



Independent Electricity  
System Operator

## FEED-IN TARIFF CONTRACT (FIT CONTRACT)

Version 4.0.2, November 25, 2015

### SUPPLIER INFORMATION & ADDRESS

1. **SUPPLIER'S ADDRESS** Fax:  
Phone:  
E-mail:
2. **COMPANY REPRESENTATIVE**
3. **SUPPLIER INFORMATION**  Not a Non-Resident of Canada  
 Non-Resident of Canada

### MATERIAL INFORMATION

4. **SUPPLIER**
5. **CONTRACT IDENTIFICATION #** F-
6. **FIT REFERENCE #** FIT-
7. **CONTRACT DATE**
8. **CONTRACT CAPACITY** \_\_\_\_\_ kW
9. **CONTRACT PRICE** \_\_\_\_\_ ¢/kWh  Peak Performance Factor applies  
 Peak Performance Factor does not apply

10. (a) **ABORIGINAL PRICE ADDER - PARTICIPATION LEVEL**  Above 50%  
 15% - 50%
- (b) **COMMUNITY PRICE ADDER - PARTICIPATION LEVEL**  Above 50%  
 15% - 50%
- (c) **MUNICIPAL PRICE ADDER – PARTICIPATION LEVEL**  Above 50%  
 15% - 50%
- (d) **PUBLIC SECTOR ENTITY PRICE ADDER – PARTICIPATION LEVEL**  Above 50%  
 15% - 50%
11. **PERCENTAGE ESCALATED** \_\_\_\_\_%
12. **PRICE REDUCTION PRIORITY POINTS AWARDED**  Tier One  
 Tier Two  
 Tier Three
13. (a) **MUNICIPAL SITE HOST**  (check if yes)
- (b) **PUBLIC SECTOR ENTITY SITE HOST**  (check if yes)
- (c) **ABORIGINAL COMMUNITY SITE HOST**  (check if yes)
14. **CONTRACT CAPACITY SET-ASIDE PROJECT**  (check if yes)
15. **ROOFTOP SOLAR ON AN UNCONSTRUCTED BUILDING**  (check if yes)
16. **MCOD**
17. **FIRST NATION LANDS EXTENDED MCO**  (check if yes)

**18. RENEWABLE FUEL**

- Biogas
- Biogas (On-Farm)
- Landfill gas
- Renewable Biomass
- Solar (PV) (Rooftop)
- Solar (PV) (Non-Rooftop)
- Waterpower
- On-Shore Wind

**19. PROJECT LOCATION**

Municipal Address:

Legal Description:

Grid Cells  
(for Projects on Crown lands):

If the Renewable Fuel of the Facility is Solar (PV) (Non-Rooftop), check all boxes that apply (in whole or in part):

- Site is located on Property that is not Rural-Residential Land
- Site is located on Property that is Rural-Residential Land
  - If so (in whole or in part), check all boxes that apply:
    - Site is located on a Property that Abuts a Residential Cluster
    - Site is located on a Property that Abuts a Residential Property
- Supplier has provided a Land Use Restriction Exemption Resolution

**20. CONNECTION POINT**

- LDC: \_\_\_\_\_
- Project connecting on:
  - single phase
  - three phase
- The name of the Distribution System Feeder where the Connection Point is proposed: \_\_\_\_\_
- The name of the upstream transformer station (or if applicable the high voltage distribution station): \_\_\_\_\_

**21. FIT RULES**

Applicable version: \_\_\_\_\_

**22. INCORPORATED SCHEDULES, APPENDICES AND EXHIBITS**

- Schedule 1 – General Terms and Conditions, version \_\_\_\_
- Exhibit A – Technology-Specific Provisions, type \_\_\_\_
- Exhibit B – Metering and Settlement, type \_\_\_\_
- Exhibit C – Arbitration Provisions Applicable to Sections 1.7, 1.8, 2.10 and 12.2
- Exhibit D – Visual Screening Requirements
- Exhibit E – Optional Termination: Grossed-up Taxes Calculation
- Appendix 1 – Standard Definitions, version 4.0.2

For valuable consideration, the Sponsor 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 Sponsor 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.

**INDEPENDENT ELECTRICITY SYSTEM  
OPERATOR**

By:

\_\_\_\_\_  
Name:

Title:

I have authority to bind the corporation.

***NOTE: If the Supplier is a Corporation, use the following signature block and delete the non-applicable signature blocks.***

**[Insert name of SUPPLIER]**

By:

\_\_\_\_\_  
Name:

Title:

I have authority to bind the corporation.

***NOTE: If the Supplier is a Limited Partnership, use the following signature block and delete the non-applicable signature blocks.***

**[Insert name of SUPPLIER], by its general  
partner [GENERAL PARTNER]**

By:

\_\_\_\_\_  
Name:

Title:

I have authority to bind the corporation.

***NOTE: If the Supplier is a Partnership, use the following signature block and delete the non-applicable signature blocks. Include sufficient and applicable signature lines for all partners required to sign the contract on behalf of the Partnership.***

**[Insert name of SUPPLIER], by its partner  
[PARTNER]**

By:

\_\_\_\_\_  
Name:

Title:

***NOTE: If the Supplier is a Natural Person, use the following signature block and delete the non-applicable signature blocks.***

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
**[Insert name of Supplier]**

***NOTE: If the Supplier is a Municipality, University or College, or School with independent legal personality, use the following signature block and delete the non-applicable signature blocks.***

**[Insert name of SUPPLIER]**

**By:**

\_\_\_\_\_  
**Name:**

**Title:**

**I/We have authority to bind the  
Municipality/University/College/School**

***NOTE: Delete non-applicable terms.***

**NOTE: If the Supplier is a School without independent legal personality, the applicable school board must sign on behalf of the School and use the following signature block, with non-applicable signature blocks deleted.**

**[Insert name of SUPPLIER]**

**By:**

---

**Name:**

**Title:**

**School/School Board**

**NOTE: Delete non-applicable terms.**

**NOTE: If the Supplier is a “band” within the meaning of the Indian Act (Canada), use the following signature block and delete the non-applicable signature blocks.**

**[Insert name of SUPPLIER], as authorized by  
band council resolution**

**By:**

---

**Name:**

**Title:**

**By:**

---

**Name:**

**Title:**



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

**SCHEDULE 1**

**GENERAL TERMS AND CONDITIONS**

**VERSION 4.0.2**

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Exhibit D	Visual Screening Requirements
Exhibit E	Optional Termination: Grossed-up Taxes Calculation

# 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 1 - 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 System Operator 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 System Operator 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 System Operator 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 Sponsor all such information as may be required or otherwise requested by the Sponsor to assess the impact of such Material IESO Market Rule Amendment on the Supplier's Economics;
- (c) the IESO 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 Sponsor'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 Sponsor 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 Sponsor's discretion, such Other Suppliers who are so affected, that are required by the Sponsor 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 Sponsor 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 C. 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 Sponsor and the Supplier and, at the Sponsor's discretion, those Other Suppliers that are required by the Sponsor 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 C. 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 Sponsor 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 in the case of a waiver issued by the Sponsor, such waiver shall not be binding on the Sponsor unless it has been executed by an individual identified in such waiver as "Contract Management". 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. Except as expressly provided in this Agreement, no amendment of any provision of this Agreement shall be binding unless executed in writing by both Parties to this Agreement, and no such amendment shall be binding on the Sponsor unless it has been executed by an individual identified in such amendment as "Contract Management".

### **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 Sponsor'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 Sponsor 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 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, the Renewable Energy Approval and any other equivalent environmental approval applicable to such Facility, in each case, as applicable, and all other Laws and Regulations and subject to Sections 9.6 and 2.4(b), the Supplier shall be responsible for all costs, expenses, liabilities and other obligations associated therewith and the IESO shall not be liable to pay any such Supplier's costs, expenses, liabilities or other obligations. 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 Project or the Facility as set out 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 "**Facility Amendment**"), without first notifying the Sponsor in writing and obtaining the Sponsor's consent in writing. Such consent may be withheld by the Sponsor in its sole and absolute discretion.
- (c) Notwithstanding Section 2.1(b), prior to the Supplier procuring and delivering its IE Certificate pursuant to Section 2.6(a)(iv), the Supplier may elect to reduce the Contract Capacity to a lower amount by giving notice to the Sponsor, provided that such lower amount is no less than 75% of the original Contract Capacity (for clarity, as set out on the original unamended FIT Contract Cover Page as of the Contract Date). If the Supplier provides such notice, the Contract Capacity shall be reduced to the lower amount. The Sponsor 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). Subject to Section 1.4 of Exhibit B, any such reduction in Contract Capacity shall only affect the amount of Completion and Performance Security that is required to be provided to the Sponsor after the date of the request for such reduction and, for clarity, shall not result in any change to the Contract Price.
- (d) Where the Supplier receives from an LDC, written estimates of the Supplier's Network Upgrade 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, or where the LDC has provided written notice denying the Connection Impact Assessment, the Supplier may, prior to delivering an NTP Request, submit a written request to the Sponsor to terminate this Agreement, along with such evidence as the Sponsor may reasonably require.
- (e) 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

Facility is greater than or equal to 50%, and the Supplier is subsequently denied financing for the Facility requested from the Aboriginal Loan Guarantee Program after having taken Commercially Reasonable Efforts to secure such financing, and such denial is reasonably anticipated to have a 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 Sponsor to terminate this Agreement, along with such evidence as the Sponsor may reasonably require.

- (f) Where the Sponsor receives a request from a Supplier pursuant to Section 2.1(d) or 2.1(e), the Sponsor 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:
    - (A) returned or refunded to the Supplier; or
    - (B) in the case of a letter of credit, returned for cancellation;as applicable, within 20 Business Days following receipt by the Sponsor 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.
- (g) In the case of a Solar (PV) Facility, the Supplier must design the Facility such that:
  - (i) the sum of the manufacturer's capacity ratings (in DC kW) for normal operation (e.g. continuous output ratings) of the installed solar modules (i.e. panels) of the Facility;  
may not exceed 120% of:
  - (ii) the sum of the manufacturer's capacity ratings (in AC kW) for normal operation (e.g. continuous output ratings) of the installed inverters of the Facility.

## **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 FIT Contract Cover Page and shall affect supply or demand on a Distribution System.
- (b) The Supplier shall provide, at its expense, separate meter(s) and ancillary metering where required by the LDC to which the Facility is connected and monitoring equipment as more specifically set out in the applicable type of Exhibit B identified on the FIT Contract Cover Page.
- (c) Where the Facility is one described in Section 4.2(a), the Supplier shall deliver a copy of the Metering Plan in the Prescribed Form to the Sponsor for its approval no later than 90

days prior to the Milestone Date for Commercial Operation. Where the Facility is not one described in Section 4.2(a), the Sponsor 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 Sponsor 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 Sponsor shall, when considering whether to approve the Metering Plan, have regard to those Electricity matters in the Metering Plan that have received System Operator or LDC approval, as applicable. If, within 15 days after the Sponsor 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). Subject to Section 2.1(b), the Metering Plan must be updated, and any resulting amendments to the Metering Plan must be provided to the Sponsor, within ten (10) Business Days after any change to the metering installation occurs.

- (d) If required to provide a Metering Plan pursuant to Section 2.2(c), the Supplier will provide the Sponsor 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 Sponsor 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 Sponsor or determination by the Independent Engineer (as applicable) without the prior written approval of the Sponsor, 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 System Operator, the Transmitter or the LDC, as applicable, from time to time to protect the safety and security of the IESO-Controlled Grid, the Distribution System and each of their customers, 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 Facility as Solar (PV) (Non-Rooftop) and the FIT Contract Cover Page indicates that such Facility's Site is located, in whole or in part, on one or more Properties that are Rural-Residential Lands, the Supplier shall:
  - (i) comply with the Visual Screening Requirements; and
  - (ii) comply with the Setback Requirements.



### **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 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.

### **2.4 Notice to Proceed**

- (a) Until the Sponsor issues Notice to Proceed to the Supplier, and the Supplier has provided to the Sponsor the Incremental NTP Security in accordance with Section 2.4(h), the Sponsor may:
  - (i) terminate this Agreement in its sole and absolute discretion by notice to the Supplier and all Completion and Performance Security shall be:
    - (A) returned or refunded to the Supplier; or
    - (B) in the case of a letter of credit, returned for cancellation;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; and
  - (ii) if the right to terminate under Section 2.4(a)(i) has been exercised by the Sponsor, in its sole and absolute discretion, issue a Stop Work Notice, pursuant to which the Supplier shall permanently cease development and construction of the Facility.

Until the Sponsor issues Notice to Proceed to the Supplier, the Supplier may terminate this Agreement in its sole and absolute discretion by notice to the Sponsor.

- (b) If the Sponsor terminates this Agreement in accordance with Section 2.4(a), the Supplier shall provide to the Sponsor a written statement documenting the Pre-Construction Development Costs incurred prior to the Termination Date. The Sponsor shall thereafter pay to the Supplier as the sole and exclusive remedy for terminating this Agreement in accordance with this Section 2.4(b), an amount equal to the Pre-Construction Development Costs set out in such statement, as confirmed by the Sponsor, 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 Sponsor of the Incremental NTP Security are the exclusive responsibility of the Supplier and shall not be included in any such payment.
- (c) If the Supplier terminates this Agreement in accordance with Section 2.4(a), then:

- (i) notwithstanding Section 9.5, as the Sponsor's sole and exclusive remedy for such termination, the Supplier shall pay to the Sponsor as liquidated damages and not as a penalty, a sum of money equal to the Dollar amount of all Completion and Performance Security required to be provided by the Supplier as of the date of such termination; provided that
- (ii) notwithstanding Section 2.4(c)(i) where:
  - (A) this Agreement is in respect of a Facility that is wind powered;
  - (B) the Site is located in whole or in part on provincial Crown lands;
  - (C) the Supplier, having obtained approval to proceed with testing for the Site from the MNRF subsequent to its Application for the Facility, has tested the wind resource at the proposed Site in accordance with Good Engineering and Operating Practices; and
  - (D) the wind resource is insufficient for the purposes of the Project;

following provision to the Sponsor by the Supplier of all wind testing information and such further evidence as the Sponsor may reasonably require that the termination was due to insufficient wind resource, the Supplier may request and the Sponsor shall return to the Supplier (or for cancellation, as appropriate) the applicable Completion and Performance Security in connection with the Supplier's exercise of its termination rights under Section 2.4(a).

- (d) The Sponsor shall not issue Notice to Proceed in accordance with this Section 2.4 until the Supplier provides the Sponsor 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 Renewable Energy Approval, if applicable, and any other equivalent environmental assessments, approvals, permits or registrations, including registering with the Environmental Activity Sector Registry, applicable to the Project necessary for the construction of the 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 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) documentation of the time and date of application for, and the completion of, all Connection Impact Assessments required by the Distribution System Code;
  - (iv) in respect of a Community Participation Project, the certificate described in Section 17.2(i); and
  - (v) where: (A) the FIT Contract Cover Page identifies the Renewable Fuel of the Facility as Solar (PV) (Non-Rooftop); (B) the FIT Contract Cover Page indicates

that such Facility's Site is located, in whole or in part, on one or more Properties that are Rural-Residential Lands; and (C) a Land Use Restriction Exemption Resolution was not included in the Supplier's Application, in respect only of such Properties that are Rural-Residential Lands, a certificate in the Prescribed Form (the "**Screening and Setback Certificate**").

- (e) The Supplier must provide the Sponsor 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 to provide a completed NTP Request as set out in this Section 2.4(e), the sole and exclusive remedy of the Sponsor in such circumstance shall be its entitlement to retain the Initial Security pursuant to Section 9.2(d)(i).
- (f) If the Sponsor determines, acting reasonably, that an NTP Request is incomplete, the Sponsor will notify the Supplier providing particulars in respect of the deficiencies in such documentation within 20 Business Days following the Sponsor's receipt of the Supplier's NTP Request.
- (g) The Sponsor 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 Sponsor's receipt of the Supplier's completed NTP Request.
  - (i) If the Sponsor provides the Supplier with an NTP Deferral Notice in accordance with this Section 2.4(g), 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 Sponsor either issues Notice to Proceed or terminates this Agreement in accordance with Section 2.4(a).
  - (ii) The Sponsor 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 Sponsor 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 Sponsor's requirement to respond to a completed NTP Request pursuant to this Section 2.4(g) shall not be extended by an event of Force Majeure described in Section 10.3(f).

- (h) The Supplier shall deliver to the Sponsor 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**

- (a) The Supplier acknowledges that time is of the essence to the Sponsor with respect to attaining Commercial Operation of the 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.

- (b) The Supplier acknowledges that even if the Facility has not achieved Commercial Operation by the Milestone Date for Commercial Operation and this Agreement is not terminated in accordance with Section 9.2 as a result of such failure, 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.
- (c) Notwithstanding Section 2.5(a), where the Facility forms part of a Rooftop Portfolio in accordance with this Section 2.5(c), the Milestone Date for Commercial Operation shall be the date that is three years following the Contract Date. The Facility shall form part of a Rooftop Portfolio following submission by the Supplier to the Sponsor of a completed application in the Prescribed Form seeking designation of the Facility as such not later than 30 days following receipt of the Prescribed Form, and notification to the Supplier of acceptance by the Sponsor of such application. Once a Facility forms part of a Rooftop Portfolio it not be removed from such Rooftop Portfolio.
- (d) Notwithstanding Section 2.5(a), where the original Milestone Date for Commercial Operation has been extended to a date that is five (5) years after the Contract Date pursuant to Section 7.7 of the FIT Rules and the FIT Cover Page so indicates (at the checkbox for “First Nation Lands Extended MCOB”), the Milestone Date for Commercial Operation is the date that is five years following the Contract Date.

## 2.6 Requirements for Commercial Operation

- (a) The Facility will be deemed to have achieved “**Commercial Operation**” at the point in time when, as subsequently confirmed by the Sponsor in a written notice to the Supplier as described in Section 2.6(c):
  - (i) the Sponsor 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 Sponsor has received the Metering Plan in the Prescribed Form, and has approved it, acting reasonably;
  - (iii) the Sponsor has received a single line electrical drawing that 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 Sponsor has received an IE Certificate in the Prescribed Form directly from the Independent Engineer, stating that:
    - (A) 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 this Agreement;
    - (B) the Connection Point of the Facility is that set out on the FIT Contract Cover Page;

- (C) the Facility has been constructed, connected, commissioned and synchronized to a Distribution System, 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;
- (D) in the case of a Solar (PV) Facility:
  - (1) the sum of the manufacturer's capacity ratings (in DC kW) for normal operation (e.g. continuous output ratings) of the installed solar modules (i.e. panels) of the Facility;
 

may not exceed 120% of:
  - (2) the sum of the manufacturer's capacity ratings (in AC kW) for normal operation (e.g. continuous output ratings) of the installed inverters of the Facility; and
- (v) the Sponsor has received a certificate addressed to it from the Supplier in the Prescribed Form with respect to the Commercial Operation of the Facility, together with such documentation required to be provided under such form to the Sponsor.
- (vi) where: (X) the FIT Contract Cover Page identifies the Renewable Fuel of the Facility as Solar (PV) (Non-Rooftop); (Y) the FIT Contract Cover Page indicates that such Facility's Site is located, in whole or in part, on one or more Properties that are Rural-Residential Lands; and (Z) a Land Use Restriction Exemption Resolution was not included in the Supplier's Application, the Sponsor has received the certifications set out in this Section (vi) in their respective Prescribed Forms (the "**Screening and Setback Reports**") containing, in respect of the Facility:
  - (A) a certification by a Landscape Architect indicating that the Supplier has complied with the Visual Screening Requirements in respect of the Facility, and an "as-built" landscape architectural drawing certified by such Landscape Architect confirming where visual buffering was planted; and
  - (B) an "as-built" drawing of the Setbacks, certified by an Independent Engineer.
- (b) The Sponsor or its Representative shall be entitled, at the Sponsor'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 Sponsor a reasonable period in advance thereof confirmation in writing of the timing of such test(s).
- (c) The Sponsor shall notify the Supplier in writing using the Prescribed Form within 20 Business Days, or, in the case where Section 2.6(a)(vi) applies, 30 Business Days, following receipt of all of the documentation required by Section 2.6(a) as to whether such documentation is acceptable to the Sponsor, acting reasonably. If the Sponsor determines that such documentation is not acceptable, the Sponsor 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 per cent (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 Sponsor with an IE Certificate stating that one hundred per cent (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, and the Renewable Energy Approval and any other equivalent environmental approval applicable to such Facility, 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.
- (d) The Supplier, the Project and the Facility shall comply with the eligibility requirements as set out in Section 2 of the FIT Rules with, for clarity, such requirements being applicable from the Contract Date until the end of the Term (other than in respect of Sections 2.1(g), (m) and 2.3 of the FIT Rules, to the extent that:
  - (i) the Supplier was in compliance with such requirements as at the Contract Date; and
  - (ii) failure to comply with any such requirement is outside the reasonable control of the Supplier).
- (e) Where: (i) the FIT Contract Cover Page identifies the Renewable Fuel of the Facility as Solar (PV) (Non-Rooftop); (ii) the FIT Contract Cover Page indicates that such Facility's Site is located, in whole or in part, on one or more Properties that are Rural-Residential Lands; and (iii) a Land Use Restriction Exemption Resolution was not included in the Supplier's Application, the Supplier covenants and agrees that, throughout the Term, it will comply with the Visual Screening Requirements, including maintenance of any visual screening required by the Visual Screening Requirements, and will maintain the Setback Requirements.

## **2.8 Insurance Covenants**

- (a) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain with insurers licensed in Ontario, from the Commencement of Construction of the Facility to the Commercial Operation Date, at its own cost and expense, all the necessary and appropriate insurance required under all applicable Laws and Regulations

as well as those that a prudent Person in the business of developing and operating the Facility would maintain including policies for "all-risk" property insurance covering not less than the full replacement value of the Facility, "all-risk" equipment breakdown insurance, "wrap-up" liability insurance and "environmental impairment" liability insurance.

- (b) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain, with insurers licensed in Ontario, from the Commercial Operation Date to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance required under all applicable Laws and Regulations as well as those that a prudent Person in the business of developing and operating the Facility would maintain including policies for "all-risk" property insurance covering not less than the full replacement value of the Facility, "boiler and machinery" insurance, "commercial general liability" insurance and "environmental impairment" liability insurance.
- (c) Any policies described in this Section 2.8 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. The limit for liability policies described in this Section 2.8 shall be for an amount appropriate for the size and scope of the Facility.
- (d) Upon the request of the Sponsor, the Supplier shall provide to the Sponsor evidence of insurance in the form of valid certificates of insurance or a copy of the insurance policy, confirming that the insurances specified in this Section 2.8 have been obtained and are in full force and effect. The evidence of insurance requested is to be provided to the Sponsor within 10 Business Days of such request.
- (e) 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, 1997* (Ontario) coverage to the Sponsor prior to the Commencement of Construction of the Facility. In addition, the Supplier shall, from time to time at the request of the Sponsor, provide additional *Workplace Safety and Insurance Act, 1997* (Ontario) 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 Facility, under the *Workplace Safety and Insurance Act, 1997* (Ontario), failing which the Sponsor 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 Sponsor in connection therewith.

## **2.9 Compliance with Laws and Regulations and Registration with the System Operator**

- (a) The Sponsor 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 Sponsor 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 licensing 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 System Operator is optional. If the Laws and Regulations require 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 System Operator, 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 Sponsor who thereafter shall, subject to Section 2.10(d), retain, all rights, title, and interest in all Environmental Attributes associated with the Facility during the Term of this Agreement.
- (b) The Supplier shall from time to time, upon written direction of the Sponsor, take all such actions and do all such things necessary to effect the transfer and assignment to, or holding in trust for, the Sponsor, 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 Sponsor, 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 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 Sponsor 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 Sponsor, 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 Facility to utilize, consume or obtain Regulatory Environmental Attributes in connection with Delivering Electricity, then the Sponsor shall propose such amendments to this Agreement to the Supplier and, at the Sponsor’s discretion, to all of the Other Suppliers who are required by the Sponsor to participate, based on the principle that the Sponsor will permit the Supplier to retain any Regulatory Environmental Attributes that may be created and allocated or credited with respect to the Facility and that are required by such Laws and Regulations in order for the Facility to Deliver Electricity. If the Parties are unable to agree on the Sponsor’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 Sponsor’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 C. 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 Sponsor to implement such award of the Arbitration Panel.

## **2.11 Supplier's Reporting Requirements**

- (a) Prior to the Facility achieving Commercial Operation, the Sponsor may request up to four times per calendar year that, within 30 days of any such request, the Supplier provide the Sponsor 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 Sponsor's request, the Supplier shall provide an opportunity for the Sponsor 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 Sponsor 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 Sponsor, provide to the Sponsor 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 On-Shore Wind, Solar (PV) (Rooftop), Solar (PV) (Non-Rooftop) 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.

## **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 Facility as specified on the FIT Contract Cover Page.

#### **3.2 Federal Program Payments**

If the Supplier receives any payments under a Federal Government Incentive Program for Renewable Power attributable to the Facility, the Supplier, within 30 days of receipt of such payment, shall pay to the Sponsor 50% of the amount of such payment, failing which, the Sponsor may set off any such payments due to the Sponsor against any amounts payable by the Sponsor 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 Sponsor 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 Sponsor, provided that the Sponsor 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 Sponsor.
- (e) The Supplier will notify the Sponsor of any revenue received by the Supplier in connection with the sale, supply or delivery of any Future Contract Related Products.
- (f) The Sponsor 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 Sponsor if the Sponsor 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 Sponsor. In the event that the Sponsor is required to remit such Taxes and the Sponsor 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 Sponsor's Responsibility for Taxes**

The Sponsor 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 Sponsor. The Contract Price does not include any Sales Tax 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 as specified hereunder. 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 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 Sponsor shall be reduced by the amount of any applicable withholding or other similar Taxes and the Sponsor shall remit such withholding or other similar Taxes to the applicable taxing authorities. The Sponsor 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 Sponsor has paid such amounts, the Sponsor receives a refund, rebate or credit on account of such Taxes, then the Sponsor 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 Sponsor forthwith of such status and shall provide the Sponsor with all such information reasonably required by the Sponsor to comply with any withholding tax or other tax obligations to which the Sponsor 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 Sponsor (which, for clarity, is in addition to any obligations under the IESO Market Rules) access to the meter(s) in any Metering Plan to accommodate remote interrogation of the metered data on a daily basis. The Supplier shall provide to the Sponsor 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 System Operator pursuant to the IESO Market Rules if the Supplier were a Market Participant, forthwith upon request by the Sponsor. The Supplier shall notify the Sponsor of any material errors and omissions in any such data or information on a timely basis so as to permit the Sponsor, within a reasonable time, to correct such errors and omissions pursuant to the IESO Market Rules and this Agreement. 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 on a timely basis.

### **4.2 Settlement for Market Participants**

- (a) This Section 4.2 shall apply only to a Facility that is a Registered Facility.
- (b) The Sponsor 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 Sponsor to the Supplier by facsimile, e-mail or other electronic means and shall include the reference number assigned to this Agreement by the Sponsor 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 (in this Section 4.2, 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 Sponsor, as applicable. The account information and HST registration numbers of the Supplier and the Sponsor constitute Supplier's Confidential Information and Sponsor's Confidential Information, respectively, and are subject to the obligations as set out in Article 7. The Supplier shall provide its account information and HST number to the Sponsor 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 Sponsor 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 Sponsor 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 Sponsor, 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-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 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 (in this Section 4.3, 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 HST number to the LDC responsible for settling Contract Payments, in the form and manner specified by such LDC, prior to achieving Commercial Operation.
- (d) If the Supplier disputes a Statement or any portion thereof, the Party (or, in the case of the Sponsor, 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 Sponsor 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 Sponsor 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 Sponsor will work with 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 Sponsor, 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 Sponsor 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 Sponsor 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 applicable 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 System Operator acting pursuant to the IESO Market Rules 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 System Operator which the System Operator has corrected pursuant to the IESO Market Rules, then the one year limit set forth in Section 4.6(a) shall not apply to the correction of such error or the Sponsor's ability to readjust the Statement.
- (c) Subject to Sections 4.2(d) and 4.3(d), 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 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 Sponsor additional Completion and Performance Security in the amount of the Incremental NTP Security pursuant to Section 2.4(h).
- (c) After the Commercial Operation Date, the Sponsor 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 Sponsor.

**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 per cent (75%) of the Contract Price, the Sponsor may at any time, by providing notice to the Supplier, require the Supplier to provide to and maintain with the Sponsor 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 per cent (75%) of the Contract Price, the Sponsor may at any time, by providing notice to the Supplier, require the Supplier to provide to and maintain with the Sponsor 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 Sponsor 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 Sponsor.

**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 set out in the applicable Prescribed Form and 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. At any time the Sponsor 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 Sponsor 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 Sponsor and the Sponsor 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).

#### **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 Sponsor 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 Sponsor 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 Sponsor; and
  - (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 Sponsor shall return the existing Completion and Performance Security held by the Sponsor for cancellation, within 15 Business Days of the Sponsor'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 Sponsor and the Supplier provides new Completion and Performance Security to the Sponsor in the form of a letter of credit, the Sponsor shall pay to the Supplier within 15 Business Days the amount of Completion and Performance Security that had been previously paid to the Sponsor 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 Sponsor by providing to the Sponsor replacement Completion and Performance Security in the cumulative amount of Completion and Performance Security outstanding, in which case the Sponsor 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 Sponsor.

#### **5.5 Interest on Completion and Performance Security**

Any interest earned by the Sponsor on any Completion and Performance Security provided to the Sponsor shall be for the sole account of the Sponsor 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 Sponsor as follows, and acknowledges that the Sponsor 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) Except for any statements, specifications, data, confirmations, representations, and information set out on the FIT Contract Cover Page that materially differ from those set out in the Application and any and all supporting evidence and documentation submitted in connection with the Application, all statements, specifications, data, confirmations, representations and information that have been set out in the Application and supporting evidence and documentation are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made to the Sponsor hereunder and there is no material information omitted from the Application or supporting evidence or documentation which would make the information in the Application or supporting evidence or documentation misleading or inaccurate.
- (g) 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.
- (h) Unless the Supplier has otherwise notified the Sponsor pursuant to Section 3.6(b), the Supplier is not a non-resident of Canada for the purposes of the ITA.
- (i) The Supplier and the Facility comply with the eligibility requirements applicable to an Applicant and a Project as set out in Section 2 of the FIT Rules in effect as at the Application Date and such compliance is restated and reaffirmed by the Supplier as at the Contract Date with, for clarity, such requirements being applicable as at such date.
- (j) The Supplier:
  - (i) has made all due inquiry into requirements to obtain any applicable Renewable Energy Approval and other equivalent environmental approvals or registrations, including registering with the Environmental Activity Sector Registry, and has, in respect of any applicable Renewable Energy Approval and other equivalent environmental approvals or registrations, read and understood the requirements and has attended at the Site; and
  - (ii) is aware that it shall only be entitled to Force Majeure relief in respect of failure to fulfill any such requirements that were reasonably unforeseeable after taking the actions set out in Section 6.1(j)(i).
- (k) The Supplier has not applied for a Connection Impact Assessment for the Project or Facility prior to the Contract Date unless (i) the Facility was connected to a Distribution System prior to the applicable Application Start Date; and (ii) the Sponsor had, prior to the applicable Application Start Date, consented in writing to the inapplicability of the restriction.
- (l) The Supplier had not, from the Application Date for the Facility to the Contract Date, undertaken an activity prohibited by Section 12.1(a) and (b) of the FIT Rules.

## 6.2 Representations of the Sponsor

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

- (a) The Sponsor 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 Sponsor and is a valid and binding obligation of the Sponsor 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 Sponsor 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 Sponsor under:
  - (i) any contract or obligation to which the Sponsor 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 Sponsor;
  - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
  - (iv) any licence, permit, approval, consent or authorization held by the Sponsor; or
  - (v) any Laws and Regulations,that could have a Material Adverse Effect on the Sponsor.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Sponsor or, to the knowledge of the Sponsor, threatened against the Sponsor.
- (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 Sponsor, threatened against the Sponsor, that could have a Material Adverse Effect on the Sponsor.
- (f) The Sponsor 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 Sponsor.

**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 or exercising its rights under this Agreement and, in the case where the Sponsor is the Receiving Party, for the purpose of the evaluation, offer and administration of a contract under the FIT Program. 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 Sponsor 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 its name and contact particulars on the Website or otherwise, (ii) of the Site, Contract Capacity, Renewable Fuel(s) and Connection Point on the Website or otherwise, (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 Sponsor in respect of this Agreement for such internal purposes as the Sponsor may reasonably determine from time to time to the Sponsor's Representatives, (v) of aggregated data relating to the FIT Program or the FIT Contracts; and (vi) in the case of Participation Projects, the names of and existence of Economic Interest held by the applicable Aboriginal Community, Community Investment Member, Municipality, or Public Sector Entity from time to time.
- (e) The Supplier hereby irrevocably authorizes and consents to the System Operator and LDC releasing, disclosing, providing, delivering and otherwise making available to the Sponsor or its agents, and to the Sponsor releasing, disclosing, providing, delivering and

otherwise making available to the System Operator and LDC, a copy of this Agreement and any and all such information relating to the connections, proposed connections, meters, meter data, testing data pertaining to commercial operation, billing data and LDC account or Metered Market Participant account (as applicable) of the Supplier or the Facility as the Sponsor or its agents may determine is required in connection with the evaluation, offer and administration of a contract under the FIT Program.

## **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 e-mails 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 7 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 Sponsor is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Sponsor ("**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 Sponsor if the Supplier continues

to possess such FIPPA Records in a deliverable form at the time of the Sponsor'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 Sponsor. 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 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 Section 8.1(c), 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 Sponsor 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 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 Sponsor.
- (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 Sponsor, provided that such cure period shall be extended by a further 15 Business Days if the Supplier is diligently remediating such failure and such failure is capable of being cured during such extended cure period.

- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier or the Facility and is not remedied within 30 Business Days after receipt by the Supplier of written notice of such failure or cessation from the Sponsor, provided that such cure period shall be extended by a further 30 Business Days if the Supplier is diligently remediating such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Supplier in this Agreement, excepting only the representation made in Section 6.1(j), 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 Sponsor, provided that such cure period shall be extended by a further 30 Business Days if the Supplier, in the reasonable opinion of the Sponsor, 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 Facility Amendment that has not first been consented to by the Sponsor pursuant to this Agreement (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) The Supplier undergoes a change in Control without first obtaining the written approval of the Sponsor, if required pursuant to this Agreement.
- (l) The Supplier assigns this Agreement without first obtaining the consent of the Sponsor, if required pursuant to this Agreement.
- (m) At any time prior to the fifth anniversary of the Commercial Operation Date, in the case of a Facility with a Municipal Site Host or Public Sector Entity Site Host (as indicated on the FIT Contract Cover Page), the Person that constituted the Municipal Site Host or Public Sector Entity Site Host ceases to qualify as such in respect of such Facility, and such failure is not remedied as permitted by Section 17.3(f)(i)(B) within six months (without double counting of cure periods) after written notice of such failure from the Sponsor.
- (n) A Supplier Event of Default has occurred as described in Section 17.3 or, where applicable, in Exhibit A.

## **9.2 Remedies of the Sponsor**

- (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 Sponsor may terminate this Agreement.
- (b) If a Supplier Event of Default occurs and is continuing, the Sponsor 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 Sponsor including, at the Sponsor's option, the amount of any Completion and Performance Security provided to the Sponsor 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 Sponsor 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 Sponsor may, in its sole and absolute discretion, require the Supplier to pay to the Sponsor as liquidated damages and not as a penalty, a sum equal to the Dollar amount of all Completion and Performance Security required to be provided by the Supplier as of the Termination Date, and the Sponsor 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 Sponsor as of the Termination Date pursuant to Section 5.1; and in such circumstances, notwithstanding Section 9.5, the Sponsor'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 Sponsor shall be entitled to retain all Completion and Performance Security required to be provided by the Supplier and exercise all such other remedies available to the Sponsor, including pursuing a Claim for damages, as contemplated under Section 9.5.
- (e) Termination shall not relieve the Supplier or the Sponsor 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 Sponsor 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 Sponsor 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 Sponsor**

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

- (a) The Sponsor 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 Sponsor fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Sponsor 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 Sponsor is diligently remedying such failure and such failure is capable of being cured during such extended cure period.



- (c) The Sponsor 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 Sponsor and is not remedied within 30 Business Days after receipt by the Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor's obligations under this Agreement.
- (f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Sponsor or of any of the Sponsor'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 Sponsor is adjudicated bankrupt or insolvent or any substantial part of the Sponsor'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 Sponsor 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 Sponsor 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 Sponsor assigns this Agreement (other than an assignment made pursuant to Section 16.1(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 Sponsor Event of Default occurs and is continuing, then upon written notice to the Sponsor, the Supplier may (i) terminate this Agreement and (ii) set off any payments due

to the Sponsor against any amounts payable by the Sponsor to the Supplier. Where the Supplier has so terminated this Agreement, the Sponsor 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 Sponsor 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 Sponsor 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.

## 9.6 Optional Termination

- (a) Notwithstanding any other provision of this Agreement, after the Sponsor has issued Notice to Proceed to the Supplier in accordance with Section 2.4(a) and the Supplier has provided to the Sponsor the Incremental NTP Security in accordance with Section 2.4(h) and prior to the Commercial Operation Date the Sponsor may terminate this Agreement in its sole and absolute discretion and for any reason whatsoever (an “**Optional Termination**”) by providing sixty (60) days’ written notice to the Supplier. In the event of notice being given by the Sponsor in accordance with this Section 9.6(a), the Sponsor shall be entitled, in its sole and absolute discretion, at any time before the expiration of such notice, to issue a Stop Work Notice whereupon the Supplier shall forthwith permanently refrain from commencing and shall cease development, construction and operation of the Project. A Stop Work Notice may further require the Decommissioning of the Project or Facility and Site.
- (b) An Optional Termination may occur subject to and in accordance with Sections 2.4(a), (b) and (c) before the Sponsor has issued Notice to Proceed to the Supplier in accordance with Section 2.4(a) and the Supplier has provided to the Sponsor the Incremental NTP Security in accordance with Section 2.4(h). If an Optional Termination occurs after the Sponsor has issued Notice to Proceed to the Supplier in accordance with Section 2.4(a) and the Supplier has provided to the Sponsor the Incremental NTP Security in accordance with Section 2.4(h), the Sponsor shall (subject to and in accordance with this Section 9.6) pay to the Supplier the Optional Termination Sum. Subject to Section 9.6(c), the “**Optional Termination Sum**” shall be an amount equal to the aggregate of:
  - (i) any amounts accruing due and payable by the Sponsor to the Supplier under this Agreement up to and including the Termination Date which have not yet been paid;
  - (ii) the Senior Debt Amount and the Senior Debt Makewhole as at the Termination Date;
  - (iii) the Junior Debt Amount and the Junior Debt Makewhole as at the Termination Date;

- (iv) the Employee Termination Payments, Subcontractor Losses and Landowner Losses, each as at the Termination Date;
- (v) the Equity Capital invested in the Project as at the Termination Date (to the extent that such Equity Capital has been applied by the Supplier for the purposes of the Project), together with an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date and taking account of the actual timing of all such investments and payments but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date, gives a nominal after-tax internal average annual rate of return to the Termination Date equal to the Equity IRR on the amount paid for such Equity Capital;
- (vi) subject to Section 9.6(e), all Decommissioning Costs; and
- (vii) any reasonable costs properly incurred by Supplier to wind up its operations solely in connection with the Project;

LESS the aggregate of the following, to the extent it is a positive amount, without double counting:

- (viii) to the extent that any of the following amounts relate to the Project or to the carrying out by the Supplier of its obligations under this Agreement, all credit balances in any bank accounts held by or on behalf of the Supplier on the Termination Date and the value of any insurance proceeds due on the Termination Date to the Supplier or to which the Supplier would have been entitled had insurance been maintained in accordance with the requirements of this Agreement (except where such insurance proceeds are to be applied in reinstatement, restoration or replacement or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability) and any sums due and payable to the Supplier from third parties as at the Termination Date other than sums wholly unrelated to the Project but excluding any claims under any subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, the Supplier shall assign any such rights and claims under the applicable subcontracts or claims against other third parties (other than claims against third parties that are wholly unrelated to the Project and this Agreement) to the Sponsor and, at no additional cost to the Supplier, provide the Sponsor with reasonable assistance in prosecuting such claims;
- (ix) the Fair Market Value as at the Termination Date of any other rights and assets of the Supplier in respect of the Project or used principally for the purposes of carrying out its obligations under this Agreement less liabilities of the Supplier properly incurred in relation to the Project or in carrying out its obligations under this Agreement as at the Termination Date, provided that no account shall be taken of any liabilities and obligations of the Supplier arising out of:
  - (A) agreements or arrangements entered into by the Supplier to the extent that such agreements or arrangements were not entered into in connection with the Supplier's obligations in relation to the Project or in carrying out its obligations under this Agreement; or

(B) agreements or arrangements entered into by the Supplier other than in the ordinary course of business and on commercial Arm's Length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial Arm's Length terms; and

(x) amounts which the Sponsor is entitled to set off pursuant to Section 18.5 or otherwise pursuant to the Sponsor's rights of set-off under this Agreement,

provided that the Optional Termination Sum (x) shall, notwithstanding any other provision of this Agreement, never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, and (y) shall be grossed-up for any Taxes payable on the Optional Termination Sum paid to the Supplier in accordance with Section 9.6(f) and Exhibit E.

(c) The Optional Termination Sum and other amounts payable to Supplier under this Section 9.6 shall be calculated without duplication or double counting of amounts. The Supplier shall have a duty to take reasonable steps to mitigate any losses, liabilities, costs, expenses and damages incurred as a result of the Optional Termination or payment of the Optional Termination Sum, and the Optional Termination Sum and other amounts payable to Supplier under this Section 9.6 will not include compensation or payment for amounts which are attributable to a failure by the Supplier to take such reasonable steps to mitigate. The duty to take reasonable steps to mitigate shall include a requirement that the Senior Debt Makewhole and Junior Debt Makewhole amounts payable if an Optional Termination occurs shall be calculated or determined on terms no more onerous to the Supplier than would apply if any other event of default or termination event occurs under the applicable Lending Agreement(s). Subject only to the preceding sentence, the duty to take reasonable steps to mitigate shall not otherwise cause the Optional Termination Sum to be less than the aggregate of the Senior Debt Amount, Senior Debt Makewhole, Junior Debt Amount and Junior Debt Makewhole or limit the obligations of the Sponsor under this Agreement to pay these sums as provided for in this Agreement.

(d) As soon as practicable and in any event within thirty (30) days after the Termination Date the Supplier shall give to the Sponsor an invoice for the Optional Termination Sum and sufficient supporting evidence, reasonably satisfactory to the Sponsor, justifying the amount of the Optional Termination Sum claimed by the Supplier including a detailed breakdown of each of the individual amounts or items comprising such sum and demonstrating to the satisfaction of the Sponsor, acting reasonably, that all such amounts and items pertain directly to, or were incurred directly in connection with, the Project. Subject to Section 9.6(g) the Sponsor shall pay to the Supplier within sixty (60) days of the Invoice Date (the "**Optional Termination Sum Payment Date**"):

(i) on account of the Optional Termination Sum, an amount equal to the greater of

(A) 90% of the Optional Termination Sum; and

(B) the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and Junior Debt Makewhole;

(ii) to the extent substantiated and verified to the satisfaction of the Sponsor, acting reasonably,

- (A) any amounts on account of interest, fees, costs and expenses provided for in the definitions of Senior Debt Amount, Senior Debt Makewhole, Junior Debt Amount and Junior Debt Makewhole accrued or incurred during the period from (but excluding) the Termination Date to (and including) the Optional Termination Sum Payment Date; and
- (B) interest at a rate per annum equal to the Equity IRR on the portion, if any, of the Optional Termination Sum which exceeds the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and Junior Debt Makewhole to the extent attributable to the Equity Capital and Equity IRR amounts included in the calculation of the Optional Termination Sum pursuant to Section 9.6(b)(v), from (but excluding) the Termination Date to (and including) the Optional Termination Sum Payment Date; and
- (iii) interest at the No Default Interest Rate on the balance, if any, of the Optional Termination Sum from (but excluding) the Termination Date to (and including) the Optional Termination Sum Payment Date.

If any undisputed element of the Optional Termination Sum payable on the Optional Termination Sum Payment Date or any such element which is disputed by the Sponsor but subsequently determined pursuant to Section 9.6(g) to be properly payable as part of the Optional Termination Sum payable on the Optional Termination Sum Payment Date is not paid by the Optional Termination Sum Payment Date, the Sponsor shall pay to the Supplier additional sums referenced in Sections 9.6(d)(ii) and (iii) applicable to such disputed or undisputed element which accrue or are incurred (or which would have accrued or been incurred had it not been paid from another source) during the period from (but excluding) the Optional Termination Sum Payment Date to (and including) the actual date on which such element is paid. Payment of the remaining balance of the Optional Termination Sum (the “**Optional Termination Sum Holdback Amount**”), if any, shall be subject to and made in accordance with Section 9.6(f). Interest shall accrue at a rate per annum equal to the Equity IRR on the Optional Termination Sum Holdback Amount from (but excluding) the Optional Termination Sum Payment Date to (and including) the Optional Termination Sum True-Up Payment Date to the extent that the Optional Termination Sum Holdback Amount is determined to be payable to the Supplier pursuant to Section 9.6(f). Whether or not any Optional Termination Sum is payable by the Sponsor to the Supplier, the Sponsor shall return any Completion and Performance Security held by the Sponsor to the Supplier within twenty (20) Business Days following receipt of a written request therefor made by the Supplier following the Termination Date, net of any amounts owing by the Supplier to the Sponsor.

- (e) The inclusion of amounts for Decommissioning Costs in Section 9.6(b)(vi) or Section 9.6(f)(vi) in the calculation or recalculation of Optional Termination Sum shall be conditional upon delivery prior to the Termination Date or Optional Termination Sum True-Up Date, as applicable, of a certificate of an Independent Engineer in the Prescribed Form acceptable to the IESO and confirming that Decommissioning is complete.
- (f) No later than thirty (30) days following the date that is eighteen (18) months after the Optional Termination Sum Payment Date (eighteen (18) months after the Optional Termination Sum Payment Date being, the “**Optional Termination Sum True-Up Date**”), the Supplier shall provide verification and sufficient supporting evidence, reasonably satisfactory to the Sponsor, confirming the following:

- (i) amounts paid for Decommissioning Costs determined as at the Optional Termination Sum True-Up Date;
- (ii) any reasonable costs properly incurred by Supplier to wind up its operations solely in connection with the Project determined as at the Optional Termination Sum True-Up Date;
- (iii) gross-up amounts for any Taxes payable on the Optional Termination Sum and other amounts paid by the Sponsor to the Supplier under this Section 9.6 determined in accordance with Exhibit E as at the Optional Termination Sum True-Up Date; and
- (iv) any Equity Capital invested in the Project after the Termination Date up to the Optional Termination Sum True-Up Date required for payment of Decommissioning Costs or Taxes payable on the Optional Termination Sum and other amounts paid by the Sponsor to the Supplier under this Section 9.6,

including a detailed breakdown of such amounts and demonstrating to the satisfaction of the Sponsor, acting reasonably, that such amounts were validly and properly incurred and have been paid. Subject to Section 9.6(g), the Optional Termination Sum will be recalculated on the same basis as determined following the Termination Date (including following resolution of any dispute pursuant to Section 9.6(g)) except that:

- (v) the Equity Capital amount referred in Section 9.6(f) (iv) together with interest at a rate per annum equal to the Equity IRR on such Equity Capital from (but excluding) the date invested to (and including) the Optional Termination Sum True-Up Payment Date shall be included in the calculation in Section 9.6(b)(v);
- (vi) subject to Section 9.6(e), the Decommissioning Cost amount referred to in Section 9.6(f)(i) shall be included in Section 9.6(b)(vi);
- (vii) any reasonable costs properly incurred by Supplier to wind up its operations solely in connection with the Project referred to in Section 9.6(f)(ii) shall be included in the calculation of 9.6(b)(vii); and
- (viii) the gross-up amount for Taxes referred to in Section 9.6(f) (iii) shall be added before the deductions in Sections 9.6(b)(viii), (ix) and (x).

Following such recalculation of the Optional Termination Sum, there shall be a true-up of sums payable under this Section 9.6, including payments of the Optional Termination Sum Holdback Amount and accrued interest thereon, and the net sum owing or payable by the Sponsor or Supplier to the Supplier or Sponsor, as applicable (the “**Optional Termination Sum True-Up Payment**”) shall, subject to Section 9.6(g) and any set-offs provided for in Section 18.5, be paid within sixty (60) days following the date the Sponsor confirms acceptance of the information and supporting evidence referenced above (the “**Optional Termination Sum True-Up Payment Date**”). If any undisputed element of the Optional Termination Sum True-Up Payment or any such element which is disputed but subsequently determined pursuant to Section 9.6(g) to be properly payable as part of the Optional Termination Sum True-Up Payment, the Sponsor or Supplier, as applicable, shall pay interest on such element at the No Default Interest Rate from (but excluding the Optional Termination Sum True-Up Payment Date) to (and including) the actual date on which the element is paid. Except as provided in this Section 9.6(f), the Sponsor

shall not be required to make any payments in respect of Decommissioning Costs or gross-up amounts for Taxes following the Optional Termination Sum True-Up Date.

- (g) Any dispute with respect to the calculation or determination of the Optional Termination Sum (including, without limitation, the validity or amount of the sum claimed or of any items which the Supplier claims should be included in such sum) and any other amount payable to Supplier under this Section 9.6 shall be determined in accordance with the procedures set out in Section 15.1 and Section 15.2. For greater certainty, if the Parties cannot reach a settlement following the Senior Conference, the dispute will proceed to mandatory and binding arbitration pursuant Section 15; provided however that, if the Supplier fails to participate in such arbitration, the Supplier shall be deemed to have waived its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel.
- (h) Except as otherwise provided in Section 9.6(i), any Optional Termination Sum and other sums paid pursuant to this Section 9.6, or any amount paid by the Sponsor pursuant to Section 9.6(j), shall be in full and final settlement of any claims, demands and proceedings of the Supplier and the Sponsor (including, without limitation, any claims, demands or proceedings with respect to any anticipated profits arising from the operation of the Facility after the Termination Date), and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Agreement, and the circumstances leading to such breach or termination, and the Supplier and the Sponsor shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (i) Section 9.6(h) shall be without prejudice to:
  - (i) any liability of either Party to the other, including under the indemnities contained in this Agreement, that arose prior to the Termination Date (but not from the Optional Termination itself or the events leading to such Optional Termination) to the extent such liability has not already been set off pursuant to Section 18.5 (or otherwise pursuant to the Sponsor's rights of set-off under the Agreement) or taken into account in determining or agreeing upon the Optional Termination Sum or other sums payable under this Section 9.6; or
  - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 18.3 of this Agreement, or the Sections referred to therein, which did not lead to such Optional Termination and which arise or continue after the Termination Date.
- (j) Notwithstanding anything to the contrary in this Section 9.6, the Sponsor may, in accordance with Section 14.2, request additional information or documentation relating to any Optional Termination, the Optional Termination Sum, or the Optional Termination Sum True-up Payment. Where the Supplier fails to provide such information or documentation to the satisfaction of the Sponsor, acting reasonably, the Sponsor may impose such assumptions as the Sponsor deems appropriate in the circumstances.
- (k) “**Invoice Date**” means the date that is the later of:
  - (i) the date on which the Sponsor receives an invoice from the Supplier for the Optional Termination Sum pursuant to Section 9.6(d); and

- (ii) the date on which the Sponsor receives reasonably satisfactory supporting evidence as required pursuant to Section 9.6(d).

## **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 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. Upon the request of the Sponsor, the Supplier shall: (i) provide to the Sponsor information and documentation confirming to the satisfaction of the Sponsor, acting reasonably, that such Commercially Reasonable Efforts were used, and (ii) represent and warrant that such information and documentation are true, complete and accurate in all material respects and that no



material information is omitted that would make such information or documentation misleading or inaccurate.

- (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) Where a Supplier has invoked Force Majeure as provided in Section 10.1(b) and where such period or periods of Force Majeure (as determined with respect to each such period from the date the Force Majeure was deemed to be invoked under Section 10.1(b) until the termination of the event or circumstances constituting Force Majeure as provided in Section 10.1(d)) were in effect (whether prior to or during the Term) for:
  - (i) where Exhibit A provides that the original Milestone Date for Commercial Operation is the date that is 18 months following the Contract Date (for clarity, including FIT Contracts forming part of a Rooftop Portfolio), 18 months in the case of a single such period, and for an aggregate of more than 24 months in the case of more than one such period;
  - (ii) where Exhibit A provides that the original Milestone Date for Commercial Operation is the date that is 24 months following the Contract Date, 24 months in the case of a single such period, and for an aggregate of more than 30 months in the case of more than one such period;
  - (iii) where Exhibit A provides that the original Milestone Date for Commercial Operation is the date that is 36 months following the Contract Date (for clarity, excluding FIT Contracts forming part of a Rooftop Portfolio), 24 months in the case of a single such period, and for an aggregate of more than 36 months in the case of more than one such period;
  - (iv) where the original Milestone Date for Commercial Operation has been extended to a date that is five (5) years after the Contract Date pursuant to Section 7.7 of the FIT Rules and the FIT Cover Page so indicates (at the checkbox for “First Nation Lands Extended MCOB”), 24 months in the case of a single such period, and for an aggregate of more than 36 months in the case of more than one such period; and
  - (v) where Exhibit A provides that the original Milestone Date for Commercial Operation is the date that is 96 months following the Contract Date, 36 months in the case of a single such period, and for an aggregate of more than 48 months in the case of more than one such period.

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 or in the case of security in the form of a letter of credit, returned for cancellation.

## 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 or its Affiliate has caused the applicable event of Force Majeure by its fault or negligence;
- (b) if and to the extent the relevant act, event, cause or condition was within the reasonable control of the Party seeking to invoke Force Majeure;
- (c) if and to the extent the Party is seeking to invoke Force Majeure as a result of the failure of performance of any other third party that is or was a direct or indirect vendor, materials supplier, service provider or other supplier, or customer, to or of such Party, unless such failure of performance of such third party was itself caused by an event that would be considered an event of Force Majeure under this Agreement, *mutatis mutandis*;
- (d) 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;
- (e) 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);
- (f) 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;
- (g) 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;
- (h) if the Force Majeure was caused by a lack of funds or other financial cause including the inability of the Supplier to secure financing; or
- (i) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 10.1(b) or 10.1(d).

For greater certainty, actions of the Sponsor that are not actions of the System Operator shall not constitute Force Majeure.

## 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, but only

if and to the extent such event or circumstance could not reasonably have been anticipated as at the Contract Date and is beyond the affected Party's reasonable control and not caused, directly or indirectly, by fault or negligence of the Party seeking to have its performance obligation excused thereby, 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) an inability to obtain, or to secure the renewal or amendment of, any permit, certificate, Connection 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, Connection 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) 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 16.1, 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 (excluding any such facility that is the subject of a contract under the microFIT Program) in Ontario that are the subject of a contract with the Sponsor and that are owned by the Supplier or an Affiliate thereof. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.
- (c) The Sponsor 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 Sponsor for any or all of the same.
- (d) No Secured Lender's Security Agreement shall be recognized by the Sponsor nor have status as such hereunder in the enforcement of the Sponsor'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 Sponsor 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 recognized by the Sponsor nor shall the assignee thereunder have the status of a Secured Lender hereunder 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor for the payment of all sums owing to the Sponsor 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 Sponsor has received the notice referred to in Section 11.1(d) or the contents thereof are embodied in the agreement entered into by the Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 Facility or shares or partnership interests in the capital of the Supplier 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 Sponsor:
  - (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, in the case of a transfer, sale or disposal of the Supplier's Interest or any other interest in the Facility, approved of the transferee or purchaser and the transferee or purchaser has entered into an agreement with the Sponsor in form and substance satisfactory to the Sponsor, 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, and in the case of a transfer, sale or disposal of shares or partnership interests in the capital of the Supplier, such a transfer, sale or disposal shall, other than in the circumstances described in Section 11.2(g), be subject to Section 16.2.

- (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 Sponsor 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 Sponsor 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 Sponsor is willing to enter into a New Agreement (the "**Sponsor Statement**"). Subject to the provisions of this Article 11, each such Secured Lender or its transferee approved by the Sponsor pursuant to Section 11.2(f) shall thereupon have the option to obtain from the Sponsor 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 Sponsor Statement, the Sponsor 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 Sponsor'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 Sponsor 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 Sponsor in accordance with this Section 11.2 to obtain a New Agreement, the Sponsor 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 Sponsor 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 Sponsor 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 Sponsor and the Supplier shall enter into an agreement with any Secured Lender substantially in the Prescribed Form for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. A Secured Lender shall have no rights under this Agreement unless and until it enters into the Prescribed Form with the Sponsor and the Supplier for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. The Sponsor, 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 Sponsor are not adversely affected thereby, the obligations of the Supplier to the Sponsor 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 Sponsor 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 Sponsor, the Government of Ontario, and/or the Ministry of Energy that appeared on the Website, the website of the Sponsor, the Government of Ontario and/or the Ministry of Energy, 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 Sponsor, the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Government of Ontario or the Ministry of Energy, 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* (Ontario), 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* (Ontario).

## 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 Sponsor;
- (b) the Parties and, at the Sponsor's discretion, those Other Suppliers that are required by the Sponsor 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 Sponsor'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 C. 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 Sponsor to implement such award of the Arbitration Panel.

### **12.3 Right of the Sponsor to Remedy a Discriminatory Action**

If the Sponsor wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Sponsor must give notice to the Supplier within 30 days after the date of receipt of notice of the Discriminatory Action. If the Sponsor gives such notice, the Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor Indemnification**

The Supplier shall indemnify, defend and hold the Sponsor, 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, 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 Sponsor 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 Business 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 Sponsor 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 Sponsor 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 Representative shall not have the power or authority to amend this Agreement solely by virtue of his or her position as Company Representative. Unless otherwise appointed as set out herein, the Supplier's Company Representative shall be the Company Representative as set out on the FIT Contract Cover Page.

#### **14.2 Record Retention; Audit Rights**

The Supplier and the Sponsor 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 Sponsor, 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, including the provision of copies of documents and all other information reasonably required by the Sponsor or its Representative, which shall be delivered to the premises of the Sponsor or its Representative as directed by the Sponsor. Moreover, the Supplier agrees and consents to the System Operator, an LDC or any other relevant third party providing to the Sponsor all relevant meter and invoice data regarding the Facility required by the Sponsor in order to verify the amount of Delivered Electricity. A Party may use its own employees or Representatives for purposes of any such review of records, provided that those employees or Representatives are bound by the confidentiality requirements provided for in Article 7 in which case no further confidentiality agreements or arrangements need be entered into. The Supplier shall ensure that any confidentiality agreements or arrangements between it and any third party (including any subcontractor, supplier or other supplier of goods or services to the Supplier) shall not have the effect of preventing, impairing or delaying any disclosure or access to or by the Sponsor or any of its Representatives as contemplated in this Section 14.2.

#### **14.3 Reports to the Sponsor**

If the Supplier is required to report Outages directly to the System Operator or an LDC, the Supplier shall deliver to the Sponsor pursuant to this Agreement in the Prescribed Form a copy of all reports, plans and notices that the Supplier is required to provide to the System Operator pursuant to the IESO Market Rules 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 System Operator pursuant to the IESO Market Rules or the LDC, as applicable.

#### **14.4 Inspection of Facility**

- (a) The Sponsor 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, and all relevant records during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Facility, to furnish the Sponsor with all reasonable assistance in inspecting the Facility (including the right to be provided with copies of any and all written records and downloads of any and all electronic records as reasonably required) 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. The Supplier shall ensure that any confidentiality agreements or arrangements between it and any third party (including any subcontractor, supplier or other supplier of goods or services to the Supplier) shall not have the effect of

preventing, impairing or delaying any disclosure or access to or by the Sponsor or any of its Representatives as contemplated in this Section 14.4.

- (b) The inspection of the Facility by or on behalf of the Sponsor 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 Sponsor. In no event will any inspection by the Sponsor 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 Sponsor 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 Sponsor 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 Sponsor Event of Default shall not constitute or be deemed to constitute a waiver of any Sponsor Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Sponsor with this Agreement.

#### **14.6 Notices**

- (a) All notices, consents, approvals, requests, reports and other information pertaining to this Agreement or required pursuant 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 (each a “**Notice**”):

If to the Supplier, to the Company Representative at the contact details set out in the FIT Contract Cover Page.

If to the Sponsor: Independent Electricity System Operator  
120 Adelaide Street West  
Suite 1600  
Toronto, Ontario  
M5H 1T1

Attention: Director, Contract Management  
Facsimile: 416-967-1947  
E-mail: FIT.Contract@ieso.ca

Either Party may, by written Notice to the other, change its respective Company Representative in accordance with Section 14.1 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.
- (d) No Notice to the Sponsor shall be deemed delivered unless the addressee of such Notice is identified in such Notice as “Contract Management”. No Notice from the Sponsor shall be binding on the Sponsor pursuant to this Agreement unless the sender of such Notice is identified in such Notice as “Contract Management”. No Notice delivered pursuant to this Agreement shall be deemed to be notice for any other purpose, including any obligation to provide notice to the System Operator pursuant to the IESO Market Rules.

## **ARTICLE 15 DISPUTE RESOLUTION**

### **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 a manager of the Sponsor, 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.

## **ARTICLE 16 ASSIGNMENT AND CHANGE OF CONTROL**

### **16.1 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 16.1(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 16.1(a), it shall not be unreasonable for the Sponsor to withhold its consent if the proposed assignment would (i) cause a Supplier to breach the obligation to own or lease the Facility as set out in Section 2.7(a), or (ii) have or is likely to have, as determined by the Sponsor acting reasonably, a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.
- (c) Notwithstanding Section 16.1(a) other than where the subject of this Agreement is a Contract Capacity Set Aside Project, 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 Sponsor 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 Sponsor 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 Sections 16.1(a) and 16.1(c), where the Facility is a Rooftop Solar Facility (for clarity, including in respect of Participation Projects), the Supplier may, prior to the Commercial Operation Date, assign this Agreement with the prior written consent of the Sponsor, 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 Sponsor incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Sponsor shall be reduced by the amount of such additional Taxes and the Sponsor shall remit such additional Taxes to the applicable taxing authorities. The Sponsor 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 Sponsor has paid such amounts, the Sponsor receives a refund, rebate or credit on account of such Taxes, then the Sponsor 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 16.1, the Sponsor acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Sponsor, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (g) The Sponsor 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 Sponsor under this Agreement and be novated into this Agreement in the place and stead of the Sponsor (except for the Sponsor's obligation in Section 16.1(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 Sponsor, 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 Sponsor shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Sponsor 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 Sponsor 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 Sponsor. The time periods in Section 9.3 shall not begin to run until both the assignee and the Sponsor have been so notified.
- (h) Notwithstanding this Section 16.1, where this Agreement forms part of a Rooftop Portfolio, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the Supplier to any Person at any time unless this Agreement and all other FIT Contracts forming part of such Rooftop Portfolio, and all related rights, interests and obligations, are similarly assigned to such Person at such time. For certainty, any assignment of a Rooftop Portfolio shall require compliance with the assignment provisions of every FIT Contract comprising such Rooftop Portfolio.

## **16.2 Change of Control**

- (a) Other than in accordance with Section 16.2(b), no change of Control of the Supplier shall be permitted prior to Commercial Operation, except with the prior written consent of the Sponsor, which consent may be withheld in the Sponsor'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 Sponsor with notice of such change of Control and such additional information as the Sponsor 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 Sponsor 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 Sponsor with notice of such change of Control and such additional information as the Sponsor 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 16.2(a) and 16.2(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 16.2(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 16.2(b)(i) so long as A is not a Special Purpose Entity.

## **ARTICLE 17 PARTICIPATION PROJECTS**

### **17.1 Provisions for Aboriginal Participation Projects**

- (a) Notwithstanding Section 1.2(e) of Exhibit A, 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 Facility is greater than 50%, the amount of the Initial Security shall be:
  - (i) where a Supplier's Application in respect of the Facility was awarded one Price Reduction Priority Point, \$15.00 per kW of Contract Capacity;
  - (ii) where a Supplier's Application in respect of the Facility was awarded two Price Reduction Priority Points, \$25.00 per kW of Contract Capacity;
  - (iii) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$55.00 per kW of Contract Capacity; or
  - (iv) in all other cases, \$5.00 per kW of Contract Capacity.

- (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 Facility is greater than 50%.
- (c) The Aboriginal Price Adder shall only apply to a Facility (i) that is an Aboriginal Participation Project as at the Commercial Operation Date, and (ii) for which the Supplier submits an Aboriginal Participation Project Declaration confirming such status prior to the Commercial Operation Date.
- (d) Where a Project or a Facility is not an Aboriginal Participation Project as of the Commercial Operation Date, or where the Supplier fails to provide an Aboriginal Participation Project Declaration confirming such status, the Aboriginal Price Adder shall not apply to such Facility 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 Sponsor at any time up to the date on which it submits the other documentation required to be provided to the Sponsor for the purpose of achieving Commercial Operation pursuant to Section 2.6.
- (f) Subject to Section 17.3, where the Supplier has provided any Completion and Performance Security to the Sponsor 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 17.1(a) or (b), where the Aboriginal Participation Level decreases from greater than 50% to equal to or below 50%, then notwithstanding Sections 17.1(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 Sections 5.1 and 5.2 or Exhibit A, as applicable. For greater certainty, where the Aboriginal Participation Level increases from equal to or below 50% to greater than 50%, there shall be no reduction in the amount of Completion and Performance Security already provided to the Sponsor.
- (g) A Supplier in respect of an Aboriginal Participation Project shall, within 20 Business Days of a request by the Sponsor, provide written evidence documenting the Aboriginal Participation Level that is to the satisfaction of the Sponsor, acting reasonably. If the evidence provided by the Supplier does not demonstrate to the satisfaction of the Sponsor, acting reasonably, that the actual Aboriginal Participation Level is at least equal to the Aboriginal Participation Level being used to determine the Aboriginal Price Adder, then, without prejudice to the provisions of Sections 17.3(b), 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 Sponsor forthwith, failing which the Sponsor may set off any such amounts from any future payments owing to the Supplier.

## 17.2 Provisions for Community Participation Projects

- (a) Notwithstanding Section 1.2(e) of Exhibit A, 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 Facility is greater than 50%, the amount of the Initial Security shall be:
  - (i) where a Supplier's Application in respect of the Facility was awarded one Price Reduction Priority Point, \$15.00 per kW of Contract Capacity;
  - (ii) where a Supplier's Application in respect of the Facility was awarded two Price Reduction Priority Points, \$25.00 per kW of Contract Capacity;
  - (iii) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$55.00 per kW of Contract Capacity; or
  - (iv) in all other cases, \$5.00 per kW of Contract Capacity.
- (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 Facility is greater than 50%.
- (c) The Community Price Adder shall only apply to a Facility (i) that is a Community Participation Project as at the Commercial Operation Date, and (ii) for which the Supplier submits a Community Participation Project Declaration confirming such status prior to the Commercial Operation Date.
- (d) Where a Project or a Facility is not a Community Participation Project as of the Commercial Operation Date, or where the Supplier fails to provide a Community Participation Project Declaration confirming such, the Community Price Adder shall not apply to such Facility 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 Sponsor, at any time up to the date on which it submits the other documentation required to be provided to the Sponsor for the purpose of achieving Commercial Operation pursuant to Section 2.6.
- (f) Where at any time the Community Participation Level decreases since the preceding Community Participation Project Declaration, the Supplier shall submit a revised Community Participation Project Declaration to the Sponsor 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.
- (g) Subject to Section 17.3, where the Supplier has provided any Completion and Performance Security to the Sponsor 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 17.2(a) or (b), where the Community Participation Level decreases from greater than 50% to below or equal to 50%, then notwithstanding Sections 17.2(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 Sections 5.1 and 5.2 or Exhibit A, as applicable. For greater certainty, where the Community Participation Level increases from below or equal to 50% to greater than 50%, there shall be no reduction in the amount of Completion and Performance Security already provided to the Sponsor.

- (h) Subject to Section 17.3, a Supplier in respect of a Community Participation Project shall, within 20 Business Days of a request by the Sponsor, provide written evidence documenting the Community Participation Level that is to the satisfaction of the Sponsor, acting reasonably. If the evidence provided by the Supplier does not demonstrate to the satisfaction of the Sponsor, 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, without prejudice to the provisions of Sections 17.3(b), 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 Sponsor forthwith, failing which the Sponsor may set off any such amounts from any future payments owing to the Supplier.
- (i) Prior to Notice to Proceed, on the Commercial Operation Date and on or prior to each anniversary thereof during the Term, the Supplier whose Facility is a Community Participation Project shall certify in writing in the Prescribed Form to the Sponsor that it has, and (other than in the case of the initial such certification) has had at all times during the period since the previous certification:
  - (i) in the case of a Facility that is a Contract Capacity Set-Aside Project, at least 50 Qualifying Members; or
  - (ii) in the case of a Facility that is not a Contract Capacity Set-Aside Project, at least 35 Qualifying Members.

Where, at the time of such certification, the identity of any such Qualifying Members has changed, the Supplier shall provide with the certification the Qualifying Membership Declaration of any new Qualifying Member and the names of any persons that ceased to be Qualifying Members during such period.

#### **17.2A Provisions for Municipal Participation Projects and Public Sector Entity Participation Projects**

- (a) Notwithstanding Section 1.2(e) of Exhibit A, if, prior to the Contract Date, the Supplier has provided a Municipal Participation Project Declaration or Public Sector Entity Participation Project Declaration confirming that the Municipal Participation Level or Public Sector Entity Participation Level, as applicable, in respect of the Facility is greater than 50%, the amount of the Initial Security shall be:

- (i) where a Supplier's Application in respect of the Facility was awarded one Price Reduction Priority Point, \$15.00 per kW of Contract Capacity;
  - (ii) where a Supplier's Application in respect of the Facility was awarded two Price Reduction Priority Points, \$25.00 per kW of Contract Capacity;
  - (iii) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$55.00 per kW of Contract Capacity; or
  - (iv) in all other cases, \$5.00 per kW of Contract Capacity.
- (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 Municipal Participation Project Declaration or Public Sector Entity Participation Project Declaration confirming that the Municipal Participation Level or Public Sector Entity Participation Level, as applicable, in respect of the Facility is greater than 50%.
- (c) The Municipal Price Adder or Public Sector Entity Price Adder, as applicable, shall only apply to a Facility (i) that is a Municipal Participation Project or Public Sector Entity Participation Project, as applicable, as at the Commercial Operation Date, and (ii) for which the Supplier submits a Municipal Participation Project Declaration or Public Sector Entity Participation Project Declaration, as applicable, confirming such status prior to the Commercial Operation Date.
- (d) Where a Project or a Facility is not a Municipal Participation Project or Public Sector Entity Participation Project as of the Commercial Operation Date, or where the Supplier fails to provide a Municipal Participation Project Declaration or Public Sector Entity Participation Project Declaration, as applicable, confirming such, the Municipal Price Adder or Public Sector Entity Price Adder, as applicable, shall not apply to such Facility at any time, regardless of any change in the Municipal Participation Level or Public Sector Entity Participation Level, as applicable.
- (e) Where the Municipal Participation Level or Public Sector Entity Participation Level has increased since the last Municipal Participation Project Declaration or Public Sector Entity Participation Project Declaration, as applicable, the Supplier may submit a revised Municipal Participation Project Declaration or Public Sector Entity Participation Project Declaration, as applicable, to the Sponsor, at any time up to the date on which it submits the other documentation required to be provided to the Sponsor for the purpose of achieving Commercial Operation pursuant to Section 2.6.
- (f) Where at any time the Municipal Participation Level or Public Sector Entity Participation Level decreases since the preceding Municipal Participation Project Declaration or Public Sector Entity Participation Project Declaration, as applicable, the Supplier shall submit a revised Municipal Participation Project Declaration or Public Sector Entity Participation Project Declaration, as applicable, to the Sponsor within 20 Business Days of such decrease, following which, the Municipal Price Adder or Public Sector Entity Price Adder, as applicable, shall be recalculated based on the decreased Municipal Participation Level or Public Sector Entity Participation Level, as applicable, and such decreased Municipal Price Adder or Public Sector Entity Price Adder shall be effective as of the date of the decrease in the Participation Level.

- (g) Subject to Section 17.3, where the Supplier has provided any Completion and Performance Security to the Sponsor 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 17.2(a) or (b), where the Municipal Participation Level or Public Sector Entity Participation Level decreases from greater than 50% to below or equal to 50%, then notwithstanding Sections 17.2(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 Sections 5.1 and 5.2 or Exhibit A, as applicable. For greater certainty, where the Municipal Participation Level or Public Sector Entity Participation Level increases from below or equal to 50% to greater than 50%, there shall be no reduction in the amount of Completion and Performance Security already provided to the Sponsor.
- (h) Subject to Section 17.3, a Supplier in respect of a Municipal Participation Project or Public Sector Entity Participation Project shall, within 20 Business Days of a request by the Sponsor, provide written evidence documenting the Participation Level that is to the satisfaction of the Sponsor, acting reasonably. If the evidence provided by the Supplier does not demonstrate to the satisfaction of the Sponsor, acting reasonably, that the actual Participation Level is not at least equal to the Municipal Participation Level or Public Sector Entity Participation Level being used to determine the Municipal Price Adder or Public Sector Entity Price Adder, as applicable, then, without prejudice to the provisions of Sections 17.3(b), the Municipal Price Adder or Public Sector Entity Price Adder, as applicable, shall be recalculated in accordance with the documented Participation Level and applied retroactively to the latest date for which the Supplier can demonstrate that the Participation Level used to determine the Municipal Price Adder or Public Sector Entity Price Adder, as applicable, was accurate. Any overpayment that resulted from an inaccurate Participation Level shall be paid by the Supplier to the Sponsor forthwith, failing which the Sponsor may set off any such amounts from any future payments owing to the Supplier.

### 17.3 Decreases in Participation Level

- (a) Where, in the case of a Participation Project, the applicable Participation Level decreases from the Participation Level in effect as at the later of:
  - (i) the date of the applicable Project Declaration; and
  - (ii) the effective date of any such decrease as set out in the most recent Notice of Decrease;the Supplier shall provide written notice (“**Notice of Decrease**”) to the Sponsor within 20 days of such decrease, which notice shall include the revised Participation Level and the effective date thereof. For clarity, where the Participation Project is a Community Participation Project and such decrease is due to the Community Investment Member ceasing to qualify as such due to an insufficient number of Co-op Members that are Property Owners, the Participation Level shall decrease to 0%.
- (b) Where, in the case of a Contract Capacity Set-Aside Project:
  - (i) at any time from the Commercial Operation Date until the fifth anniversary of the Commercial Operation Date the Participation Level is equal to or below 50%; or

- (ii) at any time after the fifth anniversary of the Commercial Operation Date the Participation Level is below 25%;

then, such failure to maintain the required Participation Level shall constitute a Supplier Event of Default if such failure is not remedied within six months after written notice of such failure from the Sponsor, provided that where the Contract Capacity Set-Aside Project is a Community Participation Project and such failure is due to the Community Investment Member ceasing to qualify as such due to an insufficient number of Co-op Members that are Property Owners such cure period shall be available only where such failure commenced less than 12 months prior to the date on which the Sponsor received the corresponding Notice of Decrease.

For a Community Participation Project, it shall not be a Supplier Event of Default if the failure to maintain the required Participation Level is due to the Community Investment Member ceasing to qualify as such due to an insufficient number of Co-op Members that are Property Owners where such insufficiency has occurred as a result of either the death of a Co-op Member or a Co-op Member no longer being a Property Owner.

- (c) Where, in the case of an Aboriginal Participation Project, a Community Participation Project, a Municipal Participation Project or a Public Sector Entity Participation Project that was otherwise eligible to receive a Price Adder:
  - (i) the Participation Level was greater than 50% as at the Commercial Operation Date; and
  - (ii) at any time during the Term the Participation Level is below or equal to 50%, but greater than or equal to 15%;

then, as at such time, the Supplier shall no longer be entitled to receive the Aboriginal Price Adder (Over 50%), the Community Price Adder (Over 50%), the Municipal Price Adder (Over 50%), or the Public Sector Entity Price Adder (Over 50%), as the case may be, but shall thereafter, subject to this Agreement, be entitled to receive the Aboriginal Price Adder (15%-50%), the Community Price Adder (15%-50%), the Municipal Price Adder (15%-50%) or Public Sector Entity Price Adder (15%-50%), as the case may be, until such time as the Supplier restores the Participation Level to greater than 50% and provides the Sponsor with a revised Aboriginal Participation Project Declaration, Community Participation Project Declaration, Municipal Participation Project Declaration or Public Sector Entity Participation Project Declaration confirming this.

- (d) Without prejudice to Sections 17.3(b), where, in the case of an Aboriginal Participation Project, a Community Participation Project, a Municipal Participation Project or a Public Sector Entity Participation Project that was otherwise eligible to receive a Price Adder, at any time during the Term the Participation Level is below 15% then, as at such time, the Supplier shall no longer be entitled to receive any Price Adder until such time as the Supplier restores the Participation Level to greater than 15% and provides the Sponsor with a revised Aboriginal Participation Project Declaration, Community Participation Project Declaration, Municipal Participation Project Declaration or Public Sector Entity Participation Project Declaration confirming this.
- (e) For clarity, in this Section 17.3, a Supplier shall be subject to a Supplier Event of Default as provided in this section only where the Project was designated as a Contract Capacity Set-Aside Project.

- (f) A Supplier may remedy a failure that would otherwise result in a Supplier Event of Default as described in Section 9.1(m) or Section 17.3(b), subject to the applicable cure periods provided for therein, as follows:
- (i) in the case of a failure described in Section 9.1(m), a Supplier may remedy such failure by:
    - (A) qualifying the Facility as a Participation Project (so long as the relevant Application was not awarded Priority Points as a Participation Project as indicated on the FIT Contract Cover Page); or
    - (B) replacing the Public Sector Entity Site Host with another Public Sector Entity Site Host;
  - (ii) in the case of a failure described in Sections 17.3(b), a Supplier may remedy such breach by requalifying as a Contract Capacity Set-Aside Project, for clarity, in each case with a Participation Level of greater than 50% any time from the Commercial Operation Date until the fifth anniversary of the Commercial Operation Date, and thereafter requalifying as a Participation Project with a Participation Level that is greater than or equal to 25%, provided that:
    - (A) where the Participation Project was, prior to such failure, an Aboriginal Participation Project, it must requalify as an Aboriginal Participation Project;
    - (B) where the Participation Project was, prior to such failure, a Community Participation Project, it must requalify as a Community Participation Project;
    - (C) where the Participation Project was, prior to such failure, a Municipal Participation Project, it must requalify as a Municipal Participation Project; and
    - (D) where the Participation Project was, prior to such failure, a Public Sector Entity Participation Project, it must requalify as a Public Sector Entity Participation Project; and

in each case, subject to such information requirements as the Sponsor may, acting reasonably, notify to the Supplier.
  - (g) For clarity, nothing in this Section 17.3 shall affect the interpretation of or limit the Sponsor's rights under Section 16.2.

## **ARTICLE 18 MISCELLANEOUS**

### **18.1 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.

## **18.2 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.

## **18.3 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, Section 14.2, and Article 15 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.

## **18.4 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.

## **18.5 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 Sponsor may set off any amounts owing by the Supplier to the Sponsor in connection with Sections 2.4, 3.1, 3.2, 3.4, 4.2(c), 4.3(c), 4.5, 9.2(d), and 16.1(c) against any monies owed by the Sponsor to the Supplier in connection with Sections 2.4(c), 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 16.1(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 Sponsor to the Supplier in connection with Sections 2.4(c), 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 16.1(c) against any monies owed by the Supplier to the Sponsor in connection with Sections 2.4, 3.1, 3.2, 3.4, 4.2(c), 4.3(c), 4.5, 9.2(d), and 16.1(c).

## **18.6 Rights and Remedies Not Limited to Contract**

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

## **18.7 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 Facility whose Renewable Fuel is Biogas, but that is not an On-Farm Biogas Facility.

**1.2 Technology-Specific Values**

- (a) Subject to Section 2.5(d), 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 Facility plus \$2.00 per kW of Contract Capacity.
- (e) The amount of the Initial Security is:
  - (i) where a Supplier's Application in respect of the Facility was awarded two Price Reduction Priority Points, \$30.00 per kW of Contract Capacity;
  - (ii) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$60.00 per kW of Contract Capacity; or
  - (iii) in all other cases, \$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) Subject to Section 2.5(d), 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 Facility plus \$2.00 per kW of Contract Capacity.
- (e) The amount of the Initial Security is:
  - (i) where a Supplier's Application in respect of the Facility was awarded two Price Reduction Priority Points, \$30.00 per kW of Contract Capacity;
  - (ii) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$60.00 per kW of Contract Capacity; or
  - (iii) in all other cases, \$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 Facility whose Renewable Fuel is landfill gas.

**1.2 Technology-Specific Values**

- (a) Subject to Section 2.5(d), 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 Facility plus \$2.00 per kW of Contract Capacity.
- (e) The amount of the Initial Security is:
  - (i) where a Supplier's Application in respect of the Facility was awarded two Price Reduction Priority Points, \$30.00 per kW of Contract Capacity;
  - (ii) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$60.00 per kW of Contract Capacity; or
  - (iii) in all other cases, \$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 Facility whose Renewable Fuel is Renewable Biomass.

**1.2 Technology-Specific Values**

- (a) Subject to Section 2.5(d), 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 Facility plus \$2.00 per kW of Contract Capacity.
- (e) The amount of the Initial Security is:
  - (i) where a Supplier's Application in respect of the Facility was awarded two Price Reduction Priority Points, \$30.00 per kW of Contract Capacity;
  - (ii) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$60.00 per kW of Contract Capacity; or
  - (iii) in all other cases, \$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 5A: ROOFTOP SOLAR FACILITIES ON EXISTING BUILDINGS**

**1.1 Application of Exhibit**

This version of Exhibit A shall apply to a Rooftop Solar Facility located on an Existing Building.

**1.2 Technology-Specific Values**

- (a) The Milestone Date for Commercial Operation is the date that is 18 months 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 Facility plus \$10.00 per kW of Contract Capacity.
- (e) The amount of the Initial Security is:
  - (i) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$60.00 per kW of Contract Capacity; or
  - (ii) in all other cases, \$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 Facility that utilizes Solar (PV) (Rooftop) 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 Solar 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 Solar Facility.

**EXHIBIT A**  
**TECHNOLOGY-SPECIFIC PROVISIONS**  
**TYPE 5B: ROOFTOP SOLAR FACILITIES ON UNCONSTRUCTED BUILDINGS**

**1.1 Application of Exhibit**

This version of Exhibit A shall apply to a Rooftop Solar Facility located on an Unconstructed Building.

**1.2 Technology-Specific Values**

- (a) The Milestone Date for Commercial Operation is the date that is 24 months 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 Facility plus \$10.00 per kW of Contract Capacity.
- (e) The amount of the Initial Security is:
  - (i) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$60.00 per kW of Contract Capacity; or
  - (ii) in all other cases, \$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) The Supplier represents and warrants that the building on which the Facility is to be built was an Unconstructed Building as at the Application Date.
- (b) The following Section (vii) is added to Section 2.6(a):
  - (vii) in the case of a Facility in respect of Unconstructed Building, the Sponsor has received:
    - (A) a copy of the final occupancy permit for the building on which the Facility is located from the Local Municipality or Municipality in which the building is located; or
    - (B) in the case where the Facility is not subject to the building permitting authority of a Municipality, the equivalent of a final occupancy permit or other such evidence of conformity with the requirements to obtain a final occupancy permit.
- (c) Notwithstanding Section 9.1(j), in the case of a Facility that utilizes Solar (PV) (Rooftop) as its Renewable Fuel, which for clarity includes Facility in respect of an Unconstructed Building, it shall be a Supplier Event of Default if the Commercial Operation Date has



not occurred on or before the date which is twelve months after the Milestone Date for Commercial Operation.

- (d) Notwithstanding anything contained in Article 17, the Participation Level shall not decrease prior to the Commercial Operation Date. Failure to maintain the Participation Level at all times prior to the Commercial Operation Date shall constitute a Supplier Event of Default. After the Commercial Operation Date, Article 17 shall apply to any decrease in Participation Level.
- (e) Where the FIT Contract Cover Page identifies the Facility as a Rooftop Solar 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 Solar Facility.

**EXHIBIT A**  
**TECHNOLOGY-SPECIFIC PROVISIONS**  
**TYPE 6: SOLAR (PV) NON-ROOFTOP FACILITIES**

**1.1 Application of Exhibit**

This version of Exhibit A shall apply to a Non-Rooftop Solar Facility.

**1.2 Technology-Specific Values**

- (a) Subject to Section 2.5(d), 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 Facility plus \$10.00 per kW of Contract Capacity.
- (e) The amount of the Initial Security is:
  - (i) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$60.00 per kW of Contract Capacity; or
  - (ii) in all other cases, \$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 Setback Requirements**

Where a Land Use Restriction Exemption Resolution was not included in the Supplier's Application, the following requirements (the "**Setback Requirements**") apply in respect of Facilities that are located, in whole or in part, on one or more Properties that are Rural-Residential Lands:

- (a) In respect of such Facilities, the Setback Requirements applicable to the Site are determined based on whether:
  - (i) the Property or Properties on which the Site is located, or a portion thereof, Abuts a Residential Cluster; and
  - (ii) whether a Municipal Council Setback Resolution has been adopted in respect of the Facility.
- (b) The Supplier shall at all times design, construct and operate such Facility with a Setback of no less than 20 metres in respect of any External Boundary located on any and all Properties on which such Site is located, in whole or in part.
- (c) In the case where: (1) such Properties that are Rural-Residential Lands Abut a Residential Cluster; and (2) there is no Municipal Council Setback Resolution in respect of such

Facility the Supplier shall at all times design, construct and operate the Facility with a Setback of:

- (i) no less than 100 metres in respect of any External Boundary located on any and all Properties on which such Site is located, in whole or in part, that borders such Residential Cluster; and
  - (ii) no less than 20 metres in respect of any External Boundary that does not border such Residential Cluster.
- (d) In the case where (1) such Properties that are Rural-Residential Lands Abut a Residential Cluster; and (2) where there is a Municipal Council Setback Resolution in respect of such Facility the Supplier shall at all times design, construct and operate the Facility with a Setback of:
- (i) no less than the greater of 20 metres, or a distance in metres as set out in such Municipal Council Setback Resolution in respect of any External Boundary located on any and all Properties on which such Site is located, in whole or in part, that borders such Residential Cluster; and
  - (ii) no less than 20 metres in respect of any External Boundary that does not border such Residential Cluster.

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

**1.1 Application of Exhibit**

This version of Exhibit A shall apply to a Facility whose Renewable Fuel is waterpower.

**1.2 Technology-Specific Values**

- (a) The Milestone Date for Commercial Operation is the date that is eight 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 Facility plus \$20.00 per kW of Contract Capacity.
- (e) The amount of the Initial Security is:
  - (i) where a Supplier's Application in respect of the Facility was awarded two Price Reduction Priority Points, \$30.00 per kW of Contract Capacity;
  - (ii) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$60.00 per kW of Contract Capacity; or
  - (iii) in all other cases, \$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**

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.

**EXHIBIT A**  
**TECHNOLOGY-SPECIFIC PROVISIONS**  
**TYPE 8: ON-SHORE WIND 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) Subject to Section 2.5(d), 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 Facility plus \$2.00 per kW of Contract Capacity.
- (e) The amount of the Initial Security is:
  - (i) where a Supplier's Application in respect of the Facility was awarded two Price Reduction Priority Points, \$30.00 per kW of Contract Capacity;
  - (ii) where a Supplier's Application in respect of the Facility was awarded three Price Reduction Priority Points, \$60.00 per kW of Contract Capacity; or
  - (iii) in all other cases, \$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 4: FACILITIES NOT REGISTERED IN THE IESO-ADMINISTERED MARKET**

**1.1 Application of Exhibit**

This version of Exhibit B shall apply to a Small FIT Facility that is not a Behind-the-Meter Facility.

**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 Sponsor with access to the applicable LDC Portal or the System Operator’s MVPortal, or equivalent with respect to the Facility. In the event that the LDC Portal, the System Operator’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 per cent (0%), the Indexed Contract Price shall be equal to the Contract Price for all years.
- (b) For all other Facilities, commencing on January 1 of the calendar year following Commercial Operation, the Indexed Contract Price in any year “y” shall be the greater of the Indexed Contract Price in the preceding year, “y-1”, and the following calculation:

$CP_y = (1 - PE) \times TCP_{BD} + PE \times \left( TCP_{BD} \times \frac{CPI_y}{CPI_{COD}} \right)$	
where:	
CP <sub>y</sub>	is the Indexed Contract Price applicable in calendar year “y” during the Term;
TCP <sub>BD</sub>	is the Total Contract Price;
CPI <sub>COD</sub>	is: <ul style="list-style-type: none"> <li>(a) for Facilities in respect of which the Commercial Operation Date falls between January 1 and September 30 (inclusive) in a calendar year, the CPI applicable to the month of January in such calendar year; and</li> <li>(b) for Facilities in respect of which the Commercial Operation Date falls on or after October 1 in a calendar year, the CPI applicable to the month of January in the next following calendar year;</li> </ul>

CPI <sub>y</sub>	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 per cent (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 Sponsor.
- (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 B**  
**METERING AND SETTLEMENT**  
**TYPE 1: FACILITIES REGISTERED IN THE IESO-ADMINISTERED MARKETS**

**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 Sponsor, for the purposes of this Agreement, 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 Sponsor’s designated Representative(s) and the Connection Point of the Facility within the MVPortal application tool or equivalent, at no cost to the Sponsor.

**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 per cent (0%), the Indexed Contract Price shall be equal to the Contract Price for all years.
- (b) For all other Facilities, commencing on January 1 of the calendar year following Commercial Operation, the Indexed Contract Price in any year “y” shall be the greater of the Indexed Contract Price in the preceding year, “y-1”, and the following calculation:

$CP_y = (1 - PE) \times TCP_{BD} + PE \times \left( TCP_{BD} \times \frac{CPI_y}{CPI_{COD}} \right)$	
where:	
$CP_y$	is the Indexed Contract Price applicable in calendar year “y” during the Term;
$TCP_{BD}$	is the Total Contract Price;
$CPI_{COD}$	is: <ul style="list-style-type: none"> <li>(a) for Facilities in respect of which the Commercial Operation Date falls between January 1 and September 30 (inclusive) in a calendar year, the CPI applicable to the month of January in such calendar year; and</li> <li>(b) for Facilities in respect of which the Commercial Operation Date falls on or after October 1 in a calendar year, the CPI applicable to the month of January in</li> </ul>



	the next following calendar year;
CPI <sub>y</sub>	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 per cent (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 Sponsor.

(c) Where the Contract Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the Sponsor to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the Sponsor.

**EXHIBIT C**  
**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 Sponsor’s option, all Other Suppliers required by the Sponsor to participate, have been unable to reach agreement as contemplated in Sections 1.7, 1.8, 2.10, and 12.2, as applicable, then the Sponsor shall commence arbitration by delivering a written notice (“**Request**”) to the Supplier and such Other Suppliers required by the Sponsor to participate (collectively the “**Suppliers**”). If the Sponsor has not already done so, the Sponsor shall then deliver to the Suppliers the names of all Suppliers. Within 20 Business Days of the delivery of the Request, the Sponsor 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 Sponsor’s notice nominating its arbitrator, the Suppliers shall by written notice to the Sponsor 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 Sponsor’s notice nominating its arbitrator, any Supplier or the Sponsor 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 Sponsor 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* (Ontario) and, where applicable, the *International Commercial Arbitration Act* (Ontario), it being the intention of the Sponsor 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 Sponsor.
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 D**  
**VISUAL SCREENING REQUIREMENTS**

[As attached and in force or applicable as at Contract Date]

## EXHIBIT E

### OPTIONAL TERMINATION: GROSSED-UP TAXES CALCULATION

The gross-up amounts for any Taxes payable (the “**Grossed-up Taxes**”) on the Optional Termination Sum and on the Optional Termination Payment True-up Sum, each as to be determined under Section 9.6 of the Agreement, shall be calculated based on the following principles:

1. The payment of the Optional Termination Sum and the Optional Termination Sum True-Up Payment, inclusive of the Grossed-up Taxes, is to compensate the Supplier for the occurrence of an Optional Termination and the destruction of its entire business activity and functions that would have been achieved through the operation of the Project
2. The objective for the payment of the Grossed-up Taxes is to enable the Supplier to be in the same position after paying Taxes on the receipt of the Optional Termination Sum plus (or less, as applicable) any Optional Termination Sum True-up Payment received hereunder, including any Taxes payable on the Grossed-up Taxes, as the Supplier would have been in had such no payment had arisen.
3. For purposes of calculating the Grossed-up Taxes, only those taxes imposed under Part I of the ITA and similar taxes imposed pursuant to any taxation statute of a province (but only to the extent that the Supplier is subject to taxation under that provincial taxation statute) shall be considered. For purposes of Exhibit E, the ITA and similar taxation statutes of a province shall be referenced as the “**Tax Acts**”.
4. If a Supplier is formed as a partnership, then the Grossed-up Taxes shall be determined after the Supplier has made the proportionate allocations of partnership income and expenses to each partner. The provisions of this Exhibit E apply with necessary modification to each such partner, and for greater certainty shall take into account any Taxes payable by each partner arising from the distribution of the proportionate share of the Optional Termination Sum and the Optional Termination True-up Sum (as applicable) to each partner.
5. If a Supplier or its partner is exempt from taxation under both the ITA and any applicable provincial statute imposing taxation on the Supplier or partner, as applicable, then no Grossed-up Taxes shall be payable to that Supplier or partner, as applicable.
6. If a Supplier is formed as a partnership and a trust is a partner in the Supplier, and further if that trust has allocated some or all of its taxable income to its beneficiaries in such a fashion that the beneficiaries would recognize that taxable income that had otherwise been recognized or allocated by the Supplier to the trust, the Grossed-up Taxes shall be determined after the trust has made the relevant allocations to each beneficiary and the provisions of this Exhibit E will apply with necessary modification to each such beneficiary of the trust.
7. To the maximum extent permitted pursuant to the Tax Acts, the Supplier shall be obligated to claim all tax deductions attributable to the Optional Termination and to the receipt of the Optional Termination Sum and the Optional Termination Sum True-Up Payment.

8. The Supplier shall utilize all non-capital losses, net capital losses, and tax credit amounts, to the maximum extent permitted under the Tax Acts, in order to minimize the quantum of the Grossed-up Taxes that would otherwise be payable. In particular, if the Supplier has non-capital loss carryforward balances or net capital loss carryforward balances as provided under the Tax Acts or has any other unutilized tax credit balances which are attributable from any source, then such loss balances and tax credits shall be applied to the maximum extent permitted pursuant to the Tax Acts as is applicable to the calculation of the Grossed-up Taxes. Similarly, the Supplier shall, to the maximum extent permitted under the Tax Acts, carry-back all future non-capital loss balances and net capital loss balances and utilize future tax credit balances, each of which are attributable to the Project or to the Optional Termination thereof, as is applicable to the calculation of the amount of the Grossed-up Taxes.
9. The Supplier shall provide its calculation of the Grossed-up Taxes, including all assumptions, calculations and methodologies used in the calculation, together with all tax returns (including any applicable tax information reporting returns) required pursuant to Part I of the ITA and similar filings required by provincial taxation statutes, where these returns have been filed by the Supplier since the Termination Date.

The Grossed-up Taxes amount shall be re-calculated and adjusted as appropriate to reflect any adjustment arising pursuant to the Optional Termination Payment True-up Sum.