

February 15, 2013

RESS, EMAIL & COURIER

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: Dufferin Wind Power Inc. - Application for Leave to Construct (EB-2012-0365) - FIT Contract and Amendments - CONFIDENTIAL FILING

We are counsel to the applicant, Dufferin Wind Power Inc. ("Dufferin Wind"), in the above-referenced proceeding. Further to the Board's requests for additional information in Procedural Order No. 3, we enclose (a) copies of Dufferin Wind's FIT Contract and all amendments to date, and (b) additional information related to Dufferin Wind's corporate organization, key individuals, financial information and technical resources.

On behalf of Dufferin Wind and pursuant to Section 10 of the Board's *Rules of Practice and Procedure*, we hereby request that the following documents (which are included as appendices to the enclosed response) be held in confidence by the Board for the reasons that follow:

1. Pages 1 - 3 of Appendix 'A' to the enclosed response, which consists of the FIT Contract Cover Pages for the FIT Contract dated April 30, 2010;
2. Appendix 'B' in its entirety, which consists of a FIT Contract Amending Agreement Re: Extension of Milestone Date for Commercial Operation for Non-CAE Projects dated June 2, 2011;
3. Appendix 'C' in its entirety, which consists of a FIT Contract Amending Agreement Re: Modification to Domestic Content Grid dated August 3, 2012;¹
4. Appendix 'D' in its entirety, which consists of a FIT Contract Facility Amendment Consent Agreement dated December 21, 2012;
5. Appendix 'E' in its entirety, which consists of a Consent Agreement Re: Change of Control dated June 24, 2011;

¹ Please note that Amendment #2 was incorrectly referred to as being dated August 27, 2012 in the Applicant's response to Board Staff IR #1(i).

6. Appendix 'F' in its entirety, which consists of Dufferin Wind's 2011 audited financial statements; and
7. Appendix 'G' in its entirety, which consists of Dufferin Wind's 2012 unaudited financial statements.

Items 1-5 above consist of documents that are or that may be subject to the confidentiality provisions set out in Article 7 of Schedule 1 of Dufferin Wind's FIT Contract. While items 1-3 above may contain information that is confidential pursuant to Article 7 of the FIT Contract, Section 4 in each of items 4 and 5 listed above expressly states that "this Agreement and the provisions hereof shall be deemed to be Confidential Information of both Parties hereunder . . .". In accordance with Article 7, Dufferin Wind has provided notice to the OPA of the request from the Board for disclosure of the FIT Contract and all amendments thereunder and the OPA has agreed to this information being filed with the Board for the purpose requested. Nevertheless, to maintain the confidential and commercially sensitive nature of the information being provided and to ensure that Dufferin Wind remains compliant with the terms of its FIT Contract, Dufferin Wind hereby requests that the FIT Contract Cover Pages and the amendments listed above be held in confidence.

Items 6-7 above consist of the audited and unaudited financial statements for Dufferin Wind for the years 2011 and 2012, respectively. This financial information is commercially sensitive. For example, the reports contain information concerning, among other things, contractual arrangements with key suppliers. Consequently, the disclosure of these reports could potentially harm Dufferin Wind's competitive position, its ongoing relationships with existing suppliers and negotiations with suppliers and other stakeholders in the future. Moreover, as project cost and financial information is not normally required to be filed by an applicant in a leave to construct application for private facilities that will not be rate regulated, there is no compelling reason for this information to be disclosed on the public record.

Please let us know if you require any further information.

Yours truly,



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cc: Mr. J. Hammond, Dufferin Wind
Mr. C. Keizer, Torys LLP

RESPONSES TO ADDITIONAL INFORMATION REQUESTS
FROM THE ONTARIO ENERGY BOARD

1. FIT Contract

Request

Responses to certain interrogatories highlighted that DWPI's Feed-in Tariff (FIT) contract has been revisited to reflect necessary amendments. The Board will require, for clarity and completeness of the record that DWPI file a copy of the FIT contract including all amendments to date.

Response

As described in response to Board Staff IR #1(ii), DWPI's FIT Contract is based on the Ontario Power Authority's (the "**OPA**") form of FIT Contract (v. 1.3.0). A copy of the FIT Contract, consisting of the FIT Contract Cover Page, Schedule 1 - General Terms and Conditions (v. 1.3), as well as Appendix 1 - Standard Definitions (v. 1.3), is provided in **Appendix 'A'**.

As described in response to Board Staff IR #1(i), there have been three amendments to the FIT Contract:

- First, the FIT Contract was amended on June 2, 2011 ("**Amendment #1**"). Amendment #1 had the effect of extending the Milestone Date for Commercial Operation by one year and was the result of the OPA offering to amend the FIT Contracts of all FIT suppliers that had not yet reached commercial operation. A copy of Amendment #1 is provided in **Appendix 'B'**.
- Second, the FIT Contract was amended on August 3, 2012 ("**Amendment #2**"). Amendment #2 was incorrectly referred to as being dated August 27, 2012 in the Applicant's response to Board Staff IR #1(i). Amendment #2 replaced the domestic content grid with the version of the grid that was included in a more recent version of the OPA's form of FIT Contract. It is DWPI's understanding that this change was offered by the OPA to other FIT Contract holders as well. A copy of Amendment #2 is provided in **Appendix 'C'**.
- Third, the FIT Contract was amended on December 21, 2012 ("**Amendment #3**"). Amendment #3 changed the description of the location of the contracted facility and its connection point. A copy of Amendment #3 is provided in **Appendix 'D'**.

In addition, DWPI notes that on October 22, 2012 the Applicant filed in confidence a copy of a FIT Contract Assumption and Acknowledgement Agreement among DWPI, Farm Owned Power

(Melancthon) Ltd. (“**FOP**”) and the OPA dated June 2, 2011 (the “**Assumption Agreement**”). Pursuant to the Assumption Agreement, the FIT Contract was assigned from FOP to DWPI. At that stage of the transaction, FOP controlled DWPI. In a subsequent stage of the transaction, a controlling interest in DWPI was acquired from FOP by Longyuan Canada Renewables Ltd. A copy of the OPA’s consent to such change of control, dated June 24, 2011 (the “**Change of Control**”) is provided in **Appendix ‘E’**.

2. Corporate Organizational Capabilities

Request

DWPI holds a standard FIT contract, and as such will apply for a generation license in connection with the wind farm under the Board’s form of generator license application for a generator under the FIT program. In addition to the information that would be provided as part of that application, the Board requires that DWPI inform the record in this proceeding as to its corporate organizational capabilities, including, but not limited to background information on key personnel, relevant financial information, and information about experience with respect to the management of similar projects, all as described in Appendix A to Procedural Order No. 3.

Response

(a) Corporate Organization

In the absence of any other definition, DWPI assumes that “energy sector affiliates” as used in this request has a similar meaning to the term “Electricity Sector Affiliates”, which is defined in Section 1.3.1 of the Board’s form of *Preliminary Filing Requirements for a Notice of Proposal Under Sections 80 and 81 of the Ontario Energy Board Act, 1998* as meaning the affiliates of a party to a proposed transaction or project that are licensed under the OEB Act to operate in Ontario for the generation, transmission, distribution, wholesaling or retailing of electricity or providing goods and services to companies licensed under the OEB Act in Ontario. Based on this definition, DWPI does not have any energy sector affiliates. DWPI’s relationships with its other associated entities, including its minority shareholder Farm Owned Power (Melancthon) Ltd. and its majority shareholder Longyuan Canada Renewables Ltd. are described in Exhibit B, Tab 2, Schedule 2.

(b) Key Individuals

The individuals listed below as the key individuals are the individuals that are responsible for executing the following functions for DWPI: matters related to regulatory requirements and conduct, financial matters and technical matters.

i. Mr. Hao Wu, President, Dufferin Wind Power Inc.

- Mr. Wu has not been a proprietor, partner, officer or director with an entity that was granted a licence under the *Ontario Energy Board Act, 1998* or that was

registered or licensed under any other statute of Canada or the United States in relation to the energy sector or that has had its registration or licence refused, suspended, revoked or cancelled.

ii. Mr. Zhongnan Huang, Chief Financial Officer, Dufferin Wind Power Inc.

- Mr. Huang has not been a proprietor, partner, officer or director with an entity that was granted a licence under the *Ontario Energy Board Act, 1998* or that was registered or licensed under any other statute of Canada or the United States in relation to the energy sector or that has had its registration or licence refused, suspended, revoked or cancelled.

iii. Mr. Zhu Dong, Vice President, Engineering

- Mr. Dong has not been a proprietor, partner, officer or director with an entity that was granted a licence under the *Ontario Energy Board Act, 1998* or that was registered or licensed under any other statute of Canada or the United States in relation to the energy sector or that has had its registration or licence refused, suspended, revoked or cancelled.

(c) Finance

The Applicant's audited financial statements for 2011 are provided in **Appendix 'F'**.

The Applicant's unaudited financial statements for 2012 are provided in **Appendix 'G'**.

(d) Technical Resources

As indicated in response to Board Staff IR #3(ii), DWPI's internal capabilities consist primarily of project management and construction management capabilities. DWPI also has internal engineering capabilities. To augment these resources, engineering/design, construction and operations and maintenance capabilities will be contracted from third parties. DWPI has selected a highly experienced Ontario-based contractor, with the appropriate qualifications, to design and build the Transmission Project. As indicated in response to Board Staff IR #4(i), for the period following construction DWPI plans to retain a dedicated third-party service provider to operate and maintain the generation facility, as well as to provide operational monitoring of the transmission facilities and, in the event of an emergency, to de-energize the transmission facilities and coordinate emergency restoration. In addition, DWPI plans to retain a third party service provider to provide regular maintenance, inspection and repair services for the transmission facilities. DWPI intends to issue an RFP for these services and will award the contract closer to completion of construction of the proposed transmission facilities.

With respect to DWPI's internal technical resources, DWPI's Vice President of Engineering, Mr. Dong, received a Bachelor of Power Systems and Automation in July 2000 from North China Electric Power University in BaoDing, Hebei Province, China. In March 2003, Mr. Dong

received a Masters of Power Systems and Automation, also from North China Electric Power University. In 2006, Mr. Dong received his Registered Qualification Certificate Constructor certification and in 2008 he received his Senior Engineer certification, which is similar to the licensed engineer qualification in Canada.

APPENDIX ‘A’ - FIT CONTRACT

[Note: FIT Contract Cover Pages filed confidentially]



FEED-IN TARIFF CONTRACT (FIT CONTRACT)

SCHEDULE 1

GENERAL TERMS AND CONDITIONS

VERSION 1.3.0

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FIT CONTRACT

GENERAL TERMS AND CONDITIONS

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions

In addition to the terms defined elsewhere in this Agreement, capitalized terms shall have the meanings given to them in the attached Appendix – Standard Definitions.

1.2 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, references to Articles, Sections and Exhibits are references to Articles, Sections and Exhibits in this Agreement.

1.3 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.4 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated, and shall be paid, in Dollars and Cents, and shall be rounded to the nearest Cent.

1.5 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done, shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

1.6 Statutory References

A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.

1.7 IESO Market Rules

In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency. To the extent that there is a change in the IESO Market Rules that was not published by the IESO in its approved form 30 days prior to the Contract Date, which such change has the effect of materially affecting the Supplier's Economics, then:

- (a) either Party may, within 15 days following the date such amendment is published by the IESO in its approved form, notify the other Party that such change materially affects the Supplier's Economics (a "**Material IESO Market Rule Amendment**"). For greater certainty, if a Party does not provide notice within 15 days following the date such amendment is published by the IESO in its approved form, then such Party shall not be entitled to any amendments to this Agreement as a result of such IESO Market Rule amendment;
- (b) the Supplier shall, within 60 days following the date of any notice sent pursuant to Section 1.7(a), provide to the OPA all such information as may be required or otherwise requested by the OPA to assess the impact of such Material IESO Market Rule Amendment on the Supplier's Economics;
- (c) the OPA shall, within 60 days following receipt of all information required to be provided by the Supplier and those Other Suppliers that are required to provide information pursuant to Section 1.7(b) of their respective FIT Contracts, but in any event no later than 120 days following receipt of all information required to be provided by the Supplier, either:
 - (i) advise the Supplier that the applicable IESO Market Rule amendment is not a Material IESO Market Rule Amendment; or
 - (ii) propose amendments to this Agreement and the respective agreements of any Other Suppliers that are so affected, on the basis that such amendments together with the change in the IESO Market Rules will substantially reflect the Supplier's Economics as contemplated hereunder and, at the OPA's discretion, that of such Other Suppliers, prior to the introduction of such change in the IESO Market Rules;
- (d) if by the date that is 60 days following the date that the OPA makes a determination or proposes amendments in accordance with Section 1.7(c), as applicable, the Parties do not agree to the amendments proposed pursuant to Section 1.7(c), or do not agree as to whether an IESO Market Rule amendment is a Material IESO Market Rule Amendment, as applicable, then the Parties and, at the OPA's discretion, such Other Suppliers who are so affected, that are required by the OPA to participate, shall engage in good faith negotiations to reach agreement;
- (e) if by the date that is 120 days following the date that the OPA makes a determination or proposes amendments in accordance with Section 1.7(c), as applicable, the Parties fail to reach agreement on the amendments described in Section 1.7(c) or do not agree as to whether an IESO Market Rule amendment is a Material IESO Market Rule Amendment, as applicable, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit E. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel; and
- (f) this Section 1.7 shall not apply to the circumstances addressed in Section 2.10 or in respect of the establishment of any Future Contract Related Products.

1.8 Invalidity, Unenforceability or Inapplicability of Provisions

In the event that a court of competent jurisdiction determines that any provision of this Agreement is invalid, inapplicable or unenforceable, then either Party may propose, by notice to the other Party, a replacement provision, and the OPA and the Supplier and, at the OPA's discretion, those Other Suppliers that are required by the OPA to participate shall engage in good faith negotiations to replace such provision with a valid, enforceable and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable or inapplicable provision which it replaces (the "**Replacement Provision(s)**"). If the Parties are unable to agree on the Replacement Provisions within 30 days after the commencement of negotiations under this Section 1.8 then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit E. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the OPA to implement such award of the Arbitration Panel. This Section 1.8 shall not apply to the circumstances addressed in Section 2.10.

1.9 Entire Agreement

- (a) This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement, except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by a Party to this Agreement, or its Representatives, to the other Party to this Agreement, or its Representatives, except to the extent that the same has been reduced to writing and included as a term of this Agreement.
- (b) Where this Agreement explicitly incorporates by reference any definitions set out in the FIT Rules, such reference shall be to the FIT Rules in effect on the Contract Date.

1.10 Waiver, Amendment

Except as expressly provided in this Agreement, no waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby and no amendment of any provision of this Agreement shall be binding unless executed in writing by both Parties to this Agreement. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided.

1.11 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

1.12 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the OPA's legal and other professional advisors, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application or

enforceability of any term or provision of this Agreement shall not be construed or interpreted against the OPA or in favour of the Supplier when interpreting such term or provision, by virtue of such fact.

1.13 Exhibits

Each of the exhibits set out in item 22 on the FIT Contract Cover Page are referenced in and form part of this Agreement.

ARTICLE 2 DEVELOPMENT AND OPERATION OF THE FACILITY

2.1 Design and Construction of the Facility

- (a) The Supplier shall design and build the Contract Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Distribution System Code, Transmission System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations. The Supplier shall ensure that the Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement.
- (b) The Supplier shall at no time after the date of this Agreement modify, vary or amend in any material respect any of the features or specifications of the Contract Facility or the Facility as outlined in the Application or the FIT Contract Cover Page (including for greater certainty, the Site) or make any change as to the Facility's status as a Registered Facility (a "**Contract Facility Amendment**"), without first notifying the OPA in writing and obtaining the OPA's consent in writing, which consent shall not be unreasonably withheld. For the purpose of this Section 2.1(b), it shall not be unreasonable for the OPA to withhold its consent to any modification, variation or amendment which would, or would be likely to,
 - (i) materially adversely affect the ability of the Supplier to comply with its obligations under this Agreement;
 - (ii) increase the Gross Nameplate Capacity of the Facility or otherwise cause Electricity generated by another facility to affect the Facility's meter reading, until such time as the Supplier and the OPA agree, acting reasonably, on any changes to the metering configuration or Exhibit B that are necessary to ensure that payments under this Agreement reflect only Delivered Electricity from the Contract Facility prior to any such Contract Facility Amendment; or
 - (iii) increase the Gross Nameplate Capacity of the Facility such that a lower Contract Price would have applied to the Contract Facility if, at the time of the original Application, the Contract Facility had an increased Contract Capacity corresponding to such increased Gross Nameplate Capacity.
- (c) Notwithstanding Section 2.1(b), prior to the Supplier delivering its NTP Request pursuant to Section 2.4, the Supplier may, on a single occasion, elect to reduce the Contract Capacity to a lower amount by giving notice to the OPA, provided that such lower amount is no less than 75% of the original Contract Capacity. If the Supplier provides such notice, the Contract Capacity shall be reduced to the lower amount. The OPA shall have no obligation to consent to a request to alter the Contract Capacity other than as set

out in this Section 2.1(c). Any such reduction in Contract Capacity shall only affect the amount of Completion and Performance Security that is required to be provided to the OPA after the date of the request for such reduction.

- (d) Where the Facility is a Capacity Allocation Exempt Facility, the applicable LDC has sought direction from the OEB prior to connecting such Capacity Allocation Exempt Facility in accordance with Section 6.2.8B of the Distribution System Code, and the outcome of the resulting OEB process has, or is reasonably expected to have, a Material Adverse Effect, then prior to delivering an NTP Request and within 20 Business Days of becoming aware of such Material Adverse Effect, the Supplier may submit a written request to the OPA to terminate this Agreement, along with such evidence as the OPA may reasonably require.
- (e) Where the Facility is not a Capacity Allocation Exempt Facility, and the Supplier receives from a Transmitter or an LDC, written estimates of the Supplier's Network Upgrade Costs, Transmitter Connection Costs or LDC Connection Costs, as applicable, that are substantially more than the costs that would have been reasonably foreseeable by a prudent Supplier taking Commercially Reasonable Efforts to estimate such costs, the Supplier may, prior to delivering an NTP Request and within 20 Business Days of receiving any such written estimate, submit a written request to the OPA to terminate this Agreement, along with such evidence as the OPA may reasonably require.
- (f) If, on or prior to the Contract Date, the Supplier has provided an Aboriginal Participation Project Declaration confirming that the Aboriginal Participation Level in respect of the Project is greater than or equal to 50%, and the Supplier is subsequently denied financing for the Facility requested from Aboriginal Loan Guarantee Program after having taken Commercially Reasonable Efforts to secure such financing, and such denial is reasonably anticipated to have Material Adverse Effect, then the Supplier may, prior to delivering an NTP Request and within 60 days of receiving any such denial, submit a written request to the OPA to terminate this Agreement, along with such evidence as the OPA may reasonably require.
- (g) Where the OPA receives a request from a Supplier pursuant to Section 2.1(d), 2.1(e) or 2.1(f), the OPA shall, acting reasonably, within 20 Business Days of any such request, either:
 - (i) approve the request, in which case this Agreement shall be terminated without any costs or payments of any kind to either Party, and all Completion and Performance Security shall be returned or refunded (as applicable) to the Supplier within 20 Business Days following receipt by the OPA of a written request for the return or refund (as applicable) of such Completion and Performance Security; or
 - (ii) deny the request, in which case the Supplier may continue under this Agreement, terminate this Agreement in accordance with Section 2.4(a), or request a Senior Conference pursuant to the terms of Section 15.1.

2.2 Additional Development and Construction Covenants

- (a) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall have a Connection Point as set out in the

Application and shall affect supply or demand on the IESO-Controlled Grid, a Distribution System or a Host Facility, as applicable.

- (b) The Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as more specifically set out in the applicable type of Exhibit B identified as the metering and settlement exhibit in respect of the Contract Facility on the FIT Contract Cover Page.
- (c) Where the Facility is described by Section 4.2(a), the Supplier shall have a Metering Plan in the Prescribed Form approved by the OPA and shall deliver a copy to the OPA for its approval no later than 90 days prior to the Milestone Date for Commercial Operation. Where the Facility is not described by Section 4.2(a), the OPA may require the Supplier to provide a Metering Plan in a Prescribed Form by providing the Supplier with 60 days' prior notice of such request. In either case, the OPA shall review the Metering Plan submitted by the Supplier and either approve the Metering Plan or provide the Supplier with its comments within 30 days after receipt. The OPA shall, when considering whether to approve the Metering Plan, have regard to those Electricity matters in the Metering Plan that have received IESO or LDC approval, as applicable. If, within 15 days after the OPA has delivered its comments on the Metering Plan to the Supplier, the Parties are not able to agree on the final terms of the Metering Plan, the Parties shall submit the matter for determination by an Independent Engineer agreed upon by the Parties, acting reasonably, whose determination on the terms of the Metering Plan shall be final and binding on the Parties (and from whose determination there shall be no recourse to the dispute resolution provisions of this Agreement).
- (d) If required to provide a Metering Plan pursuant to Section 2.2(c), the Supplier will provide the OPA with a commissioning report for all revenue meter(s) referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Section 2.6. The OPA retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan, and the meter data of the Facility to confirm the accuracy of such data. The Supplier shall not make any material changes to the Metering Plan following approval by the OPA or determination by the Independent Engineer (as applicable) without the prior written approval of the OPA, acting reasonably.
- (e) The Supplier shall provide, at its expense, all power system components on the Supplier's side of the Connection Point, including all transformation, switching and auxiliary equipment, such as synchronizing and protection and control equipment, pursuant to Laws and Regulations and any requirements deemed necessary by the IESO, the Transmitter, the LDC or the Host Facility, as applicable, from time to time to protect the safety and security of the IESO-Controlled Grid, the Distribution System, each of their customers and the Host Facility, each as the case may be. The Supplier shall install protective equipment to protect its own personnel, property, and equipment from variations in frequency and voltage or from temporary delivery of other than three-phase power, whether caused by the Facility or otherwise.
- (f) Where the FIT Contract Cover Page identifies the Renewable Fuel of the Contract Facility as windpower or solar (PV), the Supplier shall develop and construct the Contract Facility such that the Domestic Content Level is equal to or greater than the Minimum Required Domestic Content Level.

2.3 Connection Assessments, Connection Costs and Network Upgrade Costs

- (a) The Supplier shall arrange, at its sole expense, for all Facility connection requirements in accordance with Laws and Regulations to permit the delivery of Delivered Electricity to the Connection Point.
- (b) All Connection Costs shall be for the account of the Supplier and, as applicable, the Transmitter and/or LDC with which the Supplier has arranged connection of the Facility pursuant to the Connection Agreement, the Distribution System Code and the Transmission System Code, as applicable. The Supplier acknowledges that the responsibility for any Network Upgrade Costs associated with the connection of the Facility shall be allocated as set forth in the Distribution System Code and Transmission System Code.
- (c) Where the Facility is not a Capacity Allocation Exempt Facility,
 - (i) the Supplier shall not apply for any Impact Assessments in respect of the Contract Facility until after the Impact Assessment Priority Start Time;
 - (ii) the OPA shall use its best efforts to not issue to any Other Supplier that is offered a FIT Contract after this Agreement was offered, an Impact Assessment Priority Start Time before the Impact Assessment Priority Stop Time under this Agreement; and
 - (iii) the Supplier acknowledges that if it applies for any required Impact Assessment after the Impact Assessment Priority Stop Time, Other Suppliers that were offered a FIT Contract after the Supplier may have already applied for an Impact Assessment, which may have cost and resource availability implications for the Supplier.

2.4 Notice to Proceed

- (a) Until the OPA issues Notice to Proceed to the Supplier, and the Supplier has provided to the OPA the Incremental NTP Security in accordance with Section 2.4(g), the OPA may terminate this Agreement in its sole and absolute discretion by notice to the Supplier and all Completion and Performance Security shall be returned or refunded (as applicable) to the Supplier within 20 Business Days following receipt of a written request for such return or refund (as applicable) from the Supplier. Until the OPA issues Notice to Proceed to the Supplier, the Supplier may terminate this Agreement in its sole and absolute discretion by notice to the OPA.
 - (i) If the OPA terminates this Agreement in accordance with Section 2.4(a), the Supplier shall, within 60 days of such termination, provide to the OPA a written statement documenting the Pre-Construction Development Costs incurred prior to the Termination Date. The OPA shall, within 60 days of receiving such statement from the Supplier, pay to the Supplier as the sole and exclusive remedy for terminating this Agreement in accordance with this Section 2.4(a), an amount equal to the Pre-Construction Development Costs set out in such statement, as confirmed by the OPA, acting reasonably, and in any case the amount shall not exceed the Pre-Construction Liability Limit. For greater certainty, the Supplier acknowledges that any costs it may incur in excess of the Pre-Construction

Liability Limit prior to the issuance of Notice to Proceed and the subsequent receipt by the OPA of the Incremental NTP Security are the exclusive responsibility of the Supplier and shall not be included in any such payment.

- (ii) If the Supplier terminates this Agreement in accordance with Section 2.4(a), then notwithstanding Section 9.5, as the OPA's sole and exclusive remedy for such termination, the Supplier shall pay as liquidated damages and not as a penalty, a sum equivalent to the amount of all Completion and Performance Security required to be provided by the Supplier as of the date of such termination.
- (b) The OPA shall not issue Notice to Proceed in accordance with this Section 2.4 until the Supplier provides the OPA with an NTP Request in the Prescribed Form, and provided such NTP Request is complete in all respects. An NTP Request shall not be complete unless it includes all of the following (the "**NTP Pre-requisites**"):
 - (i) documentation of the completed Renewable Energy Approval, if applicable, and any other equivalent environmental and site plan approvals or permits necessary for the construction of the Contract Facility to commence;
 - (ii) a completed financing plan in the Prescribed Form, listing all sources of equity or debt financing for the development of the Contract Facility along with signed commitment letters from sources of financing representing collectively at least 50% of the expected development costs, stating their agreement in principle to provide the necessary financing, which commitment(s) may be conditional on the issuance of Notice to Proceed (the "**Financing Plan**");
 - (iii) where (A) the FIT Contract Cover Page identifies the Renewable Fuel of the Contract Facility as solar (PV) or (B) the FIT Contract Cover Page identifies the Renewable Fuel of the Contract Facility as wind power and the Contract Capacity is greater than 10 kW, a plan in the Prescribed Form setting out how the Supplier intends to meet the Minimum Required Domestic Content Level (the "**Domestic Content Plan**"); and
 - (iv) documentation of the time and date of application for, and the completion of, all Impact Assessments required by the Distribution System Code or the Transmission System Code, as applicable.
- (c) The Supplier must provide the OPA with a completed NTP Request no later than six months prior to the Milestone Date for Commercial Operation. Notwithstanding the foregoing, where the Contract Facility is a Capacity Allocation Exempt Facility, the Supplier must provide the OPA with a completed NTP Request no later than the Milestone Date for Commercial Operation. For greater certainty, in the event that this Agreement is terminated in accordance with Section 9.2 as a result of the Supplier's failure to comply with the obligation in this Section 2.4(c), the sole and exclusive remedy of the OPA in such circumstance shall be its entitlement to retain the Initial Security pursuant to Section 9.2(d)(i).
- (d) If the OPA determines, acting reasonably, that an NTP Request is incomplete, the OPA will notify the Supplier providing particulars in respect of the deficiencies in such documentation within 20 Business Days following the OPA's receipt of the Supplier's NTP Request.

- (e) If the Contract Facility is an Automatic NTP Facility as identified on the FIT Contract Cover Page, the OPA shall either terminate this Agreement in accordance with Section 2.4(a) or issue Notice to Proceed to the Supplier no later than 20 Business Days following the OPA's receipt of the Supplier's completed NTP Request.
 - (f) If the Contract Facility is not an Automatic NTP Facility, the OPA shall be required to either issue Notice to Proceed, deliver an NTP Deferral Notice to the Supplier, or terminate this Agreement in accordance with Section 2.4(a), by the later of (A) the NTP Response Date and (B) 20 Business Days following the OPA's receipt of the Supplier's completed NTP Request.
 - (i) If the OPA provides the Supplier with an NTP Deferral Notice in accordance with this Section 2.4(f), the Pre-Construction Liability Limit shall increase by the NTP Daily Delay Amount for each day following the issuance of the NTP Deferral Notice until the OPA either issues Notice to Proceed or terminates this Agreement in accordance with Section 2.4(a).
 - (ii) The OPA shall be required to either issue Notice to Proceed or terminate this Agreement in accordance with Section 2.4(a) no later than 365 days following its delivery of an NTP Deferral Notice.
 - (iii) Where the OPA has issued an NTP Deferral Notice, the Milestone Date for Commercial Operation shall be extended on a day-for-day basis corresponding to the number of days following the issuance of the NTP Deferral Notice up to and including the day on which Notice to Proceed is issued (the "**NTP Delay**") or shall otherwise be extended by such longer reasonable period of time directly resulting from the NTP Delay.
- Notwithstanding Section 10.1, the OPA's requirement to respond to a completed NTP Request pursuant to this Section 2.4(f) shall not be extended by an event of Force Majeure described in Section 10.3(f).
- (g) The Supplier shall deliver to the OPA the additional amount of Completion and Performance Security identified as the "**Incremental NTP Security**" in Exhibit A within 30 days of receiving Notice to Proceed.

2.5 Milestone Date for Commercial Operation

The Supplier acknowledges that time is of the essence to the OPA with respect to attaining Commercial Operation of the Contract Facility by the Milestone Date for Commercial Operation set out in Exhibit A. The Parties agree that Commercial Operation shall be achieved in a timely manner and by the Milestone Date for Commercial Operation. The Supplier acknowledges that even if the Contract Facility has not achieved Commercial Operation by the Milestone Date for Commercial Operation, the Term shall nevertheless expire on the day before the twentieth or fortieth anniversary (as applicable) of the Milestone Date for Commercial Operation, pursuant to Section 8.1.

2.6 Requirements for Commercial Operation

- (a) The Contract Facility will be deemed to have achieved "**Commercial Operation**" at the point in time when, as subsequently confirmed by the OPA in a written notice to the Supplier as described in Section 2.6(c):

- (i) the OPA has issued Notice to Proceed to the Supplier pursuant to Section 2.4;
 - (ii) if the Supplier is required to submit a Metering Plan pursuant to Section 2.2(c), the OPA has received the Metering Plan in the Prescribed Form, and has approved it, acting reasonably;
 - (iii) the OPA has received a single line electrical drawing which identifies the as-built Connection Point, clearly showing area transmission and distribution facilities, including the transformer station(s) that is electrically closest to the Facility;
 - (iv) the OPA has received an IE Certificate in the form set out in Exhibit G directly from the Independent Engineer, stating that:
 - (A) the Contract Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Contract Facility to operate in accordance with this Agreement and the up to 10% allowance in Contract Capacity set out in Section 2.6(a)(iv)(C);
 - (B) the Connection Point of the Contract Facility is that set out on the FIT Contract Cover Page; and
 - (C) the Contract Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, a Distribution System or a Host Facility, as applicable, such that at least 90% of the Contract Capacity is available to Deliver Electricity in compliance with Good Engineering and Operating Practices and Laws and Regulations; and
 - (v) the OPA has received a certificate addressed to it from the Supplier in the form set out in Exhibit F with respect to the Commercial Operation of the Contract Facility, together with such documentation required to be provided under such form to the OPA.
- (b) The OPA or its Representative shall be entitled, at the OPA's option, to attend any performance and generation test(s) for purposes of Section 2.6(a)(iv)(C) and the Supplier shall provide to the OPA confirmation in writing of the timing of such test(s) at least 10 Business Days in advance.
 - (c) The OPA shall notify the Supplier in writing within 20 Business Days following receipt of all of the documentation required by Section 2.6(a) as to whether such documentation is acceptable to the OPA, acting reasonably. If the OPA determines that such documentation is not acceptable, the OPA shall provide to the Supplier reasonable particulars in respect of the deficiencies in such documentation.
 - (d) If the Contract Facility has achieved Commercial Operation under Section 2.6(a) where less than one hundred percent (100%) of the Contract Capacity is available to Deliver Electricity, the Supplier shall, on or before the date which is one year after the Commercial Operation Date provide the OPA with an IE Certificate stating that one hundred percent (100%) of the Contract Capacity is available to Deliver Electricity in compliance with Good Engineering and Operating Practices and Laws and Regulations, failing which the Contract Capacity shall be reduced to the highest amount of capacity,

which for greater certainty shall not exceed the Contract Capacity, that has been demonstrated to be available as of such date.

2.7 Operation Covenants

- (a) The Supplier shall own or lease the Facility during the Term and shall operate and maintain the Facility during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the Distribution System Code, the Transmission System Code, the Connection Agreement, each as may be applicable, and all other Laws and Regulations.
- (b) The Supplier shall connect the Facility exclusively to the Connection Point. For greater certainty, the Supplier shall deliver all Delivered Electricity through the Connection Point.
- (c) The Supplier covenants and agrees that the Facility shall not utilize any sources or fuels other than the Renewable Fuel(s) identified on the FIT Contract Cover Page.

2.8 Insurance Covenants

- (a) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain, from the commencement of the construction of the Contract Facility to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance that a prudent Person in the business of developing and operating the Contract Facility would maintain including policies for “all-risk” property insurance covering not less than the full replacement value of the Contract Facility, equipment breakdown insurance, commercial general liability insurance and environmental impairment liability insurance. Any such policies must (i) for any property insurance, contain a waiver of subrogation in favour of the Indemnitees and (ii) for any liability insurance, include the Indemnitees as additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement, in which case the policy shall be non-contributing and primary with respect to coverage in favour of the Indemnitees.
- (b) Upon the request of the OPA, the Supplier will provide the OPA with a copy of each insurance policy, to be furnished within 10 Business Days of such request being made by the OPA.
- (c) If the Supplier is subject to the *Workplace Safety and Insurance Act, 1997* (Ontario), it shall submit a valid clearance certificate of Workplace Safety and Insurance Act coverage to the OPA prior to the commencement of construction of the Contract Facility. In addition, the Supplier shall, from time to time at the request of the OPA, provide additional Workplace Safety and Insurance Act clearance certificates. The Supplier shall pay when due, and shall ensure that each of its contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and subcontractors, from time to time from the commencement of construction of the Contract Facility, under the *Workplace Safety and Insurance Act, 1997* (Ontario), failing which the OPA has the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the *Workplace Safety and Insurance Act, 1997* (Ontario) and unpaid by the Supplier or its contractors and subcontractors and to deduct

such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the OPA in connection therewith.

2.9 Compliance with Laws and Regulations and Registration with the IESO

- (a) The OPA and the Supplier shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.
- (b) The OPA and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licencing as is required by the OEB.
- (c) Unless required by Laws and Regulations, participation by the Supplier as a Market Participant and registration of the Facility with the IESO is optional. If the IESO requires or the Supplier chooses such participation and/or registration:
 - (i) the settlement of Market Settlement Charges shall take place directly between the “Metered Market Participant” and the IESO, and any costs incurred by the Supplier pursuant to the IESO Market Rules in respect of this Agreement shall be the sole responsibility of the Supplier; and
 - (ii) the Supplier shall meet all applicable Facility registration requirements as specified in the IESO Market Rules.

2.10 Environmental Attributes

- (a) The Supplier hereby transfers and assigns to, or to the extent transfer or assignment is not permitted, holds in trust for, the OPA who thereafter shall, subject to Section 2.10(d), retain, all rights, title, and interest in all Environmental Attributes associated with the Contract Facility during the Term of this Agreement. For greater certainty, where the Contract Facility is an Incremental Project and Environmental Attributes are created and allocated or credited with respect to the Facility, the requirements of this Section 2.10 shall apply only to that portion of such Environmental Attributes corresponding to the Incremental Project Ratio.
- (b) The Supplier shall from time to time, upon written direction of the OPA, take all such actions and do all such things necessary to effect the transfer and assignment to, or holding in trust for, the OPA, all rights, title, and interest in all Environmental Attributes as set out in Section 2.10(a).
- (c) The Supplier shall from time to time, upon written direction of the OPA, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies Environmental Attributes that are created and allocated or credited with respect to the Contract Facility pursuant to Laws and Regulations from time to time (collectively, the “**Regulatory Environmental Attributes**”) for the purposes of transferring such Regulatory Environmental Attributes to the OPA in accordance with Section 2.10(a). The Supplier shall be entitled to reimbursement of the cost of complying

with a direction under this Section 2.10(c), provided that the OPA, acting reasonably, approved such cost in writing prior to the cost being incurred by the Supplier.

- (d) To the extent that Laws and Regulations requires the Contract Facility to utilize, consume or obtain Regulatory Environmental Attributes in connection with Delivering Electricity, then the OPA shall propose such amendments to this Agreement to the Supplier and, at the OPA's discretion, to all of the Other Suppliers who are required by the OPA to participate, based on the principle that the OPA will permit the Supplier to retain any Regulatory Environmental Attributes that may be created and allocated or credited with respect to the Contract Facility and that are required by such Laws and Regulations in order for the Contract Facility to Deliver Electricity. If the Parties are unable to agree on the OPA's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within 60 days after the delivery or communication of the OPA's proposal for such amendments, then such amendments shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit E. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the OPA to implement such award of the Arbitration Panel.

2.11 Supplier's Reporting Requirements

- (a) Prior to the Contract Facility achieving Commercial Operation, the OPA may request up to four times per calendar year that, within 30 days of any such request, the Supplier provide the OPA with a status report (i) describing the efforts made by the Supplier to prepare the NTP Pre-requisites (as applicable) and to meet the Milestone Date for Commercial Operation, (ii) setting out the progress of the design and construction work and the status of permitting and approvals related to the Facility, and (iii) containing photographs showing the status of the Facility or the construction work. At the OPA's request, the Supplier shall provide an opportunity for the OPA to meet with personnel of the Supplier familiar with the information presented in such status report. The Supplier acknowledges that photographs of the Facility or the construction work may be posted or printed by the OPA on the Website or in publications.
- (b) At any time and from time to time the Supplier shall, within 30 days of receiving a written request from the OPA, provide to the OPA all resource data relating to the availability and relevant physical properties of the Renewable Fuel that is then in the possession of the Supplier or is otherwise available to the Supplier using Commercially Reasonable Efforts. In the case of a Facility using a Renewable Fuel other than wind, solar or waterpower, the Supplier must provide this information in the form of a written plan detailing the types, supplier(s) and thermal properties of the Renewable Fuel(s) that the Supplier intends to utilize and all steps that have been undertaken to procure such Renewable Fuel.
- (c) Where (A) the FIT Contract Cover Page identifies the Renewable Fuel of the Contract Facility as solar (PV) or (B) the FIT Contract Cover Page identifies the Renewable Fuel of the Contract Facility as wind power and the Contract Capacity is greater than 10 kW, the Supplier shall, within 60 days following the Commercial Operation Date, provide the OPA with a report detailing how the Contract Facility has achieved the Minimum Required Domestic Content Level and containing the evidence prescribed by Section 1.2

of Exhibit D (such report, the “**Domestic Content Report**”), together with a statutory declaration in the Prescribed Form declaring that the Domestic Content Report is complete and accurate in all material respects and that the Domestic Content Level of the Contract Facility satisfies the requirements set out in Section 2.2(f). Within 60 days following receipt of a Domestic Content Report, the OPA shall either notify the Supplier that the Domestic Content Report is complete, or request additional information or documentation substantiating that one or more Designated Activities set out in the Domestic Content Report as having been performed, were in fact performed in relation to the Contract Facility.

- (i) Where the OPA has requested such additional information or documentation, the Supplier shall provide it to the OPA within 30 days of any such request, failing which, the applicable Domestic Content Level shall be recalculated excluding the applicable Designated Activity. Where the Supplier provides such additional information or documentation within 30 days and to the satisfaction of the OPA, acting reasonably, the OPA shall, within 30 days of receipt of such additional information or documentation, notify the Supplier that the Domestic Content Report is complete.
- (d) Notwithstanding Section 2.11(c), the OPA may, in accordance with Section 14.2, request any additional information or documentation relating to any Designated Activity set out in a Domestic Content Report as having been performed. Where the Supplier fails to provide such information or documentation to the satisfaction of the OPA, acting reasonably, the Domestic Content Level shall be recalculated excluding the applicable Designated Activity.

ARTICLE 3

ELECTRICITY, RELATED PRODUCTS DELIVERY AND PAYMENT OBLIGATIONS

3.1 Contract Payment and Settlement

The Contract Payments shall be made, and all details relating to the settlement of Contract Payments under this Agreement shall be handled in accordance with, the version of Exhibit B applicable to the Contract Facility as specified on the FIT Contract Cover Page.

3.2 EcoENERGY Payments

If the Supplier receives any payments under the ecoENERGY for Renewable Power Program attributable to the Contract Facility, the Supplier, within 30 days of receipt of such payment, shall pay to the OPA 50% of the amount of such payment, failing which, the OPA may set off any such payments due to the OPA against any amounts payable by the OPA to the Supplier.

3.3 Future Contract Related Products

- (a) All Related Products, other than Future Contract Related Products and any benefits associated therewith, shall belong to the Supplier.
- (b) The Supplier will provide the OPA with prior written notice of the development by the Supplier of any Future Contract Related Products from time to time.

- (c) The Supplier shall sell, supply or deliver all Future Contract Related Products as requested, directed or approved by the OPA, provided that the OPA shall not require the Supplier to sell, supply or deliver any Future Contract Related Product where the Approved Incremental Costs in relation to such Future Contract Related Product are reasonably expected to exceed the total revenues received by the Supplier from the sale, supply or delivery of such Future Contract Related Product.
- (d) The Supplier covenants not to sell, supply or deliver any Future Contract Related Products unless such sale, supply or delivery has been requested, directed or approved by the OPA.
- (e) The Supplier will notify the OPA of any revenue received by the Supplier in connection with the sale, supply or delivery of any Future Contract Related Products.
- (f) The OPA may, in its sole and absolute discretion, deem any Ancillary Service or other Related Product that is a Future Contract Related Product not to be a Future Contract Related Product.

3.4 Supplier's Responsibility for Taxes

The Supplier is liable for and shall pay, or cause to be paid, or reimburse the OPA if the OPA has paid, all Taxes applicable to the Delivered Electricity and Future Contract Related Products sold hereunder which may be imposed up to the Connection Point and in respect of which a credit, rebate, or refund has not and may not be obtained by the OPA. In the event that the OPA is required to remit such Taxes and the OPA is not entitled to a credit, rebate, or refund in respect of such payment of Taxes, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder.

3.5 OPA's Responsibility for Taxes

The OPA is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid any Taxes applicable to the Delivered Electricity and Future Contract Related Products sold hereunder which may be imposed at and from the Connection Point, and Taxes applicable to or associated with the transfer or assignment of Environmental Attributes from the Supplier to the OPA. The Contract Price does not include any Sales Tax payable by the OPA in respect of the Electricity and Future Contract Related Products purchased hereunder. If any Sales Tax is payable in connection with the Delivered Electricity and Future Contract Related Products purchased hereunder, such Sales Tax shall be paid by the OPA. In the event that the Supplier is required to pay or remit such Taxes and no credit, rebate, or refund is available (or, in the event that the Supplier has assigned this Agreement, that no credit, rebate, or rebate would have been available to the Supplier had it not assigned this Agreement) in respect of such payment or remittance of Taxes, the amount thereof shall be deducted from any sums becoming due to the OPA hereunder.

3.6 Non-residency

- (a) If the Supplier is a non-resident of Canada, as that term is defined in the ITA, then payments under this Agreement by the OPA shall be reduced by the amount of any applicable withholding or other similar Taxes and the OPA shall remit such withholding or other similar Taxes to the applicable taxing authorities. The OPA shall, within 60 days after remitting such Taxes, notify the Supplier in writing, providing reasonable detail of such payment so that the Supplier may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If, after the OPA has paid such amounts, the OPA

receives a refund, rebate or credit on account of such Taxes, then the OPA shall promptly remit such refund, rebate or credit amount to the Supplier.

- (b) If the Supplier is or becomes a non-resident of Canada, as that term is defined in the ITA, the Supplier shall notify the OPA forthwith of such status and shall provide the OPA with all such information reasonably required by the OPA to comply with any withholding tax or other tax obligations to which the OPA is or may become subject as a result of thereof.

ARTICLE 4

STATEMENTS AND PAYMENTS

4.1 Meter and Other Data

The Supplier shall provide to the OPA access to the meter(s) in any Metering Plan to accommodate remote interrogation of the metered data on a daily basis. If the Supplier is not a Market Participant, the Supplier shall provide to the OPA access at all times to any data or information relating to the Facility (including information related to Outages), that would have been provided to the IESO if the Supplier were a Market Participant, forthwith upon request by the OPA. The Supplier shall notify the OPA of any material errors and omissions in any such data or information on a timely basis so as to permit the OPA, within a reasonable time, to advise the IESO, if applicable, to correct such errors and omissions pursuant to the IESO Market Rules. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 4.1, such Party shall notify the other Party and, if applicable, the IESO in accordance with the IESO Market Rules, on a timely basis.

4.2 Settlement for IESO Market Participants

- (a) This Section 4.2 shall apply only to a Facility that:
 - (i) is directly connected to the IESO-Controlled Grid;
 - (ii) is a Behind-the-Meter Facility and has one or more Registered Facilities connected between it and the IESO-Controlled Grid; or
 - (iii) is otherwise a Registered Facility.
- (b) The OPA shall prepare and deliver a settlement statement (the “**Statement**”) to the Supplier, within 20 Business Days after the end of each calendar month in the Term that is the subject of the Statement (the “**Settlement Period**”), setting out the basis for the Contract Payment with respect to the Settlement Period, as well as the basis for any other payments owing under this Agreement by either Party to the other Party in the Settlement Period. If the Term begins on a day other than the first day of the Settlement Period, the initial Contract Payment may be deferred and incorporated with that of the first full Settlement Period following the commencement of the Term. A Statement may be delivered by the OPA to the Supplier by facsimile, e-mail or other electronic means and shall include the reference number assigned to this Agreement by the OPA and a description of the components of the Contract Payment and other payments owing to the Supplier for the Settlement Period.
- (c) The Party owing the Contract Payment shall remit to the other Party full payment in respect of the Statement no later than the last Business Day of the month following the end of the Settlement Period to which the Statement relates, provided that where the

Supplier owes the Contract Payment, the Supplier shall not be required to make such payment earlier than five Business Days following delivery of the Statement (the "**Payment Date**"). Any and all payments required to be made by either Party under any provision of this Agreement shall be made by wire transfer to either the account designated by the Supplier in the Prescribed Form, or to the account designated by the OPA, as applicable. The account information and GST registration numbers of the Supplier and the OPA constitute Supplier's Confidential Information and OPA's Confidential Information, respectively, and are subject to the obligations as set out in Article 7. The Supplier shall provide its account information and GST number to the OPA in the Prescribed Form prior to achieving Commercial Operation. Either Party may change its account information from time to time by notice to the other in accordance with Section 14.6.

- (d) If the Supplier disputes a Statement or any portion thereof, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement to the other Party. The Supplier shall provide notice to the OPA setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the OPA will promptly prepare a revised Statement. Any overpayment or underpayment of any amount due under a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the tenth Business Day following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five Business Days after receipt of notice of such dispute by the OPA, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 15.1.

4.3 Settlement for Non-IESO Market Participants

- (a) This Section 4.3 shall apply only to a Facility that is not a Facility described in Section 4.2(a).
- (b) The Parties agree that all Contract Payments shall be settled in accordance with the Retail Settlement Code by the LDC to which the Facility or the Host Facility (as applicable) is connected.
- (c) The Contract Payments shall be settled periodically and on a schedule consistent with the monthly, bimonthly, quarterly or other periodic billing cycle of the applicable LDC (the "**Settlement Period**"), provided that if the Term begins on a day other than the first day of the Settlement Period, the initial Contract Payment may be deferred and incorporated with that of the first full Settlement Period following the commencement of the Term. All settlement documentation, requirements and details, including the date that any Contract Payment is due (the "**Payment Date**") and the statement of amounts owing (the "**Statement**") shall be governed by the applicable LDC. The Supplier shall provide its account information and GST number to the LDC responsible for settling Contract Payments, in the form and manner specified by such LDC, prior to achieving Commercial Operation.
- (d) Where a Facility is a Behind-the-Meter Facility, the Supplier must maintain a settlement account with the applicable LDC in accordance with the Retail Settlement Code. If the

Supplier does not maintain a direct settlement account with the applicable LDC, the Supplier shall, and shall cause the applicable Host Facility, to provide a written consent to the LDC to permit settlement of this Agreement through the account of the Host Facility, in which case such Supplier shall bear all risks associated with settlement of this Agreement through the account of the Host Facility, including the failure of the Host Facility to pay any amounts owing to the Supplier. In the event that this Agreement is being settled through the account of the Host Facility, where there are amounts owing by the Supplier under this Agreement, the Supplier shall remain ultimately liable for the payment of such amounts.

- (e) If the Supplier disputes a Statement or any portion thereof, the Party (or, in the case of the OPA, the applicable LDC) owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement. Prior to engaging the OPA in a dispute, the Supplier shall make all reasonable efforts to resolve the dispute directly with the applicable LDC, failing which the Supplier shall provide notice to the OPA setting out the portions of the Statement that are in dispute with a brief explanation of the dispute and the steps taken towards resolving such dispute directly with the applicable LDC. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the OPA will work the applicable LDC to prepare a revised Statement. Any overpayment or underpayment of any amount due under a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the next Payment Date following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five Business Days after receipt of notice of such dispute by the OPA, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 15.1.

4.4 General Settlement Provisions

The OPA shall have the right to designate a settlement agent or implement such alternative settlement mechanisms other than as set out in Sections 4.2 and 4.3, as it may in its sole and absolute discretion determine, provided that such alternative arrangement does not have a Material Adverse Effect on the Supplier. The OPA shall provide 30 days' prior notice to the Supplier of any such designation or change.

4.5 Interest

The Party owing the Contract Payment shall pay interest on any late payment to the other Party, from the Payment Date to the date of payment, unless such late payment was through the fault of the other Party. The interest rate applicable to such late payment shall be the Interest Rate in effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.

4.6 Adjustment to Statement

- (a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a Party during the period of one year following the end of the calendar year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such period.

- (b) Notwithstanding the foregoing, if the Supplier is a Market Participant, the determination by the IESO of any information shall be final and binding on the Parties in accordance with the IESO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the IESO which the IESO has corrected, then the one year limit set forth in Section 4.6(a) shall not apply to the correction of such error or the OPA's ability to readjust the Statement.
- (c) Subject to Sections 4.2(d) and 4.3(e), any adjustment to a Statement made pursuant to this Section 4.6 shall be made in the subsequent Statement.

4.7 Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and Contract Payment made thereunder as well as all settlement statements and records of Contract Payments issued by applicable LDCs in accordance with Section 14.2.

ARTICLE 5 SECURITY REQUIREMENTS

5.1 Pre-COD Completion and Performance Security

- (a) The Parties acknowledge that the Supplier has, as of the date of this Agreement, provided to the OPA Completion and Performance Security in the amount of the Initial Security. The Supplier shall be required to maintain the Initial Security pursuant to this Section 5.1.
- (b) The Supplier shall be required to provide to and maintain with the OPA additional Completion and Performance Security in the amount of the Incremental NTP Security pursuant to Section 2.4(g).
- (c) After the Commercial Operation Date, the OPA shall return or refund (as applicable) the full amount of the Initial Security and the Incremental NTP Security within 20 Business Days following receipt of a written request from the Supplier, net of any amounts owing by the Supplier to the OPA.

5.2 Post-COD Completion and Performance Security

- (a) If at any time during the first 12 Contract Years the average of HOEP over a contiguous six month period is greater than seventy-five percent (75%) of the Contract Price and provided that the Contract Capacity is greater than or equal to 1,000 kW, the OPA may at any time, by providing notice to the Supplier, require the Supplier to provide to and maintain with the OPA Completion and Performance Security (such Completion and Performance Security, the "**First Period Future Performance Security**") within 30 days of such notice. The amount of First Period Future Performance Security shall be calculated as the sum of the Initial Security and the Incremental NTP Security, effective at the time of any such request.
- (b) If at any time after the end of the 12th Contract Year and prior to the start of the 17th Contract Year, the average of HOEP over a contiguous six month period is greater than seventy-five percent (75%) of the Contract Price and provided that the Contract Capacity is greater than or equal to 1,000 kW, the OPA may at any time, by providing notice to the Supplier, require the Supplier to provide to and maintain with the OPA Completion and

Performance Security (such Completion and Performance Security, the “**Second Period Future Performance Security**”) within 30 days of such notice. The amount of Second Period Future Performance Security shall be calculated as the sum of the Initial Security and the Incremental NTP Security, effective at the time of any such request. For greater certainty, the Second Period Future Performance Security is in addition to the First Period Future Performance Security, if any.

- (c) After the end of the Term, the OPA shall return or refund (as applicable) any First Period Future Performance Security and any Second Period Future Performance Security that has been provided by the Supplier within 20 Business Days following receipt of a written request from the Supplier, net of any amounts owing by the Supplier to the OPA.

5.3 Composition of Completion and Performance Security

- (a) The obligation of the Supplier to post and maintain Completion and Performance Security as required by Sections 5.1 and 5.2 must be satisfied in accordance with this Section 5.3(a) by the Supplier providing such security in the form of a certified cheque, bank draft or an irrevocable and unconditional standby letter of credit in substantially the form referenced as Exhibit C issued by a financial institution listed in either Schedule I or II of the *Bank Act* (Canada), or such other financial institution having a minimum credit rating of (i) A- with S&P, (ii) A3 with Moody's, (iii) A low with DBRS, or (iv) A with Fitch IBCA. Notwithstanding the foregoing, where the amount of any component of the Completion and Performance Security exceeds \$200,000, the Supplier must provide the Completion and Performance Security in the form of a letter of credit as described in this Section 5.3(a). For greater certainty, at any time the OPA holds a letter of credit as Completion and Performance Security, the Supplier shall ensure that such letter of credit does not expire or terminate for any reason prior to a date that is 60 days from such time.
- (b) Where the Supplier has provided Completion and Performance Security to the OPA in the form of a certified cheque or bank draft, the Supplier acknowledges that such amounts shall be deemed to have been paid by the Supplier to the OPA and the OPA shall have the right to invest, use, commingle or otherwise dispose of any such amounts, free from any claim or right of any nature whatsoever of the Supplier, including any equity or right of redemption by Supplier, subject to Sections 5.1(c) and 5.2(c) above.

5.4 Adequacy of Security; Replacement Security

- (a) The Supplier shall ensure that, at all times, the aggregate value of all Completion and Performance Security provided to the OPA is at least equal to the then currently required amount of Completion and Performance Security and that the Completion and Performance Security is current, valid, enforceable and in an acceptable form, including:
 - (i) following realization by the OPA of any amount of Completion and Performance Security, increasing the amount of Completion and Performance Security, by an amount equal to that realized by the OPA;
 - (ii) forthwith providing replacement security for any letter of credit (A) where the provider thereof has given notice that it does not wish to extend the letter of credit for an additional term, (B) which expires, terminates or fails, or ceases to be in full force and effect for the purposes hereof, (C) which is disaffirmed, disclaimed, dishonoured, repudiated or rejected in whole or in part by the

provider thereof, or (D) the validity of which is challenged by the provider thereof.

- (b) All costs associated with the requirement to provide and maintain Completion and Performance Security shall be borne by the Supplier.
- (c) If existing Completion and Performance Security in the form of a letter of credit is replaced with new Completion and Performance Security, the OPA shall return the existing Completion and Performance Security held by the OPA to the Supplier, within 15 Business Days of the OPA's receipt of such new Completion and Performance Security. If existing Completion and Performance Security in the form of a certified cheque or bank draft has been paid to the OPA and the Supplier provides new Completion and Performance Security to the OPA in the form of a letter of credit, the OPA shall pay to the Supplier within 15 Business Days the amount of Completion and Performance Security that had been previously paid to the OPA in the form of a certified cheque or bank draft. A Supplier may from time to time consolidate any separate amounts of Completion and Performance Security held by the OPA by providing to the OPA replacement Completion and Performance Security in the cumulative amount of Completion and Performance Security outstanding, in which case the OPA shall return or refund (as applicable) the existing Completion and Performance Security in accordance with this Section 5.4(c).
- (d) Notwithstanding any other provision of this Agreement, no delay, including a delay resulting from an event of Force Majeure shall extend the date by which any component of the Completion and Performance Security is required to be provided by the Supplier or returned or refunded (as applicable) by the OPA.

5.5 Interest on Completion and Performance Security

Any interest earned by the OPA on any Completion and Performance Security provided to the OPA shall be for the sole account of the OPA and the Supplier shall not have any right to such interest.

ARTICLE 6 REPRESENTATIONS

6.1 Representations of the Supplier

The Supplier represents to the OPA as follows, and acknowledges that the OPA is relying on such representations in entering into this Agreement:

- (a) The Supplier is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors' generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.

- (c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:
 - (i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the articles, by-laws or other constating documents or resolutions of the directors or shareholders of the Supplier;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Supplier; or
 - (v) any Laws and Regulations,that could have a Material Adverse Effect on the Supplier.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, that could have a Material Adverse Effect on the Supplier.
- (f) All statements, specifications, data, confirmations, and information that have been set out in the Application are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made to the OPA hereunder and there is no material information omitted from the Application which makes the information in the Application misleading or inaccurate.
- (g) As of the Contract Date, there are no Renewable Generating Facilities that are the subject of an application or a contract pursuant to the FIT Program or the microFIT Program that are on the Property and utilize the same Renewable Fuel as the Facility, other than the Facility and any Renewable Generating Facilities for which the OPA has provided a written acknowledgment to the Supplier that it is aware of such other Renewable Generating Facilities.
- (h) The Supplier is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Supplier.
- (i) Unless the Supplier has otherwise notified the OPA pursuant to Section 3.6(b), the Supplier is not a non-resident of Canada for the purposes of the ITA.

6.2 Representations of the OPA

The OPA represents to the Supplier as follows, and acknowledges that the Supplier is relying on such representations in entering into this Agreement:

- (a) The OPA is a corporation without share capital created under the laws of Ontario and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed and delivered by the OPA and is a valid and binding obligation of the OPA enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors' generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the OPA and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the OPA under:
 - (i) any contract or obligation to which the OPA is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholders of the OPA;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the OPA; or
 - (v) any Laws and Regulations,that could have a Material Adverse Effect on the OPA.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the OPA or, to the knowledge of the OPA, threatened against the OPA.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the OPA, threatened against the OPA, that could have a Material Adverse Effect on the OPA.
- (f) The OPA is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the OPA.

ARTICLE 7 CONFIDENTIALITY AND FIPPA

7.1 Confidential Information

From the date of this Agreement to and following the expiry of the Term, the Receiving Party shall keep confidential and secure and not disclose Confidential Information, except as follows:

- (a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 7 by any of its Representatives.
- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any Law and Regulations, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by Laws and Regulations in accordance with Section 7.2.
- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the Prescribed Form covenanting in favour of the OPA to hold such Confidential Information confidential on terms substantially similar to this Article 7.
- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure: (i) of the its name and contact particulars on the Website, (ii) of the Site, Contract Capacity, Renewable Fuel(s) and Connection Point on the Website, (iii) of its address for service and the name of its Company Representative to all Other Suppliers who have entered into a FIT Contract, for the purposes of Sections 1.7, 1.8, 2.10 and 12.2, (iv) on a confidential basis, of any information received by the OPA in respect of this Agreement for such internal purposes as the OPA may reasonably determine from time to time to the OPA's Representatives, and (v) of aggregated data relating to the FIT Program or the FIT Contracts.

7.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the

Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is required by law only to such Person or Persons to which the Receiving Party is legally compelled to disclose, and in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

7.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make, at its own expense, and retain one copy of, any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations and shall keep such retained copy subject to the terms of this Article 7.

7.4 Injunctive and Other Relief

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third party to whom the Disclosing Party owes a duty of confidence and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article 7.

7.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the Ontario Power Authority is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Ontario Power Authority ("FIPPA Records") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier shall provide a copy of any FIPPA Records that it previously provided to the Ontario Power Authority if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Ontario Power Authority's request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Ontario Power Authority. The provisions of this Section 7.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

ARTICLE 8 TERM

8.1 Term

- (a) This Agreement shall become effective upon the Contract Date.

- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) of the date that is the Commercial Operation Date, and ending at the beginning of the hour ending 24:00 hours (EST) on the day before:
 - (i) in the case of Facilities utilizing Renewable Fuels other than waterpower, the 20th (twentieth) anniversary of the date that is the earlier of (A) the Milestone Date for Commercial Operation and (B) the Commercial Operation Date, or
 - (ii) in the case of Facilities utilizing waterpower for their Renewable Fuel, the 40th (fortieth) anniversary of the date that is the earlier of (A) the Milestone Date for Commercial Operation and (B) the Commercial Operation Date,

subject to earlier termination in accordance with the provisions hereof. Subject to Sections 8.1(c) and (d), neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

- (c) Where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation, the OPA shall have the right, by providing notice to the Supplier no later than 180 days prior to the expiration of the Term, to extend the Term such that the Term will expire at the beginning of the hour ending 24:00 hours (EST) on the day before (i) the 20th (twentieth) anniversary of the Commercial Operation Date in the case of Facilities utilizing Renewable Fuels other than waterpower, or (ii) the 40th (fortieth) anniversary of the Commercial Operation Date in the case of Facilities utilizing waterpower for their Renewable Fuel.
- (d) Where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation, the Supplier shall have the option to, no later than 60 days after the Commercial Operation Date, provide notice to the OPA along with a payment in the amount of 0.15 Dollars per kW multiplied by the Contract Capacity and multiplied by the number of calendar days that the Commercial Operation Date followed the Milestone Date for Commercial Operation. Where the Supplier exercises such option, the Term shall be extended such that the Term will expire at the beginning of the hour ending 24:00 hours (EST) on the day before (i) the 20th (twentieth) anniversary of the Commercial Operation Date in the case of Facilities utilizing Renewable Fuels other than waterpower, or (ii) the 40th (fortieth) anniversary of the Commercial Operation Date in the case of Facilities utilizing waterpower for their Renewable Fuel.

ARTICLE 9

TERMINATION AND DEFAULT

9.1 Events of Default by the Supplier

Each of the following will constitute an Event of Default by the Supplier (each, a “**Supplier Event of Default**”):

- (a) The Supplier fails to make any payment when due or deliver, and/or maintain, the Completion and Performance Security as required under this Agreement, if such failure is not remedied within 10 Business Days after written notice of such failure from the OPA.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such

failure is not remedied within 15 Business Days after written notice of such failure from the OPA, provided that such cure period shall be extended by a further 15 Business Days if the Supplier is diligently remediating such failure and such failure is capable of being cured during such extended cure period.

- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier or the Facility and is not remedied within 30 Business Days after receipt by the Supplier of written notice of such failure or cessation from the OPA, provided that such cure period shall be extended by a further 30 Business Days if the Supplier is diligently remediating such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within 30 Business Days after receipt by the Supplier of written notice of such fact from the OPA, provided that such cure period shall be extended by a further 30 Business Days if the Supplier, in the reasonable opinion of the OPA, is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.
- (f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within 30 days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of 30 days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within 30 days.

- (h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.
- (i) The Supplier has made a Contract Facility Amendment that has not first been consented to by the OPA (other than in instances where such consent has been unreasonably withheld).
- (j) The Commercial Operation Date has not occurred on or before the date which is 18 months after the Milestone Date for Commercial Operation, or otherwise as may be set out in Exhibit A.
- (k) Where the Facility is not a Capacity Allocation Exempt Facility, and the Supplier applies for an Impact Assessment prior to the Impact Assessment Priority Start Time, and does not rescind any such Impact Assessment within 5 Business Days after receiving written notice from the OPA.
- (l) The Supplier undergoes a change in Control without first obtaining the written approval of the OPA if required pursuant to this Agreement.
- (m) The Supplier assigns this Agreement without first obtaining the consent of the OPA, if required pursuant to this Agreement.

9.2 Remedies of the OPA

- (a) If any Supplier Event of Default (other than a Supplier Event of Default relating to the Supplier referred to in Sections 9.1(e), 9.1(g) and 9.1(h)) occurs and is continuing, upon written notice to the Supplier, the OPA may terminate this Agreement.
- (b) If a Supplier Event of Default occurs and is continuing, the OPA may, in addition to the remedy set out in Section 9.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the OPA including, at the OPA's option, the amount of any Completion and Performance Security provided to the OPA pursuant to Article 5; and
 - (ii) draw on all or part of the Completion and Performance Security, and if the remedy in Section 9.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (c) Notwithstanding Sections 9.2(a) and 9.2(b), upon the occurrence of a Supplier Event of Default relating to the Supplier referred to in Sections 9.1(e), 9.1(g) or 9.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 11.2(g).
- (d) If the OPA terminates this Agreement pursuant to Section 9.2(a) or the Agreement is terminated pursuant to Section 9.2(c),

- (i) if the Termination Date precedes the Commercial Operation Date, the OPA may, in its sole and absolute discretion, require the Supplier to pay as liquidated damages and not as a penalty, a sum equivalent to the amount of all Completion and Performance Security required to be provided by the Supplier as of the Termination Date, and the OPA shall be entitled to pursue a Claim for damages with respect to the amount of any portion of the Completion and Performance Security that the Supplier failed to provide but was required to provide to the OPA as of the Termination Date pursuant to Section 5.1; and in such circumstances, notwithstanding Section 9.5, the OPA's remedies against the Supplier in respect of the termination of the Agreement shall be limited to the amount of liquidated damages payable by the Supplier pursuant to this Section 9.2(d)(i); and
 - (ii) if the Termination Date is on or after the Commercial Operation Date, the OPA shall be entitled to retain all Completion and Performance Security provided by the Supplier and exercise all such other remedies available to the OPA, including pursuing a Claim for damages, as contemplated under Section 9.5.
- (e) Termination shall not relieve the Supplier or the OPA of their respective responsibilities relating to the availability of the Facility and delivery of the Delivered Electricity and Environmental Attributes from the Facility that relate to the Delivered Electricity, and Future Contract Related Products from the Facility, or amounts payable under this Agreement, up to and including the Termination Date. The OPA shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the OPA may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

9.3 Events of Default by the OPA

Each of the following will constitute an Event of Default by the OPA (each, an “**OPA Event of Default**”):

- (a) The OPA fails to make any payment under this Agreement when due, if such failure is not remedied within 10 Business Days after written notice of such failure from the Supplier.
- (b) The OPA fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate OPA Event of Default), if such failure is not remedied within 15 Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further 15 Business Days if the OPA is diligently remediating such failure and such failure is capable of being cured during such extended cure period.
- (c) The OPA fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the OPA and is not remedied within 30 Business Days after receipt by the OPA of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further 30 Business Days if the OPA is diligently

remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.

- (d) Any representation made by the OPA in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within 30 Business Days after receipt by the OPA of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further 30 Business Days if the OPA is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the OPA unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the OPA under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the OPA's obligations under this Agreement.
- (f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the OPA or of any of the OPA's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within 30 days of the appointment. By decree, judgment or order of Governmental Authority, the OPA is adjudicated bankrupt or insolvent or any substantial part of the OPA's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of 30 days after the entry thereof. A petition, proceeding or filing is made against the OPA seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within 30 days.
- (g) The OPA makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.
- (h) The OPA assigns this Agreement (other than an assignment made pursuant to Section 15.5(g)) without first obtaining the consent of the Supplier, if such consent is required pursuant to this Agreement.

9.4 Termination by the Supplier

- (a) If any OPA Event of Default occurs and is continuing, then upon written notice to the OPA, the Supplier may (i) terminate this Agreement and (ii) set off any payments due to the OPA against any amounts payable by the OPA to the Supplier. Where the Supplier has so terminated this Agreement, the OPA shall return any Completion and Performance Security it holds within 20 Business Days following receipt of a written request from the Supplier.

- (b) Notwithstanding the foregoing, if applicable, the OPA shall be responsible for payment of amounts accruing under this Agreement only up to and including the Termination Date. The Supplier may hold back payment or set off against any payments owed by it if the OPA fails to comply with its obligations on termination.

9.5 Remedies for Termination Non-Exclusive

The termination of this Agreement by either Party and the payment of all amounts then due and owing to the other Party as expressly provided in this Agreement shall not limit, waive or extinguish in any way the recourse of either Party to any remedies available to it in relation to such termination at law, in equity or otherwise, nor shall such termination affect any rights that the Indemnitees may have pursuant to any indemnity given under this Agreement.

ARTICLE 10 FORCE MAJEURE

10.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:
 - (i) the Supplier is unable to make available all or any part of the Contract Capacity or is unable to generate at the Facility, or is unable to deliver from the Facility to the Connection Point, all or any part of the Delivered Electricity or Future Contract Related Products;
 - (ii) all or any part of the Delivered Electricity cannot be received at or transmitted or distributed from the Connection Point; or
 - (iii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including the Supplier being unable to achieve Commercial Operation by the Milestone Date for Commercial Operation,

then the Party so affected by Force Majeure shall be excused and relieved from performing or complying with such obligations (other than payment obligations) and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses, in the case of the Supplier affected by Force Majeure) to, or incurred by, the other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt written notice in substantially the Prescribed Form, provided that such notice shall be given within 20 Business Days of the later of (i) the commencement of the event or circumstances constituting Force Majeure or (ii) the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the development or operation of the Contract Facility. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such 20 Business Day period, the Party invoking Force Majeure shall be allowed a further 10

Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars in substantially the Prescribed Form to the other Party.

- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within 20 Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 10.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) If an event of Force Majeure causes the Supplier to not achieve Commercial Operation by the Milestone Date for Commercial Operation, then the Milestone Date for Commercial Operation shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. After the Commercial Operation Date, an event of Force Majeure shall not extend the Term.
- (g) If, by reason of one or more events of Force Majeure, the Commercial Operation Date is delayed by such event(s) of Force Majeure for an aggregate of more than 24 months after the original Milestone Date for Commercial Operation (prior to any extension pursuant to Section 10.1(f)), then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and all Completion and Performance Security shall be returned or refunded (as applicable) to the Supplier forthwith.
- (h) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of 36 months in any 60 month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned or refunded (as applicable) forthwith.

10.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 10, nor shall it be relieved of its obligations hereunder in any of the following circumstances:

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence;
- (b) if and to the extent the Party is seeking to invoke Force Majeure because it is unable to procure or maintain any fuel supply to be utilized by the Facility;
- (c) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and

remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);

- (d) if and to the extent that the Supplier is seeking to invoke Force Majeure because it is able to sell any of the Delivered Electricity on more advantageous terms to a third party buyer;
- (e) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach of or failure to comply with Laws and Regulations by such Party;
- (f) if the Force Majeure was caused by a lack of funds or other financial cause; or
- (g) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 10.1(b) or 10.1(d).

10.3 Definition of Force Majeure

For the purposes of this Agreement, the term “**Force Majeure**” means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, that is beyond the affected Party’s reasonable control, and shall include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute);
- (e) delays or disruptions in fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party), and provided that it shall be considered an event of Force Majeure if delays or disruptions in fuel supply arise as a result of the Supplier being unable to secure transportation capacity for fuel supply to the Facility after having made Commercially Reasonable Efforts to do so, but it shall not be considered an event of Force Majeure if such transportation capacity was available and the Supplier failed to secure it or failed to maintain it after having secured it;
- (f) delays or disruptions (including those arising from events of Force Majeure referred to in this Section 10.3) in the construction of any Transmission System or Distribution System assets that are required for the Facility to Deliver Electricity;
- (g) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (h) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the

application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;

- (i) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, Impact Assessment, licence or approval of any Governmental Authority, Transmitter or LDC required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, Impact Assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure; and
- (j) any unanticipated maintenance or outage affecting the Facility which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure.

ARTICLE 11 LENDER'S RIGHTS

11.1 Lender Security

Notwithstanding Section 15.5, the Supplier, from time to time on or after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For greater certainty, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be based upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.
- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation of the Supplier that is not related to the Facility or cover any real or personal property of the Supplier not related to the Facility, except in relation to one or more renewable generating facilities in Ontario that are owned by the Supplier. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.
- (c) The OPA shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the OPA for any or all of the same.
- (d) No Secured Lender's Security Agreement shall be binding upon the OPA in the enforcement of the OPA's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the OPA by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be binding upon the OPA unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the

assignee thereof to which notices may be sent, have been delivered to the OPA by the Supplier or the Secured Lender.

- (e) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give written notice of such default to the OPA at least 10 Business Days prior to exercising any such rights.
- (f) Any Secured Lender's Security Agreement permitted hereunder may secure two or more separate debts, liabilities or obligations in favour of two or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 11.
- (g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 11.
- (h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the OPA and the Supplier shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Prior to any such amendment, supplement or termination, the Supplier shall provide to the OPA such Secured Lender's consent in writing. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.
- (i) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the OPA for the payment of all sums owing to the OPA under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

11.2 Rights and Obligations of Secured Lenders

While any Secured Lender's Security Agreement remains outstanding, and if the OPA has received the notice referred to in Section 11.1(d) or the contents thereof are embodied in the agreement entered into by the OPA in accordance with Section 11.3, the following provisions shall apply:

- (a) No Supplier Event of Default (other than those referred to in Section 9.2(c)) shall be grounds for the termination by the OPA of this Agreement until:
 - (i) any notice required to be given under Section 9.1 and 9.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 11.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the OPA has given any notice required to be given under Section 9.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the OPA shall accept

such performance by such Secured Lender as if the same had been performed by the Supplier.

- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in this Section 11.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the OPA as required under Section 11.2(f).
- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.
- (f) Despite anything else contained in this Agreement, the Secured Lender agrees that it shall not transfer, sell or dispose of the Supplier's Interest or any other interest in the Contract Facility to any Person unless such transferee or purchaser takes the Supplier's Interest or other applicable interest subject to the Supplier's obligations pursuant to this Agreement. No transfer shall be effective unless the OPA:
 - (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender;
or
 - (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,

has approved of the transferee or purchaser and the transferee or purchaser has entered into an agreement with the OPA in form and substance satisfactory to the OPA, acting reasonably, wherein the transferee or purchaser agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest or the other applicable interest, whether arising before or after the transfer, sale or disposition and including the posting of the Completion and Performance Security, if any, required under Article 5.

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the OPA shall, within 20 Business Days after the date of such termination, deliver to each Secured Lender that is at Arm's Length with the Supplier, a statement of all sums then known to the OPA that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the OPA is willing to enter into a New Agreement (the "**OPA Statement**"). Subject to the provisions of this Article 11, each such Secured Lender or its transferee approved by the OPA pursuant to Section 11.2(f) shall thereupon have the option to obtain from the OPA a New Agreement in accordance with the following terms:
 - (i) Upon receipt of the written request of the Secured Lender within 30 days after the date on which it received the OPA Statement, the OPA shall enter into a New Agreement.
 - (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The OPA's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the OPA in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Secured Lender's security, that Person may exercise any of the Secured Lender's rights under this Section 11.2(g).

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 11 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement who are at Arm's Length with the Supplier make written requests to the OPA in accordance with this Section 11.2 to obtain a New Agreement, the OPA shall accept the request of the holder whose Secured Lender's Security Agreement had priority immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event

of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the OPA may rely upon the opinion as to such priorities of any law firm qualified to practise law in the Province of Ontario retained by the OPA in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

11.3 Co-operation

The OPA and the Supplier shall enter into an agreement with any Secured Lender substantially in the form of Exhibit H for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. The OPA, acting reasonably, shall consider any request jointly made by the Supplier and a Secured Lender or proposed Secured Lender to facilitate a provision of a Secured Lender's Security Agreement or proposed Secured Lender's Security Agreement that may require an amendment to this Agreement, provided that the rights of the OPA are not adversely affected thereby, the obligations of the Supplier to the OPA are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Supplier or the Secured Lender making the request for the amendment.

ARTICLE 12 DISCRIMINATORY ACTION

12.1 Discriminatory Action

- (a) A "Discriminatory Action" shall occur if:
 - (i) either (A) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a bill in the Legislative Assembly of Ontario or the Government of Ontario causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the Contract Date; or (B) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the consent of the Supplier;
 - (ii) the effect of the action referred to in Section 12.1(a)(i) is either (A) borne principally by the Supplier; or (B) borne principally by the Supplier and one or more Other Suppliers who have a FIT Contract or another bilateral arrangement with the OPA similar in nature to this Agreement; and
 - (iii) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in respect of Delivering Electricity, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement.
- (b) Notwithstanding the foregoing, none of the following shall be a Discriminatory Action:
 - (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
 - (ii) any such statute that prior to five Business Days prior to the Contract Date:

- (A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or
 - (B) has been made public in a discussion or consultation paper, press release or announcement issued by the Ontario Power Authority, the Government of Ontario, and/or the Ministry of Energy and Infrastructure that appeared on the Website, the website of the Ontario Power Authority, the Government of Ontario and/or the Ministry of Energy and Infrastructure, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier;
- (iii) any of such regulations that prior to five Business Days prior to the Contract Date:
- (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five Business Days prior to the Contract Date; or
 - (B) have been referred to in a press release issued by the Ontario Power Authority, the Government of Ontario and/or the Ministry of Energy and Infrastructure that appeared on the website of the Government of Ontario or the Ministry of Energy and Infrastructure, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier; and
- (iv) any new orders-in-council or regulations, the authority for the promulgation of which was created by the *Green Energy and Green Economy Act, 2009*, or the first amendment to any existing regulation, where the authority for such amendment was created by the *Green Energy and Green Economy Act, 2009*.

12.2 Consequences of Discriminatory Action

To the extent that there is a Discriminatory Action, then:

- (a) the Supplier, upon becoming aware of the consequences of such Discriminatory Action, shall promptly notify the OPA;
- (b) the Parties and, at the OPA's discretion, those Other Suppliers that are required by the OPA to participate, shall engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers on the basis that such amendments together with the Discriminatory Action will substantially reflect the Supplier's Economics and, at the OPA's discretion, those Other Suppliers, prior to the Discriminatory Action; and
- (c) if the Parties fail to reach agreement on the amendments described in Section 12.2(b), the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit E. However, if the Supplier fails to participate in such arbitration, the

Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the OPA to implement such award of the Arbitration Panel.

12.3 Right of the OPA to Remedy a Discriminatory Action

If the OPA wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the OPA must give notice to the Supplier within 30 days after the date of receipt of notice of the Discriminatory Action. If the OPA gives such notice, the OPA must remedy or cause to be remedied the Discriminatory Action within 180 days after the date of receipt of the notice of the Discriminatory Action. If the OPA remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, compensation for any detrimental effect the Discriminatory Action had on the Supplier's Economics, adjusted to apply only to the period during which the Discriminatory Action detrimentally affected the Supplier's Economics.

ARTICLE 13 LIABILITY AND INDEMNIFICATION

13.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Sections 1.7, 1.8, 2.10 and 12.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

13.2 Liquidated Damages

The Supplier acknowledges and agrees that it would be extremely difficult and impracticable to determine precisely the amount of actual damages that would be suffered by the OPA and the Ontario ratepayer as result of a failure by the Supplier to meet its obligations under this Agreement. The Supplier further acknowledges and agrees that the liquidated damages set forth in this Agreement are a fair and reasonable approximation of the amount of actual damages that would be suffered by the OPA and the Ontario ratepayer as a result of a failure by the Supplier to meet its obligations under this Agreement, and does not constitute a penalty.

13.3 OPA Indemnification

The Supplier shall indemnify, defend and hold the OPA, the Government of Ontario, the members of the Government of Ontario's Executive Council and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all Claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of (i) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws

and Regulations, (ii) any breach by the Supplier of any representations, warranties and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees, and (iii) a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to Laws and Regulations, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

13.4 Defence of Claims

- (a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding or investigation as to which the indemnity provided for in Section 13.3 may apply, the OPA shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.
- (b) Should any of the Indemnitees be entitled to indemnification under Section 13.3 as a result of a Claim by a third party, and the Supplier fails to assume the defence of such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 13.4(a)), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the Supplier, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section 13.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 13.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

13.5 Joint and Several Liability

Other than in the case of an Ontario limited partnership, if the Supplier is not a single legal entity, then all such entities that constitute the Supplier shall be jointly and severally liable to the OPA for all representations, warranties, obligations, covenants and liabilities of the Supplier hereunder.

ARTICLE 14

CONTRACT OPERATION AND ADMINISTRATION

14.1 Company Representative

The Supplier and the OPA shall, by notice in the Prescribed Form, each appoint, from time to time, a representative (a “**Company Representative**”), who shall be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose instructions, requests and decisions, provided the same are in writing signed by the respective Company Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement. The Company Representatives shall not have the power or authority to amend this Agreement.

14.2 Record Retention; Audit Rights

The Supplier and the OPA shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than seven years after the creation of the record or data. The Supplier and the OPA, on a confidential basis as provided for in Article 7 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by such Party relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify or audit information provided in accordance with this Agreement. Moreover, the Supplier agrees and consents to the IESO, an LDC or any other relevant third party providing to the OPA all relevant meter and invoice data regarding the Facility required by the OPA in order to verify the amount of Delivered Electricity. A Party may use its own employees for purposes of any such review of records, provided that those employees are bound by the confidentiality requirements provided for in Article 7. Alternatively, and at the election of the auditing Party, access shall be through the use of a mutually agreed upon third party auditor. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

14.3 Reports to the OPA

If the Supplier is required to report Outages directly to the IESO or an LDC, the Supplier shall deliver to the OPA a copy of all reports, plans and notices that the Supplier is required to provide to the IESO or such LDC with respect to Outages, at the same time or within one Business Day after such reports, plans and notices are delivered by the Supplier to the IESO or the LDC, as applicable.

14.4 Inspection of Facility

- (a) The OPA and its Representatives shall, at all times upon two Business Days' prior notice, at any time after the Contract Date, have access to the Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Facility, to furnish the OPA with all reasonable assistance in inspecting the Facility for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the Facility, as applicable, and shall not interfere with the operation of the Facility.

- (b) The inspection of the Facility by or on behalf of the OPA shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default will be waived or deemed to have been waived by any inspection by or on behalf of the OPA. In no event will any inspection by the OPA hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

14.5 Inspection Not Waiver

- (a) Failure by the OPA to inspect the Facility or any part thereof under Section 14.4, or to exercise its audit rights under Section 14.2, shall not constitute a waiver of any of the rights of the OPA hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.
- (b) Failure by the Supplier to exercise its audit rights under Section 14.2 shall not constitute or be deemed to constitute a waiver of any of the rights of the Supplier hereunder. An audit not followed by a notice of a OPA Event of Default shall not constitute or be deemed to constitute a waiver of any OPA Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the OPA with this Agreement.

14.6 Notices

- (a) All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be addressed to the other Party as follows:

If to the Supplier, all contact details shall be as set out in the FIT Contract Cover Page.

If to the OPA: Ontario Power Authority
 120 Adelaide Street West
 Suite 1600
 Toronto, Ontario
 M5H 1T1

Attention: Manager, FIT Contracts
Facsimile: 416-967-1947
E-mail: FIT.Contract@powerauthority.on.ca

Either Party may, by written notice to the other, change its respective Company Representative or the address to which notices are to be sent.

- (b) Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is received or transmitted, provided that it is received or transmitted on a Business Day prior to 5:00 p.m. local time in the place of receipt. Otherwise such notice shall be deemed to have been given and received on the next following Business Day.

- (c) Any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery.

ARTICLE 15 MISCELLANEOUS

15.1 Informal Dispute Resolution

If either Party considers that any dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within 20 Business Days following delivery of such notice to the other Party, a senior executive of the Supplier shall meet with (i) a manager of the OPA, where the Facility is a Capacity Allocation Exempt Facility, (ii) a director of the OPA, where the Facility is not a Capacity Allocation Exempt Facility and the Contract Capacity is less than 10 MW, or (iii) a vice-president of the OPA, where the Facility has a Contract Capacity greater than or equal to 10 MW, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. Each Party shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 15.2, if agreed to by both Parties.

15.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 15.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within 15 Business Days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within 90 days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

15.3 Business Relationship

Each Party shall be solely liable for the payment of all wages, Taxes and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers’

compensation coverage. None of the Persons employed by either Party shall be considered employees of the other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

15.4 Binding Agreement

Except as otherwise set out in this Agreement, this Agreement shall not confer upon any other Person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Agreement. This Agreement and all of the provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

15.5 Assignment

- (a) Following the Commercial Operation Date, this Agreement along with all of the rights, interests and obligations under this Agreement (including for greater certainty those rights, interests and obligations relating to Environmental Attributes) may be assigned by either Party, with the prior written consent of the other Party, which consent shall not be unreasonably withheld, except as set out in Section 15.5(b) below and as provided in Article 11. Prior to the Commercial Operation Date, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the Supplier.
- (b) For the purposes of Section 15.5(a), it shall not be unreasonable for the OPA to withhold its consent if the proposed assignment would (i) cause a Supplier to breach the obligation to own the Facility as set out in Section 2.7(a), or (ii) have or is likely to have, as determined by the OPA acting reasonably, a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.
- (c) Notwithstanding Section 15.5(a), the Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the OPA to an Affiliate acquiring the Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the OPA in writing to assume all of the Supplier's obligations under this Agreement and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 5 have been met in accordance with the terms of Article 5.
- (d) Notwithstanding Section 15.5(a), where the Facility is a Rooftop Facility, the Supplier may, prior to the Commercial Operation Date, assign this Agreement with the prior written consent of the OPA, which may not be unreasonably withheld, in circumstances where the building or structure to which the Facility is affixed is being sold, transferred or otherwise conveyed to the proposed assignee of this Agreement.
- (e) If the Supplier assigns this Agreement to a non-resident of Canada as that term is defined in the ITA, and the OPA incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the OPA shall be reduced by the amount of such additional Taxes and the OPA shall remit such additional Taxes to the applicable taxing authorities. The OPA shall within 60 days after remitting such Taxes, notify the assignee in writing, providing reasonable detail of such payment

so that the assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the OPA has paid such amounts, the OPA receives a refund, rebate or credit on account of such Taxes, then the OPA shall promptly remit such refund, rebate or credit amount to the assignee.

- (f) If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 15.5, the OPA acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the OPA, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (g) The OPA shall have the right to assign this Agreement from time to time and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee which shall assume the obligations and liability of the OPA under this Agreement and be novated into this Agreement in the place and stead of the OPA (except for the OPA's obligation in Section 15.5(g)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement and further agrees not to make any material amendments to or terminate this Agreement after such assignment without the prior written consent of the OPA, whereupon:
 - (i) the representation set forth in Section 6.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the representations set forth in Section 6.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and
 - (iii) the OPA shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the OPA shall remain liable to the Supplier for remedying any payment defaults under Section 9.3(a) and shall remain liable for any obligations and liabilities of the assignee arising from any OPA Event of Default, provided that any notice required to be given under Sections 9.3 and 9.4(a) is given on the same day to the assignee and to the OPA. The time periods in Section 9.3 shall not begin to run until both the assignee and the OPA have been so notified.

15.6 Change of Control

- (a) Other than in accordance with Section 15.6(b), no change of Control of the Supplier shall be permitted prior to Commercial Operation, except with the prior written consent of the OPA, which consent may be withheld in the OPA's sole and absolute discretion. Following Commercial Operation, a change of Control of the Supplier shall be permitted, provided that the Supplier, within 10 Business Days following such change of Control having effect, provides the OPA with notice of such change of Control and such additional information as the OPA may reasonably require regarding the names of the Persons who Control or otherwise indirectly or directly have an ownership interest in the Supplier, following such change of Control.
- (b) Provided there is not a Supplier Event of Default that has not been remedied, a change of Control of the Supplier prior to Commercial Operation, under one or more of the following circumstances, is permitted without the consent of the OPA, namely:

- (i) the Person that is the direct subject of the transaction giving rise to the change of Control of the Supplier, is not a Special Purpose Entity,
- (ii) each Person Controlling the Supplier following such change of Control is an Affiliate of one or more of the Persons Controlling the Supplier prior to such change of Control, or
- (iii) the Economic Interest of the Person(s) that Control the Supplier as of the Contract Date is not less than 25% following such change of Control,

The Supplier shall, within 10 Business Days following such change of Control having effect, provide the OPA with notice of such change of Control and such additional information as the OPA may reasonably require regarding the names of the Persons who Control or otherwise indirectly or directly have an ownership interest in the Supplier, following such change of Control.

- (c) For the purposes of Sections 15.6(a) and (b), a change of Control shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier, as well as a change from any Person having Control of the Supplier to no Person having Control of the Supplier.
- (d) Without limiting the generality of Section 15.6(b)(i) and by way of example only, if entity A owns entity B, and A is sold to a third party, A is the direct subject of the transaction giving rise to the change of Control; therefore if B is the Supplier, then this change of Control may be permitted pursuant to Section 15.6(b)(i) so long as A is not a Special Purpose Entity.

15.7 Provisions for Aboriginal Participation Projects

- (a) Notwithstanding Section 1.2(e) of Exhibit A, the amount of the Initial Security shall be \$5.00 per kW of Contract Capacity if, prior to the Contract Date, the Supplier has provided an Aboriginal Participation Project Declaration confirming that the Aboriginal Participation Level in respect of the Project is greater than or equal to 50%.
- (b) Notwithstanding Section 1.2(f) of Exhibit A, the amount of the Incremental NTP Security shall be \$5.00 per kW of Contract Capacity if, prior to or commensurate with the NTP Request, the Supplier has provided an Aboriginal Participation Project Declaration confirming that the Aboriginal Participation Level in respect of the Contract Facility is greater than or equal to 50%.
- (c) The Economic Interest of any Person contributing towards the Community Participation Level shall be excluded from the calculation of the Aboriginal Participation Level. The Aboriginal Price Adder shall only apply to a Project (i) that is an Aboriginal Participation Project at the time the Supplier submits its NTP Request, and (ii) for which the Supplier submits an Aboriginal Participation Project Declaration confirming such, prior to or commensurate with its NTP Request.
- (d) Where a Project is not an Aboriginal Participation Project as of the date that the Supplier provides the OPA with its NTP Request, or where the Supplier fails to provide an Aboriginal Participation Project Declaration confirming such, the Aboriginal Price Adder

shall not apply to such Project at any time, regardless of any change in the Aboriginal Participation Level.

- (e) Where the Aboriginal Participation Level has increased since the last Aboriginal Participation Project Declaration, the Supplier may submit a revised Aboriginal Participation Project Declaration to the OPA, only at the following times:
 - (i) commensurate with its NTP Request;
 - (ii) together with the other documentation required to be provided to the OPA for the purpose of achieving Commercial Operation pursuant to Section 2.6; and
 - (iii) once per Contract Year;

following which, the Aboriginal Price Adder shall be recalculated based on the increased Aboriginal Participation Level, and such increased Aboriginal Price Adder shall be effective as of the date of submission of the revised Aboriginal Participation Project Declaration.

- (f) Where the Aboriginal Participation Level has decreased since the last Aboriginal Participation Project Declaration, the Supplier shall submit a revised Aboriginal Participation Project Declaration to the OPA within 20 Business Days of such decrease, following which, the Aboriginal Price Adder shall be recalculated based on the decreased Aboriginal Participation Level, and such decreased Aboriginal Price Adder shall be effective as of the date of the decrease in the Aboriginal Participation Level. Where a Project that was an Aboriginal Participation Project as of the date that the Supplier provided the OPA with its NTP Request and for which the Supplier submitted an Aboriginal Participation Declaration along with its NTP Request ceases to be an Aboriginal Participation Project, the Aboriginal Price Adder shall cease to apply to such Project until such time as the Project restores its status as an Aboriginal Participation Project and the Supplier provides the OPA with a revised Aboriginal Participation Project Declaration confirming this.
- (g) Where the Supplier has provided any Completion and Performance Security to the OPA that has not been returned or refunded (as applicable) to the Supplier, and the Supplier has obtained the benefit of reduced Completion and Performance Security pursuant to Sections 15.7(a) or (b), where the Aboriginal Participation Level decreases from greater than or equal to 50% to below 50%, then notwithstanding Sections 15.7(a) and (b), the Supplier shall, within 20 Business Days of any such decrease, provide and maintain additional Completion and Performance Security such that the total amount of Completion and Performance Security is in accordance with the amounts set out in Section 5.2 or Exhibit A, as applicable. For greater certainty, where the Aboriginal Participation Level increases from below 50% to greater than or equal to 50%, there shall be no reduction in the amount of Completion and Performance Security already provided to the OPA.
- (h) A Supplier in respect of an Aboriginal Participation Project shall, within 20 Business Days of a request by the OPA, provide written evidence documenting the Aboriginal Participation Level that is to the satisfaction of the OPA, acting reasonably. If the evidence provided by the Supplier does not demonstrate to the satisfaction of the OPA, acting reasonably, that the actual Aboriginal Participation Level is not at least equal to

the Aboriginal Participation Level being used to determine the Aboriginal Price Adder, then the Aboriginal Price Adder shall be recalculated in accordance with the documented Aboriginal Participation Level and applied retroactively to the latest date for which the Supplier can demonstrate that the Aboriginal Participation Level used to determine the Aboriginal Price Adder was accurate. Any overpayment that resulted from an inaccurate Aboriginal Participation Level shall be paid by the Supplier to the OPA forthwith, failing which the OPA may set off any such amounts from any future payments owing to the Supplier.

15.8 Provisions for Community Participation Projects

- (a) Notwithstanding Section 1.2(e) of Exhibit A, the amount of the Initial Security shall be \$5.00 per kW of Contract Capacity if, prior to the Contract Date, the Supplier has provided a Community Participation Project Declaration confirming that the Community Participation Level in respect of the Project is greater than or equal to 50%.
- (b) Notwithstanding Section 1.2(f) of Exhibit A, the amount of the Incremental NTP Security shall be \$5.00 per kW of Contract Capacity if, prior to or commensurate with the NTP Request, the Supplier has provided a Community Participation Project Declaration confirming that the Community Participation Level in respect of the Contract Facility is greater than or equal to 50%.
- (c) The Economic Interest of any Person contributing towards the Aboriginal Participation Level shall be excluded from the calculation of the Community Participation Level. The Community Price Adder shall only apply to a Project (i) that is a Community Participation Project at the time the Supplier submits its NTP Request, and (ii) for which the Supplier submits a Community Participation Project Declaration confirming such, prior to or commensurate with its NTP Request.
- (d) Where a Project is not a Community Participation Project as of the date that the Supplier provides the OPA with its NTP Request, or where the Supplier fails to provide a Community Participation Project Declaration confirming such, the Community Price Adder shall not apply to such Project at any time, regardless of any change in the Community Participation Level.
- (e) Where the Community Participation Level has increased since the last Community Participation Project Declaration, the Supplier may submit a revised Community Participation Project Declaration to the OPA, only at the following times:
 - (i) commensurate with its NTP Request;
 - (ii) together with the other documentation to be provided to the OPA for the purpose of achieving Commercial Operation pursuant to Section 2.6; and
 - (iii) once per Contract Year,

following which, the Community Price Adder shall be recalculated based on the increased Community Participation Level, and such increased Community Price Adder shall be effective as of the date of submission of the revised Community Participation Project Declaration.

- (f) Where the Community Participation Level has decreased since the last Community Participation Project Declaration, the Supplier shall submit a revised Community Participation Project Declaration to the OPA within 20 Business Days of such decrease, following which, the Community Price Adder shall be recalculated based on the decreased Community Participation Level, and such decreased Community Price Adder shall be effective as of the date of the decrease in the Community Participation Level. Where a Project that was a Community Participation Project as of the date that the Supplier provided the OPA with its NTP Request and for which the Supplier submitted a Community Participation Declaration along with its NTP Request ceases to be a Community Participation Project, the Community Price Adder shall cease to apply to such Project until such time as the Project restores its status as a Community Participation Project and the Supplier provides the OPA with a revised Community Participation Project Declaration confirming this.
- (g) Where the Supplier has provided any Completion and Performance Security to the OPA that has not been returned or refunded (as applicable) to the Supplier, and the Supplier has obtained the benefit of reduced Completion and Performance Security pursuant to Sections 15.7(a) or (b), where the Community Participation Level decreases from greater than or equal to 50% to below 50%, then notwithstanding Sections 15.7(a) and (b), the Supplier shall, within 20 Business Days of any such decrease, provide and maintain additional Completion and Performance Security such that the total amount of Completion and Performance Security is in accordance with the amounts set out in Section 5.2 or Exhibit A, as applicable. For greater certainty, where the Community Participation Level increases from below 50% to greater than or equal to 50%, there shall be no reduction in the amount of Completion and Performance Security already provided to the OPA.
- (h) A Supplier in respect of a Community Participation Project shall, within 20 Business Days of a request by the OPA, provide written evidence documenting the Community Participation Level that is to the satisfaction of the OPA, acting reasonably. If the evidence provided by the Supplier does not demonstrate to the satisfaction of the OPA, acting reasonably, that the actual Community Participation Level is not at least equal to the Community Participation Level being used to determine the Community Price Adder, then the Community Price Adder shall be recalculated in accordance with the documented Community Participation Level and applied retroactively to the latest date for which the Supplier can demonstrate that the Community Participation Level used to determine the Community Price Adder was accurate. Any overpayment that resulted from an inaccurate Community Participation Level shall be paid by the Supplier to the OPA forthwith, failing which the OPA may set off any such amounts from any future payments owing to the Supplier.

15.9 Combined Aboriginal Participation Projects and Community Participation Projects

- (a) Notwithstanding Section 1.2(e) of Exhibit A, where a Contract Facility is in respect of an Aboriginal Participation Project and a Community Participation Project, the amount of the Initial Security shall be \$5.00 per kW of Contract Capacity if, prior to the Contract Date, the Supplier has provided an Aboriginal Participation Project Declaration and a Community Participation Project Declaration, which together confirm that the total of the Aboriginal Participation Level and Community Participation Level in respect of the Project is greater than or equal to 50%.

- (b) Notwithstanding Section 1.2(f) of Exhibit A, where a Contract Facility is in respect of an Aboriginal Participation Project and a Community Participation Project, the amount of the Incremental NTP Security shall be \$5.00 per kW of Contract Capacity if, prior to or commensurate with the NTP Request, the Supplier has provided an Aboriginal Participation Project Declaration and a Community Participation Project Declaration, which together confirm that the total of the Aboriginal Participation Level and the Community Participation Level in respect of the Contract Facility is greater than or equal to 50%.
- (c) Where the Supplier has provided any Completion and Performance Security to the OPA that has not been returned or refunded (as applicable) to the Supplier, and the Supplier has obtained the benefit of reduced Completion and Performance Security pursuant to Sections 15.9(a) or (b), where the total of the Aboriginal Participation Level and the Community Participation Level decreases from greater than or equal to 50% to below 50%, then notwithstanding Sections 15.9(a) or (b), the Supplier shall, within 20 Business Days of any such decrease, provide and maintain additional Completion and Performance Security such that the total amount of Completion and Performance Security is in accordance with the amounts set out in Section 5.2 or Exhibit A, as applicable. For greater certainty, where the total of the Aboriginal Participation Level and the Community Participation Level increases from below 50% to greater than or equal to 50%, there shall be no reduction in the amount of Completion and Performance Security already provided to the OPA.

15.10 Survival

The provisions of Sections 2.4(a), 2.10, 3.4, 3.5, 3.6, Article 4, Article 7, Section 11.2(g), Article 13, Sections 14.2, 15.1, and 15.2 shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

15.11 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile or electronic mail but such Party shall, within 10 Business Days of such delivery by facsimile or electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

15.12 Additional Rights of Set-Off

- (a) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the OPA may set off any amounts owing by the Supplier to the OPA in connection with Sections 2.4, 3.1, 3.2, 3.4, 4.2(c), 4.3(c), 4.5, 9.2(d) and 15.5(c) against any monies owed by the OPA to the Supplier in connection with Sections 2.4, 2.10(c), 3.1, 3.5, 3.6(a), 4.2(c), 4.3(c), 4.5, 5.1(c), 5.2(c), 9.4(b), 12.3 and 15.5(c).
- (b) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Supplier may set-off any amounts owing by the OPA to the Supplier in

connection with Sections 2.4, 2.10(c), 3.1, 3.5, 3.6(a), 4.2(c), 4.3(c), 4.5, 5.1(c), 5.2(c), 9.4(b), 12.3 and 15.5(c) against any monies owed by the Supplier to the OPA in connection with Sections 2.4, 3.1, 3.2, 3.4, 4.2(c), 4.3(c), 4.5, 9.2(d) and 15.5(c).

15.13 Rights and Remedies Not Limited to Contract

Unless expressly provided in this Agreement, the express rights and remedies of the OPA or the Supplier set out in this Agreement are in addition to and shall not limit any other rights and remedies available to the OPA or the Supplier, respectively, at law or in equity.

15.14 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

/END OF STANDARD TERMS AND CONDITIONS/

**EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
TYPE 9: WIND (ON-SHORE) FACILITIES**

1.1 Application of Exhibit

This version of Exhibit A shall apply to an On-Shore Wind Facility.

1.2 Technology-Specific Values

- (a) The Milestone Date for Commercial Operation is the date that is three years following the Contract Date.
- (b) The NTP Response Date is the date that is 15 months following the Contract Date.
- (c) The NTP Daily Delay Amount is \$0.033 per kW of Contract Capacity.
- (d) The Pre-Construction Liability Limit is \$400,000.00 per Contract Facility plus \$2.00 per kW of Contract Capacity.
- (e) The amount of the Initial Security is \$20.00 per kW of Contract Capacity.
- (f) The amount of the Incremental NTP Security is \$10.00 per kW of Contract Capacity.

EXHIBIT B – METERING AND SETTLEMENT
TYPE 1: FACILITIES REGISTERED IN THE IESO-ADMINISTERED MARKETS (NOT
BEHIND-THE-METER)

1.1 Application of Exhibit

This version of Exhibit B shall apply to a Facility that:

- (a) is the whole of a Registered Facility; and
- (b) is not a Behind-the-Meter Facility.

1.2 Metering

The Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the IESO Market Rules for Registered Facilities. The Supplier shall provide the OPA viewing access rights only to the revenue-quality interval meter data of the Facility to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss adjustment factors by establishing an Associated Relationship between the OPA and the Connection Point of the Facility within the MVPortal application tool or equivalent, at no cost to the OPA. For greater certainty, the OPA shall maintain in confidence in accordance with this Agreement and shall not access or use for any purpose (other than for the purposes of administering this Agreement) any information related to the Electricity usage of the Host Facility (if applicable).

1.3 Indexation

The “**Indexed Contract Price**” shall be determined as follows:

- (a) Where the FIT Contract Cover Page indicates that the Percentage Escalated is zero percent (0%), the Indexed Contract Price shall be equal to the Contract Price for all years.
- (b) For all other Facilities, the Indexed Contract Price in any year “y” shall be the greater of the Indexed Contract Price in the preceding year, “y-1”, and the following calculation:

$CP_y = (1 - PE) \times \left(TCP_{BD} \times \frac{CPI_x}{CPI_{BD}} \right) + PE \times \left(TCP_{BD} \times \frac{CPI_y}{CPI_{BD}} \right)$	
where:	
CP_y	is the Indexed Contract Price applicable in calendar year “y” during the Term;
CPI_x	is the CPI applicable in the month of December immediately preceding the calendar year “x”, where “x” is the year that is the earlier of (i) year “y” and (ii) the calendar year corresponding to the Milestone Date for Commercial Operation, as such date was established on the Contract Date prior to any adjustment for Force Majeure or NTP Delay;
TCP_{BD}	is the Total Contract Price;

CPI _{BD}	is the CPI applicable to the month in which the Base Date occurs;
CPI _y	is the CPI for the month of December immediately preceding the commencement of calendar year “y”; and
PE	is the Percentage Escalated expressed as a decimal figure.

1.4 Calculation of Contract Payment

- (a) For each hour in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to:
- (i) the Hourly Delivered Electricity multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) where the FIT Contract Cover Page indicates that the Peak Performance Factor applies, the Peak Performance Factor applicable during the corresponding hour;
- minus
- (ii) the Hourly Delivered Electricity multiplied by the greater of (A) HOEP for such hour, and (B) zero;
- provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one hour, then for the purposes of the calculation set out in this Section 1.4(a) of Exhibit B, the Contract Capacity times one hour shall be used instead of the Hourly Delivered Electricity.
- (b) The Contract Payment in respect of a Settlement Period shall be:
- (i) the sum of the Contract Payments in respect of each hour in such Settlement Period;
- minus
- (ii) in relation to the sale, supply or delivery of any Future Contract Related Products, an amount equal to eighty percent (80%) of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products for that Settlement Period, less the Approved Incremental Costs. For the purposes of this Section 1.4(b) of Exhibit B, “**Approved Incremental Costs**” means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the OPA.
- (c) Where the Contract Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the OPA to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the OPA.

1.5 IESO Instructions

- (a) Insofar as the IESO issues instructions to reduce all or part of the output of the Contract Facility on an economic basis in order to mitigate over generation on the entire IESO-Controlled Grid or substantially all of the IESO-Controlled Grid, then the calculation set out in Section 1.4 of this Exhibit B shall provide for an additional Contract Payment (the “**Additional Contract Payment**”) for any hour, “h”, in which:
 - (i) either (A) the Pre-Dispatch Price for such hour “h”, as published in the immediately preceding hour “h-1” is less than \$5.00/MWh or (B) the IESO has published an over generation advisory or equivalent notice in respect of such hour “h” for the entire IESO-Controlled Grid or substantially all of the IESO-Controlled Grid;
 - (ii) the IESO has issued an instruction on an economic basis to reduce the output of the Contract Facility to a level below that which it otherwise could have achieved for that hour “h”, but for such instruction; and
 - (iii) the Supplier has complied with such instruction.
- (b) The Additional Contract Payment for any such hour shall be the Hourly Delivered Electricity foregone as a result of compliance with the IESO’s instruction multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) where the FIT Contract Cover Page indicates that the Peak Performance Factor applies, the Peak Performance Factor applicable during the corresponding hour, provided that such amount of foregone Hourly Delivered Electricity shall not in any case exceed the Contract Capacity times one hour. For greater certainty, waterpower Facilities shall not be considered to have foregone Hourly Delivered Electricity as a result of compliance with the IESO’s instruction, where such Facility did not spill water in order to comply with such instruction.
- (c) The OPA will, acting reasonably, develop a methodology for Contract Facilities using each type of Renewable Fuel to determine the Hourly Delivered Electricity foregone as a result of compliance with an instruction from the IESO pursuant to Section 1.5(a) of this Exhibit B.
- (d) The implementation of this Section 1.5 of Exhibit B shall not trigger the amending provisions of Section 1.7 of the Agreement, except to the extent that any IESO Market Rule change has the effect of materially affecting the Supplier’s Economics notwithstanding the implementation of this Section 1.5 of Exhibit B.

EXHIBIT D
DOMESTIC CONTENT

1.1 Calculation of Domestic Content Level

- (a) For each of the “**Designated Activities**” set out in the first column of the Domestic Content Grid applicable to the Contract Facility’s technology and Contract Capacity, where the Designated Activity has been performed in relation to the Contract Facility, the Contract Facility shall be allocated the corresponding “**Qualifying Percentage**” set out in the second column of such Domestic Content Grid.
- (b) If the Contract Facility comprises more than one of the component(s) specified in the Designated Activity, the Designated Activity must have been performed in relation to all such components forming part of the Contract Facility in order for the Designated Activity to be considered to have been performed in relation to such Contract Facility.
- (c) A Designated Activity shall not be considered to be performed in relation to a Contract Facility, where:
 - (i) some but not all aspects of the Designated Activity were performed in relation to the Contract Facility; or
 - (ii) the Supplier is unable to provide evidence satisfactory to the OPA, acting reasonably, that the Designated Activity was performed in relation to the Contract Facility.
- (d) The “**Domestic Content Level**” in respect of a Contract Facility shall be calculated, following the Commercial Operation Date, as the sum of the Qualifying Percentages allocated to such Contract Facility in accordance with Section 1.1(a) of this Exhibit D.

1.2 Evidence of Performance of Designated Activities

- (a) As part of the Domestic Content Report, for each Designated Activity set out as having been performed in relation to the Contract Facility, the Supplier shall provide:
 - (i) documentation confirming to the satisfaction of the OPA, acting reasonably, that such Designated Activity was performed in relation to the Contract Facility, provided that any confidential information (including pricing) not necessary to verify that the applicable Designated Activity was performed in relation to the Contract Facility, may be redacted; and
 - (ii) a “Consent to Verify” in the Prescribed Form, signed by the service provider corresponding to the Designated Activity, authorizing the OPA to verify that such service provider performed the Designated Activity.

Table 1: Domestic Content Grid – Wind Power Projects Greater than 10 kW

Designated Activity	Qualifying Percentage
1. Wind turbine blades cast in a mould in Ontario, and instrumentation that is within the blades has been assembled in Ontario.	16%
2. Pitch system, where the gear wheels for the pitch system have been cut, carburized and ground in Ontario, and where the pitch system has been assembled and tested in Ontario.	3%
3. Yaw system where the gear wheels for the yaw system have been cut, carburized and ground in Ontario, and where the yaw system has been assembled and tested in Ontario.	7%
4. Hub and hub casing, where the hub has been entirely machined in Ontario, i.e. without any pre-machining performed outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge.	2%
5. Gearbox where gear wheels have been cut, carburized and ground in Ontario, and where the gearbox has been assembled and tested in Ontario. For greater certainty, the gearbox refers to the mechanism that increases the speed of rotation of the generator's shaft. Other gearboxes that are in or form part of another component, e.g. in the yaw system, are included as part of the Designated Activity relating to such other component, as applicable.	11%
6. Generator and brake, where the generator has been assembled and tested in Ontario. The generator is made up of a rotor, stator, rotor bearings and structures that hold the bearings and stator. For a generator that does not form an integral part of the nacelle, the generator includes the encapsulation of the foregoing components. The manufacturing of the generator must have also included the cutting and assembly of the stator and rotor plates in addition to their winding in Ontario. If the generator uses permanent magnets, these must be installed in Ontario.	3%
7. Heat exchanger has been assembled and tested in Ontario.	1%
8. Drive shaft has been entirely machined in Ontario, i.e. without any other pre-machining performed outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge.	1%
9. Power converter where the assembly, final wiring and testing has been done in Ontario.	5%
10. Towers that have been physically formed and shaped from steel plates, in Ontario. The steel plates used to manufacture the towers must not have been machined outside Ontario, i.e. they must not have been rolled, bent or welded outside Ontario.	4%

11.	All steel that was formed and shaped into the towers was processed into steel plates in a steel mill in Ontario.	9%
12.	Control panel and electronics, where the assembly, final wiring and testing have been done in Ontario.	2%
13.	Nacelle frame that has been manufactured entirely in Ontario using steel plates and beams that had not previously been machined, i.e. steel plates and beams that have not been bent, folded, welded, pierced or bolted outside Ontario, and without any other pre-machining performed outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge.	2%
14.	Nacelle shell where successive assembly of the armature and shell materials has occurred in Ontario.	2%
15.	Pad mount or equivalent transformers that have been wound and tested in Ontario.	2%
16.	Grid connection, where the transformers used in the grid connection have been wound and tested in Ontario. For greater certainty, this does not include pad mount or equivalent transformers.	10%
17.	Construction costs, and on-site labour performed by individuals Resident in Ontario, provided that no more than 5% of the total person-hours of all such labour is performed by individuals that are not Resident in Ontario.	15%
18.	Consulting services, including legal, technical and accounting performed by individuals Resident in Ontario, provided that no more than 5% of the total person-hours of all such services are performed by individuals that are not Resident in Ontario.	5%
Total		100%

EXHIBIT E

ARBITRATION PROVISIONS APPLICABLE TO SECTIONS 1.7, 1.8, 2.10 AND 12.2

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.7, 1.8, 2.10 and 12.2 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the OPA’s option, all Other Suppliers required by the OPA to participate, have been unable to reach agreement as contemplated in Sections 1.7, 1.8, 2.10 or 12.2, as applicable, then the OPA shall commence arbitration by delivering a written notice (“**Request**”) to the Supplier and such Other Suppliers required by the OPA to participate (collectively the “**Suppliers**”). If the OPA has not already done so, the OPA shall then deliver to the Suppliers the names of all Suppliers. Within 20 Business Days of the delivery of the Request, the OPA shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within 20 Business Days of the receipt of the OPA’s notice nominating its arbitrator, the Suppliers shall by written notice to the OPA nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two arbitrators nominated shall then select a chair person of the arbitration panel (the “**Arbitration Panel**”) who shall be a former judge of a Superior Court or appellate court in Canada.
2. **Application to Court** – If the Suppliers are unable to agree on the nomination of an arbitrator within 20 Business Days of the receipt of the OPA’s notice nominating its arbitrator, any Supplier or the OPA may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two arbitrators are unable to agree on a chair person within 30 days of the nomination or appointment of the Suppliers’ arbitrator, any supplier or the OPA may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.
3. **General** – The Arbitration Panel, once appointed, shall proceed immediately to determine the required amendments or the Replacement Provision, as the case may be, in accordance with the Ontario *Arbitration Act, 1991* and, where applicable, the Ontario International Commercial Arbitration Act, it being the intention of the OPA and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the required amendments or the Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.
4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the required amendments or the Replacement Provision needs to be determined through more than one arbitration proceeding, then the Parties agree that the Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.
5. **Award** – The award of the Arbitration Panel, which shall include the required amendments or Replacement Provision, shall be made within six months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.

6. **Costs** – The Parties shall pay their own costs of participating in the arbitration proceedings.
7. **Fees** – Each of the arbitrators on the Arbitration Panel shall be paid their normal professional fees for their time and attendances, which fees together with any hearing room fees, shall be paid by the OPA.
8. **Computation of Time** – In the computation of time under these Rules or an order or direction given by the Arbitration Panel, except where a contrary intention appears, or the parties otherwise agree:
 - (a) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “**at least**” are used;
 - (b) statutory holidays shall not be counted;
 - (c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and
 - (d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00 p.m. (Toronto time), or at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.
9. **Place of Arbitration** – The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.

EXHIBIT F

**FORM OF SUPPLIER'S CERTIFICATE
RE COMMERCIAL OPERATION**

**SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
FIT.Contract@powerauthority.on.ca**

Capitalized terms not defined herein have the meanings ascribed thereto in the FIT Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Agreement Title	Feed-in Tariff Contract #[Insert Contract #] (the "Agreement")
Agreement Date	
Commercial Operation Date or Term commencement date	
Beginning of the Hour Ending	01:00 hours (EST)

WHEREAS Section 2.6(a)(v) of the FIT Contract (the "Agreement") between [Supplier Short Name] and the OPA dated as of [Contract Date] provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the OPA has received a certificate (this "Certificate") address [Contract Date] [redacted]ing certain statements with respect to the Facility, in addition to a separate IE Certificate referenced in Exhibit G of the Agreement;

NOW THEREFORE, [SUPPLIER LEGAL NAME] CERTIFIES to the OPA that:

- a) [Independent Engineer] [SUPPLIER LEGAL NAME] [redacted] is:
- (i) duly qualified and licensed to practice engineering in the province of Ontario and which holds a certificate of authorization issued by Professional Engineers Ontario;
 - (ii) does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the facility; and
 - (iii) not an affiliate of [Supplier Short Name] nor directly or indirectly Controlled by [Supplier Short Name].
- [Supplier Short Name] [redacted]
- b) [Supplier Short Name] [redacted] has provided, or in the case of Section (b)(i), has caused the Independent Engineer to provide, to the OPA the following documentation required to be so provided at or prior to Commercial Operation:
- i) Certificate of an independent professional engineer using OPA's "Form of Independent Engineer Certificate" (OPACM-Form-016) in accordance with Section 2.6(a)(iv) of Agreement;
 - ii) As-built single line diagram in accordance with Section 2.6(a)(iii) of the Agreement;

- iii) Workplace Safety and Insurance Act (Ontario) clearance certificate pursuant to Section 2.8(c);
- iv) if required pursuant to Section 2.2(c), Metering Plan that has been approved by the OPA; pursuant to Section 2.2(c); and
- v) Ontario Energy Board Generator License pursuant to Section 2.9(b).

Signed [Day] day of [Month, Year].
this [Day] [Month, Year]

this

[Day]	[Month, Year]
-------	---------------

[Legal Name of Supplier]

[Legal Name of Supplier]

Per:

Name: [Name]

Title: [Title]

[Name]

[Title]

EXHIBIT G

**FORM OF INDEPENDENT ENGINEER'S CERTIFICATE
RE COMMERCIAL OPERATION**

**SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
FIT.Contract@powerauthority.on.ca**

Capitalized terms not defined herein have the meanings ascribed thereto in the FIT Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Agreement Title	Feed-in Tariff Contract # [Insert Contract #] (the "Agreement")
Agreement Date	
Legal Name of Independent Engineer	

WHEREAS Section 2.6(a)(iv) of the Agreement between the Supplier and the OPA dated as of [Contract Date] provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the OPA has received a certificate (this "Certificate") addressed to it from [Contract Date] Independent Engineer containing certain statements with respect to the Facility;

AND WHEREAS [Legal Name of Independent Engineer] (the "Undersigned") acts as the Independent Engineer for the purposes of delivery of this Certificate;

[Legal Name of Independent Engineer]

NOW THEREFORE, THE UNDERSIGNED CERTIFIES to the OPA, and acknowledges that the OPA is relying on this Certificate, that:

- (i) the Undersigned is duly qualified and licensed to practice engineering in the province of Ontario;
- (ii) the Undersigned is neither an employee nor a consultant of the Supplier such that the majority of either the time or billings of the Undersigned during the 18 month period prior to the date hereof were devoted to the Facility;
- (iii) the Undersigned is not an affiliate of the Supplier nor directly or indirectly Controlled by the Supplier;
- (iv) subject to Section (vi) below, the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with the Agreement;
- (v) the Connection Point of the Facility is at the location specified on the FIT Contract Cover Page;
- (vi) the Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, a Distribution System or an Host Facility such that at least 90% of the Contract

Capacity for the Facility is available to generate Electricity in compliance with Good Engineering and Operating Practices; and

- (vii) if required pursuant to Section 2.2(c), the Independent Engineer reviewed the Metering Plan approved by the OPA and all calculations have been performed in accordance therewith.

Signed this	[Day]	day	[Month, Year]	.	
	[Day]		[Month, Year]		

			[Legal Name of Independent Engineer]	
			[Legal Name of Supplier]	
			Per:	
			Name: [Name, P.Eng.]	
			Title: [Title]	
			[Name]	
			[Title]	

			Professional Engineer Stamp of Signing Engineer	

EXHIBIT H
FORM OF SECURED LENDER CONSENT AND ACKNOWLEDGEMENT
CONSENT AND ACKNOWLEDGMENT AGREEMENT

THIS AGREEMENT made as of this ● day of ●, 20●,

BETWEEN:

[●], *[insert legal form of the Supplier and jurisdiction of organization]*

(the “**Supplier**”),

- and -

[●], in its capacity as [{Secured Lender under the FIT Contract}
or *{insert form of Secured Lender representation, e.g., security trustee, collateral agent and trustee, etc. for and on behalf of the Secured Lenders (as defined below)}*}]

(the “**Security Agent**”),

- and -

ONTARIO POWER AUTHORITY, a corporation governed
by the laws of the Province of Ontario

(the “**OPA**”),

RECITALS:

- A. The Supplier and the OPA have entered into a Feed-In Tariff Contract dated as of ●, 20●, contract identification # ● (as amended, supplemented, restated or replaced from time to time in accordance with its terms and this agreement, the “**FIT Contract**”) in order to formalize the long-term contractual arrangements for the Supplier to develop and operate the Contract Facility and to supply, directly or indirectly, Electricity and Related Products from the Contract Facility to the Connection Point;
- B. *[Note to finalization: describe structure of collateral arrangements; describe any bond issuance and related trust indentures; identify underlying security and debt documents; identify the “Secured Lenders” if they are anyone other than the Security Agent; identify any intercreditor or collateral agency arrangements];*
- C. The Supplier has granted security against, inter alia, all of its right, title, entitlement and interest in and to the FIT Contract in favour of the Security Agent pursuant to the security agreements identified in Schedule “A” (collectively, as amended, supplemented, restated or replaced from

time to time, the “**Security Agreements**”), as security for its present and future indebtedness, liabilities and obligations under and in respect of the *[Note to finalization: describe underlying debt instrument(s)]* (the “**Secured Debt**”); and

- D. The Supplier has agreed that it will incur Secured Debt only for the purposes of financing its acquisition, construction, re-development, ownership, operation and maintenance of the Contract Facility or the Contract Facility together with one or more other renewable generating facilities in Ontario and any refinancing of any such debt;

THEREFORE, the parties agree as follows:

1. Defined Terms

Unless otherwise provided in this agreement or the context otherwise requires, all capitalized terms which are not defined in this agreement have the respective meanings given to them in the FIT Contract.

2. Acknowledgement and Confirmation of Rights of Security Agent

The OPA acknowledges and confirms that:

- (a) the Supplier has delivered to the OPA copies of the Security Agreements **[Note to finalization: and any applicable trust indenture]**;
- (b) the Security Agreements **[Note to finalization: and any applicable trust indenture]** constitute Secured Lender’s Security Agreements for purposes of the FIT Contract and are binding on the OPA in the enforcement of the OPA’s rights and remedies provided in the FIT Contract (as contemplated by Section 11.1(d) of the FIT Contract); and
- (c) the Security Agent constitutes the Secured Lender for purposes of the FIT Contract and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 11 of the FIT Contract in favour of a Secured Lender and is entitled to enforce the same as if the Security Agent were a party to the FIT Contract.

3. Covenants of the Security Agent

The Security Agent covenants and agrees with the OPA (and in the case of paragraphs (a), (d), (f) and (h) below, covenants, agrees, represents and warrants to the OPA) as follows:

- (a) Should the Security Agent commence enforcement of the Security Agreements with respect to the FIT Contract, it will comply with the terms, conditions and obligations applicable to a Secured Lender under Section 11.2 of the FIT Contract as they relate to the Security Agent’s security interests in the FIT Contract during such enforcement.
- (b) The Security Agent agrees that it will comply with Section 11.2(f) of the FIT Contract.
- (c) The Security Agent **[Note to finalization: (is and will be) or (is not)]** at Arm’s Length from the Supplier.
- (d) The Security Agreements listed on Schedule “A” constitute all of the security granted by the Supplier in favour of the Security Agent as at the date first written above.

- (e) Except the Security Agreements [**Note to finalization:** , *any applicable trust indenture*] and any other security that is delivered by the Security Agent to the OPA in accordance with Section 11.1(d) of the FIT Contract, the Security Agent acknowledges that any other security granted in favour of the Security Agent will not be binding upon the OPA.
- (f) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule "A".
- (g) If the Supplier is in default under or pursuant to any Security Agreement [**Note to finalization:** *or the trust indenture*] and the Security Agent intends to exercise any rights afforded to it with respect to the FIT Contract, then the Security Agent will give notice of such default to the OPA at least 10 Business Days prior to exercising any such rights under the FIT Contract.
- (h) The Security Agent has entered into this agreement and holds the security granted pursuant to the Security Agreements.
- (i) Only the Security Agent will be entitled to exercise the rights and remedies under the Security Agreements as the Secured Lender except that in accordance with Section 11.2(g) of the FIT Contract, when the Security Agent has appointed an agent, a receiver or a receiver and manager, or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Security Agent's security, that Person may exercise any of the Security Agent's rights under Section 11.2 of the FIT Contract.
- (j) The address of the Security Agent to which notices may be sent pursuant to Section 11.1(d) of the FIT Contract is set forth in Section 5 of this agreement.
- (k) The Security Agent will provide the OPA with written notice of any change in the identity or address of the Security Agent.

4. Covenants of the Supplier

The Supplier covenants, agrees, represents and warrants to the OPA as follows:

- (a) The Security Agreements [**Note to finalization:** *and any applicable trust indenture*] are subject to the terms and conditions applicable to a Secured Lender's Security Agreement that are contained in Article 11 of the FIT Contract, and comply therewith.
- (b) The Supplier has provided to the OPA true and complete copies of the Security Agreements [**Note to finalization:** *and any applicable trust indenture*], and the Security Agreements [**Note to finalization:** *and any applicable trust indenture*] constitute Secured Lender's Security Agreements and the Security Agent constitutes a Secured Lender for purposes of the FIT Contract.
- (c) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule "A".
- (d) The recitals to this agreement are true and accurate and the Supplier agrees that all Secured Debt will have been incurred in connection with the acquisition, construction, re-

development, ownership, operation and maintenance of the Contract Facility or the Contract Facility together with any together with one or more other renewable generating facilities in Ontario and any refinancing of any such debt.

- (e) The Supplier will provide the OPA with true and complete copies of any new or amendments to any Secured Lender's Security Agreement.
- (f) The Security Agreements [**Note to finalization:** *and any applicable trust indenture*] do not and will not secure any indebtedness, liability or obligation of the Supplier that is not related to the Contract Facility, the Contract Facility together with any together with one or more other renewable generating facilities in Ontario, or the FIT Contract, or cover any real or personal property of the Supplier not related to the Contract Facility or the Contract Facility together with any together with one or more other renewable generating facilities in Ontario.

5. Notice

All notices pertaining to this agreement not explicitly permitted to be in a form other than writing will be in writing and will be given by facsimile or other means of electronic transmission or by hand or courier delivery. Any notice will be addressed to the parties as follows:

If to the Supplier:

-
-
-
-

Attention: ●
Facsimile: ●

If to the OPA:

Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: **FIT Contract Manager**
Facsimile: (416) 967-6071

If to the Security Agent:

-
-
-
-

Attention: ●
Facsimile: ●

Notice delivered or transmitted as provided above will be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 5:00 p.m. local time or such day is not a Business Day, then such notice will be deemed to have been given and received on the next Business Day. Any party may, by written notice to the other parties, change its respective representative or the address to which notices are to be sent.

6. Successors and Assigns

Subject to complying with Sections 15.5 and 15.6 of the FIT Contract, the benefits under this agreement accruing to each of the parties to this agreement will extend to all their respective successors and permitted assigns, only if they agree, according to their interests, to be bound by all the provisions of this agreement (it being the responsibility of each party to give notice to each other party of such assignment and to require its successors and permitted assigns to expressly acknowledge and agree in favour of each other party to be bound by this agreement). Subject to complying with Section 15.5 of the FIT Contract, upon the acquisition by any such successor or permitted assign of such an interest, such successor or permitted assign will be joined, as a party benefiting and bound by this agreement, by an appropriate further agreement supplementary to this agreement in form and substance acceptable to the OPA, acting reasonably.

7. Execution and Delivery

This agreement may be executed by the parties hereto in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles will together constitute one and the same agreement.

8. Governing Law

This agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

[EXECUTION PAGE IMMEDIATELY FOLLOWS]

IN WITNESS OF WHICH, the parties have duly executed this agreement as of the date first written above.

●

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

●

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

ONTARIO POWER AUTHORITY

By: _____

Name:

Title:

SCHEDULE “A” TO EXHIBIT H

LIST OF SECURITY AGREEMENTS AND REGISTRATION DETAILS

The following Security Agreements were granted by the Supplier in favour of the Security Agent (each of which was dated ●, 20●):

- (a) ●
- (b) ●
- (c) ●

The following registrations were made against the Supplier in favour of the Security Agent under the *Personal Property Security Act* (Ontario):

-

SCHEDULE 2
SPECIAL TERMS AND CONDITIONS

[Note to Finalization: Insert Special Terms and Conditions, if applicable.]

APPENDIX 1 – STANDARD DEFINITIONS

The following terms shall have the meaning stated below when used in the FIT Rules or in the FIT Contract:

1. **Aboriginal Community** has the meaning given to it in Section 9.1 of the FIT Rules.
2. **Aboriginal Loan Guarantee Program** means the “Aboriginal Loan Guarantee Program” administered by the Ontario Financing Authority, or any successor program or other program instituted by the Government of Ontario with substantially the same objectives.
3. **Aboriginal Participation Level** has the meaning given to it in Section 9.1 of the FIT Rules.
4. **Aboriginal Participation Project** has the meaning given to it in Section 9.1 of the FIT Rules.
5. **Aboriginal Participation Project Declaration** means, with respect to a Project or a Contract Facility, (i) a statutory declaration in the Prescribed Form setting out the Aboriginal Participation Level of such Project or Contract Facility, together with (ii) written evidence documenting such Aboriginal Participation Level that is to the satisfaction of the OPA, acting reasonably.
6. **Aboriginal Price Adder** has the meaning given to it in Section 9.1 of the FIT Rules.
7. **Access Rights** has the meaning given to it in Section 3.1(e) of the FIT Rules.
8. **Additional Contract Payment** has the meaning given to it, if any, in Exhibit B to the FIT Contract.
9. **Affiliate** means any Person that (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.
10. **Agreement** has the meaning given to it on the FIT Contract Cover Page.
11. **Amendment** means a change, revision or addition to the FIT Program, FIT Rules, form of FIT Contract or Price Schedule and **Amend** has a corresponding meaning. For greater certainty, a suspension of the FIT Program, in whole or in part, shall constitute an Amendment.
12. **Ancillary Service** has the meaning given to it in the IESO Market Rules.
13. **Applicant** means a Person submitting an Application to participate in the FIT Program.
14. **Applicant Related Person** means (i) any Person that, individually or with any other Person(s), Controls or is Controlled by the Applicant, or (ii) any Person that, with the Applicant, is Controlled by a third Person or Persons.
15. **Application** means an application submitted in response to the FIT Program in respect of the construction, development and operation of a Project and all clarifications and additional information, documents and statements in respect thereof provided by an Applicant, or on behalf of an Applicant, and submitted to and accepted by the OPA.
16. **Application Fee** has the meaning given to it in Section 3.1(a) of the FIT Rules.
17. **Application Security** has the meaning given to it in Section 3.1(b) of the FIT Rules.

18. **Approved Incremental Costs** has the meaning given to it in Exhibit B of the FIT Contract.
19. **Arbitration Panel** has the meaning given to it in Exhibit E of the FIT Contract.
20. **Arm's Length** means, with respect to two or more Persons, that such Persons are not related to each other within the meaning of subsections 251(2), (3), (3.1), (3.2), (4), (5) and (6) of the ITA or that such Persons, as a matter of fact, deal with each other at a particular time at arm's length.
21. **Associated Relationship** means the relationship between a meter at a Connection Point and a Market Participant (where such Market Participant is not the Metered Market Participant), as established by certain processes in the MV-Web.
22. **Automatic NTP Facility** means a Facility designated as such by the OPA, for which the OPA cannot issue an NTP Deferral Notice, and that is identified as such on the FIT Contract Cover Page.
23. **Base Date** means the date set out on the FIT Contract Cover Page that is the effective date of the Price Schedule used to determine the Contract Price.
24. **Behind-the-Meter Facility** means a Renewable Generating Facility that is connected to a Host Facility such that Electricity Delivered by such Renewable Generating Facility is recorded on the Host Facility's electricity meter.
25. **Biogas** has the meaning given to it in Ontario Regulation 328/09, made under the *Electricity Act*, as published in *The Ontario Gazette* on September 26, 2009, but does not include landfill gas.
26. **Business Day** means any day that is not a Saturday, a Sunday, or a legal holiday in the Province of Ontario.
27. **Canada Land Inventory** means the program creating a comprehensive multi-disciplinary land inventory of rural Canada, administered by Ontario Ministry of Agriculture, Food, and Rural Affairs and accessible at <http://www.omafra.gov.on.ca/english/landuse/feed-in-tariffprogram.htm>.
28. **Capacity Allocation Exempt Facility** means either a "capacity allocation exempt small embedded generation facility" or a "micro-embedded generation facility", as such terms are defined in the Distribution System Code.
29. **Capacity Products** means any products related to the rated, continuous load-carrying capability of a Contract Facility to generate and Deliver Electricity at a given time.
30. **Cents** or ¢ means hundredths of a Dollar.
31. **Claim** means a claim or cause of action in contract, in tort, under any Laws and Regulations, or otherwise.
32. **Class 3 Available Lands** means those CLI Class 3 Lands that are designated by the OPA on the Website from time to time as being eligible to be the subject of future Applications.
33. **CLI Class 1 Lands** means the lands designated as "Class 1" pursuant to the Canada Land Inventory.
34. **CLI Class 2 Lands** means the lands designated as "Class 2" pursuant to the Canada Land Inventory.

- 35. **CLI Class 3 Lands** means the lands designated as “Class 3” pursuant to the Canada Land Inventory.
- 36. **Commercial Operation** has the meaning given to it in Section 2.6(a) of the FIT Contract.
- 37. **Commercial Operation Date** means the date on which Commercial Operation is first attained.
- 38. **Commercially Reasonable Efforts** means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by the FIT Rules or the FIT Contract and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the transaction therein contemplated.
- 39. **Community Investment Members** has the meaning given to it in Section 9.1 of the FIT Rules.
- 40. **Community Participation Level** has the meaning given to it in Section 9.1 of the FIT Rules.
- 41. **Community Participation Project** has the meaning given to it in Section 9.1 of the FIT Rules.
- 42. **Community Participation Project Declaration** means, with respect to a Project or a Contract Facility, (i) a statutory declaration in the Prescribed Form setting out the Community Participation Level of such Project or Contract Facility, together with (ii) written evidence documenting such Community Participation Level that is to the satisfaction of the OPA, acting reasonably.
- 43. **Community Price Adder** has the meaning given to it in Section 9.1 of the FIT Rules.
- 44. **Company Representative** has the meaning given to it in Section 14.1 of the FIT Contract.
- 45. **Completion and Performance Security** means the financial security for the performance of the Supplier’s obligations under the FIT Contract that the Supplier must provide to and maintain with the OPA in accordance with Article 5 of the FIT Contract and which includes each of (i) the Initial Security, (ii) the Incremental NTP Security, (iii) the First Period Future Performance Security, and (iv) the Second Period Future Performance Security.
- 46. **Confidential Information** means all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with a FIT Contract, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding (a) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by the FIT Contract; (b) information already known to the Receiving Party prior to being furnished by the Disclosing Party; (c) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (d) information that is independently developed by the Receiving Party.
- 47. **Confidentiality Undertaking** has the meaning given to it in Section 7.1(c) of the FIT Contract.
- 48. **Confirmed Transmission Developments** means those expansions, upgrades or reinforcements to the Transmission System that have received all regulatory approvals necessary to commence construction.

49. **Connecting Authority** means, with respect to a Facility, the LDC or Transmitter that is licensed to operate the Distribution System or Transmission System to which the Facility or Host Facility is connected, as applicable.
50. **Connection Agreement** means the agreement or agreements required to be entered into between the Connecting Authority and the Supplier (or if the Contract Facility is a Behind-the-Meter Facility, between the Connecting Authority and the Supplier or the Host Facility) with respect to the connection of the Contract Facility (or the Host Facility, if applicable) to a Distribution System or the IESO-Controlled Grid (directly or indirectly), in accordance with the Distribution System Code or Transmission System Code, as applicable, and governing the terms and conditions of such connection.
51. **Connection Cost Agreement** has the meaning given to it in the Distribution System Code.
52. **Connection Costs** means those costs which are payable by the Supplier related to: (i) where the Facility is connected to a Transmission System, new or modified connection facilities, as defined by the Transmission System Code, for the reliable connection of the Facility to a Transmission System as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment and Transmission System Code for generator connections; for greater certainty, Connection Costs consist of Transmitter Connection Costs and Supplier Connection Costs, but shall not include Network Upgrade Costs; (ii) where the Facility is connected to an LDC, the capital contribution that an LDC may charge a generator to construct an expansion to connect a generation facility to the Distribution System as prescribed by the Distribution System Code.
53. **Connection Impact Assessment** means an assessment conducted by an LDC to determine the impact on the Distribution System of connecting the Contract Facility to its Distribution System.
54. **Connection Point** means:
- (a) where the Contract Facility is not a Behind-the-Meter Facility, the electrical connection point between the Contract Facility and a Distribution System or the IESO-Controlled Grid where Electricity is injected into a Distribution System or the IESO-Controlled Grid (as applicable), as more particularly described in the Connection Agreement; or
 - (b) where the Contract Facility is a Behind-the-Meter Facility, the electrical connection point between the Contract Facility and the Host Facility where Electricity is injected into the Host Facility's electrical system.
55. **Contract Capacity** means:
- (a) for Incremental Projects, the total Gross Nameplate Capacity of the Facility, less the highest documented manufacturer's total installed rated capacity of the Existing Generating Facility to generate Electricity; and
 - (b) for all other Contract Facilities, the Gross Nameplate Capacity of the Contract Facility.
56. **Contract Date** means the effective date of the FIT Contract, as set out therein.
57. **Contract Facility** means:
- (a) with respect to a Project that is not an Incremental Project, for the purpose of the FIT Rules, the Renewable Generating Facility described in the Application, and for the

purpose of the FIT Contract, the Renewable Generating Facility described on the FIT Contract Cover Page; and

- (b) with respect to a Project that is an Incremental Project, for the purpose of the FIT Rules, the additional Generating Equipment that is the subject of the Expansion or Upgrade together with all other equipment and facilities of the Existing Generating Facility which are necessary to deliver the Contract Capacity, as described in the Application, and for the purpose of the FIT Contract, the additional Generating Equipment that is the subject of the Expansion or Upgrade together with all other equipment and facilities of the Existing Generating Facility which are necessary to deliver the Contract Capacity, as described on the FIT Contract Cover Page.
- 58. **Contract Facility Amendment** has the meaning given to it in Section 2.1(b) of the FIT Contract.
 - 59. **Contract Payment** means all payments to a Supplier under a FIT Contract including payments on account of the Contract Price multiplied by Hourly Delivered Electricity, and Peak Performance Factor, as applicable, determined for each Settlement Period in accordance with Exhibit B of the FIT Contract.
 - 60. **Contract Price** means, with respect to an Application, the price set out in the Price Schedule as of a particular Base Date and set out on FIT Contract Cover Page.
 - 61. **Contract Year** means a twelve (12) month period which begins on the Commercial Operation Date or an anniversary thereof, during the Term.
 - 62. **Control** means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise, and **Controlled by** has a corresponding meaning.
 - 63. **CPI or Consumer Price Index** means the consumer price index for “All Items” published or established by Statistics Canada (or its successor) for any relevant calendar month in relation to the Province of Ontario.
 - 64. **Customer Impact Assessment** means a study conducted by a Transmitter to assess the impact of the connection of a Project on other users of the IESO-Controlled Grid.
 - 65. **Delivered** means, in relation to Electricity and certain Related Products, delivered to the Connection Point and
 - (a) successfully injected into a Distribution System or the IESO-Controlled Grid, directly or through the Host Facility’s electrical system (which, for greater certainty, is net of Site-Specific Losses); and/or
 - (b) successfully injected into the Host Facility’s electrical system and used by the Host Facility;and **Deliver** and **Delivering** have the corresponding meanings.
 - 66. **Designated Activity** has the meaning given to it in Exhibit D to the FIT Contract.

- 67. **Disclosing Party** means, with respect to Confidential Information, the Party and/or its Representatives providing or disclosing such Confidential Information and may be the OPA or the Supplier, as applicable.
- 68. **Discriminatory Action** has the meaning given to it in Section 12.1 of the FIT Contract.
- 69. **Distribution Availability Test** means the process set out in Section 5.3 of the FIT Rules
- 70. **Distribution System** means a system connected to the IESO-Controlled Grid for distributing Electricity at voltages of 50 kilovolts or less, and includes any structures, equipment or other things used for that purpose, provided that a Distribution System shall be deemed not to include any equipment controlled by the IESO pursuant to the Distribution System Code.
- 71. **Distribution System Code** means the “Distribution System Code” established and approved by the OEB, which, among other things, establishes the obligations of an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for Distribution Systems.
- 72. **Dollar** or **\$** means Canadian dollars and cents, unless otherwise specifically set out to the contrary.
- 73. **Domestic Content Grid** means Table 1, Table 2 or Table 3 set out in Exhibit D to the FIT Contract, as applicable.
- 74. **Domestic Content Plan** has the meaning given to it in Section 2.4(b)(iii) of the FIT Contract.
- 75. **Domestic Content Report** has the meaning given to it in Section 2.11(c) of the FIT Contract.
- 76. **Domestic Content Level** has the meaning given to it in Exhibit D to the FIT Contract..
- 77. **EcoENERGY for Renewable Power Program** means the ecoENERGY for Renewable Power program of the Government of Canada, or any substantially equivalent program or successor that is implemented by the Government of Canada from time to time.
- 78. **Economic Connection Test** means the test described in Section 5.4 of the FIT Rules.
- 79. **Economic Interest** has the meaning given to it in Section 9.1 of the FIT Rules.
- 80. **Economic Test Notice** has the meaning given to it in Section 5.4(c) of the FIT Rules.
- 81. **Electricity** means electric energy, measured in kWh.
- 82. **Electricity Act** means the *Electricity Act, 1998* (Ontario).
- 83. **Embedded Retail Generator** has the meaning given to it in the Retail Settlement Code.
- 84. **Emission Reduction Credits** means the credits associated with the avoidance or reduction of emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made under the *Environmental Protection Act* (Ontario) or such other regulations as may be promulgated under the *Environmental Protection Act* (Ontario) or any currently applicable or future Laws and Regulations.

85. ***Environmental Attributes*** means the interests or rights arising out of attributes or characteristics relating to the environmental impacts associated with a Renewable Generating Facility or the output of a Renewable Generating Facility, now or in the future, and the right to quantify and register these with competent authorities, including:

- (a) all right, title, interest and benefit in and to any renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance or other proprietary or contractual right, whether or not tradable, resulting from the actual or assumed displacement of emissions by the production of Electricity from the Contract Facility as a result of the utilization of renewable energy technology;
- (b) rights to any fungible or non-fungible attributes or entitlements relating to environmental impacts, whether arising from the Contract Facility itself, from the interaction of the Contract Facility with the IESO-Controlled Grid, a Distribution System or the Host Facility, or because of Laws and Regulations or voluntary programs established by Governmental Authorities;
- (c) any and all rights, title and interest relating to the nature of an energy source (including a Renewable Fuel) as may be defined and awarded through Laws and Regulations or voluntary programs, including all Emission Reduction Credits; and
- (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing which may be available in connection with the Contract Facility,

but excluding:

- (e) payments under the Government of Canada's ecoENERGY for Renewable Power Program (or any predecessor program thereto) which may be available in connection with a Renewable Generating Facility;
- (f) any tax benefit, or other benefit under the Government of Canada's Canadian Renewable and Conservation Expenses (CRCE) or successor program which may be available in connection with a Renewable Generating Facility; and
- (g) such other items as the OPA may determine in its sole discretion at any time and from time to time, such excluded items to be posted on the Website and revised periodically.

For greater certainty, in the event that any governmental or non-governmental agency, whether provincial, federal, national or international in scope or authority, creates or sanctions a registry, trading system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term "Environmental Attributes" as used in the FIT Contract shall include the rights or benefits created or sanctioned under any such program or programs to the extent available as a result of, or arising from, the production of Electricity or Related Products from the Contract Facility.

86. ***EPT*** means Eastern Prevailing Time.

87. ***EST*** means Eastern Standard Time.

88. ***Event of Default*** means an event of default by the Supplier or the OPA.

89. ***Existing Generating Facility*** means an Electricity generating facility and ancillary lands required by such generating facility that is located in Ontario and which (i) was connected to the IESO-

Controlled Grid, a Distribution System or a Host Facility prior to March 14, 2009 and (ii) has operated for more than a total of 500 hours in the preceding five years.

90. **Expansion** means either:

- (a) an addition of generating unit(s) to an Existing Generating Facility, which (i) is not intended to replace any Generating Equipment that operates, or has operated within the past 12 months at the Existing Generating Facility; (ii) generates Electricity in addition to the Electricity of existing generating units that operate or operated at the Existing Generating Facility; and (iii) does not include any of the electricity generating capacity available from the Existing Generating Facility; or
- (b) an addition of generating unit(s) to a Planned Generating Facility, which (i) will generate Electricity in addition to the Electricity of the planned generating units at such Planned Generating Facility; and (ii) does not include any of the electricity generating capacity that is expected to be available at such Planned Generating Facility.

For greater certainty, an Expansion shall not include an Upgrade.

- 91. **Facility** means a Renewable Generating Facility constructed, developed and operated by the Supplier or by an Applicant Related Person of the Supplier, which is comprised either partially or completely by the Contract Facility.
- 92. **Financing Plan** has the meaning given to it in Section 2.4(b)(ii) of the FIT Contract.
- 93. **FIPPA** means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 94. **FIPPA Records** has the meaning given to it in Section 7.5 of the FIT Contract.
- 95. **First Period Future Performance Security** has the meaning given to it in Section 5.2(a) of the FIT Contract.
- 96. **FIT Application Instructions** means the “FIT Application Instructions” document published by the OPA on the Website setting out specific details relating to the FIT Program, as updated or amended from time to time.
- 97. **FIT Contract** means the agreement entered into between a Supplier and the OPA in accordance with the FIT Rules, comprised of the FIT Contract Cover Page, the general terms and conditions, any applicable special terms and conditions, these Standard Definitions, and the other Exhibits that are attached, as amended, restated or replaced from time to time.
- 98. **FIT Contract Cover Page** means the front page of the FIT Contract setting out specific features of the Facility, including its classification as an Automatic NTP Facility (as applicable), its Connection Point, Renewable Fuel, Contract Capacity, Contract Price, Escalation Percentage, applicability of the Peak Performance Factor and the applicable versions of Exhibits A and B.
- 99. **FIT Direction** means the direction issued by the Minister of Energy and Infrastructure to the OPA on September 24, 2009 directing the OPA to develop the Feed-in Tariff Program.
- 100. **FIT Production Line** means the process set out in Section 5.5 of the FIT Rules.
- 101. **FIT Program** means the Renewable Energy Feed-In Tariff Program established by the OPA pursuant to the FIT Rules and any prior or subsequent version of the FIT Rules.

- 102. ***FIT Reserve*** means the process set out in Section 5.6 of the FIT Rules.
- 103. ***FIT Rules*** means the rules governing the FIT Program as may be amended in accordance with its terms, from time to time.
- 104. ***Force Majeure*** has the meaning given to it in Section 10.3 of the FIT Contract.
- 105. ***Future Contract Related Products*** means all Related Products that relate to the Contract Facility and that were not capable of being traded or sold by the Supplier in the IESO-Administered Markets or other markets on or before the Contract Date.
- 106. ***Generating Equipment*** means equipment used by a Project or a Contract Facility in the generation of Electricity, such as wind turbines, hydroelectric turbines, biomass-fired boilers and generating sets for the combustion of landfill gas, but does not include transformers or other equipment used to transform or transmit such Electricity.
- 107. ***Good Engineering and Operating Practices*** means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent generator of Electricity in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry.
- 108. ***Government of Canada*** means Her Majesty the Queen in right of Canada.
- 109. ***Government of Ontario*** means Her Majesty the Queen in right of Ontario.
- 110. ***Governmental Approvals*** means approvals, authorizations, consents, permits, grants, licences, privileges, rights, orders, judgments, rulings, directives, ordinances, decrees, registrations and filings issued or granted by Laws and Regulations or by any Governmental Authority.
- 111. ***Governmental Authority*** means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority, but excluding the OPA.
- 112. ***Gross Load Billing*** means the “gross load billing” approach substantially set out in OEB “Notice of Proposal to Amend a Code” relating to Board File No: EB-2009-0303.
- 113. ***Gross Nameplate Capacity*** means the manufacturer’s total installed rated capacity of the Facility to generate Electricity.
- 114. ***GST*** means the goods and services tax exigible pursuant to the *Excise Tax Act* (Canada), or any successor thereto, including for greater certainty the “Harmonized Sales Tax” proposed in the March 26, 2009 Ontario Budget.

115. **Host Facility** means a facility which:

- (a) the Contract Facility is connected to at the Connection Point; and
- (b) is either (i) directly connected to a Distribution System or (ii) connected to the IESO-Controlled Grid directly or through one or more other facilities (which other facility is not, for greater certainty, a Distribution System).

116. **Hourly Delivered Electricity** means:

- (a) in respect of Incremental Projects, the Electricity generated and Delivered (net of Station Service Loads) by the Facility in any hour multiplied by the Incremental Project Ratio; and
- (b) for all other Contract Facilities, the Electricity generated and Delivered (net of Station Service Loads) by the Contract Facility during any hour,

in each case, provided such Electricity is delivered to the Connection Point and either (i) successfully injected into a Distribution System or the IESO-Controlled Grid directly or through the Host Facility's electrical system, or (ii) successfully injected into the Host Facility's electrical system.

117. **Hourly Ontario Energy Price** or **HOEP** has the meaning given to it by the IESO Market Rules or shall mean any replacement thereof or successor thereto.

118. **IE Certificate** means a certificate addressed to the OPA from an Independent Engineer, procured by the Supplier and at the Supplier's sole expense, that complies with the requirements of Section 2.6(a)(iv) of the FIT Contract.

119. **IESO** means the Independent Electricity System Operator of Ontario established under Part II of the Electricity Act or its successor.

120. **IESO-Administered Markets** has the meaning given to it by the IESO Market Rules.

121. **IESO-Controlled Grid** has the meaning given to it by the IESO Market Rules.

122. **IESO Market Rules** means the rules made under Section 32 of the Electricity Act, together with all market manuals, policies, and guidelines issued by the IESO, as may be amended from time to time.

123. **Impact Assessment** means a Connection Impact Assessment, a System Impact Assessment or a Customer Impact Assessment, as applicable.

124. **Impact Assessment Priority Start Time** means the date and time set out on the FIT Contract Cover Page, before which a Supplier shall not apply for any Impact Assessment.

125. **Impact Assessment Priority Stop Time** means, with respect to an Agreement, the date and time set out on the FIT Contract Cover Page, before which the OPA shall not issue an Impact Assessment Priority Start Time to a Supplier that is offered a FIT Contract after such Agreement was offered.

126. **including** means including (or includes) without limitation.

127. **Incremental NTP Security** means the amount of Completion and Performance Security specified for each type of Contract Facility in Exhibit A of the FIT Contract and which the Supplier is required to provide to the OPA in accordance with Section 2.4(g) of the FIT Contract.
128. **Incremental Project** means an Upgrade or an Expansion which results in an increase in the Gross Nameplate Capacity, provided that:
- (a) the Renewable Fuel used by the Existing Generating Facility or the Planned Generating Facility (as applicable) is the Renewable Fuel utilized by the Project; and
 - (b) the project type described in on the FIT Contract Cover Page is indicated as being an “Incremental Project”.
129. **Incremental Project Ratio** means the ratio relating to an Incremental Project determined by dividing the Contract Capacity by the Gross Nameplate Capacity, as may vary from time to time as a result of any changes in Gross Nameplate Capacity.
130. **Indemnitees** has the meaning given to it in Section 13.3 of the FIT Contract.
131. **Indemnifiable Loss** has the meaning given to in Section 13.3 of the FIT Contract.
132. **Independent Engineer** is an engineer that is (i) a Professional Engineer duly qualified and licensed to practise engineering in the Province of Ontario; and (ii) employed by an independent engineering firm which holds a certificate of authorization issued by Professional Engineers Ontario that is not affiliated with or directly or indirectly Controlled by the Supplier and that does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the Facility.
133. **Indexed Contract Price** means the Contract Price adjusted for increases in CPI pursuant to Exhibit B of the FIT Contract.
134. **Initial Security** means the amount of Completion and Performance Security specified for each type of Contract Facility in Exhibit A of the FIT Contract and which is required to be provided to the OPA upon execution of the FIT Contract in accordance with the instructions in the Offer Notice.
135. **Insolvency Legislation** means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada) or any analogous legislation, and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law).
136. **Interest Rate** means the annual rate of interest established by the Royal Bank of Canada or its successor, from time to time, as the interest rate it will charge for demand loans in Dollars to its commercial customers in Canada and which it designates as its “prime rate” based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by the Royal Bank of Canada.
137. **ITA** means the *Income Tax Act* (Canada).
138. **kW** means kilowatt and **kWh** means kilowatt-hour.
139. **Laws and Regulations** means:

- (a) applicable federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
 - (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
 - (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
 - (d) any requirements under or prescribed by applicable common law;
 - (e) the Retail Settlement Code, the Distribution System Code, the Transmission System Code and any other codes issued by the OEB; and
 - (f) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Supplier.
140. **LDC** means the owner or operator of a Distribution System who is licensed by the OEB as an “electricity distributor”.
141. **LDC Connection Costs** means those Connection Costs associated with those modifications to LDC-owned facilities required to connect the Contract Facility to a Distribution System that only the LDC can perform, and that are payable by the Supplier to the LDC as required by the Distribution System Code.
142. **LDC Portal** means a secure web site maintained by an LDC, either directly or indirectly, that provides a point-of-access for specific authorized users to a facility’s or site’s specific data, such as meter data, or such similar processes and/or application that may be implemented in conjunction with the “Smart Meter Initiative” for the presentment of meter data; and includes any systems or applications that may replace, supplement or succeed any such existing systems or applications.
143. **Market Participant** has the meaning given to it by the IESO Market Rules.
144. **Market Settlement Charges** means all market settlement amounts and charges described in Chapter 9 of the IESO Market Rules.
145. **Material Adverse Effect** means any change (or changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations under the FIT Contract or FIT Program.
146. **Material IESO Market Rule Amendment** has the meaning given to it in Section 1.7(a) of the FIT Contract.
147. **Maximum Aboriginal Price Adder** has the meaning given to it in Section 9.1 of the FIT Rules.
148. **Maximum Community Price Adder** has the meaning given to it in Section 9.1 of the FIT Rules.
149. **Maximum Price Adder** has the meaning given to it in Section 9.4 of the FIT Rules.
150. **Metered Market Participant** has the meaning given to that term by the IESO Market Rules.

151. **Metering Plan** means a document that is provided by the Supplier to the OPA in the Prescribed Form that (i) verifies that the revenue-quality interval meter(s) conform with Laws and Regulations administered by Measurement Canada with respect to such meter(s), and (ii) provides all required information and equipment specifications needed to permit the OPA to remotely access, verify, estimate and edit for calculation purposes and/or total revenue meter readings in order to accurately determine the output of the Facility at the Connection Point net of any Station Service Loads and auxiliary loads and which is updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.
152. **microFIT Program** means the “microFIT Program” established by the OPA pursuant to the microFIT Rules and any prior or subsequent version of the microFIT Rules.
153. **microFIT Rules** means those rules applicable to proposed Renewable Generating Facilities that are less than or equal to 10 kW in capacity, as set out on the Website.
154. **Milestone Date for Commercial Operation** means the date set out in Exhibit A to the FIT Contract by which the Contract Facility is required to attain Commercial Operation.
155. **Minimum Required Domestic Content Level** has the meaning given to it in Section 6.4(a) of the FIT Rules.
156. **MVPortal** or **MV-Web** means the internet-based communications interface application for Market Participants supplied by the IESO that allows Market Participants to access physical and financial data for the IESO-Administered Markets, and includes any systems or applications that may replace, supplement or succeed MVPortal or MV-Web.
157. **MW** means megawatt and **MWh** means megawatt-hour.
158. **Network Upgrade Costs** means those costs related to Network Upgrades. For greater certainty, Network Upgrade Costs shall not include Connection Costs.
159. **Network Upgrades** means all additions, improvements and upgrades to the network facilities, as defined by the Distribution System Code and Transmission System Code, for the connection of the Facility to a Distribution System or Transmission System, as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment, Connection Impact Assessment, Distribution System Code and Transmission System Code for generator connections.
160. **New Agreement** means a new agreement substantially in the form of the FIT Contract and for the then balance of the Term (had the FIT Contract not been terminated early), which may be entered into with a Secured Lender who is at arm’s length with the Supplier or with a Person identified by such Secured Lender following an event of default under the Secured Lender’s Security Agreement.
161. **Not-For-Profit Organization** means a corporation without share capital governed by Part III of the *Corporations Act* (Ontario) or by Part II of the *Canada Corporations Act*.
162. **Notice to Proceed** means the notice issued by the OPA that it is prepared to waive its option set out in Section 2.4 of the FIT Contract to terminate such contract.
163. **NTP Deferral Notice** means the notice of the deferral of the issuance of Notice to Proceed by the OPA pursuant to Section 2.4(f) of the FIT Contract.
164. **NTP Delay** has the meaning given to it in Section 2.4(f)(iii) of the FIT Contract.

- 165. **NTP Daily Delay Amount** means the amount specified in Exhibit A of the FIT Contract, expressed in Dollars, representing the daily increase in the Pre-Construction Liability Limit for each day following the issuance of the NTP Deferral Notice until the OPA either issues Notice to Proceed or terminates this Agreement in accordance with Section 2.4(a) of the FIT Contract.
- 166. **NTP Pre-requisites** has the meaning given to it in Section 2.4(b) of the FIT Contract.
- 167. **NTP Response Date** means the number of days following the Contract Date that is used to determine the time by which the OPA must respond to a completed NTP Request for a Contract Facility that is not an Automatic NTP Facility, as specified in Exhibit A.
- 168. **NTP Request** means the submission by the Supplier of the Prescribed Form together with the NTP Pre-requisites, by which the Supplier requests that the OPA issue Notice to Proceed.
- 169. **OEB** means the Ontario Energy Board or its successor.
- 170. **Off-Peak Hour** means any hour that is not an On-Peak Hour.
- 171. **Off-Shore Wind Facility** means a Facility utilizing wind as its Renewable Fuel that has a Site that is a body of water and is at least one kilometre away from the nearest shoreline.
- 172. **Offer Notice** has the meaning given to it in Section 6.1(a) of the FIT Rules.
- 173. **On-Farm Biogas Facility** means a Facility that is regulated under Part IX.1 of Ontario Regulation 267/03 made under the *Nutrient Management Act, 2002*.
- 174. **On-Peak Hour** means all hours between and including 11:00:00 and 18:59:59 (at the Site), on Business Days, or such other contiguous eight hour block on Business Days that is designated by the OPA from time to time, and posted on the Website with at least thirty (30) days notice of any such change.
- 175. **On-Shore Wind Facility** means a Facility utilizing wind as a Renewable Fuel that is not an Off-Shore Wind Facility.
- 176. **Ontario Supplier** means a supplier of services, components or subcomponents that is (i) an individual who is Resident in Ontario, (ii) a corporation whose head office or registered office is in Ontario or is Controlled by a Person with a head office or registered office in Ontario or (iii) a partnership with at least one partner who is an Ontario Supplier within the meaning of this definition.
- 177. **OPA** means the Ontario Power Authority and its successors and assigns.
- 178. **OPA Event of Default** has the meaning given to it in Section 9.3 of the FIT Contract.
- 179. **OPA Statement** has the meaning given to it in Section 11.2(g) of the FIT Contract.
- 180. **Other Suppliers** means all of the other suppliers that have a FIT Contract or other bilateral arrangements with the OPA similar in nature to the FIT Contract.
- 181. **Outage** means the removal of equipment from service, unavailability for connection of equipment or temporary de-rating, restriction of use or reduction in performance of equipment for any reason, including to permit the performance of inspections, tests, repairs or maintenance on

equipment, which results in a partial or total interruption in the ability of the Contract Facility to make the Contract Capacity available and Deliver the Electricity from the Contract Facility.

- 182. **Party** means, (a) with respect to the FIT Contract, any one of the Supplier and the OPA, and the OPA and the Supplier are collectively referred to as the **Parties**; and (b) with respect to the FIT Rules, any one of the Applicant and the OPA, and the OPA and the Applicant are collectively referred to as the **Parties**.
- 183. **Payment Date** has the meaning given to it in Section 4.2(c) or 4.3(c) of the FIT Contract, as applicable.
- 184. **Peak Performance Factor** means 1.35 for all On-Peak Hours and 0.90 for all Off-Peak Hours.
- 185. **Percentage Escalated** means the percentage of the Contract Price that escalates on the basis of increases in CPI, as set out in the Price Schedule and on the FIT Contract Cover Page.
- 186. **Person** means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.
- 187. **Planned Generating Facility** means, with respect to an Application for an Incremental Project, any proposed or existing Renewable Generating Facility, other than such Incremental Project.
- 188. **Planned In-Service Transmission Developments** means, with respect to a Project at a point in time, Confirmed Transmission Developments that the OPA has determined have a planned in service date on or before the earliest date that would be the NTP Response Date for such Project, if a FIT Contract for such Project were executed at that time, or such earlier date as may be determined by the OPA.
- 189. **Pre-COD Facilities** means the Facility, or the Facility and other generation facilities that are the subject of a FIT Contract or other power purchase agreement with the OPA similar in nature to the FIT Contract, where all such facilities have not achieved commercial operation.
- 190. **Pre-Construction Development Costs** means those reasonable costs incurred for the development of the Contract Facility, excluding (i) the costs of Generating Equipment, (ii) the Application Fee, (iii) that portion of any costs charged by a Person who does not deal at Arm's Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm's Length with the Supplier, and (iv) profits, less any grants received pursuant to any government or OPA programs that the Supplier is not obligated to repay. For greater certainty, Pre-Construction Development Costs may include reasonable costs incurred for feasibility studies; obtaining Access Rights; obtaining a Renewable Energy Approval (if applicable); development of business and financial plans; negotiation of contracts relating to equipment procurement, construction and financing; reasonable non-refundable deposits on Generating Equipment; resource assessments; obtaining permits and approvals necessary to commence construction and reasonable overhead expenses allocated to the foregoing.
- 191. **Pre-Construction Liability Limit** means the amount specified in Exhibit A of the FIT Contract, expressed in Dollars, representing the maximum amount of Pre-Construction Development Costs for which the OPA will indemnify the Supplier in the event that the OPA terminates the FIT Contract pursuant to Section 2.4 of the FIT Contract.

192. **Pre-Dispatch Price** means the pre-dispatch price for Electricity, being the hourly price determined from the “Pre-Dispatch Schedule” for a specified number of hours in advance of clearing of the “Real-Time Market”, as determined by the IESO-Administered Markets.
193. **Prescribed Form** means, in relation to a form, the latest version of the corresponding form appearing on the Website, as may be amended or replaced by the OPA from time to time and without notice to the Supplier.
194. **Price Schedule** means the schedule of prices established by the OPA from time to time, in its sole discretion, that will be used to determine the Contract Price for a FIT Contract, differentiated by Renewable Fuel, Contract Capacity and other factors as determined by the OPA.
195. **Prior Contract** has the meaning given to it in Section 2.1(a)(viii) of the FIT Rules.
196. **Production Line Confirmation** means the form set out in Exhibit B to the FIT Rules confirming an Applicant’s desire to submit its Application to the FIT Production Line.
197. **Program Launch** means the first date that the OPA will accept Applications.
198. **Project** means a proposed Renewable Generating Facility described in an Application.
199. **Property** means the lands encompassed by the legal description of the Site and includes any lands adjacent to the lands set out in the legal description of the Site which are owned by an Affiliate of, or the same Person as, any Person who owns any of the lands encompassed by the legal description of the Site.
200. **PST** means the Ontario provincial sales tax exigible under the *Retail Sales Tax Act* (Ontario), or any successor thereto.
201. **PV** means a solar photovoltaic system.
202. **Qualifying Percentage** has the meaning given to it in Exhibit D to the FIT Contract.
203. **Receiving Party** means, with respect to Confidential Information, the Party receiving Confidential Information and may be the OPA or the Supplier, as applicable.
204. **Registered Charity** has the meaning given to it in the ITA.
205. **Registered Facility** has the meaning given to it in the IESO Market Rules.
206. **Regulatory Environmental Attributes** has the meaning given to it in Section 2.10(c) of the FIT Contract.
207. **Related Products** means all Capacity Products, Ancillary Services, transmission rights and any other products or services that may be provided by the Contract Facility from time to time, excluding Environmental Attributes produced by the Contract Facility and any payments under the ecoENERGY for Renewable Power Program, that may be traded or sold in the IESO-Administered Markets or other markets, or otherwise sold, and which shall be deemed to include products and services for which no market may exist, such as capacity reserves.
208. **Renewable Biomass** has the meaning given to “biomass” in Ontario Regulation 328/09, made under the *Electricity Act*, as published in *The Ontario Gazette* on September 26, 2009, but may also include supplementary non-renewable fuels other than coal used for start up, combustion,

stabilization and low combustion zone temperatures shall be no more than ten percent (10%) of the total fuel heat input in any calendar year for Electricity generation units with a Gross Nameplate Capacity of 500 kW or less and five percent (5%) of the total fuel heat input in any calendar year for Electricity generation units with a Gross Nameplate Capacity of greater than 500 kW.

- 209. ***Renewable Energy Approval*** means the approval issued by the Ontario Ministry of the Environment under Section 47.3 of the *Environmental Protection Act* (Ontario).
- 210. ***Renewable Fuel*** means wind, solar (PV), Renewable Biomass, Biogas, landfill gas or waterpower.
- 211. ***Renewable Generating Facility*** means an Electricity generating facility located in Ontario that is owned or leased for the Term, as well as operated by the Supplier, which generates Electricity exclusively from one or more Renewable Fuels and delivers that Electricity through a meter in accordance with all Laws and Regulations to the IESO-Controlled Grid, a Distribution System or a Host Facility.
- 212. ***Replacement Provision(s)*** has the meaning given to it in Section 1.8 of the FIT Contract.
- 213. ***Representatives*** means a Party's directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents and those of its Affiliates and the agents and advisors of such Persons, and in respect of the OPA, includes any Connecting Authority. Prior to any assignment by the OPA, this definition shall also include the Government of Ontario, the IESO and their respective directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents.
- 214. ***Resident*** means "ordinarily resident" as that expression has been judicially interpreted for the purposes of the ITA.
- 215. ***Retail Settlement Code*** means the code established and approved by the OEB, governing the determination of financial settlement costs for electricity retailers, consumers, distributors and generators.
- 216. ***Rooftop Facility*** means a Facility that is integrated into or forms part of the wall facing, roof, cover, or other architectural element that forms part of a permanent building or structure that has been designed to be used for the purpose of providing enclosure, shelter or protection to people or property, provided that it is not principally for the purpose of supporting a solar power installation or providing shelter from the sun. A building or structure will be considered to have a principal purpose of supporting a solar power installation or providing shelter from the sun where the Facility is located on a part of the building or structure that would not reasonably have been constructed in the absence of the solar installation.
- 217. ***Sales Taxes*** means GST and PST.
- 218. ***Scheduled Program Review*** has the meaning given to it in Section 10.1(a) of the FIT Rules.
- 219. ***Second Period Future Performance Security*** has the meaning given to it in Section 5.2(b) of the FIT Contract.
- 220. ***Secured Lender*** means the lender(s) under a Secured Lender's Security Agreement.

221. ***Secured Lender's Security Agreement*** means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier's Interest granted by the Supplier that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.
222. ***Senior Conference*** has the meaning given to it in Section 15.1 of the FIT Contract.
223. ***Settlement Period*** has the meaning given to it in Section 4.2(b) or Section 4.3(c) of the FIT Contract, as applicable.
224. ***Significant Program Amendment*** has the meaning given to it in Section 10.2(a) of the FIT Rules.
225. ***Site*** means the real property on, over, in or under which the Contract Facility is, or is to be, situated, as such property is identified in the Application and in the FIT Contract.
226. ***Site-Specific Losses*** means Electricity losses due to line resistance, the operation of transformers and switches, and other associated losses of Electricity generated by the Contract Facility which may occur as a result of the difference between the location of the meter and the Connection Point, as determined pursuant to loss factors applied in accordance with the Retail Settlement Code and other applicable regulatory instruments.
227. ***Special Purpose Entity*** means a Person other than an individual that directly or indirectly owns the Facility whose special or sole purpose is the ownership, direct or indirect, of Pre-COD Facilities. The special purpose of a Person shall not be considered to be the ownership, direct or indirect, of Pre-COD Facilities where the total Nameplate Capacity of,
- (a) all Pre-COD Facilities owned, directly or indirectly, by such Person multiplied by the percent equity interest that such Person holds in each such Pre-COD Facility,
- is less than 25% of the total Nameplate Capacity of,
- (b) all Electricity generating facilities owned, directly or indirectly, by such Person, multiplied by the percent equity interest that such Person holds in each such Electricity generating facility.
228. ***Special Terms and Conditions*** means the any terms and conditions that amend, supplement or delete any of the standard terms and conditions forming part of the FIT Contract, which are incorporated into a FIT Contract in Section 22 of the FIT Contract Cover Page.
229. ***Specialty Crop Areas*** has the meaning given to it in the 2005 Provincial Policy Statement issued by the Ontario Ministry of Municipal Affairs and Housing under Section 3 of the *Planning Act* (Ontario) as approved by the Lieutenant Governor in Council via Order in Council No. 140/2005.
230. ***Standard Definitions*** means these definitions which are applicable and appended to the FIT Rules and the FIT Contract.
231. ***Standard Offer Contract*** means a contract issued in connection with a program offered by the OPA in which Electricity generating facilities that qualify under specified program rules are offered a standard form of agreement with the OPA for the development and/or operation of a generating facility, or any other program that the OPA may so designate at its sole and absolute discretion, as each such program may be amended from time to time.

- 232. **Statement** has the meaning given to it in Section 4.2(b) or 4.3(c) of the FIT Contract, as applicable.
- 233. **Station Service Loads** means the Electricity used for excitation and on-site maintenance and operation of power generation facilities, including auxiliary facilities, but excludes energy consumed in association with activities which could be ceased or moved to other locations without impeding the normal and safe operation of the Facility.
- 234. **Supplier** means the Person identified as the supplier on the FIT Contract Cover Page, and, as applicable, its heirs, estate trustees, personal and legal representatives, successors and permitted assigns.
- 235. **Supplier Event of Default** has the meaning given to it in Section 9.1 of the FIT Contract.
- 236. **Supplier's Economics** means the net present value of the revenues from the Hourly Delivered Electricity and Related Products in respect of the Contract Facility that are reasonably forecast to be earned by a Supplier, net of any costs that such Supplier would reasonably be expected to incur in respect of the Contract Facility, and taking into account any Commercially Reasonable Efforts the Supplier is reasonably expected to take to mitigate the effect of any IESO Market Rule amendments or Discriminatory Actions, such as by mitigating operating expenses and normal capital expenditures of the business of the generation and delivery of the Hourly Delivered Electricity and Related Products in respect of the Contract Facility.
- 237. **Supplier's Interest** means the right, title and interest of the Supplier in or to the Contract Facility and the FIT Contract or any benefit or advantage of any of the foregoing.
- 238. **Supplier's Network Upgrade Costs** means those Network Upgrade Costs that are payable by the Supplier to the Transmitter as required by the Transmission System Code.
- 239. **System Impact Assessment** means a study conducted by the IESO pursuant to Section 6.1.5 of Chapter 4 of the IESO Market Rules, to assess the impact of a new connection of a Contract Facility or of the modification of an existing connection of a Contract Facility on the performance of the IESO-Controlled Grid and the reliability of the integrated power system.
- 240. **Taxes** means all ad valorem, property, occupation, severance, production, governmental charges, utility, gross production, gross receipts, GST, PST, value-added, sales, stamp, use, excise, levies, countervailing, anti-dumping and special import measures, imposts, duties including customs' duties, fees, withholdings, assessments, premiums, deductions, taxes based on profits, net income or net worth and any other taxes or charges whatsoever, whether directly or indirectly imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto.
- 241. **Term** has the meaning given to it in Section 8.1(b) of the FIT Contract.
- 242. **Termination Date** means the date on which the FIT Contract terminates as a result of an early termination of the FIT Contract in accordance with its provisions.
- 243. **Threshold Price Amendment** has the meaning given to it in Section 10.2(b) of the FIT Rules.
- 244. **Time Stamp** means the official record of the date and time that an Application is received as established pursuant to Sections 4.1(a) of the FIT Rules.

- 245. **Total Contract Price** or **TCP** means the Contract Price plus any Aboriginal Price Adder and Community Price Adder, as applicable, provided that the Total Contract Price shall not exceed the Contract Price plus the Maximum Price Adder.
- 246. **Transmission Availability and Project Status Tool** or **TAPS Tool** means the set of tools on the Website to provide prospective Applicants with information on the ability of the Transmission System to accommodate the connection of a proposed Project.
- 247. **Transmission Availability Test** means the process set out in Section 5.2 of the FIT Rules.
- 248. **Transmission System** means a system for conveying Electricity at voltages of more than 50 kilovolts and includes any structures, equipment or other things used for that purpose.
- 249. **Transmission System Code** means the “Transmission System Code” established and approved by the OEB, which, among other things, establishes the obligations of a Transmitter with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for the IESO-Controlled Grid.
- 250. **Transmitter** means a Person licensed as a “transmitter” by the OEB in connection with a Transmission System.
- 251. **Transmitter Connection Costs** means those Connection Costs associated with those modifications to Transmitter-owned facilities required to connect the Contract Facility to a Transmission System that only the Transmitter can perform, and that are payable by the Supplier to the Transmitter as required by the Transmission System Code.
- 252. **Upgrade** means the refurbishment or replacement of Generating Equipment at an Existing Generating Facility with equipment which provides better or improved performance, but which does not constitute an Expansion.
- 253. **Waterpower Rights** means, with respect to a Facility utilizing waterpower for its Renewable Fuel, (i) any “Waterpower Lease” or “Licence of Occupation” entered into with Her Majesty the Queen in right of Ontario, as represented by the Ministry of Natural Resources (ii) any “Federal Licence” entered into with Her Majesty the Queen in right of Canada, as represented by the Minister of the Environment for the purposes of the Parks Canada Agency or (iii) any substantially equivalent Governmental Approval.
- 254. **Website** means the OPA’s Renewable Energy Feed-in Tariff Program website at “<http://fit.powerauthority.on.ca>” or such other website as the OPA shall designate from time to time.

APPENDIX 'B' - AMENDMENT #1

[Note: Appendix 'B' filed confidentially]

APPENDIX 'C' - AMENDMENT #2

[Note: Appendix 'C' filed confidentially]

APPENDIX 'D' - AMENDMENT #3

[Note: Appendix 'D' filed confidentially]

APPENDIX 'E' - CHANGE OF CONTROL

[Note: Appendix 'E' filed confidentially]

APPENDIX 'F' - 2011 AUDITED FINANCIAL STATEMENTS

[Note: Appendix 'F' filed confidentially]

APPENDIX 'G' - 2012 UNAUDITED FINANCIAL STATEMENTS

[Note: Appendix 'G' filed confidentially]