# FEED-IN TARIFF CONTRACT
# (FIT CONTRACT)

Version 1.4 (December 8, 2010)

| | | |
|---|---|---|
| 1. | **CONTRACT IDENTIFICATION #** | FIT- |
| 2. | **FIT REFERENCE #** | FIT- |
| 3. | **CONTRACT DATE** | |
| 4. | **SUPPLIER** | |
| 5. | **SUPPLIER'S ADDRESS** | Fax:<br>Phone:<br>Contact Person: Email: |
| 6. | **SUPPLIER INFORMATION** | ☐ Not a Non-Resident of Canada<br>☐ Non-Resident of Canada |
| 7. | **GROSS NAMEPLATE CAPACITY** | _____ kW |
| 8. | **INCREMENTAL PROJECT** | ☐ Yes ☐ No |
| 9. | **CONTRACT CAPACITY** | _____ kW |
| 10. | **CONTRACT PRICE** | _____ ¢/kWh<br>☐ Peak Performance Factor applies<br>☐ Peak Performance Factor does not apply |
| 11. | **(a) ABORIGINAL PRICE ADDER (as of the Contract Date)** | _____ ¢/kWh<br>Aboriginal Participation Level (if applicable)<br>_____ % |
| | **(b) COMMUNITY PRICE ADDER (as of the Contract Date)** | _____ ¢/kWh<br>Community Participation Level (if applicable)<br>_____ % |
| 12. | **PERCENTAGE ESCALATED** | _____% |

**13. MINIMUM REQUIRED DOMESTIC CONTENT LEVEL** _____%

**14. BASE DATE**

**15. AUTOMATIC NTP FACILITY** ☐ Yes ☐ No

**16. RENEWABLE FUEL**

☐ Biogas

☐ Biogas (On-Farm)

☐ Landfill gas

☐ Renewable Biomass

☐ Solar (PV) (Rooftop)

☐ Solar (PV) (Ground Mount)

☐ Waterpower

☐ Wind (Off-Shore)

☐ Wind (On-Shore)

**17. LOCATION:**

Municipal Address: _____

_____

Legal Description: _____

_____

_____

**18. IMPACT ASSESSMENT PRIORITY START TIME** | **IMPACT ASSESSMENT PRIORITY STOP TIME**

**19. CONNECTION POINT**

☐ IESO-Controlled Grid

☐ Distribution System

(if so state LDC:_____)

☐ Host Facility (behind-the-meter)

Technical Description of Connection Point:

_____

| | | |
|---|---|---|
| **20.** | **HOST FACILITY (IF APPLICABLE)** | Name:<br>Municipal Address:<br><br>Legal Description:<br><br> |
| **21.** | **FIT RULES** | Applicable version: _____ |
| **22.** | **INCORPORATED SCHEDULES, APPENDICES AND EXHIBITS** | Schedule 1 – General Terms and Conditions, version ___<br>Exhibit A – Technology-Specific Provisions, type ___<br>Exhibit B – Metering and Settlement, type ___<br>Exhibit C – Form of Irrevocable Standby Letter of Credit<br>Exhibit D – Domestic Content, version ___<br>Exhibit E – Arbitration Provisions Applicable to Sections 1.7, 1.8, 2.10 & 12.2<br>Exhibit F – Form of Supplier Certificate re: Commercial Operation<br>Exhibit G – Form of Independent Engineer Certificate re: Commercial Operation<br>Exhibit H – Form of Secured Lender Consent and Acknowledgement<br>Schedule 2 – Special Terms and Conditions, version ___ or ☐ N/A<br>Appendix 1 – Standard Definitions, version ___ |

For valuable consideration, the OPA and the Supplier hereby mutually agree to be bound by the terms and conditions set out in this FIT Contract and the Schedules, Appendices and Exhibits attached hereto as noted in item 22 above (the "**Agreement**"). Each of the OPA and the Supplier confirms that it has received a copy of and has reviewed this Agreement, and that its representations and warranties set out herein are true and correct.

IN WITNESS OF WHICH, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

***[Note to Finalization: Insert name of Supplier, or where Supplier is not a single legal entity, insert the name of all Persons that individually and collectively comprise the Supplier.]***

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the corporation.

**ONTARIO POWER AUTHORITY**

By: _____

Name:

Title:

I have authority to bind the corporation.

**FEED-IN TARIFF CONTRACT (FIT CONTRACT)**

**SCHEDULE 1**

**GENERAL TERMS AND CONDITIONS**

**VERSION 1.4**

**TABLE OF CONTENTS**

**Page**


ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION ....1
1.1 Definitions....1
1.2 Headings and Table of Contents....1
1.3 Gender and Number ....1
1.4 Currency....1
1.5 Time Periods ....1
1.6 Statutory References....1
1.7 IESO Market Rules....1
1.8 Invalidity, Unenforceability or Inapplicability of Provisions ....3
1.9 Entire Agreement....3
1.10 Waiver, Amendment....3
1.11 Governing Law ....3
1.12 Preparation of Agreement ....3
1.13 Exhibits....4

ARTICLE 2 DEVELOPMENT AND OPERATION OF THE FACILITY ....4
2.1 Design and Construction of the Facility....4
2.2 Additional Development and Construction Covenants....5
2.3 Connection Assessments, Connection Costs and Network Upgrade Costs....7
2.4 Notice to Proceed....7
2.5 Milestone Date for Commercial Operation....9
2.6 Requirements for Commercial Operation....9
2.7 Operation Covenants .... 11
2.8 Insurance Covenants.... 11
2.9 Compliance with Laws and Regulations and Registration with the IESO .... 12
2.10 Environmental Attributes .... 12
2.11 Supplier's Reporting Requirements .... 13

ARTICLE 3 ELECTRICITY, RELATED PRODUCTS DELIVERY AND PAYMENT OBLIGATIONS .... 14
3.1 Contract Payment and Settlement.... 14
3.2 EcoENERGY Payments.... 14
3.3 Future Contract Related Products.... 14
3.4 Supplier's Responsibility for Taxes .... 15
3.5 OPA's Responsibility for Taxes .... 15
3.6 Non-residency .... 15

ARTICLE 4 STATEMENTS AND PAYMENTS.... 16
4.1 Meter and Other Data .... 16
4.2 Settlement for IESO Market Participants.... 16
4.3 Settlement for Non-IESO Market Participants .... 17
4.4 General Settlement Provisions .... 18
4.5 Interest .... 18
4.6 Adjustment to Statement .... 18
4.7 Statements and Payment Records .... 19

**TABLE OF CONTENTS**
(continued)

**Page**


ARTICLE 5 SECURITY REQUIREMENTS ..... 19
5.1 Pre-COD Completion and Performance Security ..... 19
5.2 Post-COD Completion and Performance Security ..... 19
5.3 Composition of Completion and Performance Security ..... 20
5.4 Adequacy of Security; Replacement Security ..... 20
5.5 Interest on Completion and Performance Security ..... 21

ARTICLE 6 REPRESENTATIONS ..... 21
6.1 Representations of the Supplier ..... 21
6.2 Representations of the OPA ..... 23

ARTICLE 7 CONFIDENTIALITY AND FIPPA ..... 24
7.1 Confidential Information ..... 24
7.2 Notice Preceding Compelled Disclosure ..... 24
7.3 Return of Information ..... 25
7.4 Injunctive and Other Relief ..... 25
7.5 FIPPA Records and Compliance ..... 25

ARTICLE 8 TERM ..... 25
8.1 Term ..... 25

ARTICLE 9 TERMINATION AND DEFAULT ..... 26
9.1 Events of Default by the Supplier ..... 26
9.2 Remedies of the OPA ..... 28
9.3 Events of Default by the OPA ..... 29
9.4 Termination by the Supplier ..... 30
9.5 Remedies for Termination Non-Exclusive ..... 31

ARTICLE 10 FORCE MAJEURE ..... 31
10.1 Effect of Invoking Force Majeure ..... 31
10.2 Exclusions ..... 32
10.3 Definition of Force Majeure ..... 33

ARTICLE 11 LENDER'S RIGHTS ..... 34
11.1 Lender Security ..... 34
11.2 Rights and Obligations of Secured Lenders ..... 35
11.3 Co-operation ..... 38

ARTICLE 12 DISCRIMINATORY ACTION ..... 38
12.1 Discriminatory Action ..... 38
12.2 Consequences of Discriminatory Action ..... 39
12.3 Right of the OPA to Remedy a Discriminatory Action ..... 40

**TABLE OF CONTENTS**
(continued)

**Page**


ARTICLE 13 LIABILITY AND INDEMNIFICATION ..... 40
13.1 Exclusion of Consequential Damages ..... 40
13.2 Liquidated Damages ..... 40
13.3 OPA Indemnification ..... 40
13.4 Defence of Claims ..... 41
13.5 Joint and Several Liability ..... 41

ARTICLE 14 CONTRACT OPERATION AND ADMINISTRATION ..... 42
14.1 Company Representative ..... 42
14.2 Record Retention; Audit Rights ..... 42
14.3 Reports to the OPA ..... 42
14.4 Inspection of Facility ..... 42
14.5 Inspection Not Waiver ..... 43
14.6 Notices ..... 43

ARTICLE 15 MISCELLANEOUS ..... 44
15.1 Informal Dispute Resolution ..... 44
15.2 Arbitration ..... 44
15.3 Business Relationship ..... 44
15.4 Binding Agreement ..... 45
15.5 Assignment ..... 45
15.6 Change of Control ..... 46
15.7 Provisions for Aboriginal Participation Projects ..... 47
15.8 Provisions for Community Participation Projects ..... 49
15.9 Combined Aboriginal Participation Projects and Community Participation Projects ..... 50
15.10 Survival ..... 51
15.11 Counterparts ..... 51
15.12 Additional Rights of Set-Off ..... 51
15.13 Rights and Remedies Not Limited to Contract ..... 52
15.14 Further Assurances ..... 52

# 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 remedying 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 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 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 remedying 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 ventures, 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 1: BIOGAS FACILITIES

### 1.1 Application of Exhibit

This version of Exhibit A shall apply to a Biogas 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 $0.067 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 A – TECHNOLOGY-SPECIFIC PROVISIONS**
**TYPE 2: BIOGAS (ON-FARM) FACILITIES**

## 1.1 Application of Exhibit

This version of Exhibit A shall apply to an On-Farm Biogas 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 $0.067 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.

## 1.3 Technology-Specific Provisions

Where the FIT Contract Cover Page identifies the Facility as an "On-Farm" Biogas Facility, the Supplier covenants and agrees that at any time following the Commercial Operation Date where the Facility is generating Hourly Delivered Electricity, it shall be an On-Farm Biogas Facility.

## EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
## TYPE 3: LANDFILL GAS FACILITIES

### 1.1 Application of Exhibit

This version of Exhibit A shall apply to a landfill gas 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 $0.067 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 A – TECHNOLOGY-SPECIFIC PROVISIONS**
**TYPE 4: RENEWABLE BIOMASS FACILITIES**

## 1.1 Application of Exhibit

This version of Exhibit A shall apply to a Renewable Biomass 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 $0.067 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 A – TECHNOLOGY-SPECIFIC PROVISIONS**
**TYPE 5: SOLAR (PV) ROOFTOP FACILITIES**

## 1.1 Application of Exhibit

This version of Exhibit A shall apply to a solar (PV) Rooftop 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 $250,000.00 per Contract Facility plus $10.00 per kW of Contract Capacity.

(e) The amount of the Initial Security is $50.00 per kW of Contract Capacity.

(f) The amount of the Incremental NTP Security is $25.00 per kW of Contract Capacity.

## 1.3 Technology-Specific Provisions

(a) Notwithstanding Section 9.1(j), in the case of a Contract Facility that utilizes solar (PV) as its Renewable Fuel it shall be a Supplier Event of Default if the Commercial Operation Date has not occurred on or before the date which is six months after the Milestone Date for Commercial Operation.

(b) Where the FIT Contract Cover Page identifies the Facility as a “Rooftop” Facility, the Supplier covenants and agrees that at any time following the Commercial Operation Date where the Facility is generating Hourly Delivered Electricity, it shall be a Rooftop Facility.

**EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS**
**TYPE 6: SOLAR (PV) GROUND MOUNT FACILITIES**

## 1.1 Application of Exhibit

This version of Exhibit A shall apply to a solar (PV) 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 $250,000.00 per Contract Facility plus $10.00 per kW of Contract Capacity.

(e) The amount of the Initial Security is $50.00 per kW of Contract Capacity.

(f) The amount of the Incremental NTP Security is $25.00 per kW of Contract Capacity.

## 1.3 Technology-Specific Provisions

Notwithstanding Section 9.1(j), in the case of a Contract Facility that utilizes solar (PV) as its Renewable Fuel it shall be a Supplier Event of Default if the Commercial Operation Date has not occurred on or before the date which is six months after the Milestone Date for Commercial Operation.

**EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS**
**TYPE 7: WATERPOWER FACILITIES**

## 1.1 Application of Exhibit

This version of Exhibit A shall apply to a waterpower Facility.

## 1.2 Technology-Specific Values

(a) The Milestone Date for Commercial Operation is the date that is five years following the Contract Date.

(b) The NTP Response Date is the date that is 24 months following the Contract Date.

(c) The NTP Daily Delay Amount is $0.067 per kW of Contract Capacity.

(d) The Pre-Construction Liability Limit is $500,000.00 per Contract Facility plus $20.00 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.

## 1.3 Technology-Specific Provisions

(a) The Supplier shall ensure that any Waterpower Rights that are required for the operation of the Facility remain in effect throughout the Term. In the event that any Waterpower Rights that are required for the operation of the Facility expire while a renewal or replacement of such Waterpower Rights is pending finalization or execution such that the renewal or replacement is intended to be effective as of the expiry of the Waterpower Rights, then such Waterpower Rights shall not be deemed to have expired or been terminated.

(b) Where the Contract Capacity is equal to or greater than 10 MW**,** Supplier agrees to take all actions and provide all such reasonable assurances as may be required or requested by the OPA, acting reasonably, subsequent to the execution of this Agreement in order for the OPA to receive and perfect a security interest in and over the Supplier's Interest and any Waterpower Rights to secure the Supplier's obligations hereunder provided that:

(i) any and all such security shall be unconditionally and irrevocably deferred, postponed and subordinated in all respects to any interest of a Secured Lender pursuant to a Secured Lender's Security Agreement and the OPA shall enter into a subordination and postponement agreement that is consistent with the terms of this Agreement on such terms and conditions as the Secured Lender may require, acting reasonably, provided that the rights of the OPA under this Agreement (other than any security interest it obtains pursuant to this Section 1.3(b)(i) of this Exhibit A) are not adversely affected thereby and the obligations of the Supplier to the OPA are not altered thereby; and

(ii) the OPA shall not challenge, object to, compete with or impede in any manner any act taken or proceeding commenced by any Secured Lender in connection with the enforcement by a Secured Lender of its security interest under its Secured Lender Security Agreement.

## EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
## TYPE 8: WIND (OFF-SHORE) FACILITIES

### 1.1 Application of Exhibit

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

### 1.2 Technology-Specific Values

(a) The Milestone Date for Commercial Operation is the date that is four 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 $0.067 per kW of Contract Capacity.

(d) The Pre-Construction Liability Limit is $500,000.00 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.

### 1.3 Technology-Specific Provisions

Where the FIT Contract Cover Page identifies the Facility as an “Off-Shore” Facility, the Supplier covenants and agrees that at any time following the Commercial Operation Date where the Facility is generating Hourly Delivered Electricity, it shall be an Off-Shore Wind Facility.

**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:

| | |
|---|---|
| $\mathbf{CP_y} = (1-\mathrm{PE})\times\left(\mathrm{TCP_{BD}}\times\frac{\mathrm{CPI_x}}{\mathrm{CPI_{BD}}}\right)+\mathrm{PE}\times\left(\mathrm{TCP_{BD}}\times\frac{\mathrm{CPI_y}}{\mathrm{CPI_{BD}}}\right)$ | |
| where: | |
| $\mathrm{CP_y}$ | is the Indexed Contract Price applicable in calendar year "y" during the Term; |
| $\mathrm{CPI_x}$ | 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; |
| $\mathrm{TCP_{BD}}$ | 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 B – METERING AND SETTLEMENT**
**TYPE 2: FACILITIES REGISTERED IN THE IESO-ADMINISTERED MARKETS (BEHIND-THE-METER)**

## 1.1 Application of Exhibit

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

(a) is a part of (but not the whole of) a Registered Facility; and

(b) is a Behind-the-Meter Facility.

## 1.2 Metering

(a) Where the Facility has a Gross Nameplate Capacity equal to or greater than 20 MW, 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. The Supplier shall also take all such actions and do all such things necessary to provide the OPA with equivalent access to the Host Facility's meter data if applicable. 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).

(b) Where the Facility has a Gross Nameplate Capacity equal to or greater than 1 MW but less than 20 MW, the Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as set out in Chapter 6, Section 4.5 of the IESO Market Rules.

(c) Where the Facility has a Gross Nameplate Capacity less than 1 MW, the Supplier shall provide, at its expense, separate revenue-quality meter(s) and ancillary metering and monitoring equipment of a standard normally required for connection of a generation facility to a Distribution System, and acceptable to the OPA, acting reasonably

## 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:

| | |
|---|---|
| $$\mathbf{CP_y} = (1-\mathrm{PE})\times\left(\mathrm{TCP_{BD}}\times\frac{\mathrm{CPI_x}}{\mathrm{CPI_{BD}}}\right)+\mathrm{PE}\times\left(\mathrm{TCP_{BD}}\times\frac{\mathrm{CPI_y}}{\mathrm{CPI_{BD}}}\right)$$ | |
| 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 B – METERING AND SETTLEMENT**
**TYPE 3A: FACILITIES GREATER THAN 5 MW NOT REGISTERED IN THE IESO-ADMINISTERED MARKETS**

## 1.1 Application of Exhibit

This version of Exhibit B shall apply to a Facility with a Gross Nameplate Capacity greater than 5 MW that:

(a) is connected to a Distribution System, is not a Behind-the-Meter Facility, and is not a Registered Facility; or

(b) is a Behind-the-Meter Facility, is not a Registered Facility, and is connected to a Host Facility subject to Gross Load Billing.

## 1.2 Metering Requirements

The Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the applicable LDC. The Supplier shall provide the OPA with access to the applicable LDC Portal or the IESO's MVPortal, or equivalent with respect to the Facility. In the event that the LDC Portal, the IESO's MVPortal or equivalent is not available, the Supplier must supply validated metering data in one of the following formats: .XML or .CSV at an interval of no more than every 30 days.

## 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:

| | |
|---|---|
| $$\mathbf{CP_y} = (1-\mathrm{PE})\times\left(\mathrm{TCP_{BD}}\times\frac{\mathrm{CPI_x}}{\mathrm{CPI_{BD}}}\right)+\mathrm{PE}\times\left(\mathrm{TCP_{BD}}\times\frac{\mathrm{CPI_y}}{\mathrm{CPI_{BD}}}\right)$$ | |
| 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) where HOEP in such hour is greater than or equal to $0.00/MWh, 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; or

(ii) where HOEP in such hour is less than $0.00/MWh, the Hourly Delivered Electricity multiplied by either:

(A) where the FIT Contract Cover Page indicates that the Peak Performance Factor does not apply, the Indexed Contract Price applicable during the corresponding calendar year minus the absolute value of HOEP for that hour; or

(B) where the FIT Contract Cover Page indicates that the Peak Performance Factor applies, the price that results from multiplying (x) the Indexed Contract Price applicable during the corresponding calendar year by (y) the Peak Performance Factor applicable during the corresponding hour, and then subtracting the absolute value of HOEP for that hour,

provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one hour, then for the purposes of the calculations set out in Section 1.4(a)(i) and (ii) of Exhibit B, the Contract Capacity times one hour shall be used instead of the Hourly Delivered Electricity, and the Contract Payment for such hour shall include an additional amount equal to (A) the HOEP for such hour multiplied by (B) the Hourly Delivered Electricity minus the Contract Capacity times one hour.

(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 applicable LDC to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the applicable LDC.

**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 B – METERING AND SETTLEMENT**
**TYPE 3B: FACILITIES LESS THAN OR EQUAL TO 5 MW NOT REGISTERED IN THE IESO-ADMINISTERED MARKETS**

## 1.1 Application of Exhibit

This version of Exhibit B shall apply to a Facility with a Gross Nameplate Capacity less than or equal to 5 MW that:

(a) is connected to a Distribution System, is not a Behind-the-Meter Facility, and is not a Registered Facility; or

(b) is a Behind-the-Meter Facility, is not a Registered Facility, and is connected to a Host Facility subject to Gross Load Billing.

## 1.2 Metering Requirements

The Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the applicable LDC. The Supplier shall provide the OPA with access to the applicable LDC Portal or the IESO's MVPortal, or equivalent with respect to the Facility. In the event that the LDC Portal, the IESO's MVPortal or equivalent is not available, the Supplier must supply validated metering data in one of the following formats: .XML or .CSV at an interval of no more than every 30 days.

## 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:

| | |
|---|---|
| $$\mathbf{CP_y} = (1-\mathrm{PE})\times\left(\mathrm{TCP_{BD}}\times\frac{\mathrm{CPI_x}}{\mathrm{CPI_{BD}}}\right)+\mathrm{PE}\times\left(\mathrm{TCP_{BD}}\times\frac{\mathrm{CPI_y}}{\mathrm{CPI_{BD}}}\right)$$ | |
| 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 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; provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one hour, then for the purposes of the foregoing calculation, the Contract Capacity times one hour shall be used instead of the Hourly Delivered Electricity, and the Contract Payment for such hour shall include an additional amount equal to (i) the HOEP for such hour multiplied by (ii) the Hourly Delivered Electricity minus the Contract Capacity times one hour.

(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 applicable LDC to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the applicable LDC.

**EXHIBIT C**
**FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT**

| | |
|---|---|
| DATE OF ISSUE: | [●] |
| APPLICANT: | [●] |
| BENEFICIARY: | Ontario Power Authority and its permitted assigns (the "**Beneficiary**") |
| AMOUNT: | [●] |
| EXPIRY DATE: | [●] |
| EXPIRY PLACE: | Counters of the issuing financial institution in Toronto, Ontario |
| CREDIT RATING: | **[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the *Bank Act*]** |
| TYPE: | Irrevocable and Unconditional Standby Letter of Credit Number: [●] (the "**Credit**") |

The Credit is issued in connection with the Feed-in Tariff Contract (the "**Contract**") dated **[Insert Date of Contract]** between the Beneficiary and the "Supplier", as such term is defined under the Contract.

We hereby authorize the Beneficiary to draw on **[Issuing Bank Name/Address]**, in respect of the Credit, for the account of the Applicant, up to an aggregate amount of $[●] ([●] Canadian Dollars) available by the Beneficiary's draft at sight accompanied by the Beneficiary's signed certificate stating that:

> "The Supplier is in breach of, or default under, the Contract, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."

Drafts drawn hereunder must bear the clause "Drawn under irrevocable and unconditional Standby Letter of Credit No. [●] issued by [**Issuing Bank Name**] dated [**Issue Date**]."

Partial drawings are permitted.

This Letter of Credit will automatically extend for additional, successive terms of one year each (each an "**Additional Term**"), unless the undersigned provides the Beneficiary with written notice, at least 60 days prior to the expiration date of the then current term, that it does not wish to extend this Letter of Credit for an Additional Term.

We engage with you that all drafts drawn under and in compliance with the terms of the Credit will be duly honoured, if presented at the counters of [**Issuing Bank Name/Address**] at or before [**Expiry Time**] (EST) on [**Expiry Date**], as extended.

The Credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce publication No. 590 and, as to matters not addressed by the ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

This Credit is transferable at the written request of the Beneficiary, without the consent of the Applicant, but subject to consent of the issuing financial institution, acting reasonably. All fees incurred by the issuing financial institution in relation to such transfer shall be at the Applicant's expense, but failure of the Applicant to pay such fees shall not restrict the ability of the Beneficiary to transfer the Credit.

In the event of a transfer of this Credit as provided for above, the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by [**Issuing Bank Name**] of the Beneficiary's dated and signed letter addressed to [**Issuing Bank Name**] and completed as follows:

"We, the undersigned Beneficiary to [**Issuing Bank Name**] Letter of Credit No. [●], hereby waive all our rights under the Letter of Credit and request that the current name and address of the Beneficiary thereunder be amended to read [**insert name and address of new Beneficiary**]. We have enclosed the original Letter of Credit and all amendments (if any) thereto. Please forward the original Letter of Credit and all amendments (if any), including the current amendment to the [**new Beneficiary**], care of the Applicant."

[**Issuing Bank Name**]

**By:** _____

**By:** _____

**EXHIBIT D**
**DOMESTIC CONTENT**

## 1.5 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. In the indicated cases there are mutually exclusive options for a Designated Activity in which case only one of Qualifying Percentages shall be awarded, as appropriate.

(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.

## 1.6 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. Mutually exclusive option for pitch systems: | |
| (a) Geared 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% |
| **OR** | |
| (b) Gearless Pitch System, where the mechanical components of the pitch system have been machined in Ontario, and where the pitch system has been assembled and tested in Ontario. | 3% |
| **Note:** The maximum qualifying percentage a Supplier can claim from the combined Designated Activities listed in items 2, 4a and 4b is 5%**.** | |
| 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. (A) 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% |
| **Note**: The maximum qualifying percentage a Supplier can claim from the combined Designated Activities listed in items 2, 4a and 4b is 5%. | |
| (B) Hub assembly where all components required to be mounted to the hub are assembled in Ontario, and, any testing of the assembled hub occurs in Ontario. | 3% |
| **Note**: The maximum qualifying percentage a Supplier can claim from the combined Designated Activities listed in items 2, 4a and 4b is 5%. | |

| | | |
|---|---|---|
| 5. | Mutually exclusive option for drives: | |
| | (a) For geared drive turbines that use a gearbox: 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% |
| | **OR** | |
| | (b) For direct drive turbines that do not use a gearbox, no Qualifying Percentage shall be awarded for gearboxes. | 0% |
| 6. | Mutually exclusive option for generator and brake: | |
| | (a) For geared drive turbines that use a gearbox: 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% |
| | **OR** | |
| | (b) For direct drive turbines that do not use a gearbox: 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. | 14% |
| **Note:** Maximum qualifying percentage a Supplier can claim from the combined Designated Activities listed in items 5 and 6 is 14%. | | |
| 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. | For towers:<br><br>All concrete tower sections, if any, are physically formed in Ontario; and<br><br>All steel tower sections, if any, have been physically formed and shaped from steel plates, in Ontario.<br><br>The steel plates used to manufacture the towers, if any, must not have been machined outside Ontario, i.e. they must not have been rolled, bent or welded outside Ontario.<br><br>The foundation of a tower is not considered part of the tower for the purposes of this Designated Activity 10. | 4% |
| 11. | For towers:<br><br>All steel that was formed and shaped into steel tower sections, if any, was processed into steel plates in a steel mill in Ontario; and<br><br>All steel for rebar and tension wires or equivalents for concrete tower sections, if any, must have been rolled or extruded in a steel mill in Ontario, and the Portland cement used in the concrete tower sections, if any, must have been manufactured in Ontario.<br><br>The foundation of a tower is not considered part of the tower for the purposes of this Designated Activity 11. | 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%** |

**Table 2: Domestic Content Grid – Solar (PV) Power Projects Greater than 10 kW Utilizing Crystalline Silicon PV Technology**

| Designated Activity | | Qualifying Percentage |
|---|---|---|
| 1. | Silicon that has been used as input to solar photovoltaic cells manufactured in an Ontario refinery. | 11% |
| 2. | Silicon ingots and wafer, where silicon ingots have been cast in Ontario, and wafers have been cut from the casting by a saw in Ontario. | 13% |
| 3. | The crystalline silicon solar photovoltaic cells, where their active photovoltaic layer(s) have been formed in Ontario. | 11% |
| 4. | Solar photovoltaic modules (i.e. panels), where the electrical connections between the solar cells have been made in Ontario, and the solar photovoltaic module materials have been encapsulated in Ontario | 15% |
| 5. | Inverter, where the assembly, final wiring and testing has been done in Ontario. | 8% |
| 6. | Mounting systems, where the structural components of the fixed or moving mounting systems have been entirely machined or formed or cast in Ontario. The metal for the structural components may not have been pre-machined outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge. The machining and assembly of the mounting system must have entirely taken place in Ontario (i.e. bending, welding, piercing and bolting). | 11% |
| 7. | Wiring and electrical hardware that is not part of other Designated Activities, that has been sourced from an Ontario Supplier. | 9% |
| 8. | 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. | 18% |
| 9. | 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. | 4% |
| **Total** | | **100%** |

**Table 3: Domestic Content Grid – Solar (PV) Power Projects Greater than 10 kW Utilizing Thin-Film PV Technology**

| Designated Activity | | Qualifying Percentage |
|---|---|---|
| 10. | Thin film photovoltaic cells where the active photovoltaic layer(s) have been fabricated (by methods including but not limited to vapour deposition, evaporation or sputtering) in Ontario. Where the manufacture of the module is inseparable from the manufacture of the cells, there shall be no separate requirement for the module. | 35% |
| 11. | Solar photovoltaic module (i.e. panel), where the electrical connections between the solar cells have been made in Ontario, and solar photovoltaic module materials have been encapsulated in Ontario. | 10% |
| 12. | Inverter, where the assembly, final wiring and testing have been done in Ontario. | 8% |
| 13. | Mounting systems where the structural components of the fixed or moving mounting systems have been entirely machined or formed or cast in Ontario. The metal for the structural components may not be pre-machined outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge. The machining and assembly of the mounting system must entirely take place in Ontario (i.e. bending, welding, piercing and bolting). | 10% |
| 14. | Wiring and electrical hardware that is not part of other Designated Activities, that has been sourced from an Ontario Supplier. | 9% |
| 15. | 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. | 24% |
| 16. | 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. | 4% |
| **Total** | | **100%** |

**Table 4: Domestic Content Grid – Solar (PV) Power Projects Less than or Equal to 10 kW**

| Designated Activity | | Qualifying Percentage |
|---|---|---|
| 17. | Silicon that has been used as input to solar photovoltaic cells manufactured in an Ontario refinery. | 10% |
| 18. | Silicon ingots and wafer, where silicon ingots have been cast in Ontario, and wafers have been cut from the casting by a saw in Ontario. | 12% |
| 19. | The crystalline silicon solar photovoltaic cells, where their active photovoltaic layer(s) have been formed in Ontario. | 10% |
| 20. | Solar photovoltaic modules (i.e. panels), where the electrical connections between the solar cells have been made in Ontario, and the solar photovoltaic module materials have been encapsulated in Ontario. | 13% |
| 21. | Inverter, where the assembly, final wiring and testing has been done in Ontario. | 9% |
| 22. | Mounting systems, where the structural components of the fixed or moving mounting systems, have been entirely machined or formed or cast in Ontario. The metal for the structural components may not have been pre-machined outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge. The machining and assembly of the mounting system must entirely take place in Ontario (i.e. bending, welding, piercing, and bolting). | 9% |
| 23. | Wiring and electrical hardware that is not part of other Designated Activities (i.e., items 1-6 and 8 of this table), sourced from an Ontario Supplier. | 10% |
| 24. | All on- and off- site labour and services. For greater certainty, this Designated Activity shall apply in respect of all Contract Facilities. | 27% |
| **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") addressed to it from the Supplier containing 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 Engineering Company Legal Name] 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].

b) [Supplier Short Name] 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 this [Day] day of [Month, Year] .

**[Legal Name of Supplier]**

Per: _____

Name: [Name]
Title: [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 an 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;

**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 of | [Month, Year] | . |

| | | | | |
|---|---|---|---|---|
| | | | **[Legal Name of Independent Engineer]** | |
| | | | | |
| | | | | |
| | | | Per: | |
| | | | | Name: [Name, P.Eng.] |
| | | | | Title: [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.]***