



## RENEWABLE ENERGY STANDARD OFFER PROGRAM CONTRACT

1. CONTRACT IDENTIFICATION #: RESOP- \_\_\_\_\_
2. CONTRACT DATE: \_\_\_\_\_
3. PAYOR: Ontario Power Authority \_\_\_\_\_
4. GENERATOR: \_\_\_\_\_
5. GENERATOR'S ADDRESS: \_\_\_\_\_ Fax: \_\_\_\_\_  
Phone : \_\_\_\_\_  
Contact Person: \_\_\_\_\_ E-Mail: \_\_\_\_\_
6. GENERATOR INFORMATION: (if available) OEB License Number: EG- \_\_\_\_\_ - \_\_\_\_\_  Not a Non-Resident of Canada  
GST #: \_\_\_\_\_  Non-Resident of Canada
7. GROSS NAMEPLATE CAPACITY: \_\_\_\_\_ kW
8. CONTRACT CAPACITY: \_\_\_\_\_ kW
9. RENEWABLE FUEL:  Bio-fuel  Solar (PV)  
 Bio-gas  Solar (Thermal Electric)  
 Landfill gas  Waterpower  
 Renewable Biomass  Wind
10. PRICE:  42¢/kWh [Solar (PV) only]  
 11¢/kWh [all Renewable Fuels other than Solar (PV)], comprised of:  
▪ a fixed portion of 8.8 ¢/kWh, and  
▪ an indexed portion of 2.2 ¢/kWh
11. ON-PEAK PERFORMANCE INCENTIVE PAYMENT:  Eligible at 3.52¢/kWh for On-Peak Hours, if Standard Terms and Conditions are satisfied  
 Not eligible
12. PROJECT TYPE:  New Project  Incremental Project  
Existing facility name: \_\_\_\_\_  
 Multiple Phase Project (new or in-service) Existing nameplate capacity: \_\_\_\_\_ kW  
Phase 1 Capacity: \_\_\_\_\_ kW  
Phase 2 Capacity: \_\_\_\_\_ kW  
Phase 3 Capacity: \_\_\_\_\_ kW  
Phase 4 Capacity: \_\_\_\_\_ kW  In-service Project



**SCHEDULE 1 to the RESOP CONTRACT**  
**STANDARD TERMS AND CONDITIONS**

**SECTION 1– DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In addition to the terms defined in these Standard Terms and Conditions, capitalized terms used in this Agreement shall have the meanings set out in Schedule 2 to the RESOP Contract (Standard Definitions), and the word “including” when used in this Agreement shall mean “including without limitation”.

**1.2 Headings**

The inclusion of headings in these Standard Terms and Conditions are for convenience of reference only and shall not affect the construction or interpretation of these Standard Terms and Conditions or the Agreement. All references to Sections shall refer to sections of these Standard Terms and Conditions unless otherwise stated.

**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 Canadian currency.

**1.5 Statutes, Regulations and IESO Market Rules**

Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation, code or rule promulgated under a statute or to any provision of a statute, regulation, code or rule or to any other Laws and Regulations shall be a reference to the IESO Market Rules, statute, regulation, code, rule, provision or Laws and Regulations as amended, re-enacted or replaced from time to time.

**1.6 Entire Agreement**

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. Any conflict or inconsistency between this Agreement and the Program Rules shall be resolved in favour of this Agreement.

**1.7 Waiver, Amendment**

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

## 1.8 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 therein.

## 1.9 Preparation of Agreement

The Parties expressly agree that any doubt or ambiguity in the meaning, application, or enforceability of any term or provision of this Agreement shall not be construed or interpreted against the OPA or in favour of the Generator when interpreting such term or provision by virtue of the fact that this Agreement was prepared by the OPA.

## SECTION 2 – TERM

### 2.1 Term

This Agreement shall be effective during the period commencing on the Contract Date and ending on the last day of the Payment Period, subject to earlier termination in accordance with the provisions of this Agreement (the "Term").

## SECTION 3 – DEVELOPMENT AND OPERATION OF THE CONTRACT FACILITY

### 3.1 Location, Design and Construction of the Contract Facility

- (1) The Generator shall situate the Contract Facility only at the Location in the Province of Ontario.
- (2) The Generator shall be solely responsible for the design and construction of the Contract Facility and for all costs, expenses, liabilities and other obligations associated with such design and construction. The Generator represents, warrants and covenants that the design, construction and operation of the Contract Facility is and shall be, in all material respects, in accordance with the information provided in the Application and set out in the RESOP Contract.

### 3.2 Connection

- (1) The Generator shall be solely responsible for the negotiation, delivery and execution of the Connection Agreement, the payment of all Connection Costs and the performance of the other obligations of the Generator or the Load Customer, if applicable, under the Connection Agreement.
- (2) The Generator shall arrange, at its expense, for all Contract Facility connection requirements in accordance with the Connection Agreement to permit the delivery of Contract Energy at the Connection Point.
- (3) The Generator shall ensure that the Contract Facility is connected to the Distribution System or the Load Customer's electrical system via a single, separate and exclusive Connection Point (unless the Contract Facility is an Incremental Project, in which event it shall share a Connection Point in common with the existing Renewable Generation Facility).
- (4) The Generator shall deliver to the OPA a copy of the executed Connection Agreement concurrently with delivery of its notice of Commercial Operation Date.

### 3.3 Meter Configuration

(1) The Generator shall, in cooperation with and in accordance with specifications issued by the LDC, install or cause to be installed a single, separate and exclusive Meter for the Contract Facility (unless the Contract Facility is an Incremental Project, in which event it shall share a Meter in common with the existing Renewable Generation Facility) that meets the requirements of this Section 3.3.

(2) The Contract Facility's Meter (and the Load Customer's Meter, if the Contract Facility is a Load-Connected Facility) must provide hourly data relating to Electricity Delivered.

(3) Notwithstanding Section 3.3(2), where the Contract Facility is an LDC-Connected Facility and its Gross Nameplate Capacity is 10 kW or less, the Contract Facility's Meter shall not be required to provide hourly data until the earlier of the following:

- (a) the date on which the LDC or an authorized Governmental Authority has selected one or more Meter models or technologies for the provision of hourly data by embedded retail generators connected to the Distribution System and has mandated the installation and operation of such Meters, whether pursuant to the Government of Ontario's "smart meter initiative" or otherwise; and
- (b) December 31, 2010.

### 3.4 Commercial Operation

The Generator shall be solely responsible for the operation, maintenance and repair of the Contract Facility and for all costs, expenses, liabilities and other obligations associated with such operation, maintenance and repair.

### 3.5 Exclusion of Phases

(1) With respect to a Phase of a Phased Project other than a Waterpower Project:

- (a) The Phase, if it is the first Phase of a Phased Project to attain Commercial Operation, must have its Commercial Operation Date declared no later than the Third Anniversary, subject to Force Majeure, and in any event no later than the eighth anniversary of the Contract Date, notwithstanding any Force Majeure; and for all other Phases of a Phased Project, must attain Commercial Operation no later than the Third Anniversary, subject to Force Majeure, and in any event no later than the eighth anniversary of the Contract Date, notwithstanding any Force Majeure, and the Generator must provide notice thereof to the LDC and the OPA no later than seven (7) days following such Commercial Operation in such form as may be prescribed by the OPA from time to time and posted on the Website.
- (b) Any Phase that fails to satisfy the above-noted requirements shall be deemed to be excluded from the Contract Facility and the Phased Project from and after the time immediately prior to such failure (being the Third Anniversary or the eighth anniversary of the Contract Date, as applicable) and shall, from and after such time, no longer be considered to be a Phase for the purposes of this Agreement.

(2) With respect to a Phase of a Phased Project which is a Waterpower Project:

- (a) The Generator shall obtain, no later than the Third Anniversary, subject to Force Majeure, and in any event no later than the eighth anniversary of the Contract Date, notwithstanding any Force Majeure, the approvals and/or permits required in respect of such Phase in order to satisfy the Third Anniversary Requirements.

- (b) The Phase, if it is the first Phase of a Phased Project to attain Commercial Operation, must have its Commercial Operation Date declared no later than the eighth anniversary of the Contract Date; and for all other Phases of a Phased Project, must attain Commercial Operation no later than the eighth anniversary of the Contract Date and the Generator must provide notice thereof to the LDC and the OPA no later than seven (7) days following such Commercial Operation in such form as may be prescribed by the OPA from time to time and posted on the Website; and
- (c) Any Phase that fails to satisfy the above-noted requirements shall be deemed to be excluded from the Contract Facility and the Phased Project from and after the time immediately prior to such failure (being the Third Anniversary or the eight anniversary of the Contract Date, as applicable) and shall, from and after such time, no longer be considered to be a Phase for the purposes of this Agreement.

### **3.6 Exclusivity**

The Generator shall ensure that, during the Term, no portion of the Contract Capacity, Contract Energy or Related Products shall be subject to any agreement or undertaking for the sale, delivery, or conveyance thereof other than (i) this Agreement, (ii) an agreement with a Load Customer relating to Delivery of Contract Energy, (iii) a sale of Contract Energy to the LDC pursuant to the Retail Settlement Code, or (iv) such other agreement as may be required solely in order to comply with the provisions of Section 4.2(1). The Generator shall provide, forthwith upon request, written evidence satisfactory to the OPA of the Generator's compliance with this covenant, including evidence that appropriate amendments to any power purchase and other applicable agreements have been executed.

### **3.7 Fuel Source**

Except for Station Service, the Generator shall not permit the Contract Facility to utilize any source or fuel for the generation of Electricity at the Contract Facility other than the Renewable Fuel identified in item 9 of the RESOP Contract.

### **3.8 Station Service**

- (1) The Generator shall not permit the Contract Facility to draw any Electricity from the Distribution System or the IESO-Controlled Grid, directly or indirectly, other than for Station Service.
- (2) The Generator shall be solely responsible for all charges in relation to Electricity drawn from the Distribution System or the IESO-Controlled Grid and consumed by the Contract Facility.

### **3.9 Insurance Covenants**

The Generator covenants to obtain and maintain during the Term insurance covering such risks and in such amount as a prudent owner of a facility the same as or similar to the Contract Facility would maintain; to provide evidence thereof to the OPA upon request; and to indemnify and save the OPA harmless in respect of any failure by it to do so.

### **3.10 Compliance with Laws and Regulations and Good Engineering Practices**

- (1) The Generator agrees that it shall, and its activities and undertakings shall, at all times comply with all Laws and Regulations in all material respects and it shall not subject to risk or revocation the good standing of any Governmental Approval required to perform or comply with its obligations under this Agreement.
- (2) The Generator covenants that it shall, and its activities and undertakings shall, at all times comply with Good Engineering and Operating Practices.

## SECTION 4 – DELIVERY OF CONTRACT ENERGY AND TRANSFER OF RELATED PRODUCTS

### 4.1 Delivery of Contract Energy

The Generator shall Deliver all Contract Energy free and clear of all liens, claims and encumbrances.

### 4.2 Transfer and Delivery of Related Products

(1) The Generator hereby transfers and assigns to the OPA, unconditionally and absolutely, all of its right, title and interest in and to the Related Products. Upon request by the OPA, the Generator agrees to use Commercially Reasonable Efforts to obtain, register, certify or deliver the Related Products or any evidence of the OPA's right, title and interest thereto to the OPA, to the IESO-Administered Markets or other markets, or to any Person as the OPA may direct, on behalf, or for the benefit, of the OPA. Without limiting the generality of the foregoing, the Generator shall from time to time during and after the Payment Period, on behalf and in the name of or in trust for the OPA, use Commercially Reasonable Efforts to obtain, quantify, verify, certify and register with the relevant Governmental Authorities or other agencies all Environmental Attributes related to the Contract Capacity, Contract Energy or Contract Facility, for no additional remuneration. The OPA shall retain all rights, title, and interest in and to all such Related Products. The OPA shall be entitled, unilaterally and without the consent of the Generator, to deal with Related Products in any manner it determines, regardless of whether any consideration is being received by the OPA.

(2) The Generator covenants not to sell, supply or deliver any Related Products to the IESO-Administered Markets, other markets or any other Person, or to retire any Related Products, unless the OPA has requested and approved such sale, supply, delivery or retirement.

(3) The Generator shall not participate in any voluntary programs with respect to any Related Products associated with the Contract Facility without the prior written consent of the OPA, which consent may be withheld in the OPA's sole discretion.

(4) All Related Products shall be delivered by the Generator free and clear of all liens, claims and encumbrances other than those in favour of the OPA.

### 4.3 Contract Payments

(1) During the Payment Period, the OPA shall pay or cause to be paid to the Generator (or vice-versa, if applicable), an amount (the "**Contract Payment**") equal to:

(a) the Contract Price described in Section 4.5 for each kWh of Contract Energy;

plus

(b) if the Generator is eligible to receive the On-Peak Performance Incentive Payment in accordance with the provisions of Section 4.7, the On-Peak Performance Incentive Payment described in Section 4.7;

minus

(c) if the Contract Facility is a Load-Connected Facility, an amount equal to the Hourly Ontario Electricity Price for each kWh of Contract Energy that is consumed by the Load Customer.

### 4.4 Settlement of Contract Payments

All Contract Payments shall be made in accordance with the settlement provisions set out in Section 5.

#### 4.5 Contract Price

- (1) If the Contract Facility is a PV Project, the Contract Price shall be the amount set out in item 10 of the RESOP Contract.
- (2) If the Contract Facility is not a PV Project, the Contract Price shall be the Base Rate described in Section 4.6.

#### 4.6 Base Rate

- (1) If the Contract Facility is not a PV Project, the Base Rate shall be the sum of:
  - (a) the fixed portion of the price described in item 10 of the RESOP Contract; plus
  - (b) the indexed portion of the price described in item 10 of the RESOP Contract for the current Program Year (or partial Program Year), subject to escalation every May 1 after the Contract Date at a rate equal to the percentage increase (which, for greater certainty, shall not be less than 0%) in CPI for the immediately preceding calendar year over the previous year.

#### 4.7 On-Peak Performance Incentive Payment

- (1) In any period, the On-Peak Performance Incentive Payment, if any, shall be an amount equal to the amount set out in item 11 of the RESOP Contract multiplied by the number of kWh of Contract Energy which is Delivered during On-Peak Hours in such period.
- (2) A Generator shall only be eligible to receive the On-Peak Performance Incentive Payment with respect to the Contract Facility or a Phase if:
  - (a) no later than 7 days prior to the Commercial Operation Date, the Generator delivers the following documents to the OPA in a form and substance acceptable to the OPA acting reasonably:
    - (i) an attestation signed by an accredited professional engineer licensed by Professional Engineers Ontario and dated not earlier than 120 days prior to the Commercial Operation Date, confirming that the Generator's plans and specifications for the Contract Facility include adequate investments in such equipment and infrastructure and in obtaining such Governmental Approvals as are necessary to ensure that the Contract Facility will be able to generate Electricity for a minimum of 80% of the On-Peak Hours during the course of a calendar year under normal weather conditions and operating circumstances; and
    - (ii) an updated annual forecast of monthly Electricity production from the Contract Facility during On-Peak Hours and Off-Peak Hours, respectively;
  - (b) the Contract Facility is equipped with a Meter which provides hourly data relating to Electricity Delivered; and
  - (c) the RESOP Contract indicates at item 11 that the Generator is eligible to receive the On-Peak Performance Incentive Payment.
- (3) The OPA shall have the right at any time and from time to time during the Payment Period on not less than five (5) days advance notice to inspect or have its representatives inspect the Contract Facility during normal business hours for the purpose of confirming that the Contract Facility remains eligible for the On-Peak Performance Incentive Payment, failing which a Generator shall not be entitled to receive the On-Peak Performance Incentive Payment for the remainder of the Term or for such shorter period as the OPA may in its sole discretion determine,

and the Generator shall not be entitled to any outstanding or accrued amount owing on account of the On-Peak Performance Incentive Payment.

#### **4.8 WPPI and RPPI**

The Parties agree that any and all entitlements to payments under WPPI and RPPI arising during the Term in relation to the Contract Facility shall be shared equally as between the Generator and the OPA. The Generator shall provide written notice to the OPA of the commencement of any application process to receive WPPI or RPPI and thereafter shall provide copies to the OPA of all correspondence and related materials respecting such application. In addition, the Generator shall direct the Government of Canada or its WPPI or RPPI administrator, as appropriate, to make all payments relating thereto to the Payment Agent and to release all WPPI/RPPI-related information to the OPA and the Payment Agent in connection with the Contract Facility. Upon receipt of payments from the Government of Canada or its WPPI or RPPI administrator, as appropriate, the Payment Agent shall pay one half of each payment to each of the Generator and the OPA. The OPA shall be solely responsible for any fees or expenses of the Payment Agent.

#### **4.9 OPA's Responsibility for Taxes**

The OPA shall be responsible for payment of any Sales Taxes payable in connection with Contract Payments, as well as the OPA's own income and other corporate taxes in relation thereto.

#### **4.10 Generator's Responsibility for Taxes**

Except as provided in Section 4.9, the Generator is liable for and shall pay, or cause to be paid, or reimburse the OPA if the OPA has paid, all Taxes applicable to the Contract Facility, the Contract Energy or the Related Products. If the OPA is required to remit such Taxes to the applicable taxing authorities, the amount thereof may be deducted from any sums becoming due to the Generator hereunder.

#### **4.11 Non-Residency**

If Generator is a non-resident of Canada, as that term is defined in the ITA, and the OPA is subject to any withholding or other similar Taxes as a result of such non-residency, then payments under this Agreement by the OPA may be reduced by the amount of such withholding Taxes and the OPA may remit any such withholding Taxes to the applicable taxing authorities.

### **SECTION 5 – SETTLEMENT AND PAYMENT**

#### **5.1 Conditions for Payment**

(1) The OPA's obligation to make Contract Payments in accordance with the terms of this Agreement shall be conditional upon:

- (a) the OPA being satisfied, pursuant to Section 3.6, that no portion of the Contract Energy or Related Products is subject to any agreement or undertaking for the sale, delivery, or conveyance thereof other than (i) this Agreement, (ii) an agreement with a Load Customer relating to Delivery of Contract Energy, (iii) a sale of Contract Energy to the LDC pursuant to the Retail Settlement Code, or (iv) such other agreement as may be required solely in order to comply with the provisions of Section 4.2(1);
- (b) if the Contract Facility is a Load-Connected Facility, the Load Customer having a direct billing relationship with the LDC; and

- (c) if applicable, the Generator having registered under the *Excise Tax Act* (Canada) and having provided notice in writing of its GST registration number to the OPA.

(2) Notwithstanding any other provision of this Agreement, no Contract Payment shall be payable to the Generator for Electricity which is not Delivered, whether such failure to Deliver is due to disconnection of the Contract Facility from the Distribution System or the Load Customer, disconnection of the Load Customer from the Distribution System, or any outage, suspension, constraint or curtailment in the operation of the Contract Facility, the Load Customer, the Distribution System or the IESO-Controlled Grid which prevents or limits physical Delivery of Electricity at the Connection Point, or for any other reason whatsoever.

## 5.2 Settlement Period

(1) Subject to Section 5.2(2) below, the Parties agree that the Contract Payments shall be settled periodically and on a schedule consistent with the Settlement Period of the LDC, provided that if the Payment Period begins on a day other than the first day of a Settlement Period, the initial Contract Payment may be deferred and incorporated with the Contract Payment in respect of the first full Settlement Period which falls within the Payment Period.

(2) If a Contract Payment is not settled by or on behalf of a paying Party within the time period allowed pursuant to Section 5.2(1) above and such failure to settle is, due to an event of Force Majeure, subject to the provisions of Section 8, then such Contract Payment shall, notwithstanding any Force Majeure, be settled no later than the standard settlement/payment date following the end of the first full Settlement Period after receipt by the paying Party of written notice of such failure from the other Party.

## 5.3 Designation of the LDC as Settlement Agent

The Parties hereby designate the LDC as the exclusive settlement agent for all Contract Payments on behalf of both the OPA and the Generator.

## 5.4 Other Settlement

Notwithstanding the designation set out in Section 5.3, the OPA shall have the right to designate such other settlement agent or implement such other settlement mechanism as it may in its sole discretion determine, and will provide notice of any such designation or change to the Generator.

## 5.5 Access to Meters

(1) The Generator shall provide, and to the extent applicable and possible using Commercially Reasonable Efforts, shall cause the LDC and the Load Customer to provide, the OPA and its designated agents with access to the Contract Facility's Meter and the Load Customer's Meter for the purpose of reading, recording and downloading data, all upon not less than two (2) days advance notice in writing from the OPA to the Generator, the LDC or the Load Customer, as applicable.

(2) The Generator acknowledges that it has irrevocably authorized the LDC to release to the OPA any information or data relating to the Contract Facility and the Load Customer which may be required by the OPA for the purposes of administering this Agreement. The Generator agrees to use Commercially Reasonable Efforts to recognize or maintain the OPA's rights in this regard, and to provide similar authorizations to other agencies, settlement agents and third parties, where reasonably requested.

## SECTION 6– REPRESENTATIONS

### 6.1 Mutual Representations of the Generator and the OPA

Each of the Generator and the OPA represents to the other as follows, and acknowledges that the other is relying on such representations in entering into this Agreement:

- (a) It has the requisite power, authority and capacity to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by it and constitutes a valid and binding obligation enforceable against it 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 it and the consummation of the transactions contemplated hereby 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, its material obligations or any judgement, decree, order or award to which it is subject or any license permit, approval, consent or authorization held by it.

### 6.2 Representations of the Generator

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

- (a) All statements, specifications, data, confirmations and information set out in the Application are complete and accurate in all material respects and are hereby restated and reaffirmed by the Generator as representations made to the OPA as of the Contract Date under this Agreement.
- (b) All of the information set out in the RESOP Contract is true and correct, or, to the extent it relates to a Contract Facility yet to be constructed, is an accurate representation of the Generator's plans and designs for the construction of the Contract Facility and, without limitation, if so indicated in item 6 of the RESOP Contract, the Generator is not a non-resident of Canada for the purposes of the ITA.
- (c) Other than (i) this Agreement, (ii) such other agreement as may be required solely in order to comply with the provisions of Section 4.2(1), (iii) an arrangement to sell Contract Energy to the LDC pursuant to the Retail Settlement Code, and (iv) in the case of a Load-Connected Facility, any agreement entered into between the Generator and the Load Customer, no contract or other arrangement or agreement exists with respect to the delivery, purchase or sale of Contract Energy, the Contract Capacity or the Related Products.
- (d) Other than this Agreement, no other agreement issued under the Program exists and no application under the Program has been submitted and is still outstanding in relation to the Contract Facility, or in the case of an Incremental Project, in relation to any part of the Renewable Generation Facility of which the Incremental Project forms a part.

### 6.3 Representations of the OPA

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

- (a) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the OPA or, to the knowledge of the OPA, threatened against the OPA.
- (b) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the OPA, threatened against the OPA, that could have a Material Adverse Effect on the OPA.
- (c) All requirements for the OPA to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.

## Section 7 – TERMINATION AND DEFAULT

### 7.1 Events of Default by the Generator

Each of the following will constitute an event of default by the Generator (each, a “**Generator Event of Default**”), notwithstanding the occurrence of any event of Force Majeure, unless indicated otherwise:

- (1) The Generator or the Contract Facility fails or ceases to satisfy the eligibility requirements set out in the Program Rules and such failure or cessation is not remedied within the Cure Period.
- (2) The Generator fails to satisfy the Third Anniversary Requirements, unless such failure is, due to an event of Force Majeure, subject to the provisions of Section 8 of this Agreement.
- (3) The Contract Facility fails to achieve Commercial Operation on or before the eighth anniversary of the Contract Date.
- (4) The Generator fails to Deliver any Contract Energy from the Contract Facility for a period of twenty-four (24) consecutive months at any time after the Commercial Operation Date.
- (5) The Generator is in breach of its representations, warranties or covenants set out in Section 3.1 relating to the location, design, construction and operation of the Contract Facility, unless such breach is remedied within the Cure Period.
- (6) The Generator fails or ceases to hold a valid generator license issued by the OEB or fails or ceases to hold any other valid Governmental Approval where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Generator and is not remedied within the Cure Period.
- (7) Prior to the execution of a Connection Agreement in respect of the Contract Facility, the Generator fails to maintain its position in the LDC’s connection queue, unless the Location is in an area which was designated as of the Contract Date as a transmission “green zone” on the Website.
- (8) The Generator fails or ceases to comply in any material respect with any Laws and Regulations, and such failure or cessation is not remedied within the Cure Period.
- (9) The Generator fails or ceases to comply with Good Engineering and Operating Practices in respect of the Contract Facility, and such failure or cessation is not remedied within the Cure Period.
- (10) The Generator sells or permits another Person to sell, deliver or convey any part of the Contract Capacity, Contract Energy or Related Products, or enters into or allows any Person to enter into any agreement or undertaking for the sale, delivery or conveyance thereof, to any Person other than the OPA, or in the case of Contract Energy, the

LDC pursuant to the Retail Settlement Code or the Load Customer, or in the case of Related Products, such or agreement or undertaking as may be required solely in order to comply with the provisions of Section 4.2(1)

(11) The Generator enters into or allows or enables another Person to enter into another contract under the Program, other than this Agreement, in relation to the Contract Facility, or in the case of an Incremental Project, in relation to any part of the Renewable Generation Facility of which the Incremental Project forms a part.

(12) The Generator utilizes any source or fuel for the generation of Electricity at the Contract Facility other than the Renewable Fuel identified in item 9 of the RESOP Contract (except for Station Service).

(13) The Contract Facility draws any Electricity from the Distribution System or the IESO-Controlled Grid, directly or indirectly, other than for Station Service.

(14) The Generator fails to use Commercially Reasonable Efforts to deliver the Related Products in accordance with Section 4.2 or to otherwise comply with its obligations set out in that Section, and such failure is not remedied within the Cure Period.

(15) The Generator commits any act of fraud in relation to its Application, the OPA, this Agreement, or the Contract Facility.

(16) Any information provided by the Generator in its Application or in this Agreement or any information set out in the RESOP Contract is not true or correct in any material respect when given.

(17) The representations of the Generator set out in Sections 6.1 and 6.2 are not true and correct in all material respects throughout the Term and are not made true and correct in all material respects within the Cure Period.

(18) If the Contract Facility is a Load-Connected Facility, the Generator fails to provide, or to cause the LDC or the Load Customer to provide, the OPA with access to the Load Customer's Meter and the hourly data therefrom, and such failure is not remedied within the Cure Period.

(19) By agreement, decree, judgment or order of a Governmental Authority, the Generator agrees to be treated as or is adjudicated bankrupt or insolvent or any substantial part of the Generator's property is sequestered or subject to the appointment of any third party and such agreement, decree, judgement, order or appointment continues in effect unrevoked, undischarged and unstayed for a period of thirty (30) days after the entry or implementation thereof.

(20) The Generator dissolves, winds up or liquidates, or 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 provision of any Insolvency Legislation.

(21) The Generator fails to perform any other material covenant or obligation which does not constitute a separate Generator Event of Default described in Sections 7.1(1) to 7.1(20) above, if such failure is not remedied within the Cure Period.

## **7.2 Remedies of the OPA**

(1) In addition to all other rights and remedies it may have at law or in equity, and subject to Section 9, if any Generator Event of Default (other than a Generator Event of Default referred to in Section 7.1(19) or 7.1(20) occurs and is continuing, upon written notice to the Generator, the OPA may:

- (a) terminate this Agreement; and/or

- (b) suspend any or all Contract Payments owing to the Generator until such Generator Event of Default has been remedied to the satisfaction of the OPA, in its sole discretion; and/or
- (c) set off any amounts payable by the Generator to the OPA against any payments due to the Generator under this Agreement.

(2) Notwithstanding Section 7.2(1), upon the occurrence of a Generator Event of Default referred to in Sections 7.1(19) or 7.1(20) this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Generator Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 9.2(3).

### 7.3 Events of Default by the OPA

Each of the following will constitute an event of default by the OPA (each, an "OPA Event of Default"), notwithstanding the occurrence of any event of Force Majeure:

- (1) The OPA fails to make any payment under this Agreement when due, if such failure is not remedied no later than the standard settlement/payment date following the end of the first full Settlement Period after receipt by the OPA of written notice of such failure from the Generator.
- (2) The OPA fails or ceases to hold a valid Governmental Approval where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the OPA and is not remedied within thirty (30) Business Days after receipt by the OPA of written notice of such failure or cessation from the Generator.
- (3) Any representation made by the OPA in this Agreement is not true or correct in any material respect when made.
- (4) By agreement, or by decree, judgment or order of a Governmental Authority, the OPA agrees to be treated as or is adjudicated bankrupt or insolvent or any substantial part of the OPA's property is sequestered or subject to the appointment of any third party, and such agreement, decree, judgement, order, appointment continues in effect unrevoked, undischarged and unstayed for a period of thirty (30) days after the entry or implementation thereof.
- (5) The OPA dissolves, winds up or liquidates, or 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.
- (6) The OPA fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate OPA Event of Default), if such failure is not remedied within thirty (30) Business Days after delivery by the Generator to the OPA of written notice of such failure.

### 7.4 Termination by the Generator

If any OPA Event of Default occurs and is continuing, then, in addition to all other remedies available at law or in equity to the Generator, upon written notice to the OPA, the Generator may terminate this Agreement and set off any payments due to the OPA against any amounts payable by the OPA to the Generator. Notwithstanding the foregoing, the OPA shall be responsible for payment of amounts accruing under this Agreement up to and including the effective time of termination.

### 7.5 Effect of Termination or Expiry

Termination or expiry of this Agreement shall not affect or prejudice any rights or obligations, including those relating to amounts payable under this Agreement up to and including the time of any termination or expiry, that have

accrued or arisen under this Agreement prior to the time of termination or expiry and those rights and obligations shall survive the termination or expiry of this Agreement.

## SECTION 8 – FORCE MAJEURE

### 8.1 Events of Force Majeure

Subject to the exclusions described in Section 8.2, "Force Majeure" means any act, event, cause or condition that (i) prevents a Party from performing its obligations, and (ii) is beyond the affected Party's reasonable control.

### 8.2 Exclusions

Notwithstanding Section 8.1, no act, event, cause or condition shall be considered to be an event of Force Majeure:

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused or contributed to the applicable act, event, cause or condition by its fault or negligence or has failed to use Commercially Reasonable Efforts to prevent or remedy such act, event, cause or condition and, so far as possible and within a reasonable time period, remove it (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);
- (b) if the act, event, cause or condition involves a failure or delay on the part of the LDC or its agents to complete network or system upgrades or otherwise perform their responsibilities under a Connection Agreement, and such failure or delay is attributable to a change in specifications of the Connection Point or the Contract Facility by the Generator;
- (c) if the act, event, cause or condition is the result of a breach by the Party seeking to invoke Force Majeure of a Governmental Approval or of any applicable Laws and Regulations; or
- (d) if the act, event, cause or condition was caused by a lack of funds or other financial cause.

### 8.3 Effect of Invoking Force Majeure

(1) Except as otherwise set out in this Agreement, if a Party is unable to perform an obligation due to an event of Force Majeure, such Party shall not be liable to the other Party (or to any third party to whom it has confirmed its obligations under this Agreement) for such failure during such event of Force Majeure or such other period of delay as may be directly attributable to the event of Force Majeure. In such event, the affected Party shall be excused and relieved from performing such obligations throughout such period and the permitted time for satisfying such requirement shall be extended by an appropriate term beyond the conclusion of such period.

(2) In order to invoke Force Majeure, a Party shall deliver to the other Party written notice of the effect of the Force Majeure and reasonably full particulars of the cause thereof, including the nature of the Force Majeure, its expected duration and the particular obligations affected by the Force Majeure, as well as the date on which such Force Majeure is determined to have begun, which date shall be the later of the actual commencement of the event or circumstances constituting Force Majeure or the thirtieth (30<sup>th</sup>) day prior to the date of such notice.

(3) The affected Party shall provide reports to the other Party with respect to the Force Majeure at such intervals as the other Party may reasonably request while the Force Majeure continues. The Party invoking Force Majeure shall give written notice of the termination of the event of Force Majeure within thirty (30) Business Days following such termination.

(4) Nothing in this Section 8.3 shall relieve a Party of its liability in connection with any amounts that were due and owing before or accrued during the occurrence of the Force Majeure.

(5) Notwithstanding any other provision of this Agreement, an event of Force Majeure which occurs after the beginning of the Payment Period shall not serve to extend the duration of the Payment Period.

## SECTION 9 – LENDERS’ RIGHTS

### 9.1 Lender Security

(1) The Generator shall have the right from time to time, at its cost, to enter into one or more Secured Lender’s Security Agreements upon such terms as it desires provided that:

- (a) in the case of a deed of trust, syndication agreement or similar instrument where the trustee or syndication agent holds security on behalf of, or for the benefit of, other lenders, only the trustee or agent 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;
- (b) no Secured Lender’s Security Agreement shall affect or encumber in any manner the OPA’s title to any government-owned premises nor shall the OPA have any liability whatsoever thereunder for the payment of the principal sum secured or any interest accrued thereon or any other sum secured thereby or accruing thereunder and the Secured Lender shall not be entitled to seek any damages against the OPA for any or all of the same; and
- (c) 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.

(2) Except as may be required by an Arbitrator’s award pursuant to Section 12.6(5), the OPA, but only if it has received from the Generator prior written notice of the name and address of the Secured Lender, and the Generator shall not, while a Secured Lender’s Security Agreement is outstanding, 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.

### 9.2 Rights and Obligations of Secured Lenders

(1) While a Secured Lender’s Security Agreement remains outstanding, and provided that the OPA has received from the Generator prior written notice of the name and address for notice of the Secured Lender, no Generator Event of Default (other than those set out in Sections 7.1(19) and 7.1(20)) shall be grounds for the termination by the OPA of this Agreement unless any notices required to be given under Sections 7.1 and 7.2(1) have been given on the same day to the Generator and to the Secured Lender and the applicable cure period, if any, set out in Section 7.1 has expired without a cure having been effected either by the Generator or the Secured Lender, who shall have the right (but not the obligation) to cure such default, in which event, the OPA shall accept performance by the Secured Lender as if it had been performed by the Generator.

(2) A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender’s Security Agreement and acquire the Generator’s Interest in any lawful way and, without limitation, may sell or assign the Generator’s Interest provided such sale or assignment complies with the requirements of Section 13.4 and provided further that if the Secured Lender is the owner or is in control or possession of the Generator’s Interest, then it shall be entitled to and bound by all of the Generator’s rights and obligations hereunder so long as it is the owner or is in control or possession of the Generator’s Interest. Despite anything else contained in this Agreement, any Person to

whom the Generator's Interest is transferred shall take the Generator's Interest subject to the Generator's obligations under this Agreement.

(3) In the event of the termination of this Agreement prior to the end of the Term due to a Generator Event of Default, the OPA shall enter into a New Agreement, which New Agreement shall be effective as of the Termination Date and shall be for the then-remainder of the original Term of this Agreement and otherwise upon the terms contained in this Agreement, provided that the Secured Lender delivers to the OPA a written request therefor within ninety (90) days after the Termination Date; and provided further that the OPA's obligation to enter into a New Agreement is conditional upon the Secured Lender (a) paying all sums that would, at the time of the execution and delivery thereof, be due to the OPA 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, (c) paying all reasonable costs and expenses, including legal fees, incurred by the OPA in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by the 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, and (d) if there is more than one Secured Lender's Security Agreement outstanding in respect of which the OPA has received the notice described in Section 9.2(1), delivering to the OPA the written consent of all other Secured Lenders with respect to such New Agreement.

(4) 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 9.2.

### 9.3 Cooperation

The OPA shall, upon request of the Generator, enter into an acknowledgement and agreement, in such standard form as the OPA may from time to time determine in its sole discretion and post on the Website, with the Generator and any Secured Lender for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement.

## SECTION 10 – LIABILITY AND INDEMNIFICATION

### 10.1 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, loss of use of any property or claims of customers or contractors of the Parties for any such damages, but nothing herein shall preclude any claim by the Generator to receive the Contract Payments in respect of Contract Energy that is in fact Delivered under this Agreement during the Payment Period.

### 10.2 Indemnification

The Generator shall indemnify, defend and hold the OPA, and its Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of the design, construction or operation of the Contract Facility or the generation and delivery of Electricity and

Related Products therefrom or any occurrence or event relating thereto, or any occurrence or event on the Generator's side of the Connection Point or, where the Contract Facility is a Load-Connected Facility, on the Load Customer's side of the connection point between the Load Customer and the LDC, or a breach by the Generator of any of its representations, warranties, obligations or covenants contained in this Agreement.

**10.3 Joint and Several Liability**

If the Generator is not a single legal entity, then all such entities comprising the Generator shall be jointly and severally liable to the OPA for all representations, warranties, obligations, covenants, and liabilities of the Generator under this Agreement.

**SECTION 11 – CONTRACT OPERATION AND ADMINISTRATION**

**11.1 Record Retention; Audit Rights; Inspection Rights**

The Generator and the OPA shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement and, without limiting the generality of the foregoing, the Generator shall keep all records and other documentary evidence which may be necessary to establish, substantiate or maintain any claim or title of the OPA to any Related Products and any eligibility or entitlement to WPPI or RPPI payments. All such records shall be maintained as required by Laws and Regulations but for no less than seven (7) years after the creation of the record or data. The Generator shall provide or cause to be provided reasonable access to the relevant and appropriate financial and operating records and data kept by it or on its behalf relating to this Agreement reasonably required for the OPA to comply with its obligations to Governmental Authorities or to verify billings or to verify information provided in accordance with this Agreement or to verify compliance by the Generator with this Agreement. The OPA shall have the right at any time and from time to time during the Term on not less than five (5) days advance notice to inspect or have its representatives inspect the Contract Facility during normal business hours.

**11.2 Notices**

(1) Unless otherwise stated, all notices pertaining to this Agreement shall be in writing and shall be transmitted via e-mail, or if e-mail notification is unavailable, via facsimile, courier or hand delivery, and addressed to the other Party as follows:

(a) If to the Generator, at the Generator's e-mail address as set out in item 5 of the RESOP Contract or, in the event that no e-mail address is set out therein or e-mail is otherwise unavailable, at the Generator's address or facsimile number as set out in item 5 of the RESOP Contract.

(b) If to the OPA, to:

[standardoffer@powerauthority.on.ca](mailto:standardoffer@powerauthority.on.ca)

Subject: RESOP- \_\_\_\_\_ (Contract Identification #)

or if e-mail is unavailable, to:

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

Attention: Renewable Energy Standard Offer Program  
Subject: RESOP- \_\_\_\_\_ (Contract Identification #)  
Facsimile: 416-967-1947

(2) Notice transmitted or delivered as provided above shall be deemed to have been given and received on the day it is transmitted (if by e-mail or facsimile) or delivered (if by courier or hand delivery), provided that it is transmitted or delivered on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. If a notice is transmitted or delivered after 5:00 p.m. local time or such day is not a Business Day, then such notice shall be deemed to have been given and received on the next Business Day. Either Party may, by written notice to the other, change its contact person, e-mail address, facsimile number or postal address to which notices are to be sent.

## **SECTION 12 – ARBITRATION**

### **12.1 Scope**

Subject to and in accordance with the provisions of this Section, any and all differences, disputes, claims or controversies arising out of or in any way connected with this Agreement, whether arising before or after the expiration or termination of this Agreement, (including any dispute as to whether an issue is arbitrable) shall be resolved by arbitration before a single arbitrator (the “**Arbitrator**”) pursuant to the Arbitration Act and otherwise in accordance with the laws of the Province of Ontario.

### **12.2 Appointment and Powers of Arbitrator**

A Party desiring arbitration hereunder shall give written notice of arbitration to the other Party containing a concise description of the matter submitted for arbitration (“**Notice of Arbitration**”). If the parties fail to jointly appoint an Arbitrator within twenty (20) days thereafter, an Arbitrator shall be designated by a judge of the Ontario Court Superior Court of Justice upon application by either Party. The Arbitrator may determine all questions of law, fact and jurisdiction with respect to the dispute or the arbitration (including questions as to whether a dispute is arbitrable) and all matters of procedure relating to the arbitration. The Arbitrator may grant legal and equitable relief (including injunctive relief), award costs (including legal fees and the costs of the arbitration), and award interest.

### **12.3 Arbitration Procedure**

The arbitration shall be conducted in English in the City of Toronto at such place therein and time as the Arbitrator may fix and, failing agreement thereto by the Parties, in accordance with such procedures as the Arbitrator shall determine, in accordance with the principles of natural justice. The arbitration and all matters arising directly or indirectly therefrom shall be kept strictly confidential by the Parties and shall not be disclosed to any third party except as may be compelled by law.

### **12.4 Arbitrator’s Decision and Appeal**

The Arbitrator’s written decision shall be delivered to each of the Parties within sixty (60) days following the conclusion of the arbitration hearing. The costs of any arbitration hereunder shall be borne by the Parties in the manner specified by the Arbitrator in his or her decision. The decision of the Arbitrator shall be final and binding upon the Parties in respect of all matters relating to the arbitration, the conduct of the Parties during the proceedings and the final determination of the issues in the arbitration. There shall be no appeal from the decision of the Arbitrator to any court, except on the grounds that the conduct of the Arbitrator, or the decision itself, violated the provisions of the Arbitration Act, or solely on a question of law as provided for in the Arbitration Act. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

### **12.5 Preclusion of Actions**

Submission to arbitration under this Section is intended by the Parties to preclude any action in matters which may be arbitrated hereunder, save and except for enforcement of any arbitral award hereunder.

## 12.6 Class Arbitration

(1) Notwithstanding anything contained in Sections 12.2 to 12.5, if in the sole opinion of the OPA, a matter which has been or is to be referred to arbitration under the Arbitration Act under this Agreement or under an agreement between the OPA and any other RESOP Supplier under the Program affects all RESOP Suppliers or any class of RESOP Suppliers, then the OPA may, by issuing a Notice of Arbitration to such RESOP Supplier(s), require that such RESOP Supplier(s) participate by way of a mandatory multi-party arbitration in the issues set out in the said Notice of Arbitration before one Arbitrator in one arbitral hearing whose decision(s) will bind the OPA and all such RESOP Suppliers served with such notice, whether or not they participated in such arbitration. This mandatory multi-party arbitration between OPA and RESOP Supplier(s) shall be conducted in accordance with this Section 12 subject only to such changes as may be necessary to deal with the fact this is to be a multi-party arbitration or as may be directed by the Arbitrator then appointed.

(2) In the event that the matter in dispute relates to the alleged invalidity, inapplicability or unenforceability of any provision of this Agreement or the disappearance or inability to calculate or determine any index, price or other quantum referred to in this Agreement, then the Arbitrator shall determine a valid, applicable and enforceable replacement for such provision, the economic effect of which comes as close as possible to that of the invalid, inapplicable or unenforceable provision.

(3) In the event that the matter in dispute relates to the alleged disappearance or inability to calculate or determine any index, price or other quantum referred to in this Agreement, or a material change in the basis for such index, price or other quantum, then the Arbitrator shall determine a replacement index, price or quantum that most nearly, of those then publicly available, approximates the intent and purpose of the original index, price or quantum, and this Agreement shall be amended as necessary to accommodate such replacement index, price or quantum.

(4) The Parties agree that in the event of a Discriminatory Action, unless otherwise agreed, the OPA may, but shall not be obliged to, refer the matter to arbitration and to seek such resolution of the matter as an Arbitrator may determine is reasonable (if any), which resolution may include a deemed amendment to this Agreement, such determination to be made in accordance with the class arbitration procedures described in Section 12.6(1).

(5) The terms of this Agreement shall be deemed to be amended by the award of the Arbitrator from and after such date as may be determined by the Arbitrator.

## SECTION 13 – MISCELLANEOUS

### 13.1 FIPPA Records and Compliance

The Generator and the OPA acknowledge and agree that the OPA is subject to FIPPA and that FIPPA applies to and governs all recorded information in any form or medium that is provided by the OPA to the Generator or provided by the Generator to the OPA for the purposes of this Agreement, or created by the Generator in the performance of this Agreement, and that is in the custody or control of the OPA ("**FIPPA Records**"), and may require the disclosure of such FIPPA Records to third parties. To the extent that the OPA must comply with disclosure obligations under FIPPA, the Generator agrees (i) to keep FIPPA Records in its possession secure, (ii) to provide FIPPA Records to the OPA within seven (7) days of being directed to do so by the OPA for any reason under FIPPA, including an access request or privacy issue, and (iii) to implement other specific security measures that in the reasonable opinion of the OPA would improve the adequacy and effectiveness of the Generator's measures to ensure, for the purposes of FIPPA, the security and integrity of FIPPA Records held in the Generator's possession.

### 13.2 Business Relationship

The relationship between the OPA and the Generator is that of independent contractors and nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

### 13.3 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 heirs, executors, administrators, personal and legal representatives, 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 heirs, executors, administrators, personal and legal representatives, successors and permitted assigns.

### 13.4 Assignment and Change of Control

(1) The Generator may assign this Agreement without consent to an assignee who is eligible to participate in the Program and to whom title to the Contract Facility is transferred, provided that prior written notice of such assignment and the identity and contact information of the assignee have been provided to the OPA.

(2) A change of Control of the Generator shall be permitted without consent provided such change of Control does not result in the Generator becoming, or becoming an Affiliate of, a Person who would not be eligible to participate in the Program, and provided that prior written notice of such change of Control and the identity and contact information of the Person acquiring Control of the Generator have been provided to the OPA.

(3) The OPA may assign this Agreement without consent to any Person, provided that prior written notice of such assignment and the identity and contact information of the assignee have been provided to the Generator. Upon any such assignment, the Ontario Power Authority shall remain liable for any obligations of the assignee under this Agreement in the event of default by such assignee under this Agreement, provided that notice of such default by the assignee has been delivered to the Ontario Power Authority by the Generator and the Ontario Power Authority has been given a reasonable opportunity to cure such default following the receipt of such notice, if curable.

(4) No assignment of this Agreement shall be valid or effective and no change of Control shall be permitted if the assigning Party is in default at the time of the assignment or change of Control.

(5) Except as otherwise provided in an acknowledgement and agreement issued pursuant to Section 9.3, no assignment of this Agreement by a Party shall be valid or effective as against the other Party unless and until the assignee has provided a written acknowledgement to such other Party, in form and substance satisfactory to such other Party, acting reasonably, wherein the assignee agrees to assume and to perform all of the obligations of the assignor, whether arising before or after the assignment, and to be bound by the terms of this Agreement.

(6) For the purposes of this Section 13.4, a change of Control shall exclude a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange, and shall include a change of Control resulting from a change in ownership in any shares or units of ownership in any entity that directly owns the Contract Facility whose special or sole purpose is the ownership of the Contract Facility and other renewable generating facilities which are subject to a contract under the Program with the OPA.

(7) Other than as permitted in Sections 13.4(1), (2), (3) and (4) above, no direct or indirect assignment of this Agreement, including by operation of Laws and Regulations, and no direct or indirect change of Control of either Party shall be permitted without the prior written consent of the other Party, which may be withheld in such Party's discretion.

### **13.5 Survival**

The provisions of Section 4.2(1), Section 4.9, Section 4.10, Section 5, Section 10, Section 9.2(3), Section 9.2(4), Section 11.1, Section 12, Section 13.1, Section 13.5, Section 13.6 and Section 13.7 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.

### **13.6 OPA Right to Set Off**

In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the OPA may set off any amounts owing by the Generator to it against any monies owed by it to the Generator.

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

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

### **13.8 Time of Essence**

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

### **13.9 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 reasonably required 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.

## SCHEDULE 2 to the RESOP CONTRACT

### STANDARD DEFINITIONS

#### Definitions

In addition to the terms defined elsewhere in the RESOP Contract and its Schedules, the following terms shall have the meaning stated below when used in this Schedule, in the Standard Terms and Conditions or elsewhere in the Agreement:

- (1) **Affiliate** means any Person that: (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.
- (2) **Agreement** means the RESOP Contract to which these Standard Definitions are attached together with all Schedules thereto, including the Standard Terms and Conditions and these Standard Definitions, all as amended, restated or replaced from time to time.
- (3) **Application** means the application and all documents related thereto submitted by the Generator in response to the Program and accepted by the OPA in respect of the Contract Facility and all clarifications and additional information in respect thereof provided by the Generator in writing as requested by or on behalf of, and accepted by, the OPA.
- (4) **Arbitration Act** means the *Arbitration Act, 1991* (Ontario).
- (5) **Base Rate** means an amount calculated in accordance with Section 4.6 of the Standard Terms and Conditions.
- (6) **Biodiesel** means the mono-alkyl esters of fatty acids derived from vegetable oils or animal fats.
- (7) **Bio-fuel** means a liquid fuel or product made solely from Renewable Biomass and includes ethanol or Biodiesel as well as the direct utilization of vegetable oils or animal fats.
- (8) **Bio-gas** means a gaseous fuel or product made solely from Renewable Biomass, and for greater certainty, includes gaseous output from anaerobic digestion of Source Separated Organics, livestock manure, energy crops, livestock feed ingredients, food and feed processing by-products, off-specification food and feed materials and organic by-products from Bio-fuel production.
- (9) **Business Day** means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.
- (10) **Commercial Operation** means the receipt by the Generator of all Governmental Approvals required in connection with the operation of the Contract Facility (or the Phase, as applicable), and the determination by the Generator through testing in accordance with the Connection Agreement and the Distribution System Code, as applicable, confirmed if applicable by the LDC, that the Contract Facility (or the Phase, as applicable) is capable of delivering Electricity through the Connection Point (and, if a Load-Connected Facility, through the Load Customer), to the Distribution System.
- (11) **Commercial Operation Date** means a date not earlier than the day on which Commercial Operation of the Contract Facility or a Phase is first attained, as determined and specified in a written notice from the

Generator to the LDC and the OPA delivered no later than seven (7) days prior to such specified date in such form as may be prescribed by the OPA from time to time and posted on the Website.

- (12) **Commercially Reasonable Efforts** means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the transaction contemplated by this Agreement.
- (13) **Connection Agreement** means the agreement or agreements entered into between the LDC and the Generator (or if the Contract Facility is a Load-Connected Facility, between the LDC and the Generator or the Load-Customer) with respect to the connection of the Contract Facility (or the Load Customer, if applicable) to the Distribution System (directly or indirectly), in accordance with the Distribution System Code, as applicable, and governing the terms and conditions of such connection.
- (14) **Connection Costs** mean all costs which are payable by the Generator (or the Load Customer, if the Contract Facility is a Load-Connected Facility) with respect to the connection of the Contract Facility to the Distribution System, the Contract Facility to the Load Customer and/or the Load Customer to the Distribution System, as applicable.
- (15) **Connection Point** means
- (a) if the Contract Facility is an LDC-Connected Facility, the electrical connection point between the Contract Facility and the Distribution System where Electricity is injected into the Distribution System, as more particularly described in the Connection Agreement; and
  - (b) if the Contract Facility is a Load-Connected Facility, the electrical connection point between the Contract Facility and the Load Customer where Electricity is injected into the Load Customer's electrical system.
- (16) **Consumer Price Index** or **CPI** means the consumer price index for "All Items" published or established by Statistics Canada (or its successor) in relation to the Province of Ontario.
- (17) **Contract Capacity** means:
- (a) for Incremental Projects, the increase in Gross Nameplate Capacity of the Renewable Generation Facility of which the Incremental Project forms a part that is directly attributable to the Incremental Project; and
  - (b) for all other Contract Facilities, the Gross Nameplate Capacity of the Contract Facility;
- Unless otherwise indicated by the OPA or the Generator at any time, the Contract Capacity is deemed to be the amount identified as the contract capacity in item 8 of the RESOP Contract.
- (18) **Contract Date** means the effective date of this Agreement, as set out in item 2 of the RESOP Contract.
- (19) **Contract Energy** means, for any period:
- (a) for a Contract Facility which is not an Incremental Project, the entire quantity of Electricity actually generated by and Delivered from the Contract Facility during such period; and

- (b) for an Incremental Project, the amount of Electricity calculated as the entire quantity of Electricity actually generated by and Delivered from the Renewable Generation Facility of which the Contract Facility forms a part during such period, multiplied by the Incremental Project Ratio.
- (20) **Contract Facility** means:
- (a) where the project type is described in item 12 of the RESOP Contract as being a "New Project", the Renewable Generation Facility described in the RESOP Contract and the Application in respect of which the Generator and the OPA have entered into this Agreement;
  - (b) where the project type is described in item 12 of the RESOP Contract as being a "Multiple Phase Project", all Phases of the Renewable Generation Facility described in the RESOP Contract and the Application other than those Phases which, from time to time, have been deemed to be excluded from the Contract Facility in accordance with Section 3.5 of the Standard Terms and Conditions; and
  - (c) where the project type is described in item 12 of the RESOP Contract as being an Incremental Project, the upgraded, additional or rehabilitated equipment or facilities together with all other equipment and facilities which are necessary to deliver the Contract Capacity.
- (21) **Contract Payment** has the meaning given to it in Section 4.3 of the Standard Terms and Conditions.
- (22) **Contract Price** means the price set out in Section 4.5 of the Standard Terms and Conditions.
- (23) **Control** means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise.
- (24) **Cure Period** means a period of thirty (30) Business Days following delivery by the OPA to the Generator of written notice of a failure, cessation or breach described in Section 7.1 of the Standard Terms and Conditions, or such longer period as the OPA may determine in its sole discretion.
- (25) **Delivered** means, in the context of Contract Energy and certain Related Products, delivered to the Connection Point and
- (a) successfully injected into the Distribution System, directly or through the Load Customer's electrical system (which, for greater certainty, is net of Site-Specific Losses); and/or
  - (b) successfully injected into the Load Customer's electrical system and consumed by the Load Customer;
- and **Deliver** has the corresponding meaning.
- (26) **Discriminatory Action** means the coming into force or the amendment after the Contract Date of any item described in paragraphs (a), (c), (e) or (f) of the definition of Laws and Regulations herein, the effect of which is to materially adversely affect the costs or revenues that the OPA or all RESOP Suppliers or any

identifiable class of RESOP Suppliers of which the Generator is a member would reasonably be expected to incur or receive under this Agreement, other than:

- (a) an item which merely increases or decreases the Hourly Ontario Electricity Price (as defined in the IESO Market Rules);
  - (b) an item which had been made public in a bill, proposal, draft, discussion, paper, press release, announcement or Governmental Authority web site prior to the Contract Date; and
  - (c) Laws and Regulations of general application, including an increase of Taxes or Sales Taxes of general application.
- (27) **Distribution System** means the system connected to the IESO-Controlled Grid for distributing Electricity at voltages of 50 kV or less, which is owned and operated by the LDC, and includes any structures, equipment or other things used for that purpose.
- (28) **Distribution System Code** means the code established and approved by the OEB, which, among other things, establishes the obligations of an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for Distribution Systems.
- (29) **Electricity** means electric energy, measured in kWh.
- (30) **Emission Reduction Credits** means the credits associated with the avoidance or reduction of emissions below the lower of actual historical emissions or regulatory limits, including "emission reduction credits" as defined in O. Reg. 397/01 made under the *Environmental Protection Act* (Ontario) or such other regulations as may be promulgated under the *Environmental Protection Act* (Ontario) or any currently applicable or future Laws and Regulations.
- (31) **Environmental Attributes** means environmental attributes associated with a Contract Facility having decreased environmental impacts now or in the future, and the right to quantify and register these with competent authorities, including:
- (a) all right, title, interest and benefit in and to any renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance or other proprietary or contractual right, whether or not tradable, resulting from the actual or assumed displacement of emissions by the production of Electricity from the Contract Facility as a result of the utilization of renewable energy technology;
  - (b) rights to any fungible or non-fungible attributes or entitlements relating to environmental impacts, whether arising from the Contract Facility itself, from the interaction of the Contract Facility with the IESO-Controlled Grid, the Distribution System or the Load Customer, or because of applicable legislation or voluntary programs established by Governmental Authorities;
  - (c) any and all rights, title and interest relating to the nature of an energy source (including a Renewable Fuel) as may be defined and awarded through applicable Laws and Regulations or voluntary programs, including all Emission Reduction Credits; and
  - (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing which may be available in connection with the Contract Facility;

but excluding WPPI and RPPI payments and such other items as the OPA may determine in its sole discretion at any time and from time to time, such excluded items to be posted on the Website and revised periodically. For greater certainty, in the event that any governmental or non-governmental agency, whether provincial, federal, national or international in scope or authority, creates or sanctions a registry, trading system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term "Environmental Attributes" as used in this Agreement shall include the rights or benefits created or sanctioned under any such program or programs to the extent available as a result of, or arising from, the production of Electricity from the Contract Facility.

- (32) **FIPPA** means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- (33) **Force Majeure** has the meaning given to it in Section 8 of the Standard Terms and Conditions.
- (34) **Generator** means the Party identified as the generator in item 4 of the RESOP Contract, and, as applicable, its heirs, executors, administrators, personal and legal representatives, successors and permitted assigns.
- (35) **Generator Event of Default** has the meaning given to it in Section 7.1 of the Standard Terms and Conditions.
- (36) **Generator's Interest** means the right, title and interest of the Generator in or to the Contract Facility and this Agreement or any benefit or advantage of any of the foregoing.
- (37) **Good Engineering and Operating Practices** means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent generator of Electricity in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry.
- (38) **Governmental Approvals** means approvals, authorizations, consents, permits, grants, licences, privileges, rights, orders, judgments, rulings, directives, ordinances, decrees, registrations and filings issued or granted by law or by any Governmental Authority.
- (39) **Governmental Authority** means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority, but excluding the OPA.
- (40) **Gross Nameplate Capacity** means the manufacturer's total installed rated capacity of an Electricity generation facility to generate Electricity that is separately metered by one Meter and, in the case of an Incremental Project, includes the Contract Capacity, and, unless otherwise indicated by the OPA or the Generator at any time, the Gross Nameplate Capacity of the Contract Facility is deemed to be the amount identified as gross nameplate capacity in item 7 of the RESOP Contract.
- (41) **GST** means the goods and services tax exigible pursuant to the *Excise Tax Act* (Canada).

- (42) **Hourly Ontario Electricity Price** has the meaning given to it by the IESO Market Rules or shall mean any replacement thereof or successor thereto.
- (43) **IESO** means the Independent Electricity System Operator of Ontario established under Part II of the *Electricity Act, 1998* (Ontario), or its successor.
- (44) **IESO-Administered Markets** has the meaning given to it by the IESO Market Rules.
- (45) **IESO-Controlled Grid** has the meaning given to it by the IESO Market Rules.
- (46) **IESO Market Rules** means the rules made under section 32 of the *Electricity Act, 1998* (Ontario), together with all market manuals, policies, and guidelines issued by the IESO.
- (47) **Incremental Project** means an upgrade to, addition to or rehabilitation of an existing Renewable Generation Facility which results in an increase in the Gross Nameplate Capacity of such existing facility, provided that:
- (a) the total Gross Nameplate Capacity of such facility including the Incremental Project is not more than 10,000 kW;
  - (b) the Renewable Fuel used by such existing facility is the Renewable Fuel described in item 9 of the RESOP Contract; and
  - (c) the project type described in item 12 of the RESOP Contract is indicated as being an "Incremental Project".
- (48) **Incremental Project Ratio** means the ratio determined by dividing the Contract Capacity by the Gross Nameplate Capacity.
- (49) **Insolvency Legislation** means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada) or any successor legislation, and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law).
- (50) **ITA** means the *Income Tax Act* (Canada).
- (51) **kW** means kilowatt and **kWh** means kilowatt-hour.
- (52) **Laws and Regulations** means:
- (a) applicable federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
  - (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
  - (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
  - (d) any requirements under or prescribed by applicable common law;

- (e) the Retail Settlement Code and any other codes issued by the OEB; and
  - (f) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Generator.
- (53) **LDC** means the owner or operator of a Distribution System who is licensed by the OEB as an “electricity distributor” and whose licensed service area includes the Location, and on the Contract Date is the Person identified as the local distribution company in item 14 of the RESOP Contract.
- (54) **LDC-Connected Facility** means a Contract Facility that is connected directly to the Distribution System at the Connection Point, provided that the RESOP Contract indicates in item 15 that the Contract Facility is LDC-Connected.
- (55) **Load-Connected Facility** means a Contract Facility that is connected directly to a Load Customer, provided that the RESOP Contract indicates in item 15 that the Contract Facility is Load-Connected (behind-the-meter).
- (56) **Load Customer** means a facility which:
- (a) uses Electricity for its own consumption;
  - (b) is connected to the Contract Facility for the purpose of drawing all or part of such Electricity from the Contract Facility at the Connection Point; and
  - (c) is connected to the Distribution System at a voltage of 50 kV or less and which connection is exclusive to the Load Customer, for the purpose of:
    - (i) drawing all or part of such Electricity from the Distribution System; or
    - (ii) delivering Contract Energy to the Distribution System; or
    - (iii) both; and
  - (d) is described in item 16 of the RESOP Contract.
- (57) **Location** means the real property on, over, in or under which the Contract Facility is situated, being the location identified in item 13 of the RESOP Contract.
- (58) **Material Adverse Effect** means any change (or changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations hereunder.
- (59) **Meter** means a meter owned by or under the control of the LDC that measures and records the quantity of Electricity which passes through it.
- (60) **Municipal Solid Waste** means (i) common refuse collected from the general public and generated by residential, commercial, institutional and industrial sources, consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber and other combustible materials and non-combustible materials such as metal, glass and rock, whether or not it is owned, controlled or managed by a municipality; and (ii) solid fuel, whether or not it is waste, that is derived in whole or in part from the refuse included in clause (i) of this

definition, but which, for greater certainty, shall not include gaseous waste or wastes used in an incineration unit.

- (61) **New Agreement** means a new agreement substantially in the form of the Agreement and for the then balance of the Term (had the Agreement not been terminated early), which may be entered into with a Secured Lender who is at arm's length with the Generator or a Person identified by such Secured Lender following an event of default under the Secured Lender's Security Agreement.
- (62) **OEB** means the Ontario Energy Board or its successor.
- (63) **Off-Peak Hour** means any hour that is not an On-Peak Hour.
- (64) **On-Peak Hours** means the hours of 11:00 am to 7:00 pm Eastern Standard Time on Business Days.
- (65) **On-Peak Performance Incentive Payment** has the meaning given to it in Section 4.7(1) of the Standard Terms and Conditions.
- (66) **OPA** means the Ontario Power Authority and its successors and assigns.
- (67) **Party** means each of the Generator and the OPA, and the Generator and the OPA are collectively referred to as the Parties.
- (68) **Payment Agent** means a Canadian financial institution selected and designated by the OPA from time to time for the purpose of receiving and distributing certain payments under this Agreement.
- (69) **Payment Period** means the 20-year period (subject to earlier termination in accordance with the terms of this Agreement) commencing on the Commercial Operation Date or, where the Contract Facility is indicated in item 12 of the RESOP Contract as being an in-service project, the Contract Date.
- (70) **Person** means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.
- (71) **Phase** means a single phase of a Contract Facility which is a Phased Project, provided that the Gross Nameplate Capacity of such Phase is set out in item 12 of the RESOP Contract.
- (72) **Phased Project** means a Contract Facility comprised of multiple Phases, each of which is scheduled to attain Commercial Operation at a different time, all of which are connected or to be connected to the Distribution System or the Load Customer at a single Connection Point and all of which, in the aggregate, have or will have a Gross Nameplate Capacity of 10,000 kW or less, provided item 12 of the RESOP Contract describes the Contract Facility as being a multiple phase project.
- (73) **Program** means the Renewable Energy Standard Offer Program established by the OPA pursuant to the Program Rules and any prior or subsequent version of the Program Rules.
- (74) **Program Rules** means that version of the rules for the Program which is identified in item 18 of the RESOP Contract, as posted on the Website.
- (75) **Program Year** means a 12-month period ending on April 30 in each calendar year.
- (76) **PST** means the Ontario provincial sales tax exigible under the *Retail Sales Tax Act* (Ontario).

- (77) **PV** means a solar photovoltaic system.
- (78) **PV Project** means a Renewable Generation Facility that uses solar energy as its Renewable Fuel and converts such solar energy into electricity via PV, provided that a Contract Facility shall not be considered a PV Project unless solar (PV) is indicated as being the Renewable Fuel in item 9 of the RESOP Contract.
- (79) **Related Products** means all ancillary services (as defined in the IESO Market Rules), Environmental Attributes and products related to the rated, continuous load-carrying capability of the Contract Facility to generate and deliver Electricity at a given time, as well as any other products or services of value that may be provided by or attributable to the Contract Facility from time to time during the Term and that may be traded in the markets established from time to time by the IESO Market Rules or other markets, or otherwise sold or otherwise have value, and which shall be deemed to include products and services for which no market may exist, but excluding (i) steam and hot water produced by the Contract Facility and (ii) WPPI and RPPI payments.
- (80) **Renewable Biomass** means organic matter that is derived from a plant and available on a renewable basis, including organic matter derived from dedicated energy crops, dedicated trees, agricultural food and feed crops and waste organic material from harvesting or processing agricultural products, forestry products (including spent pulping liquor) and sewage including manure, provided that:
- (a) such organic matter is not Municipal Solid Waste;
  - (b) such organic matter is not peat or a peat derivative;
  - (c) such organic matter shall not contain any treated by-products of manufacturing processes, including chipwood, plywood, painted or varnished wood, pressure treated lumber, or wood contaminated with plastics or metals;
  - (d) such organic matter shall not include hazardous waste or liquid waste, nor contain any materials that can adversely affect anaerobic processes or cause liquids or solids produced through anaerobic processes to become hazardous waste; and
  - (e) supplementary non-renewable fuels used for start up, combustion, stabilization and low combustion zone temperatures shall be no more than ten percent (10%) of the total fuel heat input in any calendar year for Electricity generation units with a Gross Nameplate Capacity of 500 kW or less and five percent ( 5%) of the total fuel heat input in any calendar year for Electricity generation units with a Gross Nameplate Capacity of greater than 500 kW.
- (81) **Renewable Fuel** means wind, solar (PV), solar (thermal electric), Renewable Biomass, Bio-gas, Bio-fuel, landfill gas or waterpower.
- (82) **Renewable Generation Facility** means an Electricity generation facility located in Ontario and owned or operated by the Generator that generates Electricity exclusively from a Renewable Fuel and delivers that Electricity through a Meter in accordance with the Distribution System Code to a Distribution System or a Load Customer.
- (83) **RESOP Contract** means the document entitled "Renewable Energy Standard Offer Program Contract" entered into between the OPA and the Generator, and to which these Standard Definitions and the other Schedules are attached, as amended, restated or replaced from time to time.

- (84) **RESOP Suppliers** means all of the generators with whom the OPA has entered into current agreements under the Program.
- (85) **Retail Settlement Code** means the code established and approved by the OEB, governing the determination of financial settlement costs for electricity retailers, consumers, distributors and generators.
- (86) **RPPI** means the Renewable Power Production Incentive established and administered by the Government of Canada.
- (87) **Sales Taxes** means GST and PST.
- (88) **Schedule** means a schedule listed in item 19 of the RESOP Contract.
- (89) **Secured Lender** means the lender(s) under a Secured Lender's Security Agreement identified in item 17 of the RESOP Contract, provided that the Generator may, at any time during the Term, unilaterally add, remove or revise the parties identified in item 17 of the RESOP Contract by providing notice of such addition, removal or revision to the OPA.
- (90) **Secured Lender's Security Agreement** means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Generator's Interest granted by the Generator that is security for any indebtedness, liability or obligation of the Generator, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.
- (91) **Settlement Period** means the monthly, quarterly or other periodic billing cycle of the LDC, in effect from time to time.
- (92) **Site-Specific Losses** means Electricity losses due to line resistance, the operation of transformers and switches, and other associated losses of Electricity generated by the Contract Facility which may occur as a result of the difference between the location of the Meter and the Connection Point, as determined pursuant to loss factors applied in accordance with the Retail Settlement Code and other applicable regulatory instruments.
- (93) **Source Separated Organics** means the organic portion of the Municipal Solid Waste collection stream which has been separated from potential contaminants such as metal, plastic and glass prior to collection and which does not contain any treated by-products of manufacturing processes or other materials that can adversely affect anaerobic processes or cause liquids and solids produced through anaerobic processes to become hazardous waste.
- (94) **Standard Definitions** means this Schedule 2 to the RESOP Contract.
- (95) **Standard Terms and Conditions** means Schedule 1 to the RESOP Contract.
- (96) **Station Service** means the Electricity used at the Contract Facility for excitation, on-site maintenance and operation of auxiliary and other facilities, essential to the operation of the Contract Facility.
- (97) **Taxes** means all ad valorem, property, occupation, severance, production, transmission, utility, gross production, gross receipts, sales, use, excise, taxes based on profits, net income or net worth and other taxes, governmental charges, licenses, permits and assessments.

- (98) **Term** has the meaning given to it in Section 2.1 of the Standard Terms and Conditions.
- (99) **Termination Date** means the date on which this Agreement terminates as a result of an early termination of this Agreement in accordance with its provisions.
- (100) **Third Anniversary** means the date that is three years after the Contract Date.
- (101) **Third Anniversary Requirements** means:
- (a) if the Contract Facility is not a Waterpower Project, the requirement that the Commercial Operation Date occur on or before the Third Anniversary; and
  - (b) if the Contract Facility is a Waterpower Project, the requirement that the Generator obtain, for the Contract Facility, the following items on or before the Third Anniversary:
    - (i) for Contract Facilities on provincial watercourses, written approval from the Minister of Natural Resources for the location of the dam and its plans and specifications under Sections 14 or 16 of the *Lakes and Rivers Improvement Act* (Ontario), respectively; and
    - (ii) for Contract Facilities on federal watercourses, a priority permit issued under the *Dominion Water Power Regulations* (Canada);
- (102) **Waterpower Project** means a Renewable Generation Facility that uses waterpower as its Renewable Fuel, provided that a Contract Facility shall not be considered a Waterpower Project unless waterpower is indicated as being the Renewable Fuel in item 9 of the RESOP Contract.
- (103) **Website** means the OPA's Renewable Energy RESOP Program website accessible from "<http://www.powerauthority.on.ca>" or such other website as the OPA shall select from time to time.
- (104) **WPPI** means the Wind Power Production Incentive established and administered by the Government of Canada.