

THIS AGREEMENT made as of this _____ day of _____, 20____,

[NTF: IESO to insert date when executed by the IESO – Supplier to leave the date blank]

BETWEEN:

[●],

[insert legal form of the Supplier and jurisdiction of organization]

(the “Supplier”)

- and -

[●],

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

(the “Security Agent”)

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR,
a statutory corporation without share capital amalgamated
under the laws of the Province of Ontario

(the “IESO”)

RECITALS:

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

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

- D. The Supplier has agreed and the Security Agent acknowledges that the Secured Debt secured by the Security Agreements is only for the purposes of financing the Supplier’s acquisition, construction, re-development, ownership, operation and maintenance of the Contract Facility or the Contract Facility together with one or more other renewable generating facilities in Ontario and any refinancing of any such debt, and for no other purpose;

THEREFORE, the parties agree as follows:

1. Defined Terms

Unless otherwise provided in this agreement or the context otherwise requires, all capitalized terms which are not defined in this agreement have the respective meanings given to them in the FIT Contract, and “including” shall mean “including without limitation”.

2. Acknowledgement and Confirmation of Rights of Security Agent

The IESO, the Security Agent and the Supplier each acknowledge and confirm that:

- (a) the Supplier has delivered to the IESO copies of the Security Agreements listed on Schedule “A”;
- (b) the Security Agreements listed on Schedule “A” are acknowledged to be Security Agreements to which the provisions of Article 11 of the FIT Contract apply; and
- (c) the Security Agent constitutes the Secured Lender for purposes of the FIT Contract and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 11 of the FIT Contract in favour of a Secured Lender and is entitled to enforce the same as if the Security Agent were a party to the FIT Contract, until such time as IESO has received notice from the Security Agent that the Security Agreements have been terminated.

Notwithstanding any other provision of this agreement, no Security Agreement other than the Security Agreements listed on Schedule “A” shall be entitled to the benefit of the provisions of Article 11 of the FIT Contract, unless and until the IESO has received a copy thereof (as provided for in Section 11.1(d) of the FIT Contract) and each of the parties has acknowledged such additional Security Agreement by fully executing an amendment to Schedule “A” to include such additional Security Agreement. It is a condition precedent to the acknowledgement and confirmation provided in this Section 2 that the representations and warranties contained in Sections 3 and 4 hereof are true and accurate.

3. Covenants of the Security Agent

The Security Agent covenants and agrees with the IESO (and in the case of paragraphs (c), (d), (f), (h), (j), (l), (n) and (o) below, covenants, agrees, represents and warrants to the IESO) as follows:

- (a) Should the Security Agent enforce the Security Agreements with respect to the FIT Contract, it will comply with the terms, conditions and obligations applicable to a Secured Lender under Section 11.2 of the FIT Contract as they relate to the Security Agent’s security interests in the FIT Contract during such enforcement.

- (b) The Security Agent agrees that it is in compliance and will comply with Section 11.2(f) of the FIT Contract.
- (c) The Security Agent [*Note to finalization: (is and will be) or (is not)*] at Arm's Length from the Supplier.
- (d) The Security Agreements listed on Schedule "A" constitute all of the security granted by the Supplier in favour of the Security Agent as at the date first written above.
- (e) Except for the Security Agreements and any other security that is delivered by the Security Agent to the IESO in accordance with Section 11.1(d) of the FIT Contract, the Security Agent acknowledges that any other security granted in favour of the Security Agent will not impose any obligations upon the IESO pursuant to the FIT Contract.
- (f) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule "A".
- (g) If the Supplier is in default under or pursuant to any Security Agreement and the Security Agent intends to exercise any rights afforded to it with respect to the FIT Contract, then the Security Agent will give notice of such default to the IESO at least 10 Business Days prior to exercising any such rights under the FIT Contract.
- (h) The Security Agent has entered into this agreement and holds the security granted pursuant to the Security Agreements on behalf of all parties having any right, title or interest in the Security Agreements.
- (i) Only the Security Agent will be entitled to exercise the rights and remedies under the Security Agreements as the Secured Lender except that in accordance with Section 11.2(g) of the FIT Contract, when the Security Agent has appointed an agent, a receiver or a receiver and manager, or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Security Agent's security, that Person may exercise any of the Security Agent's rights under Section 11.2 of the FIT Contract.
- (j) The address of the Security Agent to which notices may be sent pursuant to Section 11.1(d) of the FIT Contract is set forth in Section 6 of this agreement.
- (k) The Security Agent will provide the IESO with written notice of any change in the identity or address of the Security Agent, and the Security Agent agrees to promptly notify IESO in writing of any discharge or termination of all or any of the Security Agreements listed on Schedule "A".
- (l) The recitals to this agreement are true and accurate.
- (m) The sale, assignment or other transfer of any rights in shares, partnership interests or similar rights in the capital of the Supplier in respect of which the Security Agent holds a security interest granted pursuant to the Security Agreements shall be subject to Section 11.2(f) of the FIT Contract.
- (n) The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for

any other purpose. The Security Agent acknowledges that any acknowledgement, agreement or confirmation of the IESO hereunder is not and shall not be construed as a consent to any assignment of the FIT Contract or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement as provided for in Article 11 of the FIT Contract.

- (o) The Security Agreements do not and will not secure any indebtedness, liability or obligation of the Supplier that is not related to the Contract Facility, the Contract Facility together with one or more other renewable generating facilities in Ontario, or the FIT Contract, or cover any real or personal property of the Supplier not related to the Contract Facility or the Contract Facility together with one or more other renewable generating facilities in Ontario.

4. Covenants of the Supplier

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

- (a) The Security Agreements are subject to the terms and conditions applicable to a Secured Lender's Security Agreement that are contained in Article 11 of the FIT Contract, and comply therewith.
- (b) The Supplier has provided to the IESO true and complete copies of the Security Agreements listed on Schedule "A", and such Security Agreements constitute Secured Lender's Security Agreements and the Security Agent constitutes a Secured Lender for purposes of the FIT Contract.
- (c) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule "A".
- (d) The recitals to this agreement are true and accurate and the Supplier agrees that all Secured Debt will have been incurred in connection with the acquisition, construction, re-development, ownership, operation and maintenance of the Contract Facility or the Contract Facility together with one or more other renewable generating facilities in Ontario and any refinancing of any such debt.
- (e) The Supplier will provide the IESO with true and complete copies of any new agreements relating to, or amendments to, any Secured Lender's Security Agreement.
- (f) The Security Agreements do not and will not secure any indebtedness, liability or obligation of the Supplier that is not related to the Contract Facility, the Contract Facility together with one or more other renewable generating facilities in Ontario, or the FIT Contract, or cover any real or personal property of the Supplier not related to the Contract Facility or the Contract Facility together with one or more other renewable generating facilities in Ontario.
- (g) There is no existing unremedied Supplier Event(s) of Default.
- (h) The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Supplier acknowledges that any acknowledgement, agreement or

confirmation of the IESO hereunder is not and shall not be construed as a consent to any assignment of the FIT Contract or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement.

5. Notice of Default by Security Agent

The parties hereto agree that the IESO shall not be bound or have any obligation to make any inquiry regarding the status of the Supplier's account with the Security Agent or regarding any breach or default under or pursuant to the Security Agreements other than the written notice (a "**Default Notice**") to be given to the IESO by the Security Agent pursuant to Section 11.1(e) of the FIT Contract, which may be accepted by the IESO as conclusive evidence of the Supplier's default thereunder. Following receipt by the IESO of a Default Notice, the IESO may at all times, subject to transfer of such interest or entry into a New Agreement in accordance with Article 11 of the FIT Contract, rely on the instructions (the "**Security Agent's Instructions**") of the Security Agent or its nominee or agent or a receiver or receiver and manager appointed in accordance with Section 11.2(d) until the Default Notice is withdrawn by the Security Agent by written notice to the IESO. The IESO shall have no liability to the Supplier for honouring a Default Notice or any Security Agent's Instructions and the Supplier hereby agrees to indemnify the IESO and hold it harmless in respect of any losses or claims incurred or suffered by the IESO due to or arising out of IESO honouring any Default Notice or complying with any Security Agent's Instructions, and the sole remedy of the Supplier in any such circumstances shall be against the Security Agent. Prior to receipt by the IESO of a Default Notice, the IESO may at all times rely on the instructions of the Supplier (the "**Supplier's Instructions**"). The IESO shall have no liability to the Security Agent for complying with any Supplier's Instructions prior to such receipt.

6. Notice

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

If to the Supplier:

-
-
-
-

Attention: ●
Facsimile: ●

If to the IESO:

Independent Electricity System Operator
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

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

If to the Security Agent:

-
-
-
-

Attention: ●
Facsimile: ●

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

7. Successors and Assigns

Subject to complying with Sections 11.1(d), 15.5 and 15.6 of the FIT Contract, the benefits under this agreement accruing to each of the parties to this agreement will extend to all their respective successors and permitted assigns, only if they agree, according to their interests, to be bound by all the provisions of this agreement (it being the responsibility of each party to give notice to each other party of such assignment and to require its successors and permitted assigns to expressly acknowledge and agree in favour of each other party to be bound by this agreement). Subject to complying with Section 11.1(d) and 15.5 of the FIT Contract, upon the acquisition by any such successor or permitted assign of such an interest, such successor or permitted assign will be joined, as a party benefiting and bound by this agreement, by an appropriate further agreement supplementary to this agreement in form and substance acceptable to the IESO, acting reasonably.

8. No Waiver

The parties hereto confirm that the FIT Contract remains in full force and effect in accordance with its terms and that this agreement shall not be deemed to waive or modify in any respect any rights of the IESO under the FIT Contract or the FIT Rules. Without limiting the foregoing, this agreement shall not constitute or be deemed to constitute:

- (a) a waiver of any Supplier Event of Default or other default of the Supplier;
- (b) waiver of any prohibition or restriction on, or the IESO's consent to, any assignment of the FIT Contract or change of Control under the FIT Contract; or
- (c) an acknowledgement that there has been or will be compliance by the Supplier with the FIT Contract, except to the extent of the acknowledgement of the rights of the Security Agent as expressly provided herein.

9. Execution and Delivery

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

10. Governing Law

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

[EXECUTION PAGE IMMEDIATELY FOLLOWS]

SAMPLE

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

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

●

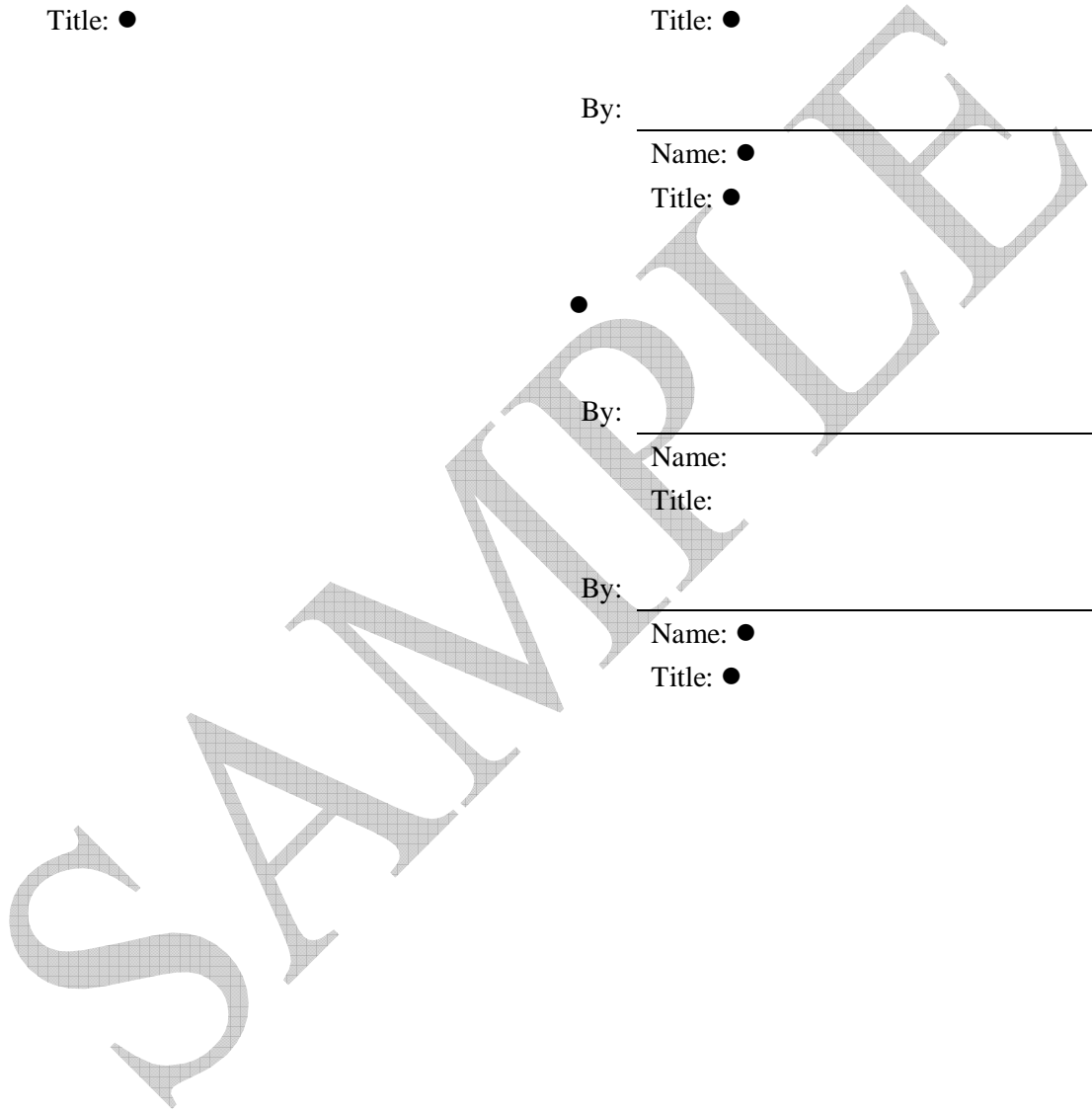
By: _____
Name: ●
Title: ●

By: _____
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Title: ●

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Name: ●
Title: ●

●
By: _____
Name:
Title:

By: _____
Name: ●
Title: ●



SCHEDULE "A"

LIST OF SECURITY AGREEMENTS AND REGISTRATION DETAILS

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

- (a) ●
- (b) ●
- (c) ●

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

-

SAMPLE