructure) to Noventa or third parties (including, without limitation, Noventa’s customers, contractors, subcontractors, and suppliers) in any way arising from the Project and that all risks with respect to the Project are assumed by Noventa.

## SECTION 3. NOVENTA SYSTEM

- (1) Noventa, at its sole expense, will design, construct and install a wastewater heat recovery facility (the **“Noventa System”**). The Noventa System will include, but not limited to, the following material components:



- (a) a wetwell (the "**Wetwell**") containing the Huber ROTAMAT® ROK4-700XL screens and to be constructed below ground and located adjacent to the mid-Toronto interceptor sewer (the "**Main**") on the south side of Dundas St W near Scadding Court Community Centre, as indicated in Schedule A;
- (b) a thermal energy transfer loop constructed below ground consisting of two (2) High Density Poly-Ethylene ("**HDPE**") pipes used to transport wastewater between the Wetwell and the Energy Transfer Station ("**ETS**");
- (c) the ETS having dimensions of approximately 150ft long by 65ft wide by 40ft high and to be constructed below ground and located adjacent to the Wetwell and which will contain the Huber RoWin® heat exchangers that will accomplish the thermal energy transfer to and from the sewer and the high-temperature chillers that will supply chilled water and hot water to TWH; and
- (d) a series of distribution pipes constructed below ground consisting of four (4) HDPE pipes used to transport chilled and heated water from the ETS to TWH.

Noventa will own the Noventa System and will be responsible to maintain and operate the Noventa System. Noventa will design, construct, operate and maintain the Noventa System in accordance with applicable laws.

Prior to construction of the Noventa System, Noventa will provide the City with the final design drawings, plans and specifications for the Noventa System for the review and acceptance of the City; such acceptance not to be unreasonably withheld. In particular, in order for such drawings, plans and specifications to be acceptable to the City, the City must be satisfied, acting reasonably, that such drawings, plans and specifications demonstrate that the designs of the Noventa System comply with applicable laws and any specifications and requirements identified by the City in the Wastewater Thermal Energy Agreement, and have taken into consideration minimizing the potential for: (i) sewage spills or discharges to the natural environment; (ii) noise or odour; and (iii) impact to the proper management, operation and/or maintenance of the Sewage Works. In connection with such review, Noventa will reimburse the City for the cost of the City retaining an independent engineer to review such drawings, plans and specifications, up to a maximum cost to Noventa of \$5,000. Noventa will construct the Noventa System in accordance with the accepted design drawings, plans and specifications. Noventa will retain the services of a contractor acceptable to the City, acting reasonably, for the construction of the connection from the Noventa System to the Main. Within 90 days of the Commencement Date, Noventa will provide the City with as built drawings of the Noventa System.

#### **SECTION 4. CONNECTION**

- (1) Subject to the terms and conditions hereof, the City will allow Noventa to connect the Noventa System to the Main at approximately the location identified in Schedule A near the Scadding Court Community Centre for the purpose of extracting thermal energy from or rejecting thermal energy to the wastewater flowing through the Main. Noventa's access to the Main and the wastewater is on an "as is where is" basis. The City makes no representation or warranty as to the volume, quality, temperature or chemistry of the wastewater in the Main or as to the operation, maintenance or condition of the Main, or as to the suitability of any of them for the Project. Noventa will not chemically alter the wastewater extracted from or discharged into the Main, except that Noventa may extract thermal energy from the wastewater and may reject thermal

energy into the wastewater in the Main. The City may permit others to extract thermal energy from and/or reject thermal energy into the wastewater in the Main provided that such extraction or rejection does not adversely affect the temperature of the wastewater at the point at which the Noventa System extracts wastewater from the Main (the “**Interconnection Point**”) and does not adversely affect the volume of flow of wastewater to the Interconnection Point. The City retains title to and ownership of the wastewater. Nothing in the agreement will transfer or grant any right, title or interest in the wastewater to Noventa.

(2) Noventa shall not, at any time during the Term:

- (a) modify or replace the connection(s) from the Noventa System to the Main; and/or
- (b) make any changes to the Noventa System or the operation and maintenance thereof that would: (i) affect the connection(s) from the Noventa System to the Main; or (ii) change the volume of the wastewater extracted from or the volume, rate or quality of the wastewater discharged into the Main from the Noventa System beyond expected fluctuations as part of normal operations and maintenance of the Noventa System;

without the prior written consent of the City.

(3) The City shall have the right to isolate the Noventa System from the Sewage Works at the Interconnection Point at any time during the Term in any one or more of the following circumstances as determined solely by the General Manager of Toronto Water, acting reasonably:

- (a) Where and for so long as is necessary for the proper management, operation and/or maintenance of the Sewage Works (including, without limitation, both planned and emergency work), and (i) in the case of any major planned work that would significantly affect the operation of the Noventa System, the City will use commercially reasonable efforts to provide Noventa with two (2) years' advance notice in writing; (ii) in the case of any planned temporary maintenance outage, the City will provide not less than ten (10) Business Days advance notice in writing; and (iii) in the case of an emergency, the City will endeavour to provide notice thereof to Noventa in a timely manner thereafter, as is reasonable in the circumstances.
- (b) In the event of and immediately upon the occurrence of any of the following events, in each case caused by or related to the operation of the Noventa System;
  - (i) any obstruction, damage to, and/or interference with the proper management operation and/or maintenance of the Sewage Works, including, without limitation, buildup of solids, sewer backup, changes in hydraulic grade line, corrosion and/or structural damage, excessive buildup of sewer gases, adverse impact to the operations of the City's wastewater treatment plants or to the structural integrity of any part or parts of the Sewage Works, and/or access to the Main for regular maintenance;

- (ii) noise and/or odour giving rise to public complaints and/or in breach of the City's Noise By-law or any conditions of any licenses, permits or approvals, and/or other applicable laws;
- (iii) spill(s) and/or discharge(s) to the natural environment;
- (iv) additional capital and/or operating costs being incurred by the City in respect of the Sewage Works as a result of the Noventa System that are sustained or reoccurring and material (including, without limitation, any additional wastewater treatment, monitoring, maintenance and/or repair costs);
- (v) non-compliance with applicable laws and/or any licenses, permits and approvals in respect of the Noventa System and/or the City's Sewage Works; and
- (vi) such other operational matters as the City and Noventa may agree in the Wastewater Thermal Energy Agreement;

until such time as any such breach is resolved to the City's satisfaction, acting reasonably.

Consistent with Section 2 (Project), the City will not be liable for such decision to isolate the Noventa System, or for any Claims and/or Losses arising from, attributable to or in any way related to such decision; provided such decision is made in accordance with the foregoing.

- (4) Upon termination or expiry of the agreement, Noventa will be required, at its sole cost, to remove all connections between the Noventa System and the Main and restore the Main to the satisfaction of the City, acting reasonably.

## SECTION 5. ENERGY TRANSFER FEE

In consideration of the City providing Noventa with the use of the wastewater as contemplated in the Term Sheet, Noventa shall pay to the City, commencing on the Commencement Date, an annual Energy Transfer Fee ("**ETF**") of [REDACTED] per ton-hour of energy extracted from or injected into the City's Sewage Works by the Noventa System as measured by the meters installed in accordance with the provisions in Section 15(1)(c); provided that such amount shall be adjusted each year following the Commencement Date during the Project Term by the same percentage as the increase in CPI such that each year the amount payable is equal to the prior year's amount plus an amount equal to the percentage increase in CPI for that year, multiplied by the prior year's amount. Such amount will be calculated in respect of each Operating Year following the Commencement Date and will be due and payable within thirty (30) days following the end of the applicable Operating Year.

## SECTION 6. TERM

The term (the "**Term**") of the Wastewater Thermal Energy Agreement will commence on the Effective Date and will terminate on the date that is thirty (30) years from the Commencement Date (the "**Termination Date**"). Should Noventa want the Term to extend for another five years



past the Termination Date, then Noventa shall notify the City in writing at least one year prior to the Termination Date, at which point the City will have six months from such notification to deny the request for an extension or the Term will automatically extend for a successive five year period (the “**Extended Term**”). Should Noventa want the Extended Term to extend for another five years past the end of the Extended Term, then Noventa shall again notify the City in writing at least one year prior to the end of the Extended Term, at which point the City has six months to deny the request for an additional extension or the Term will again automatically extend for a successive five year period.

## **SECTION 7. NOTICE RESPECTING MATERIAL ISSUES**

During the Term, if a material issue arises respecting the design, construction or operation of the Noventa System or the performance by a Party of its obligations under the agreement, the Party becoming aware of such issue shall give prompt written notice thereof to the other Party, with reasonable details of the circumstance and the effects thereof to the other Party.

## **SECTION 8. COMMISSIONING**

- (1) Prior to the Construction Completion Date, Noventa will prepare a commissioning protocol setting out the steps that will occur to commission the Noventa System. Noventa will provide the commissioning protocol to the City for its review and acceptance, such acceptance not to be unreasonably withheld. The commissioning protocol shall include safety procedures and a shutdown protocol.
- (2) Upon achieving the Construction Completion Date, Noventa will provide the City notice thereof and that the Noventa System is ready to be commissioned in accordance with the agreed commissioning protocol. Upon the Construction Completion Date, Noventa may, subject to City approval, not to be unreasonably withheld, commence to divert wastewater at the Interconnection Point into the Noventa System for the purposes of commissioning the Noventa System. The City may observe the commissioning and may isolate the Noventa System from and/or shut off Noventa’s access to the Sewage Works during commissioning if the City determines that the operations of the Noventa System interfere with the proper management, operation or maintenance of the Sewage Works or that the commissioning is not being undertaken in accordance with the agreed commissioning protocol.
- (3) Upon completion of the commissioning, Noventa shall deliver to the City a certificate of a reputable engineer confirming completion of the commissioning of the Noventa System.

## **SECTION 9. INDEMNITIES**

- (1) Noventa shall indemnify, defend and hold harmless the City, its Mayor, and each of the City’s agencies, boards, commissions, personnel, elected officials, servants, volunteers and advisers, and their respective successors and assigns (collectively, the “**Noventa Indemnitees**”) from and against all Claims brought against, or Losses suffered, sustained, or incurred by, the Noventa Indemnitees which may be directly attributable to, or arising out of:
  - (a) the design, construction, installation and operation of the Noventa System;



- (b) the negligent acts or omissions of Noventa or any of Noventa's contractors, subcontractors or suppliers in connection with the Project;
- (c) any deliberate act of wrongdoing or wilful misconduct or fraud of Noventa, or any of Noventa's contractors, subcontractors, or suppliers in connection with the Project;
- (d) any inaccuracy in or breach of the representations or warranties of Noventa contained in the Wastewater Thermal Energy Agreement;
- (e) any breach of any of Noventa's obligations under the Wastewater Thermal Energy Agreement;
- (f) any acts performed by or on behalf of Noventa beyond the authority of Noventa, whether negligently or otherwise;
- (g) a lien or subsequent lawsuit brought in connection with any lien by any of Noventa's contractors, subcontractors, or suppliers in connection with the Project; or
- (h) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trademark, industrial design or other proprietary rights conferred by contract, common law, statute or otherwise in respect of the Project;

(collectively, the "**Subject Matter of the Noventa Indemnity**").

The Subject Matter of Noventa Indemnity includes all Claims and Losses that any of the Noventa Indemnitees may suffer, sustain or incur arising in respect of bodily injury, illness or death of any individual or physical loss of or damage to tangible property.

- (2) The City shall indemnify, defend and hold harmless Noventa, its directors, officers, employees, advisers, agents, and contractors (including contractors of any tier and their employees), and their respective successors and assigns (collectively, the "**City Indemnities**") from and against all Claims brought against, or Losses suffered, sustained, or incurred by, the City Indemnitees which may be directly attributable to, or arising out of:
  - (a) the negligent acts or omissions of the City;
  - (b) the negligent acts or omissions of any of the City's contractors, subcontractors or suppliers that directly damage the Noventa System;
  - (c) any deliberate act of wrongdoing or wilful misconduct or fraud of the City or any of the City's contractors, subcontractors, or suppliers;
  - (d) any inaccuracy in or material breach of the representations or warranties of the City contained in the Wastewater Thermal Energy Agreement;
  - (e) any breach of any of the City's obligations under the Wastewater Thermal Energy Agreement; or

- (f) any acts performed by or on behalf of the City beyond the authority of the City, whether negligently or otherwise;

(collectively, the “**City Subject Matter of Indemnity**”).

The City Subject Matter of Indemnity includes all Claims and Losses that any of the City Indemnitees may suffer, sustain or incur arising in respect of bodily injury, illness or death of any individual or physical loss of or damage to tangible property.

- (3) If a Party becomes aware of any Claim involving any Losses (the “**Indemnatee**”) to which the other party’s (the “**Indemnitor**”) indemnity set out above, as the case may be, applies, the Indemnatee will promptly advise the Indemnitor in writing of the Claim with reasonable particulars (to the extent known) of the factual basis for the Claim and the amount of the Claim, as known at that time. If the Indemnatee does not give notice to the Indemnitor as aforesaid, then such failure shall only lessen or limit the Indemnatee’s rights to indemnity hereunder to the extent that the defence of the Claim was prejudiced by such lack of timely notice but such notice shall be provided, in any event, within thirty (30) calendar days of when the Indemnatee becomes aware of the Claim.
- (4) If the Indemnitor acknowledges to the Indemnatee in writing that the Indemnitor is responsible to indemnify the Indemnatee in respect of the Claim pursuant hereto, the Indemnitor shall have the right to do either or both of the following:
  - (a) assume carriage of the defence of the Claim using legal counsel of its choice and at its sole cost; and/or
  - (b) settle the Claim provided the Indemnitor pays the full monetary amount of the settlement and the settlement does not impose any restrictions or obligations on the Indemnatee or contain any acknowledgement or confirmation that the Indemnitor was at fault;

provided that if, in the Indemnatee’s reasonable opinion, the Indemnitor fails to diligently defend the Claim, the Indemnatee shall be entitled to assume carriage of such defence using legal counsel of its choice and at the sole cost of the Indemnitor, and to settle the Claim on terms it considers reasonable at the sole cost of the Indemnitor.

- (5) Each Party shall cooperate with the other in the defence of the Claim, including making available to the other Party, its directors, officers, employees and consultants whose assistance, testimony or presence is of material assistance in evaluating and defending the Claim.
- (6) The Indemnatee shall not enter into any settlement, consent order or other compromise with respect to the Claim without the prior written consent of the Indemnitor, (which consent shall not be unreasonably withheld or delayed) unless the Indemnatee waives its rights to indemnification in respect of the Claim or unless such settlement is made pursuant to Section 9(4).
- (7) Upon payment of the Claim, the Indemnitor shall be subrogated to all Claims the Indemnatee may have relating thereto. The Indemnatee shall give such further

assurances and cooperate with the Indemnitor to permit the Indemnitor to pursue such subrogated Claims as reasonably requested by it.

- (8) If the Indemnitor has paid an amount pursuant to the indemnification obligations herein and the Indemnatee shall subsequently be reimbursed from any source in respect of the Claim from any other Person, the Indemnatee shall promptly pay the amount of the reimbursement (including interest actually received) to the Indemnitor, net of any deductible on insurance policies, if applicable, and income taxes required to be paid by the Indemnatee as a result of any such receipt.

## **SECTION 10. INSURANCE AND SECURITY**

- (1) Each Party will obtain and maintain customary insurance (with limits and deductibles to be agreed upon by the Parties).
- (2) Noventa will provide, or will cause its construction contractor to provide, to the City a letter of credit in a form acceptable to the City, acting reasonably, and in a face amount to be agreed in the Wastewater Thermal Energy Agreement, to secure against damages that the City may suffer as a result of the construction of the Noventa System.

## **SECTION 11. CONDITIONS PRECEDENT TO EFFECTIVE DATE**

Customary conditions for a transaction of this nature including, but not limited to:

- (1) for the benefit of both Parties:
  - (a) following completion of negotiations, the City Agreements will have been duly executed and delivered; and
  - (b) confirmation that all Noventa Approvals and City Approvals have been obtained or can reasonably be expected to be obtained prior to the Commencement Date;
- (2) for the benefit of Noventa:
  - (a) Noventa and UHN will have executed and delivered the UHN Thermal Energy Services Agreement;
  - (b) the [REDACTED] will have been duly executed and delivered; and
  - (c) Noventa will be satisfied in its sole discretion with the financing arrangements for the Project.
- (3) for the benefit of the City:
  - (a) Noventa Energy Partners Inc. will have duly executed and delivered to the City the Guarantee, in a form acceptable to the City, acting reasonably.



## SECTION 12. ACCESS TO CITY-OWNED PROPERTY

- (1) Unless the City, in its sole discretion, decides otherwise, the City and Noventa will enter into any agreements or permits necessary in respect of access through and use and occupation of the City's public highways for the Project, including:
  - (a) non-exclusive access for the purposes of construction of the Noventa System to public highways under the jurisdiction of the City; and
  - (b) non-exclusive use rights for the purposes of maintenance and operation for that part of the Noventa System (other than ETS) located on public highways.
- (2) Unless the City, in its sole discretion, decides otherwise, in respect of the City Lands necessary for the use, occupancy, construction, maintenance and operation of the ETS:
  - (a) the acquisition of these property interests will be negotiated between the Parties, acting reasonably, in accordance with the City's delegated approving authority for real estate transactions (Municipal Code Chapter 213) and contingent on the approval of all impacted City divisions and City agencies and in compliance with City policies at a cost to Noventa of the fair market value thereof; and
  - (b) the term of such arrangements will be 30 years from the Commencement Date, pending Noventa obtaining of an Official Plan Amendment to the Official Plan Policy 4.3.8 (Sale/Disposal of Publicly Owned Lands in Parks and Open Space Areas).

## SECTION 13. EMISSIONS ATTRIBUTES

Pursuant to the terms of the [REDACTED], Noventa is obligated to: (i) forego any ownership rights to greenhouse gas emissions reductions, avoidances or removals ("**GHG Reductions**") arising directly from the Project; and (ii) not seek eligibility for GHG Reductions under existing or future offset credit programs. If there are any environmental attributes including, but not limited to, attributes that result from any reduction or displacement in emissions of GHGs or any other pollutants and any other related rights arising out of the production of thermal energy from City wastewater pursuant to the Wastewater Thermal Energy Agreement or anything ancillary thereto, but excluding any such environmental attributes that Noventa is obligated to forego, or not seek eligibility for, pursuant to the [REDACTED] (the "**Environmental Attributes**") that arise through operation of law or any other circumstance, then Noventa and the City agree that each of Noventa and the City will own and shall be entitled to retain and register for use, trade, retirement and/or sale, 50% of the Environmental Attributes.

## SECTION 14. DEFAULT AND TERMINATION

- (1) The Wastewater Energy Transfer Agreement will contain contractual provisions pertaining to events of default, ability to cure and termination. If a Party is in material breach of an obligation for a period of ninety (90) days after having received notice from the other Party of such default, the Party providing such notice may, on providing an additional notice, terminate the agreement; provided that if any such default is not



reasonably capable of being cured within such ninety (90) day period, such longer period of time as may be reasonable in the circumstances provide that the Party in default commences to cure the default within such ninety (90) day period and at all times thereafter uses its commercially reasonable efforts to remedy such default. If a Party takes any action in respect of liquidation or winding up, or makes an assignment for the benefit of creditors, or makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable statute of any applicable jurisdiction, or if a custodian, receiver, receiver and manager, trustee in bankruptcy or any other official with similar powers (collectively, an “**Official**”) is appointed for the Party or a substantial portion of the Party’s properties and assets and such appointment is not dismissed or discharged within ten (10) days, or if a bankruptcy or similar petition with respect to the bankruptcy, or other enforced liquidation of, the Party is presented or filed against it unless same is dismissed or discharged within thirty (30) days and during which grace period execution thereunder is effectively stayed, unless, within such ten (10) day or thirty (30) day period, as the case may be, the Official or any secured creditor of the Party provides to the other Party notice of its intention to continue the operations of the first Party and such person agrees to assume the obligations of the first Party.

- (2) In addition to the foregoing, the Wastewater Energy Transfer Agreement will contain the right for the City to terminate the agreement on ninety (90) days prior written notice to Noventa where the City has isolated the Noventa System from the Sewage Works in accordance with Section 4(3)(b) and (i) the breach(es) which gave rise to same have not been resolved to the satisfaction of the City, acting reasonably, and the Noventa System remains isolated; or (ii) the breach that gives rise to the isolation of the Noventa System is systemic and reoccurring, and there is no foreseeable ability to mitigate or resolve such breach(es) to the satisfaction of the City, acting reasonably.
- (3) The City may terminate the Wastewater Energy Transfer Agreement on 2 years notice, where the City has determined to relocate, abandon or make substantial changes to the Main that make the operation of the Noventa System no longer feasible, in which case the City will enter into good faith negotiations with Noventa to find an alternative location for the Noventa System acceptable to both parties acting reasonably if such is practicable in order that Noventa can continue to provide services to TWH, any such move to be at Noventa’s cost.
- (4) Consistent with Section 2 (Project), the City would not be liable for such decision to terminate, or for any Claims and/or Losses arising from, attributable to or in any way related to such decision.

## **SECTION 15. OTHER TERMS AND CONDITIONS**

- (1) Noventa acknowledges that the primary obligation of Toronto Water is to collect, treat and dispose of wastewater. Accordingly, Noventa covenants and agrees:
  - (a) Noventa will design, construct, operate and maintain the Noventa System in such a manner as to ensure that it will not have any adverse effect on the proper management, operations and maintenance of the Sewage Works at any time. Without limiting the foregoing, Noventa shall ensure that at all times:

- (i) the Sewage Works are not obstructed, damaged and/or compromised and the Noventa System does not interfere with the proper management, operation and/or maintenance of the Sewage Works (including, without limitation, any buildup of solids; sewer backup; changes in hydraulic grade line; corrosion and/or structural damage; excessive buildup of sewer gases; impact to the operations of the City's wastewater treatment plants or to the structural integrity of any part or parts of the Sewage Works; or access to the Main for regular maintenance);
  - (ii) the design, construction, operation and maintenance of the Noventa System does not result in any noise and/or odours giving rise to public complaints and/or in breach of the City's Noise By-law; the conditions of any licenses, permits or approvals; and/or other applicable laws;
  - (iii) the design, construction, operation and maintenance of the Noventa System does not result in any spill(s) and/or discharge(s) to the natural environment;
  - (iv) Noventa will design, construct, operate and maintain the Noventa System in a way so that the City does not incur any additional capital and/or operating costs in respect of the Sewage Works (including, without limitation, any additional wastewater treatment, monitoring, maintenance and/or repair costs) as a result of the Noventa System, other than those costs specifically identified in the Wastewater Thermal Energy Agreement as being excluded.
  - (v) the Noventa System is designed, constructed, operated and maintained in compliance with all applicable laws, licenses, permits and approvals; and
  - (vi) the Noventa System is designed, constructed, operated and maintained so that it can be fully isolated and shut off from the Sewage Works, if necessary.
- (b) Noventa will, on or prior to the Commencement Date, install, at its sole cost and expense, the appropriate meters in the City's wastewater system, at locations specified by the City, to measure the flow and temperature of the wastewater upstream and downstream of the Interconnection Point and shall provide to the City monthly readings from such meters for the Term.
- (c) Noventa will, on or prior to the Commencement Date, install, at its sole cost and expense, as part of the Noventa System, appropriate meters for the Noventa System to measure the flow, temperature and the thermal energy derived from or rejected into the wastewater and shall provide to the City monthly readings from such meters for the term together with a calculation of the monthly ton-hours of thermal energy derived from the Noventa System.

## SECTION 16. OTHER

- (1) Noventa will have full operational control of the Noventa System and the Wetwell and ETS and they will remain secured and subject to remote video surveillance by Noventa at all times, provided that:
  - (a) During the Reporting Period Noventa will provide the City with visual access to all agreed upon operational metering outputs of the Noventa System and to Noventa's books and records relating to the Project in order that the City can develop its policies and procedures relating to wastewater energy projects;
  - (b) authorized City employees will have access to the Wetwell and ETS in the event of an emergency; and
  - (c) the means of isolation and shut off required in accordance with Section 15(1)(a)(vi) shall be accessible to the City at all times.
- (2) Unless otherwise required by law, the City will not disclose any confidential information of Noventa's obtained in accordance with the terms of the agreement, including the information provided in accordance with Section 16(1). Notwithstanding the foregoing, nothing in the agreement will:
  - (a) fetter the City's discretion with respect to responding to a request for access to Noventa's confidential information made under MFIPPA, provided same is done in accordance with MFIPPA; or
  - (b) impose any conditions on the City or prohibit the disclosure of Noventa's confidential information to City Council, or the treatment of Noventa's confidential information by City Council in accordance with the applicable provisions of the *City of Toronto Act*, 2006, including, without limitation, s.190 of that Act.

## SECTION 17. GENERAL

- (1) A Party will not be liable for any non-performance of its obligations if such non-performance of its obligations results from Force Majeure, provided that such Party provides prompt notice to the other Party of such Force Majeure and uses commercially reasonable efforts to remove and mitigate such Force Majeure.
- (2) All \$'s referenced in this Term Sheet are in Canadian Dollars.
- (3) Noventa and the City will negotiate in good faith, each acting reasonably, and use commercially reasonable efforts to finalize and enter into the Wastewater Energy Transfer Agreement and to meet the conditions precedent, except the condition in section 11(1)(a), with a target date of December 31, 2020.



## **SECTION 18. CITY AS MUNICIPAL CORPORATION**

- (1) The Wastewater Energy Transfer Agreement will contain the following provision, or such other similar provision acceptable to the parties:
  - (a) Nothing in this Agreement derogates from, interferes with, or fetters the exercise by the City or any of its representatives or appointed officials of their respective statutory rights and regulatory responsibilities as a municipality, an owner of municipal sewage works or appointed official (whether discretionary or mandatory), and neither the City nor its representatives or appointed officials shall be prevented from or prejudiced in carrying out their respective statutory rights and regulatory responsibilities including, without limitation, its planning rights and responsibilities. For further clarity, the City agrees that this provision shall not affect the ability of either party to rely upon and enforce the provisions of this Agreement.
  - (b) No communication or dealing between Noventa and any department, committee, body, officer, employee, agent, representative, or elected or appointed official of the City that is not clearly in respect of and in accordance with this Agreement will be deemed to be a communication or dealing under this Agreement between Noventa and the City as parties to this Agreement, or affect the City with notice of any such communication or dealing. It is intended and agreed that any communication or dealing between Noventa and the City as parties to this Agreement will only be effective if delivered in accordance with the notice provisions in this Agreement. No communication or dealing between the City as a party to this Agreement and Noventa as a party to this Agreement will relieve Noventa from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, by-law, or by any other lawful manner separate and apart from the obligations imposed under this Agreement.

## **SECTION 19. CITY VALUE OPPORTUNITY**

Noventa will work with the City, prior to the entering into of the Wastewater Thermal Energy Agreement, to find opportunities to enhance the value of the Project for the City, such as providing lower cost heating and/or cooling to City owned facilities, applying for and sharing funding from senior levels of government (but not including as it relates to the [REDACTED]) and providing support for community initiatives, among other things. Any such agreed enhancements would form part of the Wastewater Thermal Energy Agreement.

During the 30 year term for the Project, should Noventa ever want to expand or significantly change the Noventa System in a manner requiring City acceptance, approval, or agreement pursuant to the terms of the City Agreements then Noventa is willing to discuss with the City further enhanced value terms in connection with such City acceptance, approval or agreement.



## INTERCONNECTION POINT AND PROPOSED PLANT LOCATION

