RENEWABLE ENERGY SUPPLY CONTRACT (RES Contract)

Between

●

- and -

ONTARIO ELECTRICITY FINANCIAL CORPORATION

DATED as of the ● day of ●, 200●

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RENEWABLE ENERGY SUPPLY CONTRACT

This Renewable Energy Supply Contract is dated as of the ● day of ●, 200● between ●, **[a ●][Note to Finalization: Set forth legal form of the Supplier]** created under the laws of ● (the "**Supplier**"), and having its principal place of business at ●, and Ontario Electricity Financial Corporation (the "**Buyer**"). The Supplier and the Buyer are each referred to herein as a "**Party**" and collectively as the "**Parties**".

WHEREAS the Government of Ontario, through the Ministry of Energy, issued a request for proposals dated June 24, 2004 to purchase energy from new renewable generating facilities collectively representing approximately 300 MW of available capacity (the "**RFP**");

AND WHEREAS the Supplier submitted a proposal to plan, design, finance, construct, own, operate, and maintain the Contract Facility, and to sell energy and related products generated by the Contract Facility to the Buyer;

AND WHEREAS the Supplier's proposal was selected by the Government of Ontario, and accordingly the Supplier and the Government of Ontario wish to execute this Agreement in order to formalize, among other things, the long-term contractual arrangements for the Supplier to sell the energy and related products to the Buyer on the terms and conditions set out herein;

AND WHEREAS the Government of Ontario introduced Bill 100 into the Legislature Assembly of Ontario on June 15, 2004, being draft legislation entitled the *Electricity Restructuring Act, 2004* which, if enacted, would create the Ontario Power Authority, a statutory body with the right to recover its costs, including all costs under this Agreement, from electricity consumers through appropriate settlement mechanisms;

AND WHEREAS this Agreement is being entered into by the Buyer on the understanding that upon the coming into effect of appropriate legislation and the establishment of the Ontario Power Authority, the Buyer shall have the unilateral right to assign this Agreement and all benefits thereunder to the Ontario Power Authority, and the Ontario Power Authority shall assume the obligations of the Buyer hereunder and be novated into this Agreement in the place and stead of the Buyer;

NOW THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions

In addition to the terms defined elsewhere herein, the following capitalized terms shall have the meaning stated below when used in this Agreement:

"**Above-Cap Energy**" means the portion of Total Contract Energy during a Contract Year, expressed in MWh, in excess of the Maximum Contract Energy.

"**Above-Cap Sales**" means the sale of Above-Cap Energy in the IMO-Administered Markets.

"**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.

"**Agencies**" means all advisory, adjudicative, regulatory (including those with governing boards), and operational service agencies (which deliver goods or services to the public), of the Government of Ontario.

"**Agreement**" means, collectively, the RES Contract, the RFP, and the Proposal, as may be amended, restated or replaced from time to time.

"**Ancillary Services**", as defined in the IMO Market Rules, means any services necessary to maintain the reliability of the IMO-Controlled Grid, including frequency control, voltage control, reactive power and Operating Reserve.

"**Approved Incremental Costs"** has the meaning ascribed to it in Section 3.4(g).

"**Arm's Length**" means, with respect to two or more Persons, that such Persons are not related to each other within the meaning of subsections 251(2), (3), (3.1), (3.2), (4), (5) and (6) of the *Income Tax Act* (Canada) or that such Persons, as a matter of fact, deal with each other at a particular time at arm's length.

"**Assignee"** has the meaning ascribed to it in Section 16.5(c).

"**Bank Act**" means the *Bank Act* (Canada), as amended from time to time.

"**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.

"**Buyer**" means Ontario Electricity Financial Corporation and its successors and assigns.

"**Buyer Event of Default**" has the meaning ascribed to it in Section 10.3.

"**Buyer Statement**" has the meaning ascribed to it in Section 12.2(g).

"**Buyer's Share of Gross Profit"** has the meaning ascribed to it in Section 4.1.

"**Capacity Products**" means any capacity related product, including Capacity Reserve.

"**Capacity Reserve**" means generation capacity that can be available to provide Electricity or Operating Reserve within the times required by the IMO Market Rules.

"**Claim**" means a claim or cause of action in contract, in tort, under any Laws and Regulations or otherwise.

"**Commercial Operation**" means the operation of the Contract Facility in compliance with all Laws and Regulations after the completion of construction, completion of connection and

synchronization to the IMO-Controlled Grid or a Local Distribution System, and completion of all commissioning tests.

"**Commercial Operation Date**" means the date on which Commercial Operation is first attained.

"**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, the transaction 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.

"**Company Representative**" has the meaning ascribed to it in Section 15.1.

"**Completion and Performance Security**" has the meaning ascribed to it in Section 6.1.

"**Connection Agreement**" means the agreement entered into by a Transmitter, or a LDC, and the Supplier with respect to the connection of the Contract Facility to the transmission system or Local Distribution System, as the case may be, in accordance with the Transmission System Code or Distribution System Code, as applicable, and governing the terms and conditions of the connection.

"**Connection Impact Assessment**" means, if the Contract Facility is to be connected to a Local Distribution System, a study conducted by a LDC to determine the feasibility of connecting the Contract Facility to its Local Distribution System, and to the transmission system if applicable.

"**Connection Point"**, as defined in the IMO Market Rules, means the point of connection between the Contract Facility and the IMO-Controlled Grid.

"Consumer Price Index" means the consumer price index for "All Items" published or established by Statistics Canada or its successors in relation to the Province of Ontario.

"**Contract Capacity**" means that portion of the Nameplate Capacity expressed in MW and set out in Exhibit B.

"**Contract Energy**" means the portion of Total Contract Energy during a Contract Year, expressed in MWh, which the Buyer agrees to purchase at the Contract Price, up to the Maximum Contract Energy.

"**Contract Facility**" means that portion of the Facility which is developed and operated by the Supplier pursuant to the Proposal to produce the Contract Energy and Contract Related Products, as more particularly described in Exhibit A and in the Proposal.

"**Contract Price**" means the price, expressed in dollars and cents per MWh, for each MWh of Contract Energy delivered to the Delivery Point during the Term, as set out in Exhibit B, and as amended from time to time pursuant to Section 3.5.

"**Contract Related Products**" means those Related Products which relate to the Contract Capacity.

"**Contract Year**" means a twelve (12) month period during the Term which begins on the Commercial Operation Date or an anniversary date thereof.

"**Contracted Proportion of Output**" means that ratio determined by dividing the Contract Capacity by the Nameplate Capacity.

"**Control**" means, with respect to any Person at any time, (i) holding, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, directly or indirectly, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint the majority of 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.

"**Costs**" means all costs and expenses reasonably incurred by the Terminating Party either in terminating any arrangements relating to the transactions provided for under this Agreement, or for entering into any new arrangements to replace this Agreement, and all reasonable legal fees and expenses incurred in connection with enforcing its rights under this Agreement.

"**Credit Rating**" means, (i) with respect to the Supplier (or the Guarantor, if a Guarantee is in place) its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its corporate credit rating (as applicable) as provided by S&P, Moody's or DBRS or any other established and reputable debt rating agency, agreed to by the Parties from time to time, each acting reasonably, and (ii) with respect to a financial institution, its long-term senior unsecured debt rating or its deposit rating as provided by Moody's, S&P, Fitch IBCA, or DBRS or any other established and reputable rating agency, as reasonably agreed to by the Parties from time to time.

"**Creditworthiness Value**" has the meaning ascribed to it in Section 6.4(b).

"**Customer Impact Assessment**" means, if the Contract Facility is to be connected to a transmission system, a study conducted by a Transmitter to assess the impact of the incorporation of the Contract Facility on the area transmission customers.

"**DBRS**" means Dominion Bond Rating Service Limited or its successors.

"**Defaulting Party**" has the meaning ascribed to it in Section 10.5.

"**Delivery Point**" means a uniquely identified reference point determined in accordance with the IMO Market Rules and used for settlement purposes in the real-time markets.

"**Discriminatory Action**" has the meaning ascribed to it in Section 13.1.

"**Discriminatory Action Compensation**" has the meaning ascribed to it in Section 13.2.

"**Discriminatory Action Compensation Amount**" has the meaning ascribed to it in Section 13.3(e).

"**Discriminatory Action Compensation Notice**" has the meaning ascribed to it in Section 13.3(e).

"Distribution Connection Agreement" means an agreement entered into by a LDC and the Supplier, if the Contract Facility is connected to its Local Distribution System, that delineates the conditions of the connection and delivery of Electricity to that connection.

"**Distribution System Code**" means the code approved by the OEB and in effect from time to time, which, among other things, establishes the obligations of a LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards of distribution systems.

"**Early Termination Date**" has the meaning ascribed to it in Section 10.5.

"**Early Termination Payment**" has the meaning ascribed to it in Section 10.5.

"**Electricity**" means electric energy measured in MWh that, in accordance with the IMO Market Rules, can be conveyed into, through or out of the IMO-Controlled Grid or the Local Distribution System.

"**Electricity Act**" means the *Electricity Act, 1998* (Ontario), as amended or replaced from time to time.

"**Embedded Connection Point"**, as defined in the IMO Market Rules, means the point of connection between the Contract Facility and the Local Distribution System.

"**Emission Reduction Credits**" means the credits associated with the amount of emissions to the air avoided by reducing the 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), as amended from time to time, or such other regulation as may be promulgated under the *Environmental Protection Act* (Ontario).

"**Energy From Nameplate Capacity**" means the entire quantity of Electricity, expressed in MWh, generated by the Nameplate Capacity and supplied to the Delivery Point.

"**Environmental Attributes**" means environmental attributes of the Electricity associated with a renewable generating facility having low environmental impact, and includes:

(a) rights to any fungible or non-fungible attributes, whether arising from the renewable generating facility itself, from the interaction of the renewable generating facility with the IMO-Controlled Grid or the Local Distribution System or because of applicable legislation; and

(b) any and all ownership rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs. Specific environmental attributes include ownership rights to Emission Reduction Credits or entitlements resulting from interaction of the renewable generating facility with the IMO-Controlled Grid or the Local Distribution System or as specified by applicable legislation (CO_2, CH_4, and N_2O), particulate matter, NOx, SOx, and heavy metals (mercury, hexavalent chromium, inorganic cadmium, lead, nickel compounds), and the right to quantify and register these with competent authorities,

but which excludes the Government of Canada's Wind Power Production Incentive (WPPI) which may be available in connection with a renewable generating facility.

"**EST**" shall mean Eastern Standard Time.

"**Event of Default**" means a Supplier Event of Default or a Buyer Event of Default.

"**Facility**" means the Contract Facility and, if applicable, the existing renewable generating facility associated with the Contract Facility.

"**Financial Indicators**" means the Net Worth and the Credit Rating.

"**FIPPA**" means the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended or supplemented from time to time.

"**FIPPA Records**" has the meaning ascribed to it in Section 8.5.

"**Fitch IBCA**" means Fitch IBCA, Duff & Phelps, a division of Fitch Inc., or its successors.

"**Force Majeure**" has the meaning ascribed to it in Section 11.3.

"**GAAP**" means generally accepted accounting principles approved or recommended from time to time by the Canadian Institute of Chartered Accountants, or any successor institute, applied on a consistent basis.

"**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 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. Without limiting the generality of the foregoing and in respect of the operation of the Facility, Good Engineering and Operating Practices include taking reasonable steps to ensure that:

(a) adequate materials, resources and supplies, including fuel, are available to meet the Facility's needs under reasonable conditions and reasonably anticipated abnormal conditions;

(b) sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and taking into account manufacturers' guidelines and specifications and are capable of responding to abnormal conditions;

(c) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation and taking into account

manufacturers' recommendations and are performed by knowledgeable, trained and experienced personnel utilising proper equipment, tools and procedures; and

(d) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions.

"**Government of Ontario**" means Her Majesty the Queen in right of Ontario.

"**Governmental Authority**" means any federal, provincial, municipal or local 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, for greater certainty, the IMO, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority.

"**Gross Profit from Above-Cap Sales**" has the meaning ascribed to it in Section 4.2.

"**GST**" means the goods and services tax exigible pursuant to the *Excise Tax Act* (Canada), as amended from time to time.

"**Guarantee**" has the meaning ascribed to it in Section 6.4.

"**Guarantor**" has the meaning ascribed to it in Section 6.4.

"**HOEP**" means the Hourly Ontario Energy Price as defined in the IMO Market Rules.

"**Hourly Delivered Electricity**" means the amount of Contract Energy expressed in MWh actually delivered by the Supplier at the Delivery Point, in any hour.

"**IMO**" means the Independent Electricity Market Operator established under Part II of the *Electricity Act*, or its successor.

"**IMO-Administered Markets**" has the meaning ascribed to it by the IMO Market Rules.

"**IMO-Controlled Grid**" means the transmission systems with respect to which, pursuant to operating agreements between the IMO and Transmitters, the IMO has authority to direct operations of the Transmitters' transmission systems as contemplated by the *Electricity Act*.

"**IMO Market Rules**" means the rules governing the IMO-Controlled Grid and establishing and governing the IMO-Administered Markets, as amended or replaced from time to time.

"**including**" means "including, without limitation".

"**Indemnifiable Loss**" has the meaning ascribed to it in Section 14.3.

"**Indemnitees**" has the meaning ascribed to it in Section 14.3.

"**Insolvency Legislation**" means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada) 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), as they may be amended from time to time.

"**Interest Rate**" means the annual rate of interest established by **[a Schedule I bank to be named]** or its successor, from time to time, as the interest rate it will charge for demand loans in Canadian dollars to its commercial customers in Canada and which it designates as its "**prime rate**" based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by **[the Schedule I bank to be named]**.

"**ITA**" means the *Income Tax Act* (Canada), as amended from time to time.

"**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, 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; and

(d) any requirements under or prescribed by applicable common law.

"**Letter of Credit**" means one or more irrevocable and unconditional standby letters of credit issued by a financial institution listed in either Schedule I or II of the *Bank Act* or such other financial institution having a minimum Credit Rating of (i) A- with S&P, (ii) A3 with Moody's, (iii) A low with DBRS, or (iv) A with Fitch IBCA, in substantially the form attached as Exhibit C or in a form acceptable to the Buyer, acting reasonably, and otherwise conforming to the provisions of Section 6.3.

"**Local Distribution Company**" or "**LDC**" means a Person licensed by the OEB as a "Distributor" in connection with a Local Distribution System.

"**Local Distribution System**" means a system for conveying electricity at voltages of 50 kilovolts or less and includes any structures, equipment or other things used for that purpose.

"Marginal Costs" has the meaning set out in Section 4.2.

"Market Price" means the spot price per MWh for Electricity in the IMO-Administered Markets applicable to the class of generator to which the Supplier belongs in accordance with the IMO Market Rules.

"**Market Settlement Charges**" means all market settlement amounts and charges described in Chapter 9 of the IMO Market Rules.

"**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.

"**Maximum Contract Energy**" means the maximum quantity of Electricity, expressed in MWh, per Contract Year as set out in Exhibit B which the Buyer agrees to purchase at the Contract Price. The Maximum Contract Energy shall be 125% of the expected annual energy output of the Contract Facility set forth in the Proposal.

"**Milestone Dates**" means those dates set forth in the second column of the table contained in Exhibit F, with respect to the attainment of the corresponding Milestone Events set out in the first column of the table contained in Exhibit F.

"**Milestone Events**" means those events set forth in the first column of the table contained in Exhibit F which are considered critical by the Parties for the timely design, construction, completion, and operation of the Contract Facility, and which are to be completed by the corresponding Milestone Dates.

"**Monthly Delivered Electricity**" means, for a specified month within the Term, the aggregate amount of Contract Energy, expressed in MWh, actually delivered to the Delivery Point.

"**Monthly Payment**" has the meaning ascribed to it in Section 3.4.

"**Moody's**" shall mean Moody's Investors Service, Inc. or its successor.

"**MW**" means megawatt.

"**MWh**" means megawatt hour.

"**Nameplate Capacity**" means the rated capacity, expressed in MW, of the Facility that is separately metered by one meter and which includes the Contract Capacity.

"**Negative Outlook**" means, with respect to any of S&P, Moody's, DBRS, a potential or threatened downgrade to the Credit Rating of the Supplier or Guarantor or their respective permitted assignees.

"**Net Worth**" means, in respect of the Supplier or Guarantor, their respective Shareholder Equity as of the date of determination.

"**New Agreement**" means a new agreement substantially in the form of this Agreement, which is to be entered into with a Secured Lender who is at Arm's Length with the Supplier or a Person identified by such Secured Lender following termination of the Agreement, as set out in Section 12.2(g).

"**Notice of Discriminatory Action**" has the meaning ascribed to it in Section 13.3(a).

"**Notice of Dispute**" has the meaning ascribed to it in Section 13.3(b).

"**OEB**" means the Ontario Energy Board, or its successor.

"**Ontario Public Service**" or "**OPS**" means the ministries, the Ontario Power Authority (if created), Ontario Electricity Financial Corporation, and other administrative units of the Government of Ontario over which Ministers of the Crown preside, and for the purposes of this Agreement includes the Agencies.

"**Operating Reserve**" means generation capacity which can be called upon on short notice by the IMO to replace scheduled Electricity supply which is unavailable as a result of an unexpected outage or to augment scheduled Electricity as a result of unexpected demand or other contingencies.

"**Operating Reserve Payment**" has the meaning ascribed to it in Section 3.4(d).

"**Operating Reserve Revenues**" means the total revenues received by the Buyer from the IMO in relation to Operating Reserve flowing from the Nameplate Capacity delivered to the IMO-Administered Markets.

"**OPS Confidential Information**" means all information of the Ontario Public Service that is of a confidential nature, including all confidential information in the custody or control of the OPS, whether recorded or not and however fixed, stored, expressed or embodied, that has been identified as confidential and which comes into the knowledge, possession or control of the Supplier in connection with the Agreement. For greater certainty, OPS Confidential Information shall:

(a) include: (i) all new information derived at any time from any such confidential information described above, whether created by the OPS, the Supplier or any third-party; and (ii) all information that the OPS is obliged, or has the discretion, not to disclose under provincial or federal legislation; and

(b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to the OPS or to any third-party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier.

"**Payment Date**" has the meaning ascribed to it in Section 5.3.

"**Performance Incentive Payment**" has the meaning ascribed to it in Section 3.4(f).

"**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.

"**Present Value Discount Rate**" means:

(a) if the time remaining in the Term is one year or less, the yield of Canadian Government Treasury Bills with a term closest to the time remaining in the Term; and

(b) if the time remaining in the Term is greater than one year, the yield of Government of Canada Bonds with a term closest to the time remaining in the Term.

"**Production-Weighted Average Price**" has the meaning ascribed to it in Section 3.4.

"**Proposal**" means the proposal submission made by the Supplier in response to the RFP in respect of developing the Contract Facility to be constructed and developed by the Supplier and which was selected by the Government of Ontario, and all clarifications in respect of such Proposal provided by the Supplier in writing as requested by or on behalf of the Ontario Ministry of Energy from time to time in accordance with the RFP prior to the date of this Agreement, a copy of all of which is attached as Exhibit I.

"**Proposal Amendment**" has the meaning ascribed to it in Section 2.1.

"**PST**" means the Ontario provincial sales tax exigible under the *Retail Sales Tax Act* (Ontario), as amended from time to time.

"**Records**" means any recorded information in any form: (a) provided by the Buyer to the Supplier, or provided by the Supplier to the Buyer, for purposes of this Agreement, or (b) created by the Supplier in the performance of the Agreement, and shall include or exclude any information specifically described in Exhibit G.

"**Related Products**" means all Capacity Products, Ancillary Services, transmission rights, and any Environmental Attributes that may be traded in the IMO-Administered Markets or other markets.

"RES Contract" means this Renewable Energy Supply Contract, including the Exhibits attached hereto, as it may be amended, restated or replaced from time to time. Unless otherwise indicated, references to Articles, Sections and Exhibits are references to Articles, Sections and Exhibits in the RES Contract.

"Reversion Date" means the day immediately following the date that the Term has expired or the Agreement is terminated.

"**RFP**" has the meaning ascribed to it in the recitals to this Agreement and, for greater certainty, shall include all addenda in respect of the RFP provided in writing by or on behalf of the Ontario Ministry of Energy from time to time prior to the date of this Agreement, a copy of which is attached as Exhibit H.

"**S&P**" means the Standard and Poors Rating Group (a division of McGraw-Hill Inc.) or its successors.

"**Schedule**", "**Scheduled**" and "**Scheduling**" means all acts necessary for the Supplier to schedule, or cause to be scheduled, including the submission of dispatch data, the Electricity at the Delivery Point throughout the Term.

"**Secured Lender**" means a lender under a Secured Lender's Security Agreement.

"**Secured Lender's Security Agreement**" means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier's Interest granted by the Supplier that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

"**Senior Conference**" has the meaning ascribed to it in Section 16.1.

"**Settlement Month**" has the meaning ascribed to it in Section 5.2.

"**Shareholder Equity**" means, in respect of the Supplier or Guarantor, such amount reported on the Supplier's or Guarantor's quarterly financial statements, prepared in accordance with GAAP.

"**Statement**" has the meaning ascribed to it in Section 5.2.

"**Supplier**" means ●, and includes any successor to ● resulting from any merger, arrangement or other reorganization of or including ● or any continuance under the laws of another jurisdiction or permitted assignee.

"**Supplier Event of Default**" has the meaning ascribed to it in Section 10.1.

"**Supplier Non-acceptance Notice**" has the meaning ascribed to it in Section 13.3(e).

"**Supplier's Capacity**" means the Nameplate Capacity less the Contract Capacity.

"**Supplier's Confidential Information**" means all information of the Supplier that is proprietary or confidential and that has been marked "Proprietary and Confidential" by the Supplier, but which for greater certainty shall not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Buyer of any duty of confidentiality owed by the Buyer to the Supplier or to any third-party; (ii) the Buyer can demonstrate to have been rightfully obtained by the Buyer, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Buyer free of any obligation of confidence; (iii) the Buyer can demonstrate to have been rightfully known to or in the possession of the Buyer at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Buyer.

"**Supplier's Energy"** means that quantity of Electricity, expressed in MWh, calculated as the Energy From Nameplate Capacity minus the Total Contract Energy, where the Total Contract Energy is not separately metered from the Energy From Nameplate Capacity.

"Supplier's Interest" means the right, title and interest of the Supplier in or to the Facility and this Agreement, or any benefit or advantage of any of the foregoing.

"**Supplier's Proportion of Output**" means that ratio calculated as 1 minus the Contracted Proportion of Output.

"**System Impact Assessment**" means a study conducted by the IMO, pursuant to section 6.1.5 of Chapter 4 of the IMO Market Rules, to assess the impact of a new connection of the Contract Facility to the IMO-Controlled Grid or of the modification of an existing connection of the Facility to the IMO-Controlled Grid, as applicable, on the reliability of the integrated power system.

"**Taxes**" means all *ad valorem*, property, occupation, severance, production, transmission, utility, gross production, gross receipts, sales, use, excise and other taxes, governmental charges, licenses, permits and assessments, other than (i) GST and PST and (ii) taxes based on excess profits, net income or net worth.

"**Term**" has the meaning ascribed to it in Section 9.1(b).

"**Terminating Party**" has the meaning ascribed to it in Section 10.5.

"**Termination Date**" means the date on which this Agreement terminates as a result of an early termination of this Agreement in accordance with this Agreement.

"**Time-Average Price**" has the meaning ascribed to it in Section 3.4.

"**Total Contract Energy**" means a quantity of Electricity expressed in MWh:

(a) as recorded by the Contract Facility's meter, where it is separately metered; or

(b) calculated as the Energy From Nameplate Capacity multiplied by the Contracted Proportion of Output, where the Electricity flowing from the Contract Capacity is not separately metered from the Energy From Nameplate Capacity.

"Transmission Connection Agreement" means an agreement entered into by a Transmitter and the Supplier governing the terms and conditions under which the Supplier is connected to the Transmitter's transmission system, and into which the Transmission System Code is incorporated and of which it forms a part.

"**Transmission System Code**" means the code approved by the OEB and in effect from time to time, which, among other things, sets the standards for a Transmitter's existing transmission system and for expanding the Transmitter's transmission facilities in order to connect new customers to it or accommodate increase in capacity or load of existing customers.

"**Transmitter**" means a Person licensed as a "transmitter" by the OEB in connection with a transmission system.

"**Unpaid Amounts**" means all amounts owed but not yet paid by the Buyer to the Supplier, whether or not such amounts are then due pursuant to this Agreement.

1.2 Exhibits

The following Exhibits are attached to this Agreement:

Exhibit A	Summary of the Contract Facility
Exhibit B	Contract Price, Maximum Contract Energy, and Contract Capacity
Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Guarantee
Exhibit E	Form of Certificate of Incumbency
Exhibit F	Milestone Events and Milestone Dates for the Contract Facility
Exhibit G	Records Under FIPPA
Exhibit H	RFP
Exhibit I	Proposal

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 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.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars.

1.6 IMO Market Rules and Statutes

Any reference in this Agreement to the IMO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IMO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IMO Market Rules and the terms of this Agreement, the IMO Market Rules shall govern to the extent of such conflict or inconsistency.

1.7 Invalidity, Unenforceability, or Inapplicability of Provisions

In the event that:

(a) an arbitrator or a court of competent jurisdiction declares that any provision contained in this Agreement is invalid or unenforceable; or

(b) an arbitrator or a court of competent jurisdiction declares that any Laws and Regulations have changed or altered (other than by way of any Discriminatory Action) from the corresponding Laws and Regulations that existed as at the date of this Agreement, in a manner that, as a direct result of the change or alteration, renders any provision contained in this Agreement inapplicable,

then the Parties shall engage in good faith negotiations to replace any provision which is declared invalid, unenforceable, or inapplicable, as the case may be, with a valid, enforceable, and applicable provision, the economic effect of which comes as close as possible to that of the invalid, unenforceable, or inapplicable provision which it replaces. For greater certainty, each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity, unenforceability, or inapplicability of any such provision or part thereof by a court of competent jurisdiction or arbitrator shall not affect the validity, enforceability, or inapplicability of any other provision of this Agreement.

1.8 Entire Agreement

The RES Contract, the RFP, and the Proposal together constitute 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 the RES Contract, the RFP, and the Proposal. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made prior to the issuance of the RFP on June 24, 2004 by a Party to this Agreement, or its directors, officers, employees or agents, to the other Party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement. Any conflict or inconsistency between the RES Contract, the RFP, or the Proposal shall be resolved by interpreting such documents in the following order, from highest to lowest priority, namely:

- the RES Contract;
- the RFP; and
- the Proposal,

where a document of a higher priority shall govern over a document of a lower priority to the extent of any conflict or inconsistency.

1.9 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 any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided.

1.10 Governing Law

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

1.11 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the Buyer's legal and other professional advisors, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application, or enforceability of any term or provision of this Agreement shall not be construed or interpreted against the Buyer or in favour of the Supplier when interpreting such term or provision, by virtue of such fact.

ARTICLE 2
DEVELOPMENT AND OPERATION OF THE CONTRACT FACILITY

2.1 Design and Construction of the Contract Facility

(a) The Supplier covenants and agrees to design and build the Contract Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IMO Market Rules, Transmission System Code, Distribution System Code, and all Laws and Regulations. The Supplier further covenants and agrees that all materials and equipment installed in the Contract Facility must be new and not previously used. For an existing Facility which is being expanded or upgraded, all materials and equipment installed as part of the expansion or upgrade must be new and not previously used.

(b) The Supplier shall at no time after the date of this Agreement modify, vary, or amend in any material respect any of the features or specifications of the Contract Facility as outlined in the Proposal (the "**Proposal Amendment**") without first obtaining the Buyer's consent in writing, which consent may be unreasonably withheld. Notwithstanding the foregoing, if:

(i) the Contract Capacity will be materially reduced as a result of a term, condition, or restriction imposed by, or contained in a permit, certificate, licence or other approval issued by, a Governmental Authority in respect

of the Facility, where the imposition of such term, condition, or restriction was beyond the reasonable control of the Supplier, or

(ii) the Nameplate Capacity will be materially increased without affecting the ability of the Contract Facility to provide the Total Contract Energy and Contract Related Products under this Agreement,

the Buyer's consent to such Proposal Amendment shall not be unreasonably withheld. Any Proposal Amendment that has not been consented to by the Buyer shall constitute a Supplier Event of Default.

2.2 Additional Development and Construction Covenants

(a) The Supplier covenants and agrees to arrange, at its expense, for all Facility connection requirements, and all necessary improvements and/or modifications of facilities on the IMO-Controlled Grid and/or the Local Distribution System as a result of such connection, in accordance with the IMO Market Rules (and as specified in the System Impact Assessment and the Customer Impact Assessment, or the Connection Impact Assessment, as applicable) to permit the delivery of Contract Energy at the Delivery Point.

(b) The Supplier covenants and agrees to provide, at its expense, separate meters and any ancillary metering and monitoring equipment as required by the IMO Market Rules. The Supplier covenants and agrees that, forthwith upon the request of the Buyer, it shall transfer ownership and title of such meters and ancillary metering and monitoring equipment to the Buyer at no cost to the Buyer, free and clear of all liens, claims and encumbrances. The Buyer covenants and agrees to operate and maintain such meters and ancillary metering and monitoring equipment owned by it in accordance with the IMO Market Rules. If the Contract Capacity is equal to or greater than 5.0 MW, and the Nameplate Capacity is greater than the Contract Capacity, then the Supplier is required to separately meter the Total Contract Energy from the Energy From Nameplate Capacity, or provide a declaration, sealed and signed by a Professional Engineer qualified to practice engineering in Ontario, that the Total Contract Energy cannot be separately metered from the Energy From Nameplate Capacity.

(c) The Supplier covenants and agrees to provide, at its expense, all power system components on the Supplier's side of the Connection Point or Embedded Connection Point including all transformation, switching and auxiliary equipment such as synchronizing and protection and control equipment, pursuant to requirements deemed necessary by the IMO, the Transmitter and the LDC (and as specified in the System Impact Assessment and the Customer Impact Assessment, or the Connection Impact Assessment, as applicable) to protect the safety and security of the IMO-Controlled Grid or the Local Distribution System and their respective customers. The equipment to be so provided by the Supplier shall include such electrical equipment as the IMO, the Transmitter and the LDC deem necessary, from time to time, for the safe and secure operation of the IMO-Controlled Grid and the Local Distribution System, as required by the IMO Market Rules, the Transmission System Code, and the Distribution System Code.

(d) The Supplier covenants and agrees to install protective equipment to protect its own personnel, property, and equipment from variations in frequency and voltage or from temporary delivery of other than three-phase power, whether caused by the Facility, the IMO-Controlled Grid, or the Local Distribution System.

2.3 Operation Covenants

(a) The Supplier covenants and agrees to operate and maintain the Facility during the Term such that the requirements of the IMO Market Rules and the Connection Agreement are met, and in accordance with Good Engineering and Operating Practices.

(b) The Supplier covenants and agrees to assume all risk, liability and obligation and to indemnify, defend, and hold harmless the Indemnitees in respect to all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment at or related to the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act*, or the *Dangerous Goods Transportation Act* (Ontario), or other similar legislation whether federal or provincial except to the degree that such discharge shall have been due to the negligence of the Indemnitees.

(c) The Supplier covenants and agrees to use Commercially Reasonable Efforts to maintain or enter into any fuel supply contracts that are necessary for the proper operation of the Contract Facility during the Term. The Supplier further covenants and agrees that the Contract Facility shall not utilize any sources or fuels other than those which qualify under the RFP. Without limiting the generality of the foregoing, a Supplier who is also a load facility under the IMO Market Rules shall be solely responsible for all charges (net of any applicable credits) in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.

2.4 Insurance Covenants

(a) The Supplier hereby agrees to put in effect and maintain, or cause its contractors and subcontractors, where appropriate, to maintain from the commencement of construction of the Contract Facility to the expiry of the Term, at its own cost and expense, with insurers reasonably acceptable to the Buyer and authorized to conduct business as an insurer in the Province of Ontario, all the necessary and appropriate insurance that a prudent Person in the business of the Supplier developing and operating the Facility would maintain including the following:

(i) "all-risk" insurance covering property of every description shall be in the joint names of at least the Supplier and its principal contractors, insuring not less than the full replacement value of the Contract Facility with a deductible not exceeding $50,000 for all perils, including delayed start-up coverage of not less than 30 days. During the construction of the Contract

Facility until the Commercial Operation Date, the policy shall include as additional insureds all subcontractors and suppliers and the coverage shall not be less than the insurance required by IBC Forms 4042 and 4047, or their equivalent replacement; and

(ii) commercial general liability insurance on an occurrence basis for death, bodily injury and property damage and other types of damage that may be caused to third parties as a result of the Supplier's activities in connection with the Contract Facility or performance of its obligations under this Agreement, to an inclusive limit of not less than $10,000,000 per occurrence and in the aggregate, with a deductible not exceeding $50,000. The coverage shall not be less than the insurance required by IBC Forms 2100 and 2320, or their equivalent replacement. The policy shall include the following clauses:

(A) the Buyer shall be an additional insured;

(B) a cross liability endorsement;

(C) coverage for contractual liability of the Supplier under this Agreement;

(D) coverage for liability resulting from completed products and operations; and

(E) coverage for liability on the part of the Supplier resulting from activities or work performed by its contractors and subcontractors.

(b) The Supplier shall provide the Buyer with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, on or before the commencement of construction of the Contract Facility, and renewal replacements on or before the expiry of any such insurance. Upon the request of the Buyer, a copy of each insurance policy shall be made available to it.

(c) If the Supplier is subject to the *Workplace Safety and Insurance Act* (Ontario), it shall submit a valid clearance certificate of *Workplace Safety and Insurance Act* coverage to the Buyer prior to the commencement date of the Agreement. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional *Workplace Safety and Insurance Act* clearance certificates. The Supplier covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it/its subcontractors, from time to time from the commencement date of this Agreement, under the *Workplace Safety and Insurance Act*, failing which the Buyer shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the *Workplace Safety and Insurance Act* and unpaid by the Supplier or its subcontractors and to deduct such amount from any amount due and owing from

time to time to the Supplier pursuant to this Agreement together with all costs incurred by the Buyer in connection therewith.

2.5 Compliance with Laws and Regulations and Governing Documentation

(a) The Buyer and the Supplier shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.

(b) The Buyer and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB. Without limiting the generality of the foregoing, the Supplier covenants and agrees to meet all Facility registration requirements as specified in the IMO Market Rules.

(c) The Buyer and Supplier shall register with the IMO in a timely manner, but in any event no later than ninety (90) days prior to the Commercial Operation Date, as a "Metered Market Participant" for the Buyer for the meter that is used to record, amongst other things, the Energy From Nameplate Capacity, and a "Registered Market Participant" and a "Generator" with respect to the Supplier, pursuant to the IMO Market Rules. The settlement of Market Settlement Charges shall take place directly between the Buyer as the "Metered Market Participant" and the IMO, and any costs incurred by the Buyer acting as the "Metered Market Participant" pursuant to the IMO Market Rules in respect of this Agreement shall be charged to and be the sole responsibility of the Supplier, save and except for any costs related to the operation and maintenance of the meters and ancillary equipment which are the responsibility of the Buyer pursuant to Section 2.2(b).

2.6 Milestone Dates

The Supplier acknowledges that time is of the essence to the Buyer with respect to attaining Commercial Operation of the Contract Facility by the corresponding Milestone Date set out by the Supplier in Exhibit F, and agrees that Commercial Operation shall be achieved by the corresponding Milestone Date, failing which the Supplier shall pay to the Buyer on or before five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages and not as a penalty, an amount equal to Sixty-Five ($65.00) Dollars per MW multiplied by the Contract Capacity for each calendar day after such Milestone Date until Commercial Operation has been achieved, up to a maximum amount equal to the product of $33,000 per MW multiplied by the Contract Capacity.

2.7 Buyer Information During Design and Construction

By the fifteenth (15th) day of each quarter following the date of this Agreement and continuing until the Commercial Operation Date, the Supplier shall provide the Buyer with quarterly progress reports in a form agreed to by the Parties describing the status of efforts made by the

Supplier to meet each Milestone Date and the progress of the design and construction work. At the Buyer's request, the Supplier shall provide an opportunity for the Buyer to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such quarterly progress report.

2.8 Delay Leading to Supplier Event of Default

In addition to the liquidated damages set out in Section 2.6 and any other remedies available to the Buyer, if the Commercial Operation Date does not occur by December 31, 2008, this shall be considered a Supplier Event of Default.

ARTICLE 3
ELECTRICITY

3.1 Sale and Purchase of Electricity and Related Products

(a) Prior to the Commercial Operation Date, the Supplier agrees to sell and to deliver to the Delivery Point, and the Buyer agrees to purchase, any Energy From Nameplate Capacity delivered by the Supplier to the Delivery Point for the Market Price for such Electricity.

(b) From and after the Commercial Operation Date, the Supplier agrees to sell and to deliver to the Delivery Point, and the Buyer agrees to purchase,

(i) the Contract Energy at the Contract Price;

(ii) the Above-Cap Energy at the price determined in accordance with Section 3.4(c); and

(iii) where the Nameplate Capacity is greater than the Contract Capacity and the Total Contract Energy is not separately metered from the Energy From Nameplate Capacity, the Supplier's Energy for the Market Price,

and the Supplier agrees to sell, and the Buyer agrees to purchase, all Contract Related Products for no additional remuneration (except as expressly set forth in Section 3.4), and the Supplier agrees to deliver all Contract Related Products to the IMO-Administered Markets or other markets on behalf, or for the benefit, of the Buyer. For greater certainty, all Related Products which relate to the Supplier's Capacity shall belong to the Supplier.

3.2 Delivery of Electricity and Related Products

The Supplier shall meet the requirements of the IMO Market Rules including the provision of dispatch data for Contract Energy and Contract Related Products required to include these services in the IMO-Administered Markets at no less than minus $1.00 per MWh and no more than the Supplier's variable cost for generating same. For greater certainty, the Supplier's variable cost shall be determined on an actual cost basis incurred by the Supplier without mark-up, as first confirmed by the Buyer and the Supplier, and which shall be subject to verification by the Buyer from time to time. If the Contract Facility is a dispatchable facility, then the Contract Facility's dispatch data will take the form required by the IMO Market Rules including offers

specified such that Contract Energy, and any Contract Related Products that are capable of dispatch from time to time, will be dispatched appropriately by the IMO in the IMO-Administered Markets.

3.3 Title, Risk and Responsibility for Contract Energy and Contract Related Products

(a) Title and all risk relating to the Contract Energy delivered or caused to be delivered hereunder shall pass from the Supplier to the Buyer at the Delivery Point. Title and all risk relating to the Contract Related Products shall pass from the Supplier to the Buyer at the Delivery Point. As between the Buyer and the Supplier, the Supplier shall be responsible for, and shall indemnify, defend and hold harmless the Indemnitees against, any loss, damage, action, cost, and expense (including Market Settlement Charges and reasonable legal costs and expenses) or injury to any Person or property, caused by the generation, sale and delivery of the Electricity and Related Products sold hereunder to the Delivery Point, except to the extent that any loss, damage, action, cost, expense or injury is attributable to the negligence or wilful misconduct of the Indemnitees. The Supplier shall deliver the Contract Energy and the Contract Related Products sold hereunder free and clear of all liens, claims and encumbrances other than in favour of the Buyer.

(b) Notwithstanding anything in this Agreement to the contrary, in the event that the OEB issues an order or directive resulting in a Transmitter or LDC, instead of the Supplier as a generator, paying any of the connection costs described in Section 2.2(a), then the Contract Price shall be reduced by mutual agreement by an amount commensurate with such reduction in such connection costs paid by the Supplier as a result of such OEB order or directive.

3.4 Monthly Payment

The total payment from the Buyer to the Supplier for selling the Electricity and Related Products flowing from the Nameplate Capacity for a given month of the Term (the "**Monthly Payment**") shall be an amount expressed in dollars and cents and equal to the sum of the following amounts:

(a) the Contract Price multiplied by the Monthly Delivered Electricity;

(b) where the Nameplate Capacity is greater than the Contract Capacity and the Total Contract Energy is not separately metered from the Energy From Nameplate Capacity, the Market Price for the Supplier's Energy, multiplied by the amount of the Supplier's Energy delivered in that month, plus any "constrained on" payments received by the Buyer in the IMO-Administered Markets relating to the Supplier's Capacity in that month;

(c) the Market Price for the Above-Cap Energy multiplied by the amount of Above-Cap Energy delivered in that month, less the Buyer's Share of Gross Profit;

(d) 25% of the total revenues received by the Buyer from the IMO in relation to Operating Reserve provided by the Supplier to the IMO-Administered Markets for that month, subject to a maximum amount in any given hour equal to 25% of

$30.00 per MW per hour (the "**Operating Reserve Payment**"), and further subject to the following:

(i) if the Nameplate Capacity is greater than the Contract Capacity, and the Total Contract Energy is not separately metered from the Energy From Nameplate Capacity, then the amount payable pursuant to this Section 3.4(d) shall be equal to (A) the amount determined by multiplying the Operating Reserve Payment by the Contracted Proportion of Output; plus (B) the amount determined by multiplying the Operating Reserve Revenues received by the Buyer from the IMO for that month by the Supplier's Proportion of Output.

(e) If the Nameplate Capacity is greater than the Contract Capacity, and the Total Contract Energy is not separately metered from the Energy From Nameplate Capacity, the total revenues received by the Buyer from the IMO in relation to Related Products (other than Operating Reserve) flowing from the Nameplate Capacity provided by the Supplier to the IMO-Administered Markets in that month, multiplied by the Supplier's Proportion of Output;

(f) the "**Performance Incentive Payment**", being an incentive payment to the Supplier, expressed in dollars, and determined by the following formula:

$$P \times (Q - R) \times S$$

where P is equal to twenty-five (25%) percent, Q is the Production-Weighted Average Price, R is the Time-Average Price, and S is the Monthly Delivered Electricity. If Q is equal to or less than R, then the Performance Incentive Payment shall be deemed to be zero. Notwithstanding the foregoing, once the Contract Energy has reached the Maximum Contract Energy, no further Performance Incentive Payments in relation to Electricity delivered above the Maximum Contract Energy will be payable; and

(g) the incremental costs incurred by the Supplier in excess of the cost of production of the Total Contract Energy, and in relation to the supply and delivery of Contract Related Products, excluding Operating Reserve for which the Supplier is compensated under Section 3.4(d), to or on behalf of the Buyer, and which costs are reasonable and have first been verified and approved by the Buyer (the "**Approved Incremental Costs**"),

less the charges (net of any applicable credits) payable by the Buyer to the IMO in relation to all Electricity consumed by the Supplier to operate the Facility for that month.

For the purposes of this Section, the "**Production-Weighted Average Price**" means an amount expressed in dollars and calculated by dividing (i) the aggregate sum for all hours in the month of the value of the Hourly Delivered Electricity for each hour in the month multiplied by the corresponding HOEP for such hour, subject to a maximum $150.00 per MWh in each such hour, by (ii) the Monthly Delivered Electricity; and the "**Time-Average Price**" means an amount expressed in dollars and calculated by dividing (i) the aggregate sum of the HOEP for all hours

of a given month, subject to a maximum of $150.00 per MWh in each such hour, by (ii) the total number of hours in such month.

3.5 Indexation of Portion of Contract Price

The Parties agree that fifteen percent (15%) of the Contract Price shall be indexed to the percentage increase or decrease (if any) between the Consumer Price Index effective as of January 1 of each year during the Term and the Consumer Price Index effective as of January 1 of the prior year, with the exception of the first year of the Term, where the percentage increase or decrease (if any) as calculated above shall then be prorated by the ratio of the number of days from the Commercial Operation Date to and including December 31 of that year in which the Commercial Operation Date falls, divided by 365. The Contract Price shall be adjusted accordingly on January 1 of each calendar year during the Term.

3.6 Supplier's Responsibility for Taxes

The Supplier is liable for and shall pay, or cause to be paid, or reimburse the Buyer if the Buyer has paid, all Taxes applicable to the Contract Energy and Contract Related Products sold hereunder which may be imposed up to the Delivery Point. In the event that the Buyer is required to remit such Tax, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder.

3.7 Buyer's Responsibility for Taxes

The Buyer is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid, all Taxes applicable to the Electricity and Related Products sold hereunder which may be imposed at and from the Delivery Point. The Contract Price does not include any GST or PST payable by the Buyer in respect of the Electricity and Related Products purchased hereunder. If any GST or PST is payable in connection with the Electricity and Related Products purchased hereunder, such GST or PST shall be paid by the Buyer.

ARTICLE 4
ABOVE-CAP SALES OF ENERGY

4.1 Division of Gross Profits from Above-Cap Sales

The Parties agree that the Buyer shall be entitled to payment of 50% of the Gross Profit from Above-Cap Sales (the "**Buyer's Share of Gross Profit**"), which payment shall be paid to the Buyer on a monthly basis, or set-off against proceeds of Above-Cap Sales as set forth in Section 4.3.

4.2 Calculation of Gross Profits from Above-Cap Sales

For the purpose of Section 4.1, "**Gross Profit from Above-Cap Sales**" means, with respect to Above-Cap Sales, the gross profit expressed in dollars, and calculated as the Market Price received for the sale of Above-Cap Energy sold less the Marginal Costs associated with the Supplier's production of such Electricity, and "**Marginal Costs**" mean, for a given hour, variable operation and maintenance costs plus the incremental cost of any fuel utilized to generate the Above-Cap Energy for the Above-Cap Sales. For greater certainty, Marginal Costs shall be

determined on an actual cost basis incurred by the Supplier without mark-up, as first confirmed by the Buyer and the Supplier, and which shall be subject to verification by the Buyer from time to time.

4.3 Set-off

The Buyer shall be permitted to set-off all or any portion of the Buyer's Share of Gross Profit against the Monthly Payment owing to the Supplier hereunder.

4.4 Marginal Cost Statement and Records

The Supplier shall provide to the Buyer a statement detailing the calculation of the Marginal Costs, as and when required by the Buyer from time to time. The Supplier shall maintain a copy of all information and records required to support the statement and shall provide the Buyer with access to same upon request.

ARTICLE 5
STATEMENTS AND PAYMENTS

5.1 Meter Data

The Buyer covenants and agrees to provide, upon the request of the Supplier, all meter data, market price information, and any other information relating to the Contract Facility that the Buyer has received from the IMO from time to time. The Supplier shall notify the Buyer of any errors and omissions in any such data or information on a timely basis so as to permit the Buyer, within a reasonable time, to require the IMO to correct such errors and omissions pursuant to the IMO Market Rules. Upon becoming aware of any errors in any such data or information, the Buyer shall notify the Supplier, and the IMO in accordance with the IMO Market Rules, on a timely basis.

5.2 Statements

The Buyer shall prepare and deliver a settlement statement (the "**Statement**") to the Supplier, within twenty (20) Business Days after the end of the month that is the subject of the Statement (the "**Settlement Month**"), setting out the basis for the Monthly Payment payable to the Supplier with respect to the Settlement Month. A Statement may be delivered by the Buyer to the Supplier by facsimile or electronic means, and shall include the reference number assigned to this Agreement by the Buyer and a description of the components of the Monthly Payment, as described in Section 3.4, owing to the Supplier for the Settlement Month.

5.3 Payment

The Buyer shall remit to the Supplier full payment in respect of the Statement no later than the last Business Day of the month immediately following the Settlement Month (the "**Payment Date**"), provided that if the Buyer is reasonably delayed in issuing a Statement, the Payment Date shall be extended by the number of Business Days by which the Buyer's issuance of the Statement was delayed. Any and all payments required to be made by the Buyer under this Section 5.3 or by either Party under any other provision of this Agreement shall be made by wire transfer to the account designated below or as otherwise agreed by the Parties.

5.4 Interest

The Buyer shall pay interest on any late payment to the Supplier, from the Payment Date to the date of payment provided that such late payment was through no fault of the Supplier. The interest rate applicable to such late payment shall be the Interest Rate in effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.

5.5 Payment Account Information

Account for payments to Supplier:

[Bank]
[Bank address]

Account Name: ●
Account Number: ●
Transit Number: ●

Accounts for payments to Buyer:

[Bank]
[Bank address]

Account Name: ●
Account Number: ●
Transit Number: ●

Either Party may change its account information from time to time by written notice to the other in accordance with Section 15.5.

5.6 Adjustment to Statement

(a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a party during the period of one (1) year following the date of such Statement. If there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such one year period.

(b) Notwithstanding the foregoing, the determination by the IMO of any quantity data or information shall be final and binding on the Parties in accordance with the IMO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the IMO which the IMO has requested be corrected, then the one year limit set forth in Section 5.6(a) shall not apply to the correction of such error or the Buyer's ability to readjust the Statement.

(c) Subject to Section 5.7, any adjustment to a Statement made pursuant to this Section 5.6 shall be made in a subsequent Statement.

5.7 Disputed Statement

If the Supplier disputes a Statement or any portion thereof, the Buyer shall, notwithstanding such dispute, pay the entire amount set forth in the Statement to the Supplier. The Supplier shall provide written notice to the Buyer setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the Buyer will promptly prepare a revised Statement. Any overpayment or underpayment of a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of said overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the tenth (10th) Business Day following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Buyer, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 16.1.

5.8 Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and Monthly Payment made thereunder, in accordance with Section 15.2.

5.9 Designation of the IMO as Settlement Agent

Notwithstanding the settlement mechanism set forth in Sections 5.1 to 5.7 inclusive, the Parties agree that the Buyer shall have the unilateral right, exercisable at any time upon notice to the Supplier, to designate the IMO as the exclusive settlement agent on behalf of both the Buyer and the Supplier for any and all payments provided for under this Agreement, in which case Sections 5.1 to 5.7 inclusive will cease to apply to the extent of any payments between the Parties settled by the IMO.

ARTICLE 6
CREDIT AND SECURITY REQUIREMENTS

6.1 Completion and Performance Security

The Supplier shall provide security to the Buyer upon execution of this Agreement for the performance of the Supplier's obligations under this Agreement, in an amount equal to $33,000 per MW of Contract Capacity and in the form described in Section 6.2 (the "**Completion and Performance Security**"). Upon the Commercial Operation Date, and provided that the Buyer has determined that any liquidated damages payable by the Supplier under Section 2.6 have been paid by the Supplier, then the amount of the Completion and Performance Security shall be reduced to an amount equal to $20,000 per MW of Contract Capacity. In the event that the Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security.

6.2 Composition of Security

(a) Prior to the Commercial Operation Date, the Completion and Performance Security shall be provided in the form of a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, for the full amount.

(b) From and after the Commercial Operation Date, the Completion and Performance Security shall be provided in one of the following two forms:

(i) a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, for the full amount of the Completion and Performance Security; or

(ii) a Guarantee, up to a maximum amount determined pursuant to Section 6.4, but not to exceed 90% of the amount of the Completion and Performance Security, together with a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, for the balance of the amount of the Completion and Performance Security.

To the extent that the amount of the Guarantee requirement increases or decreases from time to time in accordance with this Article 6, the amount of the Letter of Credit shall correspondingly be required to be decreased or increased, respectively, so that the total amount of the Completion and Performance Security held by the Buyer at all times from and after the Commercial Operation Date remains in an aggregate amount equal to $20,000 per MW of Contract Capacity.

(c) If the aggregate of the Supplier's Creditworthiness Value and the principal amount of the Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer described in Section 6.2(b)(ii)

is equal to or greater than the amount of the Completion and Performance Security, then no Guarantee is required.

(d) If:

(i) the Creditworthiness Value of the Supplier determined pursuant to Section 6.4 is equal to or greater than the Creditworthiness Value of the Guarantor determined pursuant to Section 6.4, provided the Guarantor has a Credit Rating required of a guarantor as set out in Section 6.4, or

(ii) the aggregate of the Supplier's Creditworthiness Value and the principal amount of the Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer described in Section 6.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security,

then, provided the Supplier is not then in default under this Agreement, the Guarantor shall be entitled, upon request by the Supplier, to the return and cancellation of its Guarantee.

6.3 Letter of Credit Provisions

Any Letter of Credit delivered hereunder shall be subject to the following provisions:

(a) The Supplier shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or other equivalent form of surety instrument satisfactory to the Buyer at least ten (10) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a bank issuing a Letter of Credit fails to honour the Buyer's properly documented request to draw on an outstanding Letter of Credit (other than a failure to honour as a result of a request to draw that does not conform to the requirements of such Letter of Credit), provide for the benefit of the Buyer (A) a substitute Letter of Credit that is issued by another financial institution, or (B) other surety instrument satisfactory to the Buyer in an amount equal to such outstanding Letter of Credit, in either case within five (5) Business Days after the Supplier receives notice of such refusal.

(b) A Letter of Credit shall provide that the Buyer may draw upon the Letter of Credit in an amount (up to the face amount for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Supplier but that have not been paid to the Buyer within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the bank issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Buyer in accordance with the specific requirements of the Letter of Credit.

(c) If the Supplier shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more additional Letters of Credit or other equivalent form of surety instrument satisfactory to the Buyer when required hereunder, then the Buyer may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying the amounts due and owing to the Buyer in accordance with the specific requirements of the Letter of Credit. If the amounts due and owing are less than the amount drawn under such Letter of Credit, then such excess amount shall be held as Completion and Performance Security. The Supplier shall remain liable for any amounts due and owing to the Buyer and remaining unpaid after the application of the amounts so drawn by the Buyer.

(d) The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Supplier.

(e) The Buyer shall return a Letter of Credit held by the Buyer to the Supplier if the Supplier is substituting a Letter of Credit of a greater or lesser amount pursuant to Section 6.3(a), within five (5) Business Days from the Buyer's receipt of such substituted Letter of Credit.

6.4 Guarantee Provisions

(a) The Buyer shall accept a guarantee in the form attached hereto as Exhibit D (the "**Guarantee**") from a guarantor of the Supplier (with the applicable party providing the Guarantee being referred to as the "**Guarantor"**), provided however that Guarantor shall have a Credit Rating as listed in any of the four rows contained in the table below. Notwithstanding the foregoing, in the event the Guarantor has a Negative Outlook, then its Credit Rating, for purposes of calculating the Creditworthiness Value of the Guarantor in Section 6.4(b), will be automatically be demoted by one level as set forth below. For greater certainty, a Guarantor with a Credit Rating in the 4th level set forth below without a Negative Outlook will no longer be able to provide a Guarantee if it subsequently receives a Negative Outlook.

(b) A Person's Creditworthiness Value (the "**Creditworthiness Value**") shall be determined by the following formula:

S x T

where S represents the Net Worth of the Person, expressed in dollars, and T is a figure, used for weighting purposes, taken from the 4th column of the table below of the appropriate row corresponding to the Person's Credit Rating as adjusted by any Negative Outlook:

Credit Rating of Guarantor				
	S & P	**DBRS**	**Moody's**	**Value of T**
1.	At least A-	At least A low	At least A3	0.10
2.	At least BBB+	At least BBB high	At least Baa1	0.08
3.	At least BBB	At least BBB	At least Baa2	0.06
4.	At least BBB-	At least BBB low	At least Baa3	0.05

Subject to Section 6.2(b)(ii), the amount of the Guarantee shall be equal to or less than the Creditworthiness Value of the Guarantor as determined by the foregoing.

(c) Upon the consent of the Buyer, which consent shall not be unreasonably withheld, the Guarantor may substitute its Guarantee with a guarantee from an Affiliate or from any other Person who would qualify as a guarantor for an amount equivalent to the amount of the Guarantee (the "**Replacement Guarantee**"). The Replacement Guarantee shall be in the form of the Guarantee and satisfactory to the Buyer, acting reasonably. Upon delivery of the Replacement Guarantee, (i) such Replacement Guarantee shall be deemed to be the "**Guarantee**" and such Affiliate or other Person providing such guarantee, as the case may be, shall be deemed to be the "**Guarantor**" for all purposes of this Agreement and (ii) the Buyer shall return the original Guarantee to the original Guarantor within five (5) Business Days of such delivery.

(d) For greater clarity, all provisions of the Agreement that refer to (1) the Guarantor or similar references or (2) the Creditworthiness Value of the Guarantor or similar references shall:

(i) only apply in respect of the Guarantor if that Guarantor has, at the applicable time, issued a Guarantee in favour of the Buyer and that Guarantee remains in effect at that time (otherwise, the reference to Guarantor shall be excluded when interpreting the provision until such time as a Guarantee is provided); and

(ii) shall only refer to the Creditworthiness Value of the Supplier (and not the Creditworthiness Value of its Guarantor) when and for so long as its Guarantor has not provided a Guarantee that remains in effect at the applicable time.

6.5 Financial Statements

The Supplier shall, on a quarterly basis, provide to the Buyer (i) as soon as available and in no event later than forty-five (45) days after the end of each fiscal quarter of the Guarantor, unaudited consolidated financial statements of the Guarantor, for such fiscal quarter prepared in accordance with GAAP, and (ii) as soon as possible and in no event later than 120 days after the

end of each fiscal year, audited consolidated financial statements of the Guarantor for such fiscal year prepared in accordance with GAAP. Notwithstanding the foregoing, if any such financial statements are not available in a timely manner due to a delay in preparation or auditing, such delay shall not be considered a breach of this Section 6.5 so long as the Guarantor is diligently pursuing the preparation, audit and delivery of such financial statements. Quarterly financial statements may be delivered electronically to the Buyer in PDF form. Upon each delivery of the Guarantor's financial statements to the Buyer, the Guarantor providing such financial statements shall be deemed to represent to the Buyer that its financial statements were prepared in accordance with GAAP and present fairly the financial position of the Guarantor for the relevant period then ended. In the event that the Guarantor does not publish financial statements on a quarterly basis, then unaudited consolidated financial statements shall be provided by the Guarantor, at a minimum, on a semi-annual basis. To the extent that the Supplier's Creditworthiness Value is such that the Guarantee is not required or it is returned to the Guarantor and cancelled pursuant to Section 6.2(d), then the obligations to provide financial statements under this Section 6.5 shall apply in full to the Supplier instead of the Guarantor.

6.6 Notice of Deterioration in Financial Indicators

The Supplier shall provide notice to the Buyer of any material deterioration of any of the Financial Indicators of the Supplier or the Guarantor immediately upon the Supplier or the Guarantor becoming aware of such deterioration.

ARTICLE 7
REPRESENTATIONS

7.1 Representations of the Supplier

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

(a) The Supplier is a ●, **[incorporated] [Note to Finalization: Set forth legal form of the Supplier]** under the laws of ●, and validly subsisting under the laws of the Province of Ontario and has the requisite power to enter into this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.

(c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:

(i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;

(ii) the articles, by-laws or other constating documents, or resolutions of the directors or shareholders of the Supplier;

(iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;

(iv) any licence, permit, approval, consent or authorization held by the Supplier; or

(v) any Laws and Regulations,

that could have a Material Adverse Effect on the Supplier.

(d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.

(e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, that could have a Material Adverse Effect on the Supplier.

(f) All requirements for the Supplier to make any filing, declaration 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.

(g) All statements, specifications, data, confirmations, and information that have been set out in the Proposal are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made to the Buyer under this RES Contract.

(h) The Milestone Dates set out with respect to the Milestone Events in Exhibit F are accurate, and the Supplier has no actual knowledge of any fact or circumstance that any one or more of the Milestone Events may not be achieved by the corresponding Milestone Dates.

(i) The Supplier is not a non-resident of Canada for the purposes of the Income Tax Act (Canada).

(j) The Supplier is in compliance with all tax statutes administered by the Ontario Ministry of Finance.

7.2 Representations of the Buyer

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

(a) The Buyer is a corporation continued under the *Electricity Act* and has the requisite power to enter into this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly authorized, executed, and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.

(c) The execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Buyer under:

(i) any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;

(ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Buyer;

(iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;

(iv) any licence, permit, approval, consent or authorization held by the Buyer; or

(v) any Laws and Regulations,

that could have a Material Adverse Effect on the Buyer.

(d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer.

(e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer, that could have a Material Adverse Effect on the Buyer.

(f) All requirements for the Buyer 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.

ARTICLE 8
CONFIDENTIALITY AND FIPPA

8.1 OPS Confidential Information

From the date of this Agreement to and following the expiry of the Term, the Supplier shall:

(a) keep all OPS Confidential Information confidential and secure;

(b) limit the disclosure of OPS Confidential Information to the Supplier, any Affiliate of the Supplier, and the Guarantor, and their respective employees, directors, officers, agents, representatives, or advisors, who have a need to know it and who have been specifically authorized to have such disclosure;

(c) not directly or indirectly disclose, destroy, exploit or use any OPS Confidential Information (except for the purpose of providing the Electricity and Related Products sold hereunder, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Buyer and (ii) in respect of any OPS Confidential Information about any third-party, the written consent of such third-party;

(d) provide OPS Confidential Information to the Buyer on demand; and

(e) return all OPS Confidential Information to the Buyer before the expiry of the Term, with no copy or portion kept by the Supplier.

8.2 Supplier Restrictions on Copying

The Supplier shall not copy any OPS Confidential Information, in whole or in part, unless copying is essential for the provision of the Electricity and Related Products sold hereunder. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.

8.3 Buyer Injunctive and Other Relief

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

8.4 Notice and Buyer Protective Order

If the Supplier, any Affiliate of the Supplier, the Guarantor, or any of their respective directors, officers, employees, agents, representatives or advisors, become legally compelled to disclose any OPS Confidential Information, the Supplier will provide the Buyer with prompt notice to that effect in order to allow the Buyer to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Buyer and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of OPS Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the Buyer) that such OPS Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such OPS Confidential Information subject to those terms and conditions.

8.5 FIPPA Records and Compliance

The Supplier and the Buyer acknowledge and agree that the Buyer is subject to FIPPA and that FIPPA applies to and governs all Records in the custody or control of the Buyer ("**FIPPA Records**") and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees:

(a) to keep FIPPA Records secure;

(b) to provide FIPPA Records to the Buyer within seven (7) calendar days of being directed to do so by the Buyer for any reason including an access request or privacy issue; and

(c) to implement other specific security measures that in the reasonable opinion of the Buyer would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of FIPPA Records,

and the provisions of this Section shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

8.6 Responsibility of Buyer

Subject to the provisions of this Agreement and all Laws and Regulations (including FIPPA), from the date of the Agreement to and following the expiry of the Term, the Buyer shall (a) keep the Supplier's Confidential Information confidential and secure; (b) limit the disclosure of Supplier's Confidential Information to only those employees, agents, representatives, or advisors of the Ontario Power Authority (if created), Ontario Electricity Financial Corporation, the OPS, the IMO, and their respective Affiliates who have a need to know it and who have been authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Supplier's Confidential Information (except in the course of complying with its obligations under this Agreement and except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Supplier and (ii) in respect of any Supplier's Confidential

Information about any third-party, the written consent of such third-party; and (d) provide the Supplier's Confidential Information to the Supplier on demand.

ARTICLE 9
TERM

9.1 Term

(a) The RES Contract shall become effective upon the date hereof.

(b) The "**Term**" means that period of time commencing upon the later of the Commercial Operation Date and the date of this Agreement and ending at 24:00 hours (EST) on the day before the 20th anniversary date thereafter, subject to earlier termination in accordance with the provisions hereof.

(c) The obligations of the Parties under Section 3.1(b) to deliver, or cause to be delivered, and sell, or to purchase and receive, or cause to be received, Electricity and Related Products, as applicable, shall commence at the beginning of the hour ending 01:00 hours (EST) of the commencement of the Term. Neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

ARTICLE 10
TERMINATION AND DEFAULT

10.1 Events of Default by the Supplier

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

(a) The Supplier or the Guarantor fails to make any payment, or deliver and/or maintain the Completion and Performance Security under this Agreement when due, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Buyer.

(b) The Supplier or the Guarantor fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Buyer.

(c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier and is not remedied within twenty (20) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Buyer.

(d) Any representation made by the Supplier in this Agreement is not materially true or correct in any material respect when made and is not made materially true or

correct within twenty (20) Business Days after receipt by the Supplier of written notice of such fact from the Buyer.

(e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier or Guarantor, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement or the Guarantee by the Supplier or Guarantor under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's or Guarantor's obligations under this Agreement or Guarantee, as applicable.

(f) The Supplier or Guarantor amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier or Guarantor under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's or Guarantor's obligations under this Agreement or Guarantee, as applicable.

(g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier (or the Guarantor) or of any of the Supplier's (or Guarantor's) property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier or Guarantor is adjudicated bankrupt or insolvent or any substantial part of the Supplier's (or Guarantor's) property is sequestered, and such decree continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Supplier or Guarantor seeking to have the Supplier or Guarantor declared bankrupt or insolvent, or seeking adjustment or composition of any of their respective debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.

(h) The Supplier or the Guarantor 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.

(i) The Supplier or the Guarantor has defaulted under one or more obligations for indebtedness to other Persons, resulting in obligations for indebtedness in an aggregate amount of more than the greater of 5% of its Net Worth and $2,000,000 becoming immediately due and payable.

(j) The Supplier has made a Proposal Amendment that has not first been consented to by the Buyer.

(k) The Commercial Operation Date has not occurred on or before December 31, 2008.

(l) The Supplier undergoes a change in Control without first obtaining the written approval of the Buyer if required pursuant to Section 16.6.

(m) The Supplier assigns this Agreement without first obtaining such consent of the Buyer if required pursuant to this Agreement.

10.2 Termination by the Buyer

(a) If any Supplier Event of Default occurs, upon written notice to the Supplier, the Buyer may: (i) in accordance with Section 10.5(a), terminate this Agreement and, if applicable, demand the Early Termination Payment, and (ii) set off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 6.

(b) Despite the foregoing, upon the occurrence of a Supplier Event of Default referred to in Sections 10.1(e), 10.1(f), 10.1(g), and 10.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default.

(c) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the delivery of the Electricity and Related Products purchased hereunder, or amounts payable under this Agreement in relation to such delivery, up to and including the effective date of termination. The Buyer shall only be responsible for the payment of amounts due from it under this Agreement up to and including the effective date of termination. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the Buyer may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

10.3 Events of Default by the Buyer

Each of the following will constitute an Event of Default by the Buyer (each, a "**Buyer Event of Default**"):

(a) The Buyer fails to make any payment under this Agreement when due, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Supplier.

(b) The Buyer fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Buyer Event of Default),

if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Supplier.

(c) The Buyer fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Buyer and is not remedied within twenty (20) Business Days after receipt by the Buyer of written notice of such failure or cessation from the Supplier.

(d) Any representation made by the Buyer in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within twenty (20) Business Days after receipt by the Buyer of written notice of such fact from the Supplier.

(e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the Buyer unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Buyer under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Buyer's obligations under this Agreement.

(f) The Buyer amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Buyer under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Buyer's obligations under this Agreement.

(g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Buyer or of any of the Buyer's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of Governmental Authority, the Buyer is adjudicated bankrupt or insolvent or any substantial part of the Buyer's property is sequestered, and such decree continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Buyer seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.

(h) The Buyer 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.

(i) The Buyer assigns this Agreement (other than an assignment made pursuant to Section 16.5(d)), without first obtaining the consent of the Supplier if required pursuant to this Agreement.

10.4 Termination by the Supplier

(a) If any Buyer Event of Default occurs, upon written notice to the Buyer, the Supplier may: (i) in accordance with Section 10.5(a), terminate this Agreement and, if applicable, demand the Early Termination Payment, and (ii) set off any payments due to the Buyer against any amounts payable by the Buyer to the Supplier.

(b) Notwithstanding the foregoing, and except for any Early Termination Payment, if applicable, the Buyer shall be responsible for payment of amounts due from it under this Agreement only up to and including the effective date of any termination. The Supplier may hold back payment or set off against any payments owed by it if the Buyer fails to comply with its obligations on termination.

10.5 Liquidated Damages for Early Termination

(a) If an Event of Default occurs with respect to a Party (the "**Defaulting Party**") at any time during the term of this Agreement, then the other Party (the "**Terminating Party**") may: (i) upon two (2) Business Days written notice to the Defaulting Party, which notice shall be given no later than sixty (60) days after the discovery of the occurrence of the Event of Default, establish a date on which this Agreement may be terminated (the "**Early Termination Date**"), (ii) withhold any payments due in respect of this Agreement and/or (iii) suspend performance hereunder; provided, however, upon the occurrence of any Event of Default listed in Section 10.2(b) then this Agreement shall automatically terminate at the time set out therein, without notice, as if an Early Termination Date had been immediately declared at the point in time immediately prior to the occurrence of such Event of Default. If an Early Termination Date occurs, the Terminating Party shall in good faith calculate its damages, including its Costs, resulting from the termination of this Agreement in accordance with this Section 10.5 (the "**Early Termination Payment**").

(b) If the Terminating Party is the Supplier, the Early Termination Payment will be the sum of: (i) the positive excess, if any, of (A) the payments (discounted to the Early Termination Date at the Present Value Discount Rate) for the remaining Term from and after the Early Termination Date for the Contract Energy at the Contract Price under this Agreement had this Agreement not been terminated, over (B) the Contract Energy at the relevant market prices (discounted to the Early Termination Date at the Present Value Discount Rate), for the remaining Term from and after the Early Termination Date either quoted by a bona fide third party offer or which are reasonably expected to be available in the market

under a replacement contract for this Agreement, plus (ii) the Costs of the Supplier.

(c) If the Terminating Party is the Buyer, then the Early Termination Payment will be the sum of: (i) the positive excess if any, of (A) the Contract Energy at the relevant market prices (discounted to the Early Termination Date at the Present Value Discount Rate) for the remaining Term from and after the Early Termination Date either quoted by a bona fide third party offer or which are reasonably expected to be available in the market under a replacement contract for this Agreement, over (B) the Contract Energy at the Contract Price under this Agreement (discounted to the Early Termination Date at the Present Value Discount Rate), plus (ii) the Costs of the Buyer.

(d) To ascertain the market prices of a replacement contract for purposes of calculating the Early Termination Payment, the Terminating Party shall consider, among other valuations, at least two (2) quotations from leading dealers or brokers in power purchase and sale contracts and other bona fide third party offers, all adjusted for the length of the remaining Term and any transmission differential. The Parties agree that the Terminating Party shall not be required to enter into any replacement contract or transaction in order to determine or be entitled to the Early Termination Payment**.**

(e) The Terminating Party shall give the Defaulting Party written notice of the amount of the Early Termination Payment, together with a statement showing its determination of the amount thereof. The Defaulting Party shall pay the Early Termination Payment to the Terminating Party within ten (10) days of receipt of such notice, together with interest at the Interest Rate from and including the Early Termination Date until and including the date the Early Termination Payment is paid in full. There shall be added to the Early Termination Payment an amount equal to the difference between any Unpaid Amounts and any amounts owing by the Supplier to the Buyer.

(f) If the Defaulting Party disputes the Terminating Party's calculation of the Early Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of the Terminating Party's calculation of the Early Termination Payment, provide to the Terminating Party a detailed written explanation of the basis for such dispute; provided, however, that if the Early Termination Payment is due from the Defaulting Party, the Defaulting Party shall first deliver security acceptable to the Terminating Party in an amount equal to the amount of the Early Termination Payment.

10.6 Sole Remedies

If the Agreement is terminated pursuant to Section 10.2 or Section 10.4, then and subject to the Terminating Party's right to receive the Early Termination Payment pursuant to Section 10.5 and to be paid for all other amounts then due and owing to the Terminating Party, such right of termination shall represent that Terminating Party's sole and exclusive remedy for the Defaulting Party's default that gave rise to the termination but shall not affect any rights that the Indemnitees may have pursuant to any indemnity hereunder.

ARTICLE 11
FORCE MAJEURE

11.1 Effect of Invoking Force Majeure

(a) If, by reason of Force Majeure:

(i) the Supplier is unable to generate at the Contract Facility, or is unable to deliver from the Contract Facility to the Delivery Point, all or any part of the Contract Energy or Contract Related Products (and notwithstanding whether the Supplier may be able to Schedule any part of the Energy From Nameplate Capacity);

(ii) the Buyer is unable to receive at the Delivery Point, or is unable to transmit or distribute from the Delivery Point, all or any part of the Contract Energy (and notwithstanding whether the Buyer may be able to otherwise cause all or any part of the Contract Energy to be received at the Delivery Point or to be transmitted or distributed from the Delivery Point); or

(iii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including the Supplier being unable to achieve a Milestone Event by the relevant Milestone Date, or the Supplier not achieving Commercial Operation by December 31, 2008;

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

(b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt notice, written or oral (but if oral, promptly confirmed in writing) of the effect of the Force Majeure and reasonably full particulars of the cause thereof.

(c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.

(d) The Party invoking Force Majeure shall give prompt notice, written or oral (but if oral, promptly confirmed in writing) of the termination of the event of Force Majeure.

(e) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing by the Party invoking Force Majeure before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.

(f) If an event of Force Majeure causes the Supplier to not achieve a Milestone Event by the relevant Milestone Date or to not achieve Commercial Operation by December 31, 2008, as applicable, then such date shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. After the Commercial Operation Date, an event of Force Majeure shall not extend the Term of this Agreement.

(g) If an event of Force Majeure described in Section 11.3(i) has delayed the Commercial Operation Date by more than 365 days after the Milestone Date set out for attaining Commercial Operation of the Contract Facility, then notwithstanding anything in this Agreement to the contrary, the Supplier at its sole option may terminate this Agreement upon notice to the Buyer and without any cost to either Party.

11.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 11, nor shall it be relieved of its obligations hereunder in any of the following circumstances:

(a) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);

(b) if and to the extent that the Supplier is seeking to invoke Force Majeure because it is able to sell any of the Contract Energy on more advantageous terms to a third party buyer;

(c) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Laws and Regulations; or

(d) if the Force Majeure was caused by a lack of funds or other financial cause.

11.3 Definition of Force Majeure

For the purposes of this Agreement, the term "**Force Majeure**" means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, that is beyond the affected Party's reasonable control, that is not caused by such

Party's fault or negligence and that by the exercise of Commercially Reasonable Efforts such Party is unable to prevent or remedy, including:

(a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, landslides, drought, floods and washouts;

(b) fires or explosions;

(c) local, regional or national states of emergency;

(d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of such Party or third party invoking Force Majeure, unless such strikes or labour disputes are the result or part of a general industry strike or labour dispute);

(e) delays in fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party);

(f) civil disobedience or disturbances, war, acts of sabotage, blockades, insurrections, terrorism, riots or epidemics;

(g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;

(h) any interruption, loss or deterioration of electric services or the production of Electricity under this Agreement caused by the IMO, the Transmitter, or the LDC;

(i) any inability to obtain or to secure the renewal or amendment of any permit, certificate, licence or approval of any Governmental Authority required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure; or

(j) any unanticipated maintenance or outage affecting the Contract Facility: (i) which is not identified in the Supplier's then current schedule of planned outages submitted to the IMO or the LDC, if applicable in advance of the occurrence of an event of Force Majeure referred to in this Section 11.3, but (ii) which results directly from or is scheduled or planned directly as a consequence of an event of Force Majeure referred to in this Section 11.3; provided that (A) notice of the unanticipated maintenance or outage is provided to the Buyer by the Supplier concurrently, or as soon as reasonably possible thereafter, with the notice in respect thereof provided to the IMO, (B) the Supplier provides notice to the Buyer immediately, or as soon as reasonably possible thereafter, upon receipt from the IMO of advance acceptance or other proposed scheduling or approval of such maintenance or outage, (C) the Supplier provides timely updates to the

Buyer of the Commercial Operation Date of the maintenance or outage and, where possible, provides seven (7) days advance notice of such date, (D) the unanticipated maintenance or outage is commenced within 120 days of the commencement of the occurrence of the relevant event of Force Majeure, and (E) the Supplier schedules the unanticipated maintenance or outage in accordance with Good Engineering and Operating Practices.

For greater certainty, nothing in Section 11.3(j) shall be construed as limiting the duration of an event of Force Majeure. Each Party shall resume its obligations as soon as the event of Force Majeure has been overcome.

ARTICLE 12
LENDER'S RIGHTS

12.1 Lender Security

Notwithstanding Section 16.5, the Supplier, from time to time after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For the avoidance of doubt, in the case of a deed of trust or similar instrument securing bonds or debentures, only the trustee in respect thereof shall be the Secured Lender. A Secured Lender's Security Agreement shall be upon and subject to the following conditions:

(a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.

(b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation of the Supplier that is not related to the Contract Facility or cover any real or personal property of the Supplier not related to the Contract Facility, except in relation to any one or more renewable generating facilities owned by the Supplier and subject to a renewable energy supply contract with the Buyer in the same standard form as this Agreement. For greater certainty, a Secured Lender's Security Agreement may cover shares in the capital of the Supplier.

(c) No Secured Lender's Security Agreement shall affect or encumber in any manner the Buyer's title to any government-owned premises. The Buyer shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Buyer for any or all of the same.

(d) No Secured Lender's Security Agreement shall be binding upon the Buyer in the enforcement of the Buyer's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Buyer by the Supplier or the Secured Lender; and in the event of an assignment

of such Secured Lender's Security Agreement, such assignment shall not be binding upon the Buyer unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Buyer by the Supplier or the Secured Lender.

(e) The Secured Lender shall provide reasonable notice to the Buyer of a default of the Supplier, prior to the Secured Lender exercising any rights afforded to it under this Agreement.

(f) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 12.

(g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 12.

(h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Buyer and the Supplier shall not amend or supplement this Agreement or agree to a termination of the Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.

(i) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the Buyer for the payment of all sums owing to the Buyer under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

12.2 Rights and Obligations of Secured Lenders

While any Secured Lender's Security Agreement remains outstanding, and if the Buyer has received the notice referred to in Section 12.1(d) or the contents thereof are embodied in the agreement entered into by the Buyer in accordance with Section 12.3, the following provisions shall apply:

(a) No Supplier Event of Default shall be grounds for the termination by the Buyer of this Agreement or entry by the Buyer on any premises until:

(i) any notice required to be given under Section 10.1 and 10.2(a) has been given to the Supplier and to the Secured Lender; and

(ii) the cure period set out in Section 12.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.

(b) In the event the Buyer has given the notice required to be given under Section 10.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Buyer shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.

(c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.

(d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided herein. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Contract Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest.

(e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, it shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is not at Arms' Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.

(f) Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Buyer:

(i) acting reasonably, if such transferee is at Arms' Length with the Secured Lender; or

(ii) acting in its sole and subjective discretion, if such transferee is not at Arms' Length with the Secured Lender,

has approved of the transferee and the transferee has entered into an agreement with the Buyer in form and substance satisfactory to the Buyer, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Completion and Performance Security required under Article 6.

(g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Buyer shall, within ten (10) days after the date of such termination, deliver to each Secured Lender which is at Arms' Length with the Supplier a statement of all sums then known to the Buyer that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Buyer is willing to enter into a New Agreement (the "**Buyer Statement**"). Subject to the provisions of this Article 12, each such Secured Lender shall thereupon have the option to obtain from the Buyer a New Agreement in accordance with the following terms:

(i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Buyer Statement, the Buyer shall enter into a New Agreement.

(ii) Such New Agreement shall be effective as of the date of termination of this Agreement and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Buyer's obligation to grant a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees on a solicitor and his own client basis so as to provide a full indemnity (and not only substantial indemnity), incurred by the Buyer in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for

the purpose of enforcing the Secured Lender's security, that Person may exercise any of the Secured Lender's rights under this Section 12.2(g).

(h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 12 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement who are at Arms' Length with the Supplier make written requests to the Buyer in accordance with this Section 12.2 to obtain a New Agreement, the Buyer shall accept the request of the holder whose Secured Lender's Security Agreement had priority immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the Buyer may rely upon the opinion as to such priorities of any law firm qualified to practise law in the Province of Ontario retained by the Buyer in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

12.3 Cooperation

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

ARTICLE 13
DISCRIMINATORY ACTION

13.1 Discriminatory Action

A "**Discriminatory Action**" shall occur if:

(a) (i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a government bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the submission of the Proposal; or

(ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;

(b) the effect of the action referred to in Section 13.1(a):

(i) is borne solely by the Supplier; or

(ii) is borne only by the Supplier and all other suppliers of renewable energy generated from the same or similar facilities as the Contract Facility which are subject to a renewable energy supply contract with the Buyer in the same standard form as the RES Contract; and

(c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in the generation and delivery of the Contract Energy and/or Contract Related Products or adversely affects the revenues of the Supplier from the Contract Facility, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:

(i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;

(ii) any such statute that prior to the date of the submission of the Proposal:

(A) has been introduced as a Bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such Bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or

(B) has been made public in a discussion or consultation paper, press release or announcement issued by the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Government of Ontario and/or the Ministry of Energy, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier;

(iii) any of such regulations that prior to five (5) Business Days prior to the date that the Supplier submitted its Proposal in accordance with the RFP:

(A) have been published but by the terms of such regulations come into force on or after five (5) Business Days prior to date that the Supplier submitted its Proposal in accordance with the RFP, or

(B) have been referred to in a press release issued by the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Government of Ontario or the Ministry of Energy, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

13.2 Consequences of Discriminatory Action

If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the "**Discriminatory Action Compensation**") from the Buyer for:

(a) the amount of the increase in the costs that the Supplier would reasonably be expected to incur in the generation and delivery of the Contract Energy and/or Contract Related Products as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding, for the avoidance of doubt, the portion of any costs charged by a Person who does not deal at Arm's Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm's Length with the Supplier; and

(b) the amount by which (i) the net present value of the gross revenues from the Contract Facility that are forecast to be earned by the Supplier pursuant to this RES Contract during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, exceeds (ii) the net present value of the gross revenues from the Contract Facility that are forecast to be earned by the Supplier pursuant to this RES Contract during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending on the expiry of the Term, taking into account the occurrence of the Discriminatory Action and any actions that the Supplier should reasonably be expected to take to mitigate operating expenses and normal capital expenditures of the business of the generation and delivery of the Electricity as a result of the occurrence of the Discriminatory Action.

13.3 Notice of Discriminatory Action

(a) In order to exercise its rights in the event of the occurrence of a Discriminatory Action, the Supplier must give a notice (the "**Preliminary Notice**") to the Buyer within sixty (60) days after the date on which the Supplier first became aware (or should have been aware, using reasonable due diligence) of the Discriminatory Action stating that a Discriminatory Action has occurred. Within sixty (60) days after the date of receipt of the Preliminary Notice, the Supplier must give another notice (the "**Notice of Discriminatory Action**"). A Notice of Discriminatory Action must include:

(i) a statement of the Discriminatory Action that has occurred;

(ii) details of the effect of the said occurrence that is borne by the Supplier;

(iii) details of the manner in which the Discriminatory Action increases the costs that the Supplier would reasonably be expected to incur in the generation and delivery of the Contract Energy and Contract Related Products and adversely affects the revenues of the Supplier; and

(iv) the amount claimed as Discriminatory Action Compensation and details of the computation thereof.

The Buyer shall, after receipt of a Notice of Discriminatory Action, be entitled, by notice given within thirty (30) days after the date of receipt of the Notice of Discriminatory Action, to require the Supplier to provide such further supporting particulars as the Buyer considers necessary, acting reasonably.

(b) If the Buyer wishes to dispute the occurrence of a Discriminatory Action, the Buyer shall give a notice of dispute (the "**Notice of Dispute**") to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.

(c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to the dispute resolution procedure in Section 16.2 without first having to comply with Section 16.1.

(d) If the Buyer does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed in the Notice of Discriminatory Action, the Buyer shall pay to the Supplier the amount of Discriminatory Action Compensation claimed within sixty (60) days after the date of receipt of the Notice of Discriminatory Action. If a Notice of Dispute has been given, the Buyer shall pay to the Supplier the Discriminatory Action Compensation Amount determined in accordance with Section 13.3(e) not later than sixty (60) days after the later of the date on which the dispute with respect to the occurrence of a Discriminatory Action is resolved and the date on which the Discriminatory Action Compensation Amount is determined.

(e) (i) If the Buyer wishes to dispute the amount of the Discriminatory Action Compensation, the Buyer shall give to the Supplier a notice (the "**Discriminatory Action Compensation Notice**") setting out an amount that the Buyer proposes as the Discriminatory Action Compensation (the "**Discriminatory Action Compensation Amount**"), if any, together with details of the computation. If the Supplier does not give notice (the "**Supplier Non-acceptance Notice**") to the Buyer stating that it does not accept the Discriminatory Action Compensation Amount proposed within thirty (30) days after the date of receipt of the Discriminatory Action Compensation Notice, the Supplier shall be deemed to have accepted the Discriminatory Action Compensation Amount so proposed. If the Supplier Non-acceptance Notice is given, the Buyer and the Supplier shall attempt to determine the Discriminatory Action Compensation Amount through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation Amount. If the Buyer and the Supplier do not agree in writing upon the Discriminatory Action Compensation Amount within sixty (60) days after the date of receipt of the Supplier Non-acceptance Notice, the Discriminatory Action

Compensation Amount shall be determined in accordance with the procedure set forth in Section 13.3(e)(ii) and Sections 16.1 and 16.2 shall not apply to such determination.

(ii) If the negotiation described in Section 13.3(e)(i) does not result in an agreement in writing on the Discriminatory Action Compensation Amount, either the Buyer or the Supplier may, after the later of (A) the date on which a dispute with respect to the occurrence of a Discriminatory Action is resolved and (B) the date of the expiry of a period of thirty (30) days after the date of receipt of the Supplier Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The Buyer and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years' experience in the field of business valuation. If the Buyer and the Supplier are unable to agree upon a valuator within such period, the Buyer and the Supplier shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Buyer and the Supplier shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-prevailing party. "Prevailing party" means the party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator's determination. The Supplier's and the Buyer's respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.

(iii) In order to facilitate the determination of the Discriminatory Action Compensation Amount by the valuator, each of the Buyer and the Supplier shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Supplier shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.

(iv) The Discriminatory Action Compensation Amount as determined by the valuator shall be final and conclusive and not subject to any appeal.

(f) Any amount to be paid under Section 13.3(d) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the date of receipt of the Notice of Discriminatory Action to the date of payment.

(g) Payment of the Discriminatory Action Compensation and interest thereon by the Buyer to the Supplier shall constitute full and final satisfaction of all amounts that may be claimed by the Supplier for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Buyer shall be released and forever discharged by the Supplier from any and all liability in respect of such Discriminatory Action.

13.4 Right of the Buyer to Remedy or Cause to be Remedied a Discriminatory Action

If the Buyer wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Buyer must give notice to the Supplier within thirty (30) days after the later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Buyer of the further supporting particulars referred to in Section 13.3(b). If the Buyer gives such notice, the Buyer must remedy or cause to be remedied the Discriminatory Action within one hundred and eighty (180) days after the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days after the date of the final award pursuant to Section 16.2 to the effect that a Discriminatory Action occurred. If the Buyer remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, the amount that the Supplier would have the right to claim in respect of that Discriminatory Action pursuant to Section 13.2(b), adjusted to apply only to the period commencing on the first day of the first calendar month following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

ARTICLE 14
LIABILITY AND INDEMNIFICATION

14.1 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.

14.2 Liquidated Damages

Nothing in this Article shall reduce a Party's claim for liquidated damages pursuant to Section 2.6 or for an Early Termination Payment pursuant to Section 10.5. The Supplier acknowledges and agrees with the Buyer that the actual damages incurred by the Buyer and electricity consumers as a result of a failure by the Supplier to meet its obligations under this Agreement are impossible to definitively quantify and the Supplier further agrees that the payment of the liquidated damages set forth in this Agreement constitutes a fair and reasonable means of compensating the Buyer for damages likely to be incurred as a result of such delays and does not constitute a penalty. The Buyer agrees that the payment of liquidated damages pursuant to

Section 2.6 and Section 10.5 constitutes a fair and reasonable means of compensating the Supplier for such damages likely to be incurred and does not constitute a penalty.

14.3 Indemnification

In addition to the indemnities provided by the Supplier in Sections 2.3 and 3.3, the Supplier shall indemnify, defend and hold Ontario Electricity Financial Corporation, the Ontario Power Authority (if created), the Government of Ontario, the members of the Government of Ontario's Executive Council, and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of (i) any occurrence or event on the Supplier's side of the Delivery Point, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations and (ii) any breach by the Supplier of any representations and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

14.4 Defence of Claims

(a) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 14.3 may apply, the Indemnitees shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by such Party and satisfactory to the Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five days prior to the deadline for responding to any claim relating to any Indemnifiable Loss.

(b) Should any of the Indemnitees be entitled to indemnification under Section 14.3 as a result of a claim by a third party, and the Supplier fails to assume the defence of such claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 14.4(a), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the

Supplier, settle) such claim, provided that no such contest need be made and settlement or full payment of any such claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section 14.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 14.3, the amount owing to the Indemnitees will be the amount of such Party's actual out-of-pocket loss net of any insurance proceeds received or other recovery.

ARTICLE 15
CONTRACT OPERATION AND ADMINISTRATION

15.1 Company Representative

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

15.2 Record Retention; Audit Rights

The Supplier and the Buyer shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data. The Supplier and the Buyer, on a confidential basis as provided for in Article 8 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify billings or to verify information provided in accordance with this Agreement. A Party may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 8. Alternatively, and at the election of the auditing Party, access shall be through the use of a mutually agreed upon third party auditor. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

15.3 Inspection of Facility

(a) The Buyer and its authorized agents and representatives shall, at all times upon two (2) Business Days' prior notice, have access to the Facility and every part thereof and the Supplier shall and shall cause all personnel operating and managing the Facility to furnish the Buyer with all reasonable assistance in inspecting the Facility for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the Facility, as applicable.

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

15.4 Inspection Not Waiver

(a) Failure by the Buyer to inspect the Facility or any part thereof under Section 15.3, or to exercise its audit rights under Section 15.2, shall not constitute a waiver of any of the rights of the Buyer hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.

(b) Failure by the Supplier to exercise its audit rights under Section 15.2 shall not constitute or be deemed to constitute a waiver of any of the rights of the Supplier hereunder. An audit not followed by a notice of a Buyer Event of Default shall not constitute or be deemed to constitute a waiver of any Buyer Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Buyer with this Agreement.

15.5 Notices

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

If to the Supplier: ●

Attention: ●
Facsimile: ●

and to: ●
Attention: ●
Facsimile: ●
(which shall not be required to constitute notice)

If to the Buyer: Ontario Electricity Financial Corporation
1 Dundas Street West
Suite 1400
Toronto, ON M7A 1Y7

Attention: ●

Facsimile : ●

and to: ●
Attention: ●
Facsimile: ●
(which shall not be required to constitute notice)

Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 5:00 p.m. local time or such day is not a Business Day, then such notice 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 respective Company Representative or the address to which notices are to be sent.

ARTICLE 16
MISCELLANEOUS

16.1 Informal Dispute Resolution

If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties shall promptly advise its senior management, in writing, of such dispute. Within three (3) Business Days following delivery of such notice, a senior executive (Senior Vice-President or higher) from each Party shall meet, either in person or by telephone (the "**Senior Conference**"), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 16.2, if agreed to by both Parties.

16.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 16.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change the Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the

provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

16.3 Business Relationship

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment by such Party of persons who perform this Agreement, including all federal, provincial, and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the persons employed by either Party shall be considered employees of the other Party for any purpose. The relationship between the Buyer and the Supplier is that of buyer and supplier 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.

16.4 Binding Agreement

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

16.5 Assignment

(a) Except as set out below and as provided in Article 12, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall be in the sole discretion of the other Party.

(b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Buyer to an Affiliate acquiring the Contract Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the Buyer in writing to assume all of the Buyer's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5, the Buyer acknowledges and agrees that, upon such assignment and

assumption and notice thereof by the assignor to the Buyer, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.

(c) If Supplier assigns this Agreement to a non-resident of Canada (the "**Assignee**"), as that term is defined in the ITA, and the Buyer incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Buyer shall be reduced by the amount of such additional or withholding Taxes and the Buyer shall remit such additional or withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Assignee.

(d) If the Ontario Power Authority has been established pursuant to legislation, then the Buyer shall have the unilateral right to assign this Agreement and all benefits and obligations thereunder to the Ontario Power Authority, which shall assume the obligations of the Buyer hereunder and be novated into this Agreement in the place and stead of the Buyer, whereupon Ontario Electricity Financial Corporation shall be relieved of all obligations and liability arising pursuant to this Agreement, provided however, that no assignment to the Ontario Power Authority will be valid or effective unless and until the Ontario Power Authority agrees in writing to assume and be bound by the terms and conditions of this Agreement. Upon such assignment and assumption, the representation set forth in Section 7.2(a) shall apply to the Ontario Power Authority with all necessary amendments to reflect the form and the manner in which the Ontario Power Authority was established, and all of the representations set forth in Section 7.2 shall be deemed to be made by the Buyer to the Supplier at the time of such assignment and assumption.

16.6 No Change of Control

(a) The Supplier shall not permit or allow a change of Control of the Supplier, except with the prior written consent of the Buyer, which consent may not be unreasonably withheld. It shall not be unreasonable to withhold such consent if the change of Control will have or is likely to have a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement, in which case such consent may be withheld by the Buyer.

(b) For the purposes of Sections 16.6(a) and 16.7(b), except for shares or units of ownership in any entity that directly owns the Contract Facility whose special or sole purpose is the ownership of the Facility or the Contract Facility and other renewable generating facilities which are subject to a renewable energy supply contract with the Buyer in the same standard form as this RES Contract (which shall constitute a change of Control), a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange shall not constitute a change of Control.

16.7 No Assignment or Change of Control for Specified Period

Notwithstanding Sections 16.5(a), 16.5(b), 16.5(c), and 16.6(a) to the contrary, and except as provided in Article 12, under no circumstances shall:

(a) any assignment of this Agreement by the Supplier; and

(b) any change of Control in respect of the Supplier,

be permitted until the third (3rd) anniversary of the Commercial Operation Date.

16.8 Survival

The provisions of Sections 2.3(b), 2.3(c), 3.3(a), 3.6, 3.7, Article 5, Article 10, Article 14, Section 15.2, Sections 16.1, 16.2 and 16.5(c) shall survive the expiration of the Term or earlier termination of this Agreement. The provisions of Article 8 shall survive the expiration of the Term or earlier termination of this Agreement for a period of two (2) years. 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.

16.9 Counterparts

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

16.10 Use of Insignia

The Supplier shall not use any insignia or logo of Her Majesty the Queen in right of Ontario except where required to provide the Contract Energy and Contract Related Products, and only if it has received the prior written permission of the Buyer to do so.

16.11 Buyer Right to Set Off

In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Buyer may set off any amounts owing by the Supplier to the Buyer in connection with Section 2.5(c), Section 2.6, and Section 14.3 against any monies owed by the Buyer to the Supplier in connection with Section 3.4.

16.12 Rights and Remedies Not Limited to Contract

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

16.13 Time of Essence

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

16.14 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be 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.

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

●

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

I/We have authority to bind the ●

ONTARIO ELECTRICITY FINANCIAL CORPORATION

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

We have authority to bind the Corporation.

EXHIBIT A
SUMMARY OF CONTRACT FACILITY

Legal Name of Supplier:

Contract Facility Location:

Type of Generator:

Description of Key Equipment:

Schematic of Contract Facility and the Connection Point or Embedded Connection Point:

EXHIBIT B
CONTRACT PRICE, MAXIMUM CONTRACT ENERGY, NAMEPLATE CAPACITY AND CONTRACT CAPACITY

Contract Price (Dollars and Cents/MWh)	Maximum Contract Energy (MWh per Contract Year)	Nameplate Capacity (MW)	Contract Capacity (MW)
$. /MWh	MWh/Contract Year	. MW	. MW

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE: ●

APPLICANT: ●

BENEFICIARY: Ontario Electricity Financial Corporation (or, Ontario Power Authority, if created)

AMOUNT: ●

EXPIRY DATE: ●

EXPIRY PLACE: Counters of the issuing financial institution

CREDIT RATING: [**Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the *Bank Act*]**

TYPE: IRREVOCABLE AND UNCONDITIONAL STANDBY LETTER OF CREDIT

Number:

We hereby authorize you to draw on **[insert name of financial institution and financial institution's address]** in respect of irrevocable standby letter of credit No. _____ (the "**Credit**"), for the account of the Applicant up to an aggregate amount of $? (? Canadian dollars) available by your drafts at sight, accompanied by the Beneficiary's signed certificate stating that:

> "The Applicant has defaulted under the RES Contract between the Beneficiary and [**insert name of Supplier**], and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."

Drafts drawn hereunder must bear the clause "Drawn under irrevocable and unconditional Standby Letter of Credit No. **[insert number]** issued by [**the financial institution**] dated [**insert date]**".

Partial drawings are permitted.

This Credit is issued in connection with the Renewable Energy Supply Contract dated **[insert date]** between the Beneficiary and **[insert name of Supplier]** (the "**RES Contract**").

We engage with you that all drafts drawn under, and in compliance with the terms of this Credit will be duly honoured, if presented at the counters of **[insert the financial institution and financial institution's address]** at or before 5:00 pm (EST) on **[insert the expiry date]**.

It is a condition of this Credit that if there should be an interruption of the issuing financial institution's business upon the expiry date, arising out of any of the circumstances provided for in Article 17 of to the Uniform Customs and Practice for Documentary Credits (1993 Revision),

International Chamber of Commerce Publication No. 500, this Credit shall automatically be extended to the first following day on which the issuing financial institution resumes business.

This Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500. This Credit shall be governed by and construed in accordance with the laws of the Province of Ontario, without regard to principles of conflict of laws. The place of jurisdiction shall be the Courts of the Province of Ontario.

- END -

[Insert name of Financial Institution]

By: _____

Authorized Signatory

EXHIBIT D
GUARANTEE

THIS GUARANTEE dated as of ● is made and entered into between ●, a corporation incorporated under the laws of ● (the "**Guarantor**"), and Ontario Electricity Financial Corporation (the "**Buyer**").

RECITALS:

A. The Buyer and ●, a ● corporation incorporated under the laws of ● ("**Supplier**"), have entered into a renewable energy supply contract dated as of ● (as extended, amended, replaced and supplemented, collectively, the "**Agreement**");

B. The Guarantor will directly or indirectly benefit from the Agreement;

C. Pursuant to the terms of the Agreement, the Buyer has required that the Guarantor shall deliver a guarantee of all payment obligations of Supplier under the Agreement to the Buyer; and

D. Capitalized terms used in this Guarantee but not otherwise defined herein have the meanings ascribed to it in the Agreement.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Guarantor hereby agrees as follows:

1. Guarantee

Subject to the terms and conditions hereof, the Guarantor absolutely, irrevocably and unconditionally guarantees to the Buyer the full and timely payment when due, whether at stated maturity, by acceleration or otherwise, of the payment obligations of Supplier set forth in the Agreement from time to time and interest thereon accrued as provided in the Agreement, irrespective of when such obligations were incurred (the **"Guaranteed Obligations"**); provided, however, that the applicable rate of interest shall never exceed the maximum rate permitted by law. The aggregate amount of the Guarantor's liability under this Guarantee shall not exceed ● CANADIAN DOLLARS (Cdn. $●), plus reasonable legal fees and expenses payable by the Guarantor as provided herein (the **"Maximum Guarantee Amount"**). To the extent that Supplier fails to pay any Guaranteed Obligation, the Guarantor shall promptly pay to the Buyer the amount due. The Guarantor shall also be liable for all reasonable out-of-pocket expenses (including the legal fees and expenses of the Buyer) incurred to collect or enforce any of the Guaranteed Obligations; provided however, that such legal fees and expenses shall be payable by the Guarantor only to the extent that the Buyer is successful in enforcing the Guaranteed Obligations. This Guarantee shall be a continuing guarantee effective during the term of the Agreement and until fulfillment of, including payment in full of, the Guaranteed Obligations.

2. Demand

The Guarantor's obligation to make payment under this Guarantee shall arise forthwith after demand for payment has been received by the Guarantor from the Buyer in writing in accordance with section 11 hereof and the Guarantor's liability for the Guaranteed Obligations shall bear

interest in accordance with the terms and conditions set forth in the Agreement. The only condition (and no other document, proof or action other than as specifically provided in this Guarantee is necessary as a condition) of the Guarantor honouring its obligations under this Guarantee shall be such demand for payment. No notice of the Guaranteed Obligations need be given in any form to the Guarantor at any time and the Guarantor waives any such notice and the right to consent to the Guaranteed Obligations. In the event that any payment to the Buyer in respect to any Guaranteed Obligations is rescinded or must otherwise be returned for any reason whatsoever, including the insolvency or bankruptcy of Supplier or otherwise, the Guarantor shall remain liable hereunder in respect to such Guaranteed Obligations as if such payment had not been made.

3. Waivers

(a) The Guarantor waives any right to require as a condition to its obligations hereunder that:

(i) collateral be applied to the Guaranteed Obligations;

(ii) an action be brought against Supplier or any Person other than the Guarantor should the Buyer seek to enforce the obligations of the Guarantor;

(iii) a judgment be rendered against Supplier or any Person other than the Guarantor;

(iv) Supplier or any other Person be joined in any action against the Guarantor;

(v) an action separate from one against the Guarantor be brought against Supplier or any other Person or under any other security or guarantee held by the Buyer; and

(vi) any Supplier Event of Default under the Agreement has occurred.

(b) The Guarantor further waives:

(i) all defenses, set-offs, counterclaims, estoppels or privileges which might but for this provision exonerate or discharge it from its obligations hereunder; and

(ii) notice of acceptance of this Guarantee, notice of any liability to which it may apply, presentment, demand, protest and notice of dishonour, non-payment or non-performance and marshalling of assets.

(c) The obligations of the Guarantor hereunder shall in no way be affected or impaired by reason, and the Guarantor waives its right to prior notice, of the happening from time to time of any of the following:

(i) any invalidity or unenforceability of all or any part of the Guaranteed Obligations or any agreement or instrument relating to or securing the Guaranteed Obligations;

(ii) any insolvency, bankruptcy, reorganization, or dissolution, or any proceeding of Supplier or any other guarantor, including without limitation, rejection of the Guaranteed Obligations in such bankruptcy;

(iii) extensions (whether or not material) of the time for payment or performance of all or any portion of the Guaranteed Obligations;

(iv) the modification or amendment in any manner (whether or not material) of the Agreement or the Guaranteed Obligations;

(v) subject to applicable statutes of limitations, any failure, delay or lack of diligence on the part of the Buyer or any other Person to enforce, assert or exercise any right, privilege, power or remedy conferred on the Buyer or any Person in the Agreement or at law, or any action on the part of the Buyer or such other Person granting an indulgence or extension of any kind;

(vi) the settlement or compromise of any Guaranteed Obligations;

(vii) the change of status, composition, structure or name of Supplier, including by reason of merger, amalgamation, continuance, dissolution; reorganization or consolidation with or into another legal entity;

(viii) the release or waiver, by operation of law or otherwise, of the performance or observance by Supplier of any express or implied covenant, term or condition in the Agreement or the enforceability of any covenant, term or condition thereof;

(ix) the release or waiver, by operation of law or otherwise, of the performance or observance by any co-guarantor, surety, endorser or other obligor of any express or implied covenant, term or condition to be performed or observed by it under the Agreement or any related document;

(x) the failure to acquire, perfect or maintain perfection of any lien on, or security interest in, any collateral provided by Supplier to the Buyer or the release of any such collateral or the release, modification or waiver of, or failure to enforce, any pledge, security, guarantee, surety or other indemnity agreement in respect of such collateral;

(xi) the assignment of the Agreement and/or any rights thereunder from or by Supplier to any other Person; and

(xii) any other circumstance similar, or having a similar effect, as those set out in subsections 3(c)(i) through (xi) inclusive, which might constitute in whole or in part a defence available to the release and discharge of this Guarantee.

4. Limitation of Liability

The Guarantor shall not be liable hereunder for any special, consequential, incidental, punitive, exemplary or indirect damages, including loss of use of any property or claims of customers of Supplier or the Buyer, except to the extent specifically provided in the Agreement to be due from Supplier.

5. Indemnity

The Guarantor hereby indemnifies and saves the Buyer harmless from and against any and all damages, losses, costs and expenses of any nature whatsoever resulting from or in consequence of any default, non-payment or non-performance by Supplier of its obligations under the Agreement, irrespective of when such obligations were incurred, including its obligations to pay interest as provided in the Agreement and all reasonable out-of-pocket expenses (including legal fees and expenses incurred to collect or enforce the Agreement); provided however, that the maximum amount recoverable under the foregoing indemnity and otherwise under this Guarantee shall be an amount equal to the Maximum Guarantee Amount. In addition, the Guarantor shall also be liable to the Buyer for all reasonable out-of-pocket expenses (including legal fees and expenses of the Buyer) incurred to collect or enforce this indemnity; provided however, that such legal fees and expenses shall be payable by the Guarantor only to the extent that the Buyer is successful in enforcing the indemnity provided herein. Any payment made pursuant to this section 5 shall be reduced by any amount that is fully and indefeasibly paid by the Guarantor to the Buyer pursuant to its obligations under section 1 hereof.

6. Release of Guarantee

If Section 6.2(d) of the Agreement is applicable, then upon request by the Supplier, the Buyer shall promptly return this Guarantee to the Guarantor and the Guarantor shall be released and discharged of its obligations hereunder with respect to any Guaranteed Obligations existing or arising after the date that Section 6.2(d) of the Agreement is applicable.

7. Defences

The Guarantor reserves the right to assert all rights, setoffs, counterclaims and other defences of Supplier relating to the Guaranteed Obligations, other than defences arising out of the bankruptcy, insolvency, dissolution or liquidation of Supplier.

8. Subrogation

The Guarantor shall not be or claim to be subrogated, in whole or in part, to the rights of the Buyer against Supplier under the Agreement or otherwise, until (a) the Buyer shall have received full and indefeasible payment of all Guaranteed Obligations; and (b) either the Agreement has been terminated or this Guarantee has been terminated pursuant to the terms hereof and the terms and conditions of the Agreement as applicable. Except as set out in this section 8, nothing contained in this Guarantee shall limit the rights at law and in equity of the Guarantor to subrogation.

9. Representations

The Guarantor represents that:

(a) it is a [**corporation duly incorporated**] and existing under the laws of the Province of [**Ontario**][**Note to Finalization: Reflect form and jurisdiction of Guarantor]** and has the corporate power and capacity to enter into this Guarantee and to perform its obligations hereunder;

(b) this Guarantee has been duly authorized, executed and delivered by the Guarantor and is a valid and binding obligation of the Guarantor enforceable in accordance with its terms;

(c) no declaration, filing or registration with, or notice to, or licence, permit, certificate, registration, authorization, consent or approval of or from, any Governmental Authority is necessary or required for the consummation by the Guarantor of the transaction contemplated by this Guarantee; and

(d) the execution and delivery of this Guarantee and performance of its obligations hereunder do not conflict with or result in a breach of its constating documents or by-laws, any applicable law, rule or regulation, any judgment, order, contractual restriction or agreement binding on it or affecting its properties.

10. No Waiver by the Buyer

No failure on the part of the Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Buyer of any right, remedy or power hereby granted to the Buyer or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Buyer from time to time. No term, condition or provision hereof or any right hereunder or in respect hereof shall be, or shall be deemed to have been, waived by the Buyer except by express written waiver signed by the Buyer, all such waivers to extend only to the particular circumstances therein specified.

11. Notices

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be sufficiently given if transmitted by facsimile or delivered by hand or courier delivery:

(a) if to the Buyer, to:

Ontario Electricity Financial Corporation
1 Dundas Street West
Suite 1400
Toronto, ON M7A 1Y7
Attention: ●

Facsimile: ●

(b) if to the Guarantor, to:

●

Attention: ●
Facsimile: ●

Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 5:00 p.m. local time or such day is not a Business Day, then such notice 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 address to which notices are to be sent.

12. Governing Law

This Guarantee shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Guarantor agrees that any suit, action or proceeding against the Guarantor arising out of or relating to this Guarantee against it may be brought in any court in the Province of Ontario and the Guarantor irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of such courts. The Guarantor irrevocably waives and agrees not to raise any objection it might now or hereafter have to the bringing of any such suit, action or proceeding in any such court, including any objection that the place where such court is located is an inconvenient forum or that there is any other suit, action or proceeding in any other place relating in whole or in part to the same subject matter. The Guarantor agrees that any judgment or order in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and consents to any such judgment or order being recognized and enforced in the courts of its jurisdiction of incorporation or any other courts, by registration of such judgment or order, by a suit, action or proceeding upon such judgment or order, or any other means available for enforcement of judgments or orders, at the option of the Buyer, provided that service of any required process is effected upon it as permitted by applicable law. Nothing in this paragraph shall restrict the bringing of any such suit, action or proceeding in the courts of any other jurisdiction.

13. Severability

Each of the provisions contained in this Guarantee is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Guarantee.

14. Entire Agreement

This Guarantee constitutes the entire agreement between the parties pertaining to the subject matter of this Guarantee. There are no warranties, conditions, representations or agreements in connection with such subject matter except as specifically set forth or referred to in this Guarantee.

15. Binding and Assignment

This Guarantee and all of the provisions hereof shall be binding upon and ensure to the benefit of the parties and their respective successors and permitted assigns. This Guarantee is not intended to confer upon any other Person, except the parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Guarantee.

Neither this Guarantee nor any of the rights, interests or obligations under this Guarantee shall be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, if the Ontario Power Authority has been established pursuant to legislation and assigns the Agreement to the Ontario Power Authority, the Buyer may assign this Guarantee to the Ontario Power Authority without the consent of the Guarantor.

16. Facsimile and Counterparts

The parties may deliver an executed copy of this Guarantee by facsimile and this Guarantee may be executed and delivered by the parties in counterparts. All such facsimiles and counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Guarantee as of the day and year first above written.

[GUARANTOR]

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

I/We have the authority to bind the Guarantor.

ONTARIO ELECTRICITY FINANCIAL CORPORATION

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

I/We have the authority to bind the Corporation.

EXHIBIT E
FORM OF CERTIFICATE OF INCUMBENCY

Certificate of Incumbency

I, the undersigned, do hereby certify for and on behalf of ● (the "Corporation") [**Note to Finalization: Amend to suit legal form of Supplier, if necessary.]** in my capacity as an officer of the Corporation, and not in my personal capacity, as follows:

1. **[Officer A]** has been duly appointed to the office of ● in the Corporation and holds, as at the date hereof, such office, and has the authority to execute the Renewable Energy Supply Contract dated as of ●, 200● (the "Agreement") between the Corporation and ● ("Counterparty") and any other related document under the Agreement;

2. [**Officer B**] has been duly appointed to the office of ● in the Corporation and holds, as at the date hereof, such office, and has the authority to execute the Agreement and any other related document under the Agreement; and

3. the following are the genuine signatures of the following individuals:

● _____
● _____
● _____

DATED this day of , 200●.

_____
●
●

I, the undersigned, do hereby certify for and on behalf of the Corporation in my capacity as an officer of the Corporation, and not in my personal capacity, that (i) **[Officer C]** has been duly appointed to the office of ●, (ii) **[Officer C]** holds, as at the date hereof, such office and has the authority to execute the Agreement and any other document under the Agreement, and (iii) the signature set out in this certificate above the name **[Officer C]** is a true specimen of his signature.

DATED this day of , 200●.

_____
●
●

EXHIBIT F
MILESTONE EVENTS AND MILESTONE DATES FOR THE CONTRACT FACILITY

	MILESTONE EVENT	**MILESTONE DATE**
1.	Contract Facility and Site Approvals, and Permitting	
2. .	Completion of connection assessments including receipt of approvals from the IMO, the Transmitter, and LDC, as applicable.	
3.	Financial Closing	
4.	Equipment Order	
5.	Equipment Delivered	
6.	Commencement of Construction	
7.	Construction Completed	
8.	Connection of the Contract Facility to the transmission or distribution system	
9.	Commercial Operation	

EXHIBIT G
RECORDS UNDER FIPPA

Specific Inclusions to and Exclusions from the Definition of "Records" under FIPPA
The following shall be included in the definition of Records under the Agreement: ●
The following shall not be included in the definition of Records under the Agreement: ●

EXHIBIT H
RFP

[Note to Finalization: Attach]

EXHIBIT I
PROPOSAL

[Note to Finalization: Attach]