

**ROYALTY AND CONTRIBUTION AGREEMENT**

**Between**

**[Insert]**

**and**

**[Insert]**

**and**

**CANADA INFRASTRUCTURE BANK**

**Dated February 25, 2022**

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**THIS ROYALTY AND CONTRIBUTION AGREEMENT** (this "**Agreement**") dated as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_,

**BETWEEN:**

**[Insert]**, a **[Insert]** formed under the laws of the Province of **[Insert]**  
(the "**Proponent**")

-and-

**[Insert]**, a **[Insert]** formed under the laws of the Province of **[Insert]**  
(the "**Proponent GP**")]

-and-

**CANADA INFRASTRUCTURE BANK**, a body corporate formed pursuant to the *Canada Infrastructure Bank Act*

(the "**CIB**")

**WITNESSES THAT**

**WHEREAS** the Proponent is developing a renewable energy project located in the Province of Nova Scotia, as more particularly described herein;

**AND WHEREAS** the Proponent has entered into a power purchase agreement with Nova Scotia Power Incorporated for the purchase and sale of all of the output from such renewable energy project;

**AND WHEREAS** the CIB has offered to provide royalty financing in respect of such renewable energy project on the terms and conditions set out herein;

**AND WHEREAS** the Proponent desires to obtain such royalty financing on the terms and conditions set out herein;

**NOW THEREFORE**, in consideration of the respective covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the parties agree as follows:

## **ARTICLE 1 DEFINITIONS**

### **1.1 Definitions**

Except as otherwise expressly provided herein, capitalized terms used in this Agreement and its exhibits shall have the following meanings:

**"Acceptable Counterparty"** means a Person that: (a) is not (and the directors, officers, employees and agents of which are not) Persons whose standing or activities (i) are inconsistent with the CIB's role and mandate, (ii) may compromise the reputation or integrity of the CIB or the Federal Government of Canada, or (iii) are inconsistent with the nature of the

CIB's role and mandate, so as to negatively affect public perception of the CIB; (b) is not a Restricted Person or an Affiliate of a Restricted Person; (c) is not from a jurisdiction or organization sanctioned by the Treasury Office of Foreign Asset Control or the United Nations Security Council or the Government of Canada; (d) satisfies the requirements of all know-your-client, anti-money laundering and terrorists financing policies (or like restrictions) of the CIB and the Senior Lenders; (e) has demonstrated at least [five (5) years] experience owning at least [two hundred fifty (250) MW] of renewable electricity generating assets, or access, through a management agreement, to such experience; and (f) has (i) public long-term unsecured debt outstanding for not less than four Quarters which debt is rated not less than BBB- from S&P, Baa3 from Moody's or BBB- from Fitch; or (ii) a minimum tangible net worth or, in the case of an investment fund, minimum assets under management of at least five hundred million dollars (\$500,000,000) (or equivalent at prevailing exchange rates), as indicated by its most recently published audited consolidated financial statements.

**"Additional Material Project Documents"** means, each of the agreements related to the construction, testing, maintenance, repair, operation or use of the Project entered into by Proponent and any other Person subsequent to the Closing Date and that either (a) replaces or substitutes for an existing Material Project Document, or (b) is otherwise material to the Project.

**"Affiliate"** of a specified Person means any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the Person specified. When used with respect to Proponent, **"Affiliate"** shall include any Proponent Partner thereof, and any Affiliate of any of the foregoing.

**"Annual Operating Plan and Budget"** has the meaning given in Section 10.8.

**"Anti-Corruption Laws"** means the *Patriot Act* (United States), the *Foreign Corrupt Practices Act of 1977* (United States), the *Corruption of Foreign Public Officials Act* (Canada), the *Bribery Act 2010* (United Kingdom), the rules or regulations under each of the foregoing, and any other applicable anti-corruption law.

**"Applicable Law"** means, in respect of any Person, property, transaction, event or other matter, as applicable, all laws, rules, statutes, regulations, by-laws, treaties, ordinances, orders, judgments and decrees and all official directives, rules, guidelines, orders, decisions, policies and other requirements of any Governmental Authority, in each case having the force of law, and also includes any interpretation of the law or any part of the law by any Person having jurisdiction over it or charged with its administration or interpretation relating or applicable to such Person, property, transaction, event or other matter.

**"Applicable Permit"** means any Permit, and any zoning, environmental protection, pollution, sanitation, safety, siting, construction, development or building permit that is necessary under Applicable Law to construct, operate, maintain, repair, own or use the Project as contemplated by the Operative Documents, to sell electricity therefrom, to enter into any Operative Document or to consummate any transaction contemplated thereby.

**"Assignment of Material Project Documents"** has the meaning given in Section 6.1(a).

**"Available Construction Funds"** means, at any time and without duplication, the aggregate committed amount of all sources of funds available to Proponent for the purpose of the Project by way of (a) unadvanced portions of the Contribution, (b) unadvanced funds available under the Senior Lenders Financing, (c) equity actually contributed to the Proponent; (d) cash on hand; and (e) any HST paid by Proponent for which a claim for input tax credits may



be properly made or has been properly made but a reimbursement therefor has not yet been received.

**"Bankruptcy Law"** means any of *The Companies Creditors Arrangement Act* (Canada), *The Bankruptcy and Insolvency Act* (Canada), or *The Winding-Up and Restructuring Act* (Canada) or any other similar bankruptcy or insolvency related statute applicable to a Person or relevant to the jurisdiction in which such Person's principal place of business or registered office is located.

**"Business Day"** means any day other than a Saturday, Sunday or any other day on which banks are authorized to be closed in Halifax, Nova Scotia and/or Toronto, Ontario.

**"Change of Control"** means, in respect of a Person, a change in the ultimate direct or indirect Control of such Person.

**"CIB"** means the Canada Infrastructure Bank, and its successors and assigns.

**"CIB's Counsel"** means any law firm designated by the CIB from time to time as its legal counsel in respect of this Agreement.

**"Claims"** means any and all claims, obligations, liabilities, losses, damages, fines, injuries (to person, property, or the environment, including natural resources), penalties, actions, orders, proceedings, suits, judgments, costs and expenses (including reasonable attorneys' and consultants' fees) of whatever kind or nature, whether or not well founded, meritorious or unmeritorious.

**"Closing Date"** means the date on which each of the conditions precedent listed in Section 8.1 has been satisfied (or waived in writing by the CIB).

**"Collateral"** means all real and personal property (and the rents, Proceeds, other proceeds, profits and products of the foregoing) which are subject, or are intended or required to become subject, to the security or Liens granted under any of the Collateral Documents.

**"Collateral Documents"** means the General Security Agreement, the Guarantee, the Assignment of Material Project Documents, the assignment of insurance, the Real Property Security Documents, the Consent and Acknowledgement Agreements, the NSPI Consent & Direction, the Intercreditor Agreement, the Inter-Company Subordination Agreement and any other mortgage, deed of hypothec, security document, financing statement, application for registration and the like filed or recorded in connection with the foregoing. **[NTD: List of Collateral Documents to be confirmed]**

**"Commercial Operation"** has the meaning given in the PPA.

**"Commercial Operation Date"** has the meaning given in the PPA.

**"Consent and Acknowledgement Agreements"** means the consent and acknowledgement agreements by and among Proponent, the CIB, and the Material Project Parties, or in the case of any Additional Material Project Document, in a form and in substance reasonably satisfactory to the CIB.

**"Constating Documents"** means, with respect to any Person, its articles or certificate of incorporation, amendment, amalgamation or continuance, by-laws, partnership agreement, limited partnership agreement, declaration of trust, trust indenture or other similar document as

may be applicable, together with any shareholders' agreements, unanimous shareholder declarations, voting trust agreements, or similar agreements or arrangements applicable to such Person's shares, units, partnership, interests or other similar rights in such Person's equity or capital from time to time.

**"Construction Contractors"** means the contractors who are counterparties to the Construction Contracts.

**"Construction Contracts"** means the construction contracts for the Project listed under the heading "Construction Contracts" in Exhibit 7.

**"Contribution"** has the meaning given in Section 2.1.

**"Contribution Payment"** has the meaning given in Section 3.1.

**"Contribution Payment Availability Period"** means the period from and including the Closing Date, to and including the earlier of ninety (90) days after the Commercial Operation Date and ninety (90) days after the Outside Date.

**"Contribution Payment Request"** means an irrevocable written request for Contribution Payment in the form of Exhibit 1 which will certify, among other matters, those matters set forth in Section 8.2(c).

**"Contribution Ratio"** means, at any given time, the ratio of the percentage of the total amount of the Contribution that has actually been disbursed to the Proponent to the percentage of the Total Senior Lenders Loan Commitment that has actually been drawn by the Proponent at such time.

**"Control"** (and correlative terms) means the possession, directly or indirectly, through one or more intermediaries, of either of the following: (a) in the case of a corporation, more than 50% of the outstanding voting or economic securities thereof; (b) in the case of a limited liability company, partnership, limited partnership or joint venture, the right to more than 50% of the distributions therefrom (including liquidating distributions); (c) in the case of a trust or estate, including a business trust, more than 50% of the beneficial interest therein; and (d) in the case of any other entity, more than 50% of the economic or beneficial interest therein; or in the case of any entity, the power or authority, through ownership of voting securities, by contract or otherwise, to exercise a controlling influence over the management of that entity.

**"Costs to Complete"** means, as at any date, all Project Costs remaining to be incurred in order for the Project to achieve Final Completion.

**"Cure Period"** means either (a) the cure period provided to Proponent under a Material Project Document, if a Consent and Acknowledgement Agreement has been obtained in respect of such Material Project Document and such Consent and Acknowledgement Agreement provides the CIB with a cure period in respect of such Material Project Document in excess of the cure period provided to Proponent under the terms of such Material Project Document, as such cure period provided to Proponent under such Material Project Document may be extended from time to time, provided that the cure period provided to the CIB under such Consent and Acknowledgement Agreement is extended by the same period; or (b) one-half of the cure period provided to Proponent under a Material Project Document if no Consent and Acknowledgement Agreement has been obtained in respect of such Material Project Document, or if a Consent and Acknowledgement Agreement has been obtained in respect of such Material Project Document but the cure period provided to the CIB under such Consent and

Acknowledgement Agreement is not in excess of the cure period provided to Proponent under the terms of such Material Project Document, as such cure period provided to Proponent under such Material Project Document may be extended from time to time, provided that if a Consent and Acknowledgement Agreement has been obtained in respect of such Material Project Document, the cure period provided to the CIB under such Consent and Acknowledgement Agreement is extended by the same period.

**"Debt"** of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit, letter of guarantee or other similar instrument, (g) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all Debt of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee and (i) obligations in respect of hedging agreements.

**"Default Notice"** has the meaning given in Section 10.5.

**"Default Rate"** means 6 percent per annum.

**"Disposition"** means, with respect to any Person, any sale, assignment, transfer, conveyance, lease, licence or other disposition of any nature or kind whatsoever by such Person of any Property or of any right, title or interest in or to any Property that is out of the ordinary course of business of such Person, and the verb **"Dispose"** has a corresponding meaning.

**"Dollars"** and **"\$"** means Canadian dollars.

**"Environmental Claim"** means any and all administrative, regulatory, judicial or other action, suits, demands, decrees, Claims, Liens, judgments, warning notices, directions, notices of non-compliance or violation, investigations, proceedings, removal or remedial actions, inquiries or orders, whether actual or contingent, relating in any way to any Hazardous Substances Law, any Release of, or exposure to, Hazardous Substances or any Permit issued under any such Hazardous Substances Law (including any liability for damages, fines, penalties or indemnities) (hereafter in this definition **"Claims"**), including (a) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Hazardous Substances Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to health, safety or the environment.

**"Equity Contributions"** means the capital contributions made by the Proponent Partners to the Proponent from time to time by way of equity or Inter-Company Debt.

**"Equity Letters of Credit"** means one or more irrevocable and unconditional standby letters of credit issued by a financial institution listed on Schedule I or Schedule II of the *Bank*

Act (Canada) in form and substance satisfactory to the CIB in an aggregate amount equal to the difference between the Costs to Complete and the Available Construction Funds.

**"Event of Default"** and **"Events of Default"** have the meanings given in Article 16.

**"Event of Expropriation"** means any compulsory transfer or taking by condemnation, expropriation, or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Collateral, by any agency, department, authority, commission, board, instrumentality or political subdivision of the Province of Nova Scotia or Canada or another Governmental Authority having jurisdiction.

**"Expropriation Proceeds"** has the meaning given in Section 14.2.

**"Final Completion"** means the completion of all work on the Project has been completed in accordance with the Plans and Specifications and the requirements of all Applicable Permits, and that all completion requirements have occurred in accordance with the terms of any applicable Material Project Document, all as certified by the Independent Engineer to the CIB, and Commercial Operation has been achieved.

**"Final Completion Date"** means the date on which Final Completion occurs.

**"Financing Documents"** means this Agreement, the Collateral Documents and any other documents, agreements or instruments entered into in connection with any of the foregoing, other than Project Documents.

**"Force Majeure"** means any act of God, strike, walkout or other industrial disturbance, act of public enemies, act or threat of terrorism, war, blockade, insurrection, riot, epidemic, land slide, lightning, earthquake, fire, explosion, mechanical failure, storm, flood, washout, nuclear and radiation activity, order, restraint, or prohibition by any Governmental Authority within whose jurisdiction construction of the Project is to be performed, Applicable Laws, orders, injunctions, prohibitions or directions of any court of competent jurisdiction, and without limitation, any arrest and restraint of rulers and people, civil disturbance, including environmental protests, explosions, and any other causes (except financial) not within the control of Proponent, so far as it is affected by such cause and by the exercise of due diligence, Proponent was not able to avoid or overcome.

**"GAAP"** means generally accepted accounting principles in Canada as provided in the Handbook of the Canadian Institute of Chartered Accountants, applied on a consistent basis.

**"General Security Agreement"** means a general security agreement to be made by each of the Proponent and the Proponent GP in favour of the CIB pursuant to which such Person, as applicable, shall, *inter alia*, grant a security interest in all of its present and after-acquired personal property.

**"GHG"** means greenhouse gases as determined by Governmental Authorities from time to time.

**"GHG Report"** has the meaning ascribed thereto in Section 10.7(e).

**"Governmental Authority"** means any Canadian federal, provincial, territorial, or municipal government or governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, office, board, regulatory administrative or other agency, or any political or other subdivision, department or branch of any of the

foregoing, having jurisdiction in any way over or in respect of the performance of this Agreement, or any part of hereof or any aspect of the Project.

**"Guarantee"** means an unlimited guarantee by the Proponent GP of the Obligations of Proponent in favour of the CIB, in form and substance satisfactory to the CIB, acting reasonably.

**"Hazardous Substances"** means any substance, matter, pollutant or contaminant, as defined or regulated under any Hazardous Substances Law or the Release of which in the environment could cause harm or damage to or impairment of the environment or any risk to human health or safety or property including, but not limited to noise, hazardous materials, vibrations, radiation, petroleum products (and its derivative byproducts), asbestos, polychlorinated biphenyls, dangerous goods or substances, toxic or hazardous substances or materials, wastes and other hydrocarbons, and radioactive materials.

**"Hazardous Substances Law"** means Applicable Laws, Applicable Permits and Legal Requirements relating to environmental or occupational health and safety matters including but not limited to, all such requirements relating to: (a) the protection, preservation or remediation of the environment (including all components of the earth, air, all layers of the atmosphere, property, soils, water, ground water, organic and inorganic matters, living species and organisms or any combination of any of the above or the general environment and sewers); (b) Hazardous Substances generation, handling, treatment, storage, disposal or transportation; (c) occupational or public safety and health; and (d) Hazardous Substances.

**"HST"** means the taxes imposed pursuant to section 165 of Part IX to the *Excise Tax Act* (Canada).

**"Independent Consultants"** means, collectively, the Insurance Consultant and the Independent Engineer.

**"Independent Engineer"** means the independent engineer retained by the CIB for its due diligence in respect of the Project at Proponent's costs, which engineer may, in the CIB's sole discretion, be the same independent engineer engaged by the Senior Lenders for their due diligence in respect of the Project.

**"Independent Engineer's Report"** means the report of the Independent Engineer, satisfactory to the CIB.

**"Indigenous Group"** means any Indian or Indian Band (as those terms are defined in the *Indian Act* (Canada)), Indigenous Person or People, Inuit Person or People, Métis Person or People, Aboriginal Person or People, native Person or People, indigenous Person or People, any person or group asserting or otherwise claiming an aboriginal or treaty right, including aboriginal title, or any other aboriginal interest, and any Person or group representing, or purporting to represent, any of the foregoing.

**"Initial Equity Contribution"** means the Equity Contribution (including adequate contingency) made by the Proponent Partners to the Proponent on or prior to the Closing Date.

**"Insurance Consultant"** means the independent insurance consultant retained by the CIB for its due diligence in respect of the Project at Proponent's costs.

**"Insurance Consultant's Certificate"** has the meaning given in Section 8.1(cc).

**"Insurance Proceeds"** has the meaning given in Section 14.1.

**"Inter-Company Debt"** means unsecured, subordinated and postponed Debt incurred by the Proponent from an Affiliate of the Proponent that is subject to the Inter-Company Subordination Agreement, and is evidenced by the Inter-Company Note.

**"Inter-Company Note"** means an Inter-Company promissory note made by the Proponent in favour of an Affiliate of the Proponent providing Inter-Company Debt, evidencing such Inter-Company Debt.

**"Inter-Company Subordination Agreement"** means a subordination, postponement and standstill agreement to be entered into by each Affiliate of the Proponent providing Inter-Company Debt, the Senior Lender and the CIB concurrently with the incurrence by the Proponent of such Inter-Company Debt, in form and substance satisfactory to the CIB but to include full subordination and postponement of such Inter-Company Debt and standstill provisions in relation thereto.

**"Interconnection Agreement"** means the generator interconnection and operating agreement between NSPI and the Proponent dated [insert], providing for the interconnection of the Project to NSPI's transmission grid satisfactory in form and substance to the CIB, acting reasonably.

**"Intercreditor Agreement"** has the meaning given in Section 6.1.

**"IRR"** means the CIB's internal rate of return with respect to the Royalty payable hereunder, as calculated by the CIB in its sole discretion, and taking into account all Royalty payments received, and measured from the first Contribution Payment made hereunder.

**"Legal Requirements"** means, as to any Person, the articles of incorporation, bylaws or other organizational or governing documents of such Person, and any Applicable Laws (including any Hazardous Substances Laws), any requirement under a Permit, in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its property is subject.

**"Lien"** on any asset means any mortgage, deed of trust, statutory trust, hypothec, lien, pledge, charge, security interest, restrictive covenant or easement or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective under Applicable Law, or any preference, priority or preferential arrangement of any kind or nature whatsoever intended as security including the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

**"Lump Sum Payments"** means any payment received under a Material Project Document, the application of which is not specifically dealt with in this Agreement which constitutes a lump sum payment in compensation for permanently lost future revenues.

**"Material Adverse Effect"** means (a) a material adverse change or effect on the assets, properties, operations, condition (financial or otherwise) or prospects of a Proponent Group Member or the Project; or (b) any event or occurrence of any nature which would materially and adversely change or affect (i) the ability (financial or otherwise) of a Proponent Group Member, or any other Person to perform its material covenants or obligations under the Operative Documents to which it is a party or (ii) the validity or priority of the CIB's security interests in and Liens on the Collateral or the remedies of the CIB under the Financing Documents.

**"Material Project Documents"** means the PPA, the Interconnection Agreement, the Supply Contracts, the Construction Contracts, the O&M Contracts, and each other contract listed in Exhibit 7.

**"Material Project Parties"** means the counterparties to the Material Project Documents.

**"Minimum Equity Contribution"** means an Equity Contribution equal to the difference between the total Project Costs and the aggregate of the Contribution and the Total Senior Lenders Loan Commitment to ensure that the Project will achieve Final Completion on or before the Outside Date and which, in any event, shall not be less than [insert]% of the Project Costs. **[NTD: Will be determined on basis of particular Project debt/equity structure]**

**"Monthly Payment Date"** means the fifth (5<sup>th</sup>) Business Day of each calendar month of the Term, commencing on the Commercial Operation Date.

**"NSPI"** means Nova Scotia Power Incorporated, a Nova Scotia corporation and its successors and assigns.

**"NSPI Consent & Direction"** means the consent, acknowledgement and irrevocable direction to pay among Proponent, the CIB, and NSPI substantially in the form attached hereto as Exhibit 14;

**"O&M Contractors"** means the contractors who are counterparties to the O&M Contracts.

**"O&M Contracts"** means the operation and maintenance contracts for the project listed under the heading "O&M Contracts" in Exhibit 7.

**"Obligations"** means, with respect to the Proponent, all Royalty obligations, advances, debts, liabilities, and obligations of performance, howsoever arising, owed by the Proponent to the CIB of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of this Agreement or any of the other Financing Documents, including all interest, fees, charges, expenses, legal fees and Independent Consultant's fees chargeable to the Proponent in connection with Independent Consultant's dealings with the Proponent, the CIB and payable by the Proponent under this Agreement or any of the other Financing Documents including but not limited to the CIB's right to receive an amount that shall result in the CIB receiving an IRR of 5% as provided for herein.

**"Operative Documents"** means collectively the Financing Documents and the Project Documents.

**"Organizational Chart"** has the meaning given in Section 8.1(w).

**"Outside Date"** means the date that is [six (6)] months after the Scheduled Commercial Operation Date specified in the PPA.

**"Permit"** means any action, certificate, authorization, registration, notice, decree, filing, approval, consent, waiver, exemption, variance, franchise, order, permit, right, license or other authorization of or from a Governmental Authority or the giving of notice to any Governmental Authority.

**"Permitted Builders' Liens"** means legal hypothecs, materialmen's, mechanics, workers', repairmen's, employees' or other like Liens arising in the ordinary course of business either (i) which at the relevant time have not yet been registered in accordance with Applicable Law against the Project or the Site or part thereof; (ii) are for amounts being contested in good faith by appropriate proceedings so long as such proceedings shall not involve any danger of the sale, forfeiture or loss of any part of the Project or the Site, as the case may be, title thereto or interest therein and shall not interfere with the use or disposition of the Project or the Site and the CIB has been provided with a bond or other form of security in form and substance and from a Person satisfactory to the CIB in its sole discretion in an amount not less than 125% of the amount claimed; or (iii) the Proponent has delivered a waiver of such Liens delivered under the Material Project Documents, the form and currency of which is satisfactory to the CIB in its sole discretion.

**"Permitted Liens"** means, collectively, (a) the rights and interests of the CIB as provided in the Operative Documents; (b) Liens imposed by any Governmental Authority for Taxes, either secured by a bond reasonably acceptable to the CIB or not yet due or delinquent or being contested in good faith and by appropriate proceedings and in respect of which appropriate reserves have been established to the satisfaction of the CIB and retained in working capital, so long as such proceedings shall not involve any danger of the sale, forfeiture or loss of the Project or the Site, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the use or disposition of the Project or the Site; (c) Permitted Builders' Liens; (d) Liens incurred in the ordinary course of business in connection with worker's compensation, unemployment insurance, social security and other Applicable Laws and that do not in the aggregate materially impair the use of the property or assets of Proponent or the value of such property or assets for the purposes of such business; (e) Liens arising out of judgments or awards so long as an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate reserves established to the satisfaction of the CIB and retained in working capital, bonds or other security acceptable to the CIB in its sole discretion have been provided or are fully covered by insurance; (f) servitudes, easements, rights-of-way, restrictions, minor defects and other similar encumbrances incurred in the ordinary course of business and encumbrances consisting of zoning restrictions, licenses, restrictions on the use of property or minor imperfections in title, which do not materially impair the property affected thereby for the purpose for which title was acquired or interfere with the operation of the Project as contemplated by the Operative Documents; (g) reservations in any original grants from the Crown of any land or interest therein, statutory exceptions to title and reservations of mineral rights in any grants from the Crown or from any other predecessors in title; (h) Liens, deposits or pledges to secure statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature in the ordinary course of its business; (i) involuntary Liens (including a Lien of an attachment, judgment or execution) securing a charge or obligation, on any of Proponent's property, either real or personal, whether now or hereafter owned in the aggregate sum of less than [\$200,000]; (j) Liens of trade vendors created in connection with Debt allowed under Section 11.2; (k) Liens securing Purchase Money Security Interests and capital leases in connection with Debt allowed under Section 11.2; (l) Liens in favour of the Senior Lenders; (m) Liens listed in Exhibit 12, (n) security given to a public utility or any Governmental Authority when required by such utility or authority in connection with the operations of the Project in the ordinary course of its business; and (o) any other Liens consented to in writing from time to time by the CIB, acting reasonably. Inclusion of a Lien as a Permitted Lien shall not constitute an acknowledgement by the CIB that such Lien ranks prior to the Liens constituted by the Collateral Documents.



**"Person"** means any natural person, corporation, limited liability company, partnership, limited partnership, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

**"Plans and Specifications"** means the plans and specifications for the design, engineering, and construction of the Project, including all work drawings, engineering and construction schedules, project schedules, project monitoring systems, specifications status lists, material and procurement ledgers, drawings and drawing lists, manpower allocation documents, management and project procedures documents, and project design criteria, as the same may be amended to the extent permitted by this Agreement.

**"PPA" or "Power Purchase Agreement"** means the power purchase agreement for renewable energy dated as of [insert] between the Proponent and NSPI, as the same may be amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms of this Agreement, and for greater certainty, includes any new power purchase agreement between the Proponent and NSPI in respect of the Project, entered into after the expiry of the PPA.

**"PPSA"** means, with respect to any province or territory of Canada, the *Personal Property Security Act*, or in the case of a province or territory that does not have a *Personal Property Security Act*, the other applicable legislation relating to the creation, registration or perfection of Liens in personal property, in force in such province or territory, as the context dictates.

**"Proceeds"** means, collectively, Insurance Proceeds and Expropriation Proceeds.

**"Prohibited Act"** means: (a) offering, giving or agreeing to give the CIB or any Governmental Authority (or anyone employed by or acting on their behalf) or any of their respective directors, offices, employees, agents or officials, or any family member of such persons, any gift or consideration of any kind as an inducement or reward: (i) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Agreement or any other agreement with the CIB or any Governmental Authority in connection with the Project; or (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the CIB or any Governmental Authority in connection with the Project; but, for greater certainty, excluding consideration to the CIB or any Governmental Authority provided by Proponent Group Members (or anyone employed by or acting on their behalf) in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of the Proponent Group Members under this Agreement or any other agreement with the CIB or any Governmental Authority in connection with the Project; (b) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Agreement or any other agreement with the CIB or any Governmental Authority in connection with the Project; or (c) defrauding or attempting to defraud or conspiring to defraud the CIB or any Governmental Authority.

**"Project"** means [insert description of project], together with all buildings, structures or improvements erected on the Site, all alterations thereto or replacements thereof, all fixtures, attachments, appliances, equipment, machinery and other articles attached thereto or used in connection therewith and all parts and components which may from time to time be incorporated or installed in or attached thereto, all contracts and agreements for the purchase or sale of commodities or other personal property related thereto, all leases of real or personal property related thereto, all easement rights and all other real and tangible and intangible personal

property leased or owned by Proponent and placed upon or used in connection with the generation of electricity upon the Site<sup>1</sup>.

**"Project Budget"** has the meaning given in Section 8.1(b).

**"Project Capital Costs"** means the following capital costs incurred prior to the Commercial Operation Date paid to non-Affiliates of the Proponent Group Members plus any of the following capital costs which are paid to any Affiliate of a Proponent Group Member (including development fees) prior to the Commercial Operation Date which are expressly pre-approved by the CIB in writing. For greater certainty, no capital costs paid or payable to an Affiliate of any Proponent Group Member shall be included in the Project Capital Costs unless it is included in the Project Budget and expressly pre-approved by the CIB in writing: (a) the cost of designing, equipping, procuring, constructing, managing, starting up and testing the Project, (b) the cost to Proponent of electrical interconnection of the Project to NSPI's transmission system, (c) the cost of acquiring any lease and any other necessary interest in the Project or the Site, (d) real and personal property taxes, ad valorem taxes, sales, use and excise taxes and insurance premiums payable with respect to the construction of the Project, (e) initial working capital requirements of the Project as set forth in the Project Budget, (f) the costs of acquiring Permits for the Project, (g) all general and administrative costs of Proponent attributable to the construction of the Project, and (h) the cost of establishing a spare parts inventory for the Project. The Project Capital Costs shall be subject to review and verification by the Independent Engineer.

**"Project Costs"** means (a) the cost of designing, equipping, procuring, constructing, managing, starting up and testing the Project, (b) the cost to Proponent of electrical interconnection of the Project to NSPI's transmission system, (c) the cost of acquiring any lease and any other necessary interest in the Project or the Site, (d) real and personal property taxes, ad valorem taxes, sales, use and excise taxes and insurance premiums payable with respect to the Project, (e) interest payable on any loan and financing-related fees and costs, (f) initial working capital requirements of the Project as set forth in the Project Budget, (g) the costs of acquiring Permits for the Project, (h) all general and administrative costs of Proponent or any Proponent Partner attributable to the Project, (i) the cost of establishing a spare parts inventory for the Project, (j) the cost of providing security to NSPI as required under the terms of the PPA and (l) other fees and expenses relating to the development, construction and closing of financing of the Project and including financial, legal and consulting fees, costs and expenses, and all of the foregoing costs incurred in connection with the repair and restoration of the Project in connection with an event that gave rise to Insurance Proceeds which were deposited into the Operating Account in all cases including costs accrued or reasonably anticipated, all such Project Costs as set forth in the Project Budget.

**"Project Documents"** means the Material Project Documents and the Additional Material Project Documents.

**"Project Revenues"** means all gross income of every nature and kind, without deduction of any kind, of the Proponent or the Proponent GP derived from the PPA or the Project (including, for greater certainty, all amounts paid by NSPI directly to the CIB pursuant to the direction to pay contained in the NSPI Consent & Direction, and all amounts received by the Proponent from any Person in respect of renewable energy credits, GHG credits, or other

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<sup>1</sup> This Royalty Agreement reflects a wind project. A separate but similar Royalty Agreement will be prepared in respect of solar projects.

environmental credits or attributes of any kind whatsoever) and all other amounts that, in each case compensate the Proponent for lost revenues under the PPA, including proceeds of any business interruption insurance, penalties and liquidated damages, as well as extraordinary gains and Lump Sum Payments, provided that any Insurance Proceeds and Expropriation Proceeds shall be applied in accordance with Section 14.1 and Section 14.2 respectively and in each case shall not be included in Project Revenues.

**"Project Schedule"** means the schedule for construction and completion of the Project as a whole as set forth in the schedule attached as Exhibit 10.

**"Proponent"** means [insert].

**"Proponent's Counsel"** means any law firm designated by the Proponent from time to time as its legal counsel in respect of this Agreement.

**"Proponent GP"** means [insert].

**"Proponent Group Members"** means collectively, the Proponent and the Proponent GP, and each a **"Proponent Group Member"**.

**"Proponent Limited Partners"** means the limited partners in the Proponent.

**"Proponent Partners"** means the proponent GP and the Proponent Limited Partners.

**"Prudent Industry Practices"** means those practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, are necessary and proper for the proper operation, maintenance and technical and commercial management of the Project and so as to maintain the useful life of the equipment over the term of the PPA. Prudent Industry Practices are not limited to optimum practices, methods or acts, but rather are a range of acceptable practices, methods or acts that are commonly and prudently used in North America to operate renewable energy generation projects.

**"Public Office Holder"** means any officer or employee of Her Majesty in right of Canada and includes: (a) a member of the Senate or the House of Commons and any person on the staff of such a member; (b) a person who is appointed to any office or body by or with the approval of the Governor in Council or a minister of the Crown, other than a judge receiving a salary under the *Judges Act* (Canada) or the lieutenant governor of a province; (c) an officer, director or employee of any federal board, commission or other tribunal as defined in the *Federal Courts Act*; (d) a member of the Canadian Armed Forces, and (e) a member of the Royal Canadian Mounted Police.

**"Purchase Money Security Interest"** means a Lien created or assumed by Proponent securing Debt incurred to finance the unpaid acquisition price (including any installation costs or costs of construction) of property provided that (a) such Lien is created substantially concurrently with the acquisition of such property, (b) such Lien does not at any time encumber any property other than the property and the proceeds thereof financed or refinanced (to the extent the principal amount is not increased) by such Debt, (c) the amount of Debt secured thereby is not increased subsequent to such acquisition, and (d) the principal amount of Debt secured by any such Lien at no time exceeds 100% of the original purchase price of such property at the time it was acquired, and any Lien replacing any such Lien.

**"Quarter"** means each three month period ending on March 31, June 30, September 30 and December 31.

**"Real Property Documents"** means collectively, the agreements, licences of occupation, leases, deeds and instruments creating privileges, interests, rights-of-way, easements and rights in the nature of easements granted or to be granted to the proponent for the purposes of the development, construction and operation of the Project, all as listed in Exhibit 15.

**"Real Property Security Documents"** means, collectively, (a) a debenture granted by the Proponent and the Proponent GP charging, mortgaging, assigning, transferring and creating a security interest in all of the Proponent's and Proponent GP's right, title, interest, claim, privilege, benefit and entitlement in and to the Real Property Documents including, the interests in land created thereunder, (b) either a mortgage non-disturbance agreement between, *inter alia*, the Proponent GP and each mortgagee, if any, of the grantor's interest in the Real Property Documents or a postponement from each such mortgagee, postponing any freehold mortgage in favour of the applicable Real Property Document, and (d) a lender agreement among the Proponent, the Proponent GP, the CIB, the Senior Lender, the owner of the freehold estate in the lands subject to the Real Property Documents and any freehold mortgagee.

**"Release"** means disposing, depositing, discharging, injecting, spilling, leaking, dumping, pumping, pouring, emitting, escaping, emptying, seeping, flowing, leaching, placing and any similar method of release, into or upon any land or water or air, or otherwise entering into or migrating into the environment and **"Released"** shall have a corresponding meaning.

**"Restricted Person"** means any Person who, or any member of a group of Persons acting together, any one of which: (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the Treasury Office of Foreign Asset Control, the United Nations Security Council or the Government of Canada; (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism; (c) (i) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that would prevent such Person from constructing, owning or operating the Project in whole or in part or (ii) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that could result in an order described in (i) being issued; (d) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five (5) years prior to the date at which the consideration of whether such individual is a "Restricted Person" is made hereunder, whether or not such Person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Motor Vehicle Act* (Nova Scotia) or corresponding legislation in any other jurisdiction less than five (5) years prior to the date at which the consideration of whether such individual is a "Restricted Person" is made hereunder; (e) in the case of a Person other than an individual, (i) it or any of the members of its (or its general partner's) board of directors or its senior executive managers has been convicted of any indictable offence less than five (5) years prior to the date at which the consideration of whether such Person is a "Restricted Person" is made hereunder, whether or not such Person received a custodial sentence; or (ii) any of the members of its (or its general partner's) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Motor Vehicle Act* (Nova Scotia) or corresponding legislation in any other jurisdiction less than five (5) years prior to the date at which the consideration of whether such Person is a "Restricted Person" is made hereunder; or (f) has a material interest in the production of tobacco products.

**"Royalty"** means the royalty payable hereunder by the Proponent to the CIB, which shall be calculated in respect of any particular calendar month by multiplying the Royalty Rate by the Project Revenues paid to the Proponent in such calendar month (including all amounts paid by NSPI directly to the CIB pursuant to the direction to pay contained in the NSPI Consent & Direction).

**"Royalty Rate"** means the percentage of Project Revenues determined by the CIB as of the Closing Date to be required for the CIB to achieve an IRR equal to the Government of Canada Bond yield as of the Closing Date, interpolated for 25 years, based on the P90 production forecast for the Project (as verified by the Independent Engineer), and calculated from the first Contribution Payment to the expiry date of the PPA.

**"Senior Lenders"** means **[insert]**.

**"Senior Lenders Credit Agreement"** means the credit agreement between the Proponent and the Senior Lenders.

**"Site"** means collectively, all real property upon which the Project is situate.

**"Supply Contractors"** means the suppliers who are counterparties to the Supply Contracts.

**"Supply Contracts"** means the equipment supply contracts for the Project listed under the heading "Supply Contracts" in Exhibit 7.

**"Taxes"** means any and all present or future taxes, levies, imposts, duties, deductions, fees, assessments, withholdings or other charges of whatever nature now or hereafter imposed by any Governmental Authority and all interest, penalties or similar liabilities with respect thereto, including HST.

**"Term"** means the entire period during which there is any outstanding Obligation.

**"Total Senior Lenders Loan Commitment"** means the total amount of the loans in respect of the Project that the Senior Lenders have committed to advancing to the Proponent pursuant to the Senior Lenders Credit Agreement.

**"Transfer"** means any transaction whereby an ownership interest in the Proponent or the Proponent GP, whether legal or beneficial, is sold, granted, set over, conveyed, leased, assigned, exchanged, transferred, disposed of, given, devised, bequeathed or otherwise similarly dealt with, voluntarily or involuntarily, directly or indirectly by operation of law or otherwise, including vesting by way of merger, consolidation or amalgamation or any transfer or assignment of any right, title or interest in such property by operation of Bankruptcy Law or creditor remedies including vesting by way of any judicial order, judgment or decree made pursuant to Bankruptcy law.

## **1.2 Rules of Interpretation**

Except as otherwise expressly provided herein, the following rules of interpretation shall apply to this Agreement:

- (a) The singular includes the plural and the plural includes the singular.

- (b) A reference to an Applicable Law includes any amendment, modification, restatement, supplement or replacement thereof.
- (c) A reference to a Person includes its successors and permitted assigns.
- (d) The words "**include**", "**includes**" and "**including**" are not limiting.
- (e) A reference herein to an Article, Section or Exhibit is to the Article, Section or Exhibit hereof unless otherwise indicated. Exhibits hereto shall be deemed incorporated by reference in such document.
- (f) References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time.
- (g) The words "**hereof**," "**herein**" and "**hereunder**" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
- (h) The word "**knowledge**" shall mean the actual knowledge of any director, officer or senior manager of any Person or the knowledge that such director, officer or senior manager would have acquired after reasonable inquiry.
- (i) References to "**days**" shall mean calendar days, unless the term "**Business Days**" is used. References to a time of day shall mean such time in Toronto, Ontario, unless otherwise specified.
- (j) The Financing Documents are the result of negotiations between, and have been reviewed by Proponent, the CIB and their respective counsel. Accordingly, the Financing Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favour of or against Proponent or the CIB.

## **ARTICLE 2**

### **CONTRIBUTION & GRANT OF ROYALTY**

#### **2.1 Contribution**

The CIB hereby agrees to contribute to the Proponent, as consideration for the grant of the Royalty as contemplated herein, an amount equal to the lesser of:

- (i) 50% of the difference between the actual Project Capital Costs and any grant or other non-repayable contribution received or receivable by the Proponent from any Governmental Authority as a contribution in respect of the Project Capital Costs (a "**Grant**"); and
- (ii) 50% of the difference between the budgeted Project Capital Costs included in the Project Budget as of the Closing Date and any Grant

(the "**Contribution**"), which shall be paid to the Proponent in accordance with the terms hereof.

## 2.2 Grant of Royalty

As consideration for the making of the Contribution, the Proponent hereby grants to the CIB, and agrees to pay to the CIB, in accordance with the terms hereof, the Royalty.

## **ARTICLE 3 PAYMENT OF CONTRIBUTION**

### 3.1 Payment of Contribution

Subject to the terms and conditions set forth in this Agreement, the CIB agrees to pay the Contribution to the Proponent as provided in Section 3.2 and Section 3.3 (individually, a "**Contribution Payment**" and collectively, the "**Contribution Payments**").

### 3.2 Contribution Payment Request

Subject to satisfaction of the conditions precedent described in Section 8.1 and Section 8.2 and the other terms and conditions hereof, Proponent shall request Contribution Payments by submitting a Contribution Payment Request. A Contribution Payment Request shall be for an amount not greater than the difference between fifty percent (50%) of the Project Capital Costs actually expended by the Proponent up to the date that the Contribution Payment Request is made and the aggregate amount of all Contribution Payments made by the CIB prior to the date of the Contribution Payment Request. Notwithstanding anything herein to the contrary, at no time shall the Contribution Ratio exceed 50:50.

### 3.3 Contribution Payment Request Procedure

- (a) Proponent shall request a Contribution Payment no more frequently than once per Quarter, by delivering to the CIB an irrevocable written notice in the form of Exhibit 1, appropriately completed to the satisfaction of the CIB (a "**Contribution Payment Request**"), which specifies, among other things:
  - (i) The amount of the requested Contribution Payment; and
  - (ii) The date of the requested Contribution Payment, which shall be a Business Day.
- (b) Proponent shall deliver the Contribution Payment Request to the CIB at least ten (10) Business Days before the requested date of the Contribution Payment, together with the other documents required pursuant to Section 8.2 hereof.
- (c) The Contribution Payment Request shall be delivered to the CIB in accordance with Section 17.1.
- (d) Subject to the other terms and conditions hereof, if the applicable conditions precedent listed in Section 8.2 have been satisfied or waived, the CIB will make the Contribution Payment set out in a Contribution Payment Request to the Proponent.
- (e) Notwithstanding anything herein to the contrary, the CIB may, in its sole discretion, amend the Contribution Payment Request procedure set out in this Section 3.3 to reflect the construction loan draw procedure set out in the Senior Lenders Loan Agreement.

**ARTICLE 4**  
**THE ROYALTY**

**4.1 Payment of Royalty**

- (a) The Royalty is payable in respect of all gross Project Revenues received by the Proponent without deduction for any expenses, costs, losses or other amounts of any kind whatsoever.
- (b) The Royalty shall be paid as follows:
  - (i) in respect of Project Revenues payable to the Proponent under the PPA, the Royalty shall be paid directly to the CIB by NSPI, pursuant to the direction to pay set out in the NSPI Consent & Direction, each time that a payment is to be made by NSPI to the Proponent pursuant to the PPA; and
  - (ii) in respect of all other Project Revenues, and in respect of any amount that should have been paid directly to the CIB by NSPI pursuant to the direction to pay contained in the NSPI Consent & Direction, but was not so paid for any reason whatsoever, the Royalty shall be paid by the Proponent to the CIB on each Monthly Payment Date following the Closing Date.
- (c) On each Monthly Payment Date, the Proponent shall deliver to the CIB, a statement, signed by an officer of the Proponent (or the Proponent GP), confirming the accuracy of the information provided in such statement, which statement shall set out all Project Revenues received by the Proponent during the immediately preceding calendar month, in sufficient detail and with sufficient supporting information to enable the CIB to verify the accuracy thereof.
- (d) Without limiting the rights of the CIB with respect to any Event of Default, if the Proponent fails to pay any Royalty payment when due pursuant hereto, the Proponent shall pay to the CIB, forthwith upon demand: (i) interest on the outstanding amount of such unpaid Royalty payment, calculated daily and compounded monthly at the Default Rate from and after the date on which such Royalty payment was due, to and including the date on which such Royalty payment is paid in full; and (ii) all costs and expenses (including all legal fees and disbursements on a full indemnity basis and all costs of enforcement) incurred by the CIB in connection with the Proponent's failure to pay such Royalty when due.
- (e) This Agreement and the obligation of the Proponent to pay the Royalty shall continue until the earlier of: (i) the fortieth (40<sup>th</sup>) anniversary of the Commercial Operation Date; and (ii) the date on which the CIB has achieved an IRR equal to 5%, calculated from the date of the first Contribution Payment.

**4.2 Early Termination of Royalty.**

Proponent may, at its option, upon ten (10) Business Days' advance notice to the CIB, prepay all but not less than all of the Royalty by paying to the CIB an amount which shall result in the CIB receiving an IRR in respect of the Royalty equal to 5%, and upon such payment, the Royalty and all obligation of the Proponent to pay the Royalty shall terminate.



**ARTICLE 5**  
**GENERAL PROVISIONS RELATED TO ROYALTY PAYMENTS**

**5.1 Payment Terms**

- (a) Proponent shall make all payments due to the CIB hereunder in lawful money of Canada and in immediately available funds not later than 4:00 p.m. Eastern Time, on the date on which such payment is due. Any payment made after such time on any day shall be deemed received on the next Business Day after such payment is received.
- (b) Whenever any payment due hereunder shall fall due on a day other than a Business Day, such payment shall be made on the immediately following Business Day.
- (c) If any amounts required to be paid by Proponent under this Agreement or the other Financing Documents remain unpaid after such amounts are due, Proponent shall (to the extent permitted by Applicable Laws) pay interest on the aggregate outstanding balance of such amounts from the date due until those amounts are paid in full at a per annum rate equal to the Default Rate.
- (d) Any and all payments by or on account of any Obligation hereunder or under any other Financing Document shall be made free and clear of, and without deduction for, any Taxes.
- (e) Payments made under this Agreement and the other Financing Documents shall be applied first, to any fees, costs, interest, charges or expenses payable to the CIB hereunder or under the other Financing Documents, and second to any amount of the Royalty due and owing.

**ARTICLE 6**  
**COLLATERAL DOCUMENTS**

**6.1 Security**

- (a) The Obligations shall be secured by, and Proponent and Proponent GP shall deliver or cause to be delivered to the CIB on the Closing Date, the following in form and substance satisfactory to the CIB:
  - (i) the General Security Agreement;
  - (ii) the NSPI Consent & Direction;
  - (iii) the Real Property Security Documents;
  - (iv) an assignment by way of security by the Proponent of all of the Proponent's right, title and interest, to and under each Material Project Document to which it is a party (the "**Assignment of Material Project Documents**");
  - (v) the Guarantee;

- (vi) Consent and Acknowledgement Agreements in respect of each of the Material Project Documents;
  - (vii) an intercreditor agreement between the Proponent, the Proponent GP, the Senior Lenders and the CIB, which sets out that the CIB Liens over the payments contemplated under the NSPI Consent & Direction shall rank in priority to the Senior Lender Liens and that the Senior Lender Liens shall rank in priority to the CIB Liens over all other Collateral of the Proponent and Proponent GP, and which shall be consistent with the Intercreditor Principles set out in Exhibit 13 (the "**Intercreditor Agreement**");
  - (viii) an assignment of insurance from the Proponent to the CIB; and
  - (ix) such other documents, instruments and agreements as the CIB may request, acting reasonably, to grant to the CIB, Liens over all assets of the Proponent Group Members and the Project.
- (b) Concurrently with the incurrence of any Inter-Company Debt, the Person providing such Inter-Company Debt shall enter into, and deliver to the CIB, an Inter-Company Subordination Agreement and such other documentation in respect thereof, including legal opinions, as the CIB may reasonably request.

## **6.2 Insurance**

Subject to the terms of the Intercreditor Agreement, the Proponent (i) will cause the CIB to be shown as loss payee and mortgagee as its interests may appear under the builder's risk and equipment breakdown insurance covering construction of the Project and under the property and equipment breakdown insurance covering the Project once operational and (ii) will insure property of others incidental to the Project which the Proponent is obligated to insure; and (iii) for all liability policies (excluding automobile liability and professional liability) will have the CIB noted as an additional insured with respect to Claims arising out of the operations of the Proponent; and (iv) will ensure that the policies of insurance include a waiver of the insurers' rights of subrogation against the CIB; and (v) will ensure that all policies covering physical loss or damage to the Project include a loss payable or mortgage clause acceptable to the CIB; and (vi) will comply with each other endorsement requirement set out in Exhibit 11.

## **6.3 Further Assurances**

Proponent shall deliver to the CIB each of the items referred in Sections 6.1 and Section 6.2 and such other instruments, agreements, certificates, opinions and documents as the CIB may reasonably request in order to perfect and maintain the Liens granted to the CIB hereunder prior to the Liens or other interests of any Person (other than Permitted Liens). Proponent shall fully cooperate with the CIB and perform all additional acts reasonably requested by the CIB to effect the purposes of the foregoing.

## **ARTICLE 7 INDEPENDENT CONSULTANTS**

### **7.1 Independent Consultants**

Notwithstanding any other provision hereof, the CIB may, in its sole discretion, and subject to such terms and conditions as it may consider appropriate, agree that in respect of some or all of the duties of the Independent Consultants set out herein, it will;

- (a) engage one or more of the independent consultants engaged by the Senior Lenders; or
- (b) rely, in whole or in part, on any report, certificate, opinion or information of one or more of the independent consultants engaged by the Senior Lenders; or
- (c) accept, in whole or in part, in lieu of any form of report or certificate contemplated herein, a form of report or certificate to be provided by the Senior Lenders' independent consultant pursuant to the Senior Lenders Credit Agreement.

### **7.2 Senior Lender Independent Consultants**

Proponent shall cause the Senior Lenders and the Senior Lenders' independent consultants (including the Senior Lender's independent engineer and insurance consultant) to enter into one or more agreements satisfactory to the CIB (a) to provide to the CIB, a copy of each report, certificate and other document delivered to the Senior Lenders in respect of the Project or the Proponent Group Members, and (b) that shall entitle the CIB to rely on all such reports, certificates and other documents in the same manner and to the same extent as the Senior Lenders.

## **ARTICLE 8 CONDITIONS PRECEDENT**

### **8.1 Conditions Precedent to the Closing Date**

The effectiveness of this Agreement is subject to the prior satisfaction of each of the following conditions (unless waived in writing by the CIB) on or before the Closing Date:

- (a) Delivery to the CIB of executed originals of each Financing Document and a certified list and true and correct copies of each Material Project Document, and any supplements or amendments thereto, all of which (i) shall be reasonably satisfactory in form and substance to the CIB, (ii) shall have been duly authorized, executed and delivered by the parties thereto, and (iii) shall be in full force and effect without change or amendment (other than such amendments approved by and delivered to the CIB or as otherwise permitted hereunder) since the respective dates of their execution and delivery;
- (b) the Proponent shall have furnished to the CIB a budget in substantially the form of Exhibit 8 ("**Project Budget**") for all anticipated Project Costs to be incurred in connection with the construction, commissioning and start-up of the Project, including such additional information as the CIB may require, which describes construction phases and components and is reasonably satisfactory to the CIB, together with a Project Schedule reasonably satisfactory to the CIB;

- (c) the Project Budget shall include a summary of all budgeted Project Capital Costs;
- (d) the Proponent shall have furnished to the CIB, a copy of the financial model for the Project, in form and substance satisfactory to the CIB;
- (e) the Proponent shall have furnished to the CIB, to the extent applicable, evidence of meaningful equity ownership, as determined by the CIB, of the Proponent or the Project by one or more Indigenous Groups;
- (f) The CIB shall have received a report in respect of Indigenous group matters from Proponent's counsel addressed to the CIB, in form and substance satisfactory to the CIB, acting reasonably<sup>2</sup>;
- (g) The CIB shall have been satisfied, with respect to each of the Indigenous Groups that have been identified as being potentially affected by the Project: (i) with the consultation undertaken by the Material Project Parties (and the Provincial and Federal Crown, if applicable) in relation to the Project, and (ii) that their aboriginal interests, rights or title have been adequately accommodated, where such accommodation was required;
- (h) The Proponent shall have furnished to the CIB, an initial form of GHG Report with respect to the Project, which GHG Report shall be in form and substance acceptable to the CIB, acting reasonably;
- (i) The Proponent shall have furnished to the CIB, certificates of an officer of each Proponent Group Member, certifying, confirming, containing or delivering, as applicable:
  - (i) copies of the articles of incorporation, certificate of incorporation or formation (or equivalent) of each Proponent Group Member, copies of the bylaws (or equivalent) of each Proponent Group Member and copies of any unanimous shareholder agreement (if applicable) or limited partnership agreement (if applicable) of such Proponent Group Member;
  - (ii) a copy of resolutions or other authorizations of such Proponent Group Member certified by the appropriate officer or representative of each such entity as being in full force and effect on the Closing Date, authorizing the execution, delivery and performance of this Agreement and the other Operative Documents and any instruments or agreements required hereunder or thereunder to which such Proponent Group Member is a party;

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<sup>2</sup> CIB is expecting a memo from Proponent's counsel which sets out the legal duty to consult Indigenous communities with respect to the CIB's proposed investment in the Project. The memo should include a summary of the proposed transaction as it relates to the Project and whether the proposed funding of the applicable Project would trigger the Crown's legal duty to consult with potentially affected Indigenous communities regarding the Project. More specifically, it should include an overview of where the Project is located, a summary of the Indigenous communities which may be impacted by the Project and those neighboring the Project, how the Project itself and its construction may impact those communities, if permits will be required, and if any consultation work has started or is expected to be conducted.

- (iii) the incumbency of the natural persons authorized to execute and deliver this Agreement and the other Operative Documents and any instruments or agreements required hereunder or thereunder to which such Person is a party;
  - (iv) each representation and warranty set forth in Article 8 and Section 12.2 is true and correct in all material respects as if made on such date (or if stated to have been made solely as of an earlier date, such representation and warranty shall be true and correct as of such earlier date);
  - (v) no Material Adverse Effect has occurred and is continuing or will result from the Closing, and there is no fact known that would reasonably be expected to have a Material Adverse Effect; and
  - (vi) no Event of Default has occurred and is continuing or will result from the Closing;
- (j) All corporate, partnership, and legal proceedings and all instruments in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to the CIB, acting reasonably, and the CIB shall have received all information and copies of all documents, including records of corporate or partnership proceedings and copies of any approval by any Governmental Authority required in connection with any transactions herein contemplated, which the CIB may have requested in connection herewith, such documents where appropriate to be certified by proper corporate or partnership officers or representatives or Governmental Authorities;
- (k) the CIB shall have received a certificate, dated as of the Closing Date, signed by an authorized officer or representative of the Proponent or the Proponent GP, certifying such other matters as are deemed appropriate by the CIB;
- (l) Delivery to the CIB of opinion(s) of Proponent's Counsel, each in form and scope reasonably satisfactory to the CIB:
- (i) with respect to the existence thereof and the due authorization, execution, and delivery of the Operative Documents to which each such Person is a party and enforceability of the Operative Documents to which each such Person is a party;
  - (ii) addressing (i) receipt of all necessary regulatory approvals, (ii) creation and registration of the security interests granted under the Financing Documents, and (iii) such other opinions in respect of the Financing Documents as the CIB may request, acting reasonably;
  - (iii) in respect of Permits necessary for the construction and operation of the Project; and
  - (iv) containing a copy of the Certificate of Status (or equivalent) of the Proponent and the Proponent GP.
- (m) Receipt by the CIB of a copy of the most recent internal financial statements of the Proponent and such financial statements shall be acceptable to the CIB;

- (n) the CIB will have received satisfactory evidence, which shall be subject to verification by the Independent Engineer, confirming that the aggregate amount of the Initial Equity Contribution is equal to or greater than the Minimum Equity Contribution and has been put toward the Project Costs, or the Proponent shall have provided one or more Equity Letters of Credit, in form and substance acceptable to the CIB, in an amount equal to the difference between the Initial Equity Contribution and the Minimum Equity Contribution;
- (o) If the Project Costs are exposed to currency exchange risk, the Proponent shall have hedged the Project Costs from such currency exchange risk on a basis acceptable to the CIB, or the Project Costs shall reflect a contingency amount satisfactory to the CIB in respect of any currency exchange rate exposure;
- (p) The CIB shall have completed its due diligence with respect to the Proponent Group Members, the Project and such other matters as the CIB considers necessary, and the results of such due diligence shall be satisfactory to the CIB in its sole and absolute discretion;
- (q) All fees and other costs and expenses payable in connection with the execution, delivery, recordation and filing of the documents and instruments required to be filed pursuant to the Financing Documents, shall have been paid in full, including all fees, costs and expenses of the CIB's counsel and the Independent Consultants;
- (r) The CIB shall have received a search report dated no more than two (2) Business Days before the Closing Date for each of the jurisdictions in which the Collateral Documents or notice thereof are intended to be filed, recorded or registered, showing the due filing, recordation or registration of or that upon due filing, recordation or registration (assuming such filing, recordation or registration occurred on the date of such respective reports), the security and Liens created under such Collateral Documents will be prior to all other financing statements or other security documents in respect of the Collateral (subject only to Permitted Liens);
- (s) In the reasonable judgment of the CIB, there shall not have occurred any material adverse change in (i) the Project Budget or Project Schedule, or (ii) the economics or feasibility of operating the Project;
- (t) There shall not have been filed with or served upon the Proponent, notice of any Lien, claim of Lien or attachment upon or claim affecting the right to receive payment of any of the moneys payable to any of the Persons named on such request which has not been released, other than Permitted Liens;
- (u) No material action, suit, proceeding or investigation shall have been instituted or threatened against any Proponent Group Member or the Project that has not been settled or finally adjudicated;
- (v) The CIB has not become aware of any information or other matter affecting any Proponent Group Member or the Project which is inconsistent in a material and adverse manner with any information disclosed to the CIB prior to the date hereof;

- (w) The Proponent shall have delivered to the CIB a chart of the organizational structure of the Project setting out the ownership interests in each Proponent Group Member and the Project, in form and substance satisfactory to the CIB (the "**Organizational Chart**");
- (x) Confirmation that the Proponent has applied for all applicable HST input tax credits;
- (y) Delivery to the CIB of all non-disturbance and recognition agreements reasonably requested;
- (z) Delivery to the CIB of copies of each Applicable Permit listed on Part I of Exhibit 6, each in form and substance reasonably satisfactory to the CIB together with a certificate of an authorized officer of the Proponent certifying that such Applicable Permits have been obtained and are in the name of the Proponent or the Proponent GP. All Applicable Permits with respect to the construction and operation of the Project required to have been obtained by the Closing Date from any Governmental Authority for the state of construction of the Project at that time have been issued and are in full force and effect and obtained by the Proponent or the Proponent GP and are in full force and effect and, to the Proponent's knowledge, are not subject to any appeals or further proceedings or to any unsatisfied condition that may allow a material modification, suspension, cancellation or revocation, and the Proponent through its representations and warranties hereunder, has confirmed that it has no reasonable belief that any such Permit will be suspended, cancelled, revoked or materially adversely modified and the Proponent is in material compliance with all such Applicable Permits;
- (aa) Delivery to the CIB of the Independent Engineer's Certificate, in substantially the form of Exhibit 3 together with the Independent Engineer's Report in a form and substance reasonably satisfactory to the CIB;
- (bb) Delivery to the CIB of confirmation satisfactory to the CIB from the Senior Lender's independent engineer and insurance consultant that they shall contemporaneously deliver to the CIB, a copy of each report, certificate and other document delivered to the Senior Lenders, and that the CIB shall be entitled to rely on all such reports, certificates and other documents in the same manner and to the same extent as the Senior Lenders;
- (cc) Insurance complying with Section 6.2 and Exhibit 11 shall be in full force and effect (to the extent required at that time pursuant Exhibit 11 to and the CIB shall have received (i) certified copies of all policies evidencing such insurance (or detailed binders or certificates of insurance signed by the insurer (or an authorized representative of the insurer)), in form and substance satisfactory to the CIB and (ii) Insurance Consultant's certificate, in substantially the form of Exhibit 2 (the "**Insurance Consultant's Certificate**"), with the Insurance Consultant's report as to the adequacy of the Project insurance, in form and substance satisfactory to the CIB, acting reasonably, attached thereto;
- (dd) Proponent shall have provided the CIB with confirmation from the Senior Lenders in a form satisfactory to the CIB that all conditions precedent to advance under the Senior Lenders Credit Agreement have been met and the Total Senior Lenders Commitment is available to the Proponent; and

- (ee) The CIB shall be satisfied that the Government of Canada and the Province of Nova Scotia have satisfied any obligation of the Crown, if any, to consult and if appropriate accommodate any Indigenous Groups that may be impacted by the Project.

## **8.2 Conditions Precedent to Contribution Payments**

The obligation of the CIB to make any Contribution Payment hereunder is subject to the prior satisfaction by the Proponent of each of the following conditions (unless waived in writing by the CIB):

- (a) The CIB shall be satisfied that each of the following conditions has been met, with evidence of satisfaction thereof required to be delivered hereunder consisting of: (i) a Contribution Payment Request delivered by the Proponent pursuant to Section 8.2(c), and (ii) the Independent Engineer's Contribution Certificate delivered by the Independent Engineer pursuant to Section 8.2(d):
- (i) There are no cost overruns in the Project Costs in excess of the contingency amount included in the Project Budget;
  - (i) Proponent shall have provided evidence reasonably satisfactory to the CIB that the aggregate of the Available Construction Funds and the Equity Letters of Credit equal or exceed the aggregate of Costs to Complete;
  - (ii) the Contribution Ratio does not exceed 50:50;
  - (iii) there has not been any material default under any Material Project Document, Applicable Permit or insurance policy or other similar approval or agreement that could reasonably be expected to have a Material Adverse Effect;
  - (iv) all Applicable Permits with respect to the construction and operation of the Project required to have been obtained by the date of such Contribution Payment (as applicable) from any Governmental Authority for the state of construction of the Project at such time have been issued and are in full force and effect and Proponent through its representations and warranties hereunder has confirmed that it has no reason to believe that any such Permit will be suspended, cancelled, revoked or materially adversely modified and Proponent is in material compliance with all such Applicable Permits;
  - (v) if, at the time of Contribution Payment, the Project shall have been materially damaged by flood, fire or other casualty, the Person entitled thereto pursuant to Section 14.1 shall have received evidence that insurance proceeds or money or other assurances sufficient in the reasonable judgment of the CIB to assure restoration and Final Completion prior to the Outside Date will be received;
  - (vi) there has not been any technical development with respect to the Project that is likely to have a Material Adverse Effect;



- (vii) no material action, suit, proceeding or investigation shall have been instituted or threatened against any Proponent Group Member or the Project;
  - (viii) all of the Operative Documents to be executed and delivered with respect to the Project on or prior to the date of the applicable Contribution Payment shall be in full force and effect without change or amendment (other than changes or amendments permitted hereunder) since the respective dates of their execution and delivery in a form which was approved by the CIB, acting reasonably;
  - (ix) with respect to Applicable Permits entered into or obtained, transferred or required (whether because of the status of the construction or operation of the Project or otherwise) since the Closing Date, the CIB shall have received copies of such Applicable Permits; and
  - (x) Proponent shall have provided evidence reasonably satisfactory to the CIB that all work requiring inspection, as required by Applicable Law, as of such date by any Governmental Authorities having jurisdiction has been duly inspected and approved by such authorities and that any certificates or notices required to be issued in connection therewith have been issued by such Governmental Authorities;
- (b) the CIB shall have received an opinion from counsel for the Proponent setting forth a sub-search report dated no more than two (2) Business Days prior to the proposed date of the Contribution Payment, showing that the Project is free and clear of Liens (other than Permitted Liens);
- (c) the CIB and Independent Engineer shall have received from the Proponent a Contribution Payment Request in accordance with Section 3.2 and Section 3.3 which will:
- (i) set forth the Project Costs and Project Capital Costs incurred to the date of the requested Contribution Payment (including supporting documentation) by major expense category, detailed variances from the Project Budget and Costs to Complete the Project;
  - (ii) certify that all material milestones required to have been met by the date of such certificate under a Material Project Document have been met;
  - (iii) provide evidence reasonably satisfactory to the CIB of each of the items enumerated in the definition of Available Construction Funds and certify that the aggregate of the Available Construction Funds and the Equity Letters of Credit exceed Costs to Complete;
  - (iv) certify that each representation and warranty set forth in Article 8 and Section 12.2 is true and correct in all material respects as if made on such date (or if stated to have been made solely as of an earlier date, such representation and warranty shall be true and correct as of such earlier date);

- (v) certify that no Material Adverse Effect has occurred and is continuing or will result from the Contribution Payment, and there is no fact known that would reasonably be expected to have a Material Adverse Effect;
  - (vi) certify that no Event of Default has occurred and is continuing or will result from the Contribution Payment;
  - (vii) provide a detailed description (supported by valid invoices where applicable) of those Project Capital Costs which have been paid during the previous fiscal quarter prior to the date of the subject Contribution Payment; and
  - (viii) if applicable, certify that all amounts required to be withheld by the Proponent under the *Builders' Lien Act* (Nova Scotia) have been withheld by the Proponent;
- (d) the CIB shall have received from the Independent Engineer an Independent Engineer's Contribution Certificate in substantially the form of Exhibit 4 at least five (5) Business Days prior to the date of the requested Contribution Payment.
  - (e) the CIB's obligation to make any Contribution Payment is conditional upon the Government of Canada and the Province of Nova Scotia having satisfied any obligation of the Crown, if any, to consult and if appropriate accommodate any Indigenous Groups that may be impacted by the Project; and
  - (f) delivery of any update in respect of Indigenous matters since the last report delivered pursuant to Section 10.7(c).

## **ARTICLE 9**

### **REPRESENTATIONS AND WARRANTIES**

The Proponent makes the following representations and warranties to and in favour of the CIB as of the date hereof and, except as otherwise provided, as of such date as such representations and warranties are required to be made pursuant to Section 8.1(i)(iv) and Section 8.2(c)(iv). All of these representations and warranties shall survive the Closing Date and the making of the Contribution:

#### **9.1 Organization and Project Ownership**

- (a) Proponent (i) is a [limited partnership] duly constituted, validly existing and in good standing under the laws of [the Province of [insert]] and (ii) is duly qualified and authorized to do business in the Province of Nova Scotia, and in each other jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary. Proponent has all requisite power and authority to own or hold under lease and operate the property it purports to own or hold under lease and to carry on its business as now being conducted and as proposed to be conducted under the Operative Documents to which it is a party in respect of the Project. The sole general partner of Proponent is the Proponent GP, the only limited partners of Proponent are the Proponent Limited Partners and, in each case, any Proponent Partner that subsequently obtains its interest in compliance with this Agreement.

- (b) Proponent GP (i) is duly organized and validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with all requisite organizational or other power and authority under the laws of such jurisdiction to enter into the Operative Documents to which it is a party and to perform its obligations thereunder and to consummate the transactions contemplated thereby; (ii) is duly qualified, authorized to do business and in good standing in each jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary; (iii) has the power (A) to carry on its business as now being conducted and as proposed to be conducted under the Operative Documents to which it is a party, (B) to own or hold under lease and operate the property it purports to own or hold under lease, (C) to execute, deliver and perform its obligations under each Operative Document to which it is a party, (D) to take all action as may be necessary to consummate the transactions contemplated thereunder, and (E) grant the Liens and security interest provided for in the Financing Documents to which it is a party; and (iv) has the authority to execute, deliver and perform its obligations under each Operative Document to which it is a party.
- (c) The Organizational Chart delivered to the CIB pursuant to Section 8.1(w) is true and correct and contains:
- (i) a list of the Proponent Group Members and all Proponent Limited Partners; and
  - (ii) a complete and accurate list of (i) each such Person's full and correct name (including any French and English forms of name as applicable) and the jurisdiction in which each such Person was formed and (ii) the full address of each such Person's chief executive office; and sets out the ownership interests in the Project, including the authorized and issued capital of the Proponent and each Proponent Partner, the registered (if applicable) and beneficial owners of such capital, and a complete and accurate description of all Inter-Company Debt.

## **9.2 Authorization, No Conflict**

Each Proponent Group Member has duly authorized, executed and delivered each Operative Document to which it is a party, and the execution and delivery thereof or its consummation of the transactions contemplated thereby, its compliance with the terms thereof or performance of its obligation thereunder (a) does not and will not contravene (i) its Constatting Documents, any other Material Project Document or any Applicable Permit or (ii) any other Legal Requirement applicable to or binding on it or any of its properties, except for any immaterial contravention of a Legal Requirement, (b) does not and will not contravene or result in any material breach of or constitute any material default under, or result in or require the creation of any Lien (other than Liens in favour of the CIB pursuant to the Financing Documents) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected or (c) (except for Applicable Permits (which are specifically provided for in Section 9.10)) does not and will not require the consent or approval of any Person which has not already been obtained. The Proponent has obtained and delivered to the CIB all regulatory, governmental, third party and other approvals, acknowledgements, directions, consents and agreements required in order for it to enter into each Operative Document to which it is a party and to perform its Obligations hereunder and thereunder.

**9.3 Laws, Regulations, Etc.**

Each Proponent Group Member is conducting its business operations in compliance with its constituting documents and all material Legal Requirements applicable to or binding on it or any of its properties.

**9.4 Enforceability**

Each Operative Document to which each Proponent Group Member is a party is a legal and valid agreement and binding obligation of such Proponent Group Member, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and subject to general equitable principles.

**9.5 Taxes**

Each Proponent Group Member has filed, or has caused to be filed, all federal and provincial tax returns that it is required to file, has paid or has caused to be paid all Taxes it is required to pay to the extent due (other than those taxes that it is contesting in good faith and by appropriate proceedings with such adequate segregated reserves established for the payment thereof to the extent required hereunder) and, to the extent such Taxes are not due, has established or has caused to be established reserves that are adequate for the payment thereof as required by GAAP if such would be required hereunder.

**9.6 Business, Debt, Contracts, Etc.**

The Proponent has not conducted any business other than the business contemplated by the Operative Documents, it has no outstanding Debt or other material liabilities other than as permitted by Section 11.2, and it is not a party to or bound by any material contract other than the Operative Documents to which it is a party. The Proponent is not a general partner or limited partner in any general or limited partnership or is a party to any joint venture or is a member in any limited liability company and the Proponent does not own any shares, capital stock or other ownership interest in any Person.

**9.7 Filings**

Other than as listed on Exhibit 9 no filing, recording, refiling or re-recording is necessary to perfect and maintain the perfection and priority of the Liens granted in favour of the CIB hereunder, and on the Closing Date all such filings or recordings (other than those that are required to be made only at a later date, which are so indicated on Exhibit 9 will have been made.

**9.8 Financial Statements**

The financial statements delivered in respect of Proponent Group Members pursuant to Section 10.6 fairly present in all material respects the financial condition of the Proponent Group Members as of the date thereof. Such financial statements have been prepared in accordance with GAAP. Proponent has no material liabilities, direct or contingent, except as have been disclosed in such financial statements or otherwise disclosed in writing to the CIB prior to the date hereof.

### **9.9 No Default**

No Event of Default has occurred.

### **9.10 Permits**

A complete list of all Applicable Permits is set forth in Exhibit 6. Each Applicable Permit described in Part I of Exhibit 6 is in the name of the Proponent or the Proponent GP and is in full force and effect and, to the Proponent's knowledge, is not the subject of any appeals or further proceedings or to any unsatisfied condition that would reasonably be expected to result in material modification, suspension or revocation thereof. The Proponent has no reason to believe that any Applicable Permit described in Part I of Exhibit 6 will be suspended, cancelled or revoked. Each Applicable Permit described in Part II of Exhibit 6 has not yet been obtained but is of a type that is routinely granted on application and would not normally be obtained at the current stage of construction or operation of the Project. The Proponent has no reasonable belief that any Applicable Permit described in Part II of Exhibit 6 will not be obtained prior to the time it becomes necessary or desirable for the current stage of construction or operation of the Project. Exhibit 6 may be updated from time to time by the Proponent such that the statements made in this Section 9.10 shall be true and correct in all material respects on the dates that such representation and warranty is made as required pursuant to Section 8.1(i)(iv) and Section 8.2(c)(iv). The Proponent is not in any material violation of any Applicable Permit to which it is a party.

### **9.11 Offices, Location of Collateral**

Each Proponent Group Member's jurisdiction of formation, chief executive office and principal place of business and the address at which the books and records of each such Proponent Group Member are located and the address from which the invoices and accounts of the Proponent are issued are located in the jurisdictions set out in Exhibit 9.

### **9.12 Adverse Change**

To the best of the Proponent's knowledge, except as disclosed in writing to the CIB, no material adverse change has occurred in the Project Budget or the Project Schedule, in the economics or feasibility of constructing and/or operating the Project.

### **9.13 Hazardous Substances**

- (a) (i) No Proponent Group Member is, and has not in the past been, in violation of any Hazardous Substances Law which violation could result in a material liability to any Proponent Group Member; (ii) no Proponent Group Member nor to their knowledge, any third party, has used, Released, generated, manufactured, produced or stored in, on, at, under, or about the Site, or transported thereto or therefrom, any Hazardous Substances in a manner that could reasonably be expected to subject the CIB or any Proponent Group Member to material liability under any Hazardous Substances Law or subject the CIB or any Proponent Group Member to an Environmental Claim; (iii) there are no underground or above-ground tanks located on the Site (iv) there are no Hazardous Substances used, stored or present at, in, on, under or, to the knowledge of a Proponent Group Member, near the Site, in each case that would reasonably be expected to subject the CIB or any Proponent Group Member to material liability under any Hazardous Substances Law or subject the CIB or any Proponent Group Member to an Environmental Claim, and (v) there is or has been no condition,

circumstance, action, activity or event that, to the knowledge of the Proponent, could form the basis of any material violation of, or material liability to the CIB or any Proponent Group Member under any Hazardous Substances Law or subject the CIB, or any Proponent Group Member to an Environmental Claim.

- (b) To the knowledge of the Proponent Group Members, there is no proceeding, investigation or inquiry by any Governmental Authority or any non-governmental third party with respect to the presence or Release of Hazardous Substances in, on, under, from or to the Site.
- (c) No Proponent Group Member has knowledge of any past or existing material violations of any Hazardous Substances Laws by any Person relating in any way to the Site.

#### **9.14 Impact Assessment Act (Canada)**

- (a) The Proponent represents that the Project is not a "designated project" as defined in the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1 ("**IAA**") and the project is not being carried out on "federal lands" as defined in the IAA.
- (b) If, as a result of changes to the Project or otherwise, an impact assessment is required in accordance with the IAA for the Project, the CIB's obligations under this Agreement will be suspended from the moment the Minister of the Environment has designated the Project under subsection 9(1) of the IAA, until (i) a decision statement has been issued to the Proponent or, if applicable, the Minister has decided that the Project is not likely to cause significant adverse environmental effects or the Governor in Council has decided that the significant adverse environmental effects are justified in the circumstances, and (ii) if required, an amendment to this Agreement has been signed, setting out any conditions included in the decision statement.

#### **9.15 Litigation**

At the date hereof, there are no pending or, to the best of the Proponent's knowledge, threatened actions or proceedings of any kind, including actions or proceedings of or before any Governmental Authority, to which any Proponent Group Member or the Project is a party or is subject, or by which any of them or any of their properties or the Project are bound.

#### **9.16 Sufficiency of Project Documents**

- (a) The Real Property Documents, Applicable Permits and other rights granted pursuant to the Project Documents: (i) comprise all of the property interests (both real and personal) necessary to secure any right material to the acquisition, leasing, development, construction, installation, completion, operation and maintenance of the Project in accordance with all Legal Requirements, all without reference to any proprietary information not owned by the Proponent (under terms or conditions satisfactory to the CIB) or available to the Proponent under the Project Documents; (ii) are sufficient to enable the Project to be located, constructed, operated and maintained on the Site; and (iii) provide adequate ingress and egress for any reasonable purpose in connection with the construction, operation and maintenance of the Project under the Project Documents;

- (b) There are no material services, materials or rights required for the construction, operation or maintenance of the Project, other than those available under the Project Documents or that can reasonably be expected to be commercially available at the Site on commercially reasonable terms;
- (c) There are no material documents other than the Project Documents including, without limitation, any guarantees or similar security provided by any person for the benefit of the Proponent in connection with the Project.

### **9.17 Title and Liens**

The Proponent has or will have good and valid title to the Project assets (subject to the terms of the Supply Contracts). The Proponent or Proponent GP is the grantee under good and valid registered easements and the lessee under good and valid and registered leases for the use and occupation of the Site pursuant to the Real Property Documents, in each case free and clear of all Liens, encumbrances or other exceptions to title other than Permitted Liens, for the duration of the Term. The Proponent has the exclusive right to use all easements and leases granted under the Real Property Documents for the purpose of the Project and they have been validly created and such Person's interest therein is free and clear of all Liens, encumbrances and other statutory exceptions to title other than Permitted Liens. The only interests in real property necessary for the construction or operation of the Project are those that have been obtained by the Proponent or the Proponent GP pursuant to the Real Property Documents. The Liens established under the Collateral Documents to which the Proponent or Proponent GP is a party constitute: (A) a valid and subsisting first ranking perfected security interest in the personal property of such Person in accordance with the provisions of the relevant Collateral Document, and (B) valid and subsisting first ranking perfected security interest, mortgage and charge on and in all the right, title and interest of such Person in the Site; in each case subject only to Permitted Liens.

### **9.18 Project Documents**

There are no material uncured breaches or defaults by any Proponent Group Member or, to the Proponent's knowledge, any other person under any Project Document.

### **9.19 Construction Budget; Projection**

Proponent has prepared the Project Budget and Financial Model and is responsible for developing the assumptions on which the Project Budget and the Financial Model are based; the Project Budget and Financial Model: (a) will as of the Closing Date be based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (b) as of the Closing Date, will be consistent with the provisions of the Project Documents, and (c) indicate that the estimated Project Costs will not exceed funds available to pay Project Costs. As of the date hereof, there are no material Project Costs that are not included in the Project Budget or the Financial Model. The Proponent has provided to the Independent Engineer all of the material information in its possession or to which it has access relating to the Project and the construction, operation and maintenance thereof and has reviewed the report of the Independent Engineer delivered pursuant to Section 8.1(aa) and such report, based on the Proponent's review (excluding any information with respect to any opinions contained therein), is not materially incorrect.

## **9.20 Construction of Project**

All work done on the Project has been done in a good and workmanlike manner and in accordance with the Material Project Documents, Prudent Industry Practices and all Legal Requirements and in compliance with all recommendations described in the Independent Engineer's Report. The Proponent has made or caused to be made all contracts and has done or caused to be done all things necessary for the development, procurement and construction of the Project so as to achieve Final Completion on or before the Outside Date in all material respects in compliance with the Plans and Specifications, the Material Project Documents and the Project Budget, in each case as appropriate for the Project at its then current state of construction. The Plans and Specifications comply with the requirements of the Material Project Documents and Applicable Law.

## **9.21 Force Majeure**

Except as disclosed to the CIB in writing pursuant to Section 10.4(a)(xxiii), neither the business nor the properties of any Proponent Group Member nor, to the knowledge of the Proponent, any Material Project Party have been materially adversely affected by any event of Force Majeure.

## **9.22 Disclosure**

Neither this Agreement, nor any Financing Document nor any certificate furnished to the CIB by or on behalf of any Proponent Group Member, in connection with the transactions contemplated by this Agreement, the other Project Documents or the design, description, testing or operation of the Project, taking into account documentation furnished to the CIB or to the Independent Engineer (such information to be taken as a whole, including updated or supplemented information), contains any untrue statement of fact or omits to state a fact necessary in order to make the statements contained herein or therein not misleading under the circumstances and at the time at which they were made. There is no fact known to the Proponent which has not been disclosed to the CIB in writing which could reasonably be expected to have a Material Adverse Effect.

## **9.23 Personal Property**

- (a) As of the Closing Date, the security granted to the CIB in the Collateral pursuant to the Financing Documents constitute, as to personal property of the Proponent included in the Collateral and, with respect to subsequently acquired personal property included in the Collateral, will constitute, valid, legally binding and enforceable first priority Liens arising whether by way of mortgage, Lien, encumbrance, assignment or otherwise, except Permitted Liens;
- (b) Proponent has taken all such action necessary to establish and perfect the CIB's rights in and to, and the first priority Lien (subject to Permitted Liens) on, the Collateral of the Proponent, as applicable, including any recording, filing, registration, giving of notice or other similar action. The Collateral Documents relating to the Collateral, as applicable, and the financing statements relating thereto have been duly filed, registered or recorded in each office and in each jurisdiction where required in order to create, perfect and maintain the first Lien and security described above (subject to Permitted Liens).



### **9.24 Intellectual Property**

The Proponent owns or has the right to use all patents, trademarks, service marks, trade names, copyrights, licenses and other rights (collectively, "**Intellectual Property Rights**"), which are necessary for its operation of the Project. The Proponent has not received written or actual notice that (a) any material product, process, method, substance, part or other material presently contemplated to be sold by or employed by the Proponent in connection with its business will infringe in any material manner any Intellectual Property Rights owned by any other Person; (b) there is pending or threatened any claim or litigation against or affecting the Proponent contesting its right to sell or use any such product, process, method, substance, part or other material; or (c) there is, or there is pending or proposed, any patent, invention, device, application or principle or any Applicable Law, standard or code which could reasonably be expected to have a Material Adverse Effect with respect to the Intellectual Property Rights.

### **9.25 Indigenous Matters**

- (a) To the knowledge of the Proponent Group Members, there are no Claims or legal proceedings (i) pending by any Indigenous Group involving any Proponent Group Member or the Project, or (ii) threatened in writing against any Proponent Group Member or the Project by any Indigenous Group.
- (b) The Proponent Group Members are not aware of any opposition by Indigenous Groups to, or threats to oppose, the development, construction or operation of the Project, including anything related to the Crown's duty to consult Indigenous Groups.

### **9.26 Insolvency**

Each of the Proponent Group Members has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any petition for a receiving order in bankruptcy filed against it, has not made a voluntary assignment in bankruptcy, has not taken any proceeding with respect to any compromise or arrangement, has not taken any proceeding to have itself declared bankrupt or wound up, has not taken any proceeding to have a receiver appointed for it or any part of its assets, has not had any encumbrancer take possession of any of its property and has not had an execution or distress become enforceable or become lien on any of its property.

## **ARTICLE 10 POSITIVE COVENANTS**

The Proponent covenants and agrees that so long as this Agreement is in effect or any Obligations remain outstanding, it will, unless the CIB waives compliance in writing:

### **10.1 Payment**

Pay all sums due under this Agreement and the other Financing Documents in accordance with the terms hereof and thereof.

### **10.2 Compliance with Senior Lenders Credit Agreement**

Pay all sums due and perform all obligations under the Senior Lenders Credit Agreement and all the other documents entered into in accordance with the terms thereof.

### 10.3 **Know Your Customer**

Provide such documentation as is required for the CIB to comply with “Know Your Customer” requirements, and maintain and update information as requested by the CIB to satisfy related obligations, as they may change from time to time.

### 10.4 **Notices**

- (a) Promptly, upon acquiring notice or giving notice, as the case may be, or obtaining knowledge thereof, give written notice to the CIB of:
  - (i) any litigation pending or threatened against any Proponent Group Member involving Claims against any such Proponent Group Member or the Project that could reasonably be anticipated to have a Material Adverse Effect, such notice to include copies of all material pleadings filed in such litigation and to be given monthly if any such pleadings have been filed since the last notice given;
  - (ii) any dispute or disputes which may exist between any Proponent Group Member and any Governmental Authority and which could reasonably be anticipated to have a Material Adverse Effect;
  - (iii) the occurrence of any Event of Default together with a statement of an officer of the Proponent or the Proponent GP, as the case may be, setting forth details of such Event of Default and any action which has been or is proposed to be taken with respect thereto;
  - (iv) any damage or loss, whether or not insured, through fire, theft, other hazard or casualty, or any act or omission of the Proponent or any Proponent Group Member or any of its respective officers, directors, employees, agents, contractors, consultants or representatives, or of any other Person if such casualty, damage or loss is likely to have a Material Adverse Effect on any Proponent Group Member or the Project;
  - (v) any cancellation or material change in the terms, coverages or amounts of any insurance described in Exhibit 11;
  - (vi) any matter which has or could reasonably be expected to have, singularly, or in the aggregate, a Material Adverse Effect;
  - (vii) initiation of any condemnation or expropriation proceedings involving the Project or any portion thereof;
  - (viii) all material notices, directives or written communication relating to the Project received by any Proponent Group Member from any Governmental Authority;
  - (ix) any material contractual obligations incurred by any Proponent Group Member, other than any Obligations incurred pursuant to the Operative Documents or any obligations contemplated in the Annual Operating Plan and Budget;
  - (x) any material dispute with respect to any Project Document or any Permit;

- (xi) any termination or event of default under any Project Document that could reasonably be anticipated to have a Material Adverse Effect;
- (xii) any (i) fact, circumstance, condition or occurrence at, on, or arising from, the Site, that results in material violation of any Hazardous Substances Law or any Release of Hazardous Substances on or from the Site by any Person, and (ii) material pending or, to Proponent's knowledge, threatened, Environmental Claim against any Proponent Group Member or to the Proponent's knowledge any Affiliates of a Proponent Group Member, contractors, lessees or any other Persons, arising in connection with their occupying or conducting operations on or at the Project, or the Site;
- (xiii) any Claims or legal proceedings (i) pending by any Indigenous Group involving a proponent Group Member or the Project, or (ii) threatened in writing against any Proponent Group Member or the Project by any Indigenous Group;
- (xiv) without limiting Article 15, promptly, but in no event later than thirty (30) days prior to the occurrence of any change in or transfer of ownership interests in any Proponent Group Member or the Project, notice thereof, which notice shall describe, in reasonable detail, such proposed change or transfer;
- (xv) promptly following the occurrence thereof, a certificate from Proponent, in form and substance satisfactory to the CIB and the Independent Engineer that Final Completion has been achieved;
- (xvi) promptly following the occurrence thereof, a certificate of the Independent Engineer in substantially the form of Exhibit 5 confirming that Final Completion has been achieved, including confirming any Project commissioning tests and Project inspections, and including a report with regard thereto in form and substance reasonably satisfactory to the CIB;
- (xvii) any material damages or penalty assessed pursuant to the PPA or the Interconnection Agreement;
- (xviii) failure to achieve Final Completion by the Outside Date;
- (xix) any notice provided to any Proponent Group Member, or any other related person or entity stating that any portion of any Material Project Document will not be recognized by any counter-party thereto, or the terms thereof will not be upheld in the manner set forth in such Material Project Document;
- (xx) any notice that any counterparty to a Material Project Document, or any subcontractor thereunder, has, or plans to withhold performance under its contract due to an event of force majeure thereunder;
- (xxi) not later than 48 hours after the occurrence of any serious health or safety event, including any fatal injuries, in connection with the construction or operation of the Project, a notice setting out a summary of such event;

- (xxii) the filing of any Lien that is not a Permitted Lien, or receipt by the Proponent of any notice of Lien under the *Builder's Lien Act* (Nova Scotia);
- (xxiii) any event or circumstance constituting Force Majeure together with details of such event including the date upon which such event occurred or commenced; and
- (xxiv) not later than five (5) Business Days prior to the occurrence thereof, (i) each material commissioning test; and (ii) the completion of critical milestones including but not limited to the Commercial Operation Date, and Final Completion; such notices shall also be delivered contemporaneously to the Independent Engineer.

### **10.5 Notices under Material Project Documents**

If the Proponent is provided with (i) a notice that NSPI intends to refuse to take delivery of electricity under the PPA, (ii) a notice of suspension under the Interconnection Agreement, or (iii) a notice of default under any Material Project Document which default would reasonably be expected to result in a Material Adverse Effect (each a "**Default Notice**"), the Proponent shall provide, as soon as reasonably practicable thereafter, a copy of such Default Notice to the CIB with a description of the applicable default or circumstance giving rise thereto and a report indicating the status of such default or circumstance and the steps taken and to be taken (as applicable) to cure such default or circumstance. If such default or circumstance is not cured within ten (10) Business Days after the receipt by the Proponent of the Default Notice, the Proponent will so advise the CIB and thereafter will co-operate and work with the Independent Engineer and the CIB to attempt to cure such default promptly and within the then remaining cure period available to the Proponent, if any, under the applicable Material Project Document.

### **10.6 Financial Statements**

Deliver to the CIB, in form and detail reasonably satisfactory to the CIB:

- (a) as soon as available but no later than sixty (60) days after the close of each of the first three (3) fiscal quarters of its fiscal year, quarterly (and year-to-date) unaudited financial statements of each Proponent Group Member, prepared in accordance with GAAP;
- (b) as soon as available but no later than one hundred twenty (120) days after the close of each fiscal year, annual audited consolidated financial statements of each Proponent Group Member, prepared in accordance with GAAP;
- (c) as soon as available but no later than one hundred twenty (120) days after the close of each fiscal year prior to the Commercial Operation Date, annual audited financial statements of the Construction Contractor for each fiscal year end during the Construction Term;
- (d) as soon as available but no later than sixty (60) days after the close of each of the first three (3) fiscal quarters of its fiscal year prior to the Commercial Operation Date, quarterly unaudited financial statements of the Construction Contractors;

- (e) as soon as available but no later than one hundred twenty (120) days after the close of each fiscal year after the Commercial Operation Date, annual audited financial statements of the O&M Contractor; and
- (f) as soon as available but no later than sixty (60) days after the close of each of the first three (3) fiscal quarters of its fiscal year after the Commercial Operation Date, quarterly unaudited financial statements of the O&M Contractor.

## 10.7 Reports & Information

- (a) Deliver to the CIB contemporaneously with delivery of the annual financial statements under Section 10.6(b), as applicable, a detailed variance analysis from the Annual Operating Plan and Budget.
- (b) During the Contribution Payment Availability Period, deliver to the CIB copies of any material written report received from the Construction Contractors describing the progress of the construction of the Project.
- (c) Deliver to the CIB a construction report on or before the twentieth (20<sup>th</sup>) day of a month for the prior month which report shall include (i) Project Costs incurred in such prior month by major expense category; (ii) an updated Project Budget together with a description of any cost overruns, and detailing variances from the Project Budget (with a narrative explanation of such variances); (iii) an updated Project schedule, including the estimated date of Final Completion; (iv) a calculation demonstrating that Available Construction Funds together with the Equity Letters of Credit will meet or exceed remaining projected Project Costs; (v) a description of any material disputes with contractors, materialmen, suppliers or others and any related claims against the Proponent; (vi) a narrative report describing in reasonable detail the progress of the construction of the Project since the last report hereunder; (vii) health and safety matters; and (viii) impact of the Project on Indigenous Groups.
- (d) Deliver to the CIB a quarterly operating report, in form and substance acceptable to the CIB, acting reasonably, as soon as available but no later than ninety (90) days after the close of each fiscal quarter of its fiscal year which report shall include (i) quarterly and year-to-date numerical and narrative assessment of (A) the Project's compliance with each material category in the Annual Operating Plan and Budget, (B) electrical production and delivery, (C) Project availability and scheduled and unscheduled maintenance, (D) casualty losses of value in excess of [\$200,000], (E) replacement of equipment not contemplated by the then current Annual Operating Plan and Budget of value in excess of [\$200,000] (F) material disputes with contractors, materialmen, suppliers or others and any related claims against the Proponent, (G) cash receipts and disbursements and cash balances; and (ii) a comparison of year-to-date figures to corresponding figures provided in the prior year; (iii) a comparison of year-to-date figures to corresponding figures provided in the Annual Operating Plan and Budget, and any updates to the Annual Operating Plan and Budget.
- (e) Deliver to the CIB an annual report for the Project not later than one hundred twenty (120) days following the end of each calendar year beginning in the first full calendar year after the Commercial Operation Date, in form and substance acceptable to the CIB, acting reasonably (the "**GHG Report**"), which report shall report on the Proponent's GHG inventory for such Project as measured in

accordance *The Greenhouse Gas Protocol* prepared by the World Resource Institute, or such other standards agreed to from time to time between the Proponent and the CIB, and any supporting data.

- (f) Deliver to the CIB an annual report for the Project not later than one hundred twenty (120) days following the end of each calendar year beginning in the first full calendar year after the Commercial Operation Date, in form and substance acceptable to the CIB, acting reasonably, an operating report in respect of the Project, which shall include, *inter alia*: (i) health and safety matters; and (ii) impact of the Project on Indigenous Groups.
- (g) Provide or cause to be provided to the CIB, promptly upon request, any information relating to a Proponent Group Member or the Project that the CIB may reasonably request in connection with the financial condition, business, property and operations of the Proponent Group Members or the Project, or performance of the Proponent Group Members' obligations hereunder.

#### **10.8 Annual Operating Plan and Budget**

Proponent shall adopt an operating plan and a budget, detailed by Quarter, of anticipated revenues, debt service, maintenance, repair and operation expenses (including reasonable allowance for contingencies and prudent cash and other working capital), maintenance reserves and all other anticipated costs for the Project for the period from the Closing Date to the conclusion of the first full fiscal year thereafter ("**Annual Operating Plan and Budget**"). Not less than thirty (30) days in advance of the beginning of each fiscal year thereafter, Proponent shall prepare a draft Annual Operating Plan and Budget for the ensuing fiscal year. Copies of the draft Annual Operating Plan and Budget for each year of operation shall be furnished to the CIB for its review.

#### **10.9 Additional Material Project Documents**

Following approval thereof pursuant to Section 11.8(c), deliver to the CIB promptly, but in any event within thirty (30) days after the receipt thereof by the Proponent, certified copies of (a) all Additional Material Project Documents obtained or entered into by the Proponent after the Closing Date; and (b) any material amendment, supplement or other modification to any Material Project Document received by the Proponent after the Closing Date. With respect to any Material Project Document entered into by the Proponent after the Closing Date, the Proponent shall, if requested by the CIB, cause the counterparty thereto to execute and deliver to the CIB a Consent and Acknowledgement Agreement with respect to such Material Project Document in form and substance satisfactory to the CIB.

#### **10.10 Cooperation**

Perform, upon the reasonable request of the CIB, such reasonable acts as may be necessary or advisable to comply with the terms of this Agreement and the other Financing Documents. Each Proponent Group Member shall cooperate with the Independent Consultants in order to allow the Independent Consultants to carry out the investigations and provide the reports of the Independent Consultants contemplated in the Financing Documents.

#### **10.11 Existence, Conduct of Business, Properties, Etc.**

Except as otherwise expressly permitted under this Agreement, (a) maintain and preserve its existence under the laws of its jurisdiction or formation, (b) maintain and preserve

all material rights, privileges and franchises necessary or desirable in the normal conduct of its business; (c) except as permitted in Section 10.14, perform in all material respects all of its contractual obligations under the Operative Documents and all other agreements and contracts by which it is bound; (d) maintain all material Applicable Permits, with respect to its business and the Project; and (e) engage only in the business contemplated by the Operative Documents.

### **10.12 Additional Applicable Permits**

The Proponent shall diligently obtain each of the Applicable Permits set forth in Part II of Exhibit 6 prior to the time it becomes necessary or desirable for the current stage of construction or operation of the Project. Promptly upon obtaining same, or in any event within thirty (30) days after receipt thereof by the Proponent, it shall deliver a copy of each such Applicable Permit to the CIB, together with an updated Exhibit 6 and copies of any material amendment supplement or other modification to any Applicable Permit.

### **10.13 Indigenous Matters**

- (a) No construction of the Project will occur, and the CIB shall have no obligation to advance any Contribution Payment, until CIB is satisfied that any legal duty to consult with, and where appropriate, to accommodate Indigenous Groups has been met and continues to be met.
- (b) If information becomes available or a change is proposed for, or made to the Project or otherwise, which would trigger consultation, the Proponent will work with the CIB to ensure that the legal duty to consult, and where appropriate, to accommodate Indigenous Groups, is met and continues to be met to the CIB's satisfaction.
- (c) The Proponent will consult with Indigenous Groups that might be affected by the Project, explain the Project to them, including the CIB's role, and will provide a report to the CIB, which will include:
  - (i) a list of all Indigenous Groups contacted;
  - (ii) a summary of all communications to date with the Indigenous Groups, indicating which groups support or object to the Project, and whether their positions are final, preliminary or conditional in nature;
  - (iii) a summary of any issues or concerns that the Indigenous Groups have raised and an indication of how the Proponent has addressed or proposes to address those issues or concerns; and
  - (iv) any other information the CIB may deem appropriate.
- (d) The Proponent shall implement its ordinary course engagement best practices with respect to the Indigenous Groups located in the vicinity of the Project, which may include, but are not limited to: (i) respectful, early, ongoing and upfront coordination and communication; and (ii) providing updates and information on the development, construction and operation of the Project.

- (e) The Proponent shall provide to the CIB, a copy of any Indigenous Benefit Agreement entered into by any Proponent Group Member with any Indigenous Group.

#### **10.14 Obligations**

Pay all obligations, howsoever arising, as and when due and payable except (a) those that may be contested in good faith or as to which a bona fide dispute may exist; provided that with respect to such disputes relating to amounts of more than [\$200,000], provision is made to the satisfaction of the CIB in its reasonable discretion, for the posting of cash collateral for or the bonding of such obligations or the prompt payment thereof in the event that such obligation is payable; and (b) the Proponent's trade payables which shall be paid in the ordinary course of business.

#### **10.15 Books, Records, Access**

Keep or cause to be kept, adequate books, accounts and records with respect to itself and the Project and prepare all financial statements required hereunder in accordance with GAAP, and:

- (a) provide the CIB and the Independent Consultants with reasonable rights of inspection of and access to such books, records, premises and information that any of the foregoing may from time to time reasonably require in connection with the Financing Documents in order to ensure the applicable party is able to carry out all of its duties and obligations thereunder; and
- (b) upon request, provide the CIB with copies of any reports or material information required to be prepared or delivered by or to the Proponent under the Material Project Documents.

#### **10.16 Operation of Project and Compliance with Annual Operating Plan and Budget**

Keep, operate and maintain the Project, or cause the same to be kept, operated and maintained, in good operating condition consistent with all Prudent Industry Practices, Applicable Permits, Legal Requirements, and requirements of the Operative Documents.

#### **10.17 Preservation of Rights; Further Assurances**

- (a) Preserve, protect and defend, in all material respects, the rights of the Proponent under each and every Project Document and Applicable Permit to which it is a party, including, if appropriate, prosecution of suits to enforce any rights thereunder, enforcement of any claims with respect thereto, and enforcement of remedies available under the Project Documents, including enforcement of warranties thereunder.
- (b) From time to time as reasonably requested by the CIB, execute, record, register, deliver and/or file all such notices, statements, instruments and other documents, execute such acknowledgements relating to the Obligations, and take such other steps as may be necessary or advisable to render fully valid and enforceable under all Applicable Laws the rights, Liens and priorities of the CIB with respect to all Collateral and other security from time to time furnished under this Agreement and the other Financing Documents or intended to be so furnished, in each case in such form and at such times as shall be reasonably satisfactory to



the CIB, and pay all reasonable fees and expenses (including attorneys' fees) incident to compliance with this Section 10.17(b).

- (c) If the Proponent shall at any time acquire any freehold or leasehold interest in any real property, easement, license or other interest in real property not covered by the Real Property Security Documents, promptly upon such acquisition, notify the CIB in writing and thereafter execute, deliver and record, register or cause such actions to be taken, if required, reasonably satisfactory in form and substance to the CIB, subjecting such freehold or leasehold interest in real property or lease, easement or other interests to the Lien and security created by the Financing Documents.

#### **10.18 Taxes, etc.**

Pay, or cause to be paid, as and when due and prior to delinquency, all taxes, assessments and governmental charges of any kind that may at any time be lawfully assessed or levied against or with respect to the Proponent or the Project, all utility and other charges incurred in the construction, operation, maintenance, use, occupancy and upkeep of the Project, and all assessments and charges lawfully made by any Governmental Authority for public improvements that may be secured by a Lien on the Project; however, the Proponent may contest in good faith any such taxes, assessments and other charges and, in such event, may permit the taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when the Proponent is in good faith contesting the same, so long as, with respect to any dispute in an amount greater than [\$200,000], (a) reserves reasonably satisfactory to the CIB have been established in an amount sufficient to pay any such taxes, assessments or other charges, accrued interest thereon and potential penalties or other costs relating thereto, or other adequate provision for the payment thereof shall have been made; (b) enforcement of the contested tax, assessment or other charge is effectively stayed for the entire duration of such contest; and (c) any Tax, assessment or other charge determined to be due, together with any interest or penalties thereon, is paid when due after resolution.

#### **10.19 Compliance with Laws**

At its expense, within such time as may be required by Legal Requirements (a) comply, or cause compliance with all Legal Requirements; and (b) procure, maintain and comply with, or cause to be procured, maintained and complied with, in all material respects, all Applicable Permits required for the Project or any part thereof, then being made or contemplated by the Operative Documents (including maintaining certification of the Project pursuant to the *Renewable Electricity Regulations* (Nova Scotia)) except that the Proponent may, at its expense, contest by appropriate proceedings conducted in good faith the validity or application of any such Legal Requirements, provided that (i) neither the CIB nor the Proponent would be subject to any civil, statutory, penal or criminal liability for failure to comply therewith, (which in the case of the Proponent only would be sufficient to cause an Event of Default hereunder), and (ii) all proceedings to enforce such Legal Requirements against the CIB, the Proponent or the Project or any part of any of them, shall have been duly and effectively stayed during the entire pendency of such contest.

#### **10.20 Environmental Reporting**

Notify the CIB of any material occurrences where the Proponent receives any notice alleging material liability pursuant to Hazardous Substances Laws in respect of the Project or undertakes any material activities as a result of changes or proposed changes to any existing Hazardous Substances Laws.

**10.21 Construction of Project**

Ensure that all work done on the Project is done in a good and workmanlike manner and in accordance with the Material Project Documents and Prudent Industry Practices. Make or cause to be made all contracts and do or cause to be done all things necessary to achieve Final Completion, and cause the Project to be constructed, improved, equipped and to achieve Commercial Operation and Final Completion in all material respects in compliance with the Plans and Specifications, the Material Project Documents, the Project Budget and all recommendations set forth in the Independent Engineer's Report.

**10.22 Equity Contributions & Equity Letters of Credit**

Ensure that Equity Contributions are made at such times and on such frequency to provide for sufficient funds available to the Proponent to fund the Costs to Complete, and ensure that Equity Letters of Credit are maintained at all times prior to the Commercial Operation Date in an amount equal to the difference between the Costs to Complete and the Available Construction funds.

**10.23 Final Completion and Commercial Operation**

Cause Final Completion and Commercial Operation to occur no later than the Outside Date.

**10.24 Maintenance of Insurance**

The Proponent shall maintain in effect at all times the types of insurance set forth in Exhibit 11. Within thirty (30) days prior to the insurance renewal date each year, Proponent shall provide to the CIB a certificate signed by a duly authorized insurer or authorized insurance representative showing the insurance then maintained by or on behalf of the Proponent and stating that such insurance complies with the terms hereof, together with evidence of payment of all premiums; in the event insurance required by this Agreement shall be reduced or ceased to be maintained, then (without limiting the rights of the CIB hereunder in respect of the Event of Default which arises as a result of such failure), the CIB may, at its option, maintain the insurance required hereby and the Proponent shall reimburse the CIB upon demand for the cost thereof together with interest at the Default Rate.

**10.25 Warranty of Title**

The Proponent shall (a) maintain and defend all of its right, title, interest, claim, benefit, entitlement and privilege in the Site pursuant to the Real Property Documents, in each case free and clear of all Liens, encumbrances or other exceptions to title other than Permitted Liens, and (b) maintain and defend a good and valid title to all of its other respective properties and assets tangible and intangible, present and future, wherever situated (other than properties and assets disposed of in the ordinary course of business), subject to Permitted Liens.

**10.26 Event of Expropriation**

If an Event of Expropriation shall be threatened or occur with respect to any Collateral, the Proponent (a) shall, promptly upon discovery or receipt of notice of any such threat or occurrence, provide written notice thereof to the CIB; (b) shall diligently pursue all its rights to compensation against the relevant Governmental Authority in respect of such Event of Expropriation; (c) shall not, without the prior written consent of the CIB, which consent shall not

be unreasonably withheld, compromise or settle any claim against such Governmental Authority; and (d) shall pay or apply Expropriation Proceeds in accordance with Section 14.2.

### **10.27 Indemnification**

- (a) Without duplication of any of the Proponent's other indemnification obligations hereunder, the Proponent shall indemnify, defend and hold harmless the CIB and its respective officers, directors, shareholders, employees, agents and servants (collectively, the "**Indemnitees**") from and against and reimburse the Indemnitees for:
- (i) Claims demanded, asserted or claimed against any such Indemnitee arising out of or in connection with this Agreement, the other Operative Documents, or the Project;
  - (ii) any and all Environmental Claims arising in connection with (A) the Release or presence of any Hazardous Substances at, in, on, under, from or about the Site; and (B) the Release or presence of any Hazardous Substances at, in, on, under, from or about the Site caused or permitted by the Proponent; whether foreseeable or unforeseeable, including all reasonable costs of removal and disposal of such Hazardous Substances required by Hazardous Substances Law, all costs required by Governmental Authorities or under any Legal Requirement to be incurred in (x) determining whether the Project is in compliance and (y) causing the Project to be in compliance, with all applicable Legal Requirements, and (z) carrying out any remediation or rehabilitation measure, including investigation and monitoring studies, all reasonable costs associated with Claims for damages to persons, property or the environment, and reasonable attorneys', consultants' and other experts' fees and court costs; and
  - (iii) any and all Claims in any way relating to, or arising out of or in connection with any Claims, suits, liabilities, obligations, penalties and actions against the Proponent or any of its Affiliates.
- (b) The foregoing indemnities shall not apply with respect to an Indemnitee, to the extent a Claim arises solely as a result of the gross negligence or wilful misconduct of such Indemnitee, but shall continue to apply to other Indemnitees.
- (c) The provisions of this Section 10.27 shall survive foreclosure of the Collateral Documents or any of them and satisfaction or discharge of the Proponent's obligations hereunder, and shall be in addition to any other rights and remedies of the CIB.
- (d) In case any Claim shall be brought against any Indemnitee, such Indemnitee shall promptly notify the Proponent of the commencement thereof, and the Proponent shall be entitled, at its expense, acting through counsel acceptable to such Indemnitee, acting reasonably, to participate in, and, to the extent that the Proponent desires, to assume and control the defense thereof. Such Indemnitee shall be entitled, at its expense, to participate in any Claim the defense of which has been assumed by the Proponent. Notwithstanding the foregoing, the Proponent shall not be entitled to assume and control the defense of any such Claim if and to the extent that, in the reasonable opinion of such Indemnitee and

its counsel, such Claim involves the potential imposition of criminal liability upon such Indemnitee or a potential or actual conflict of interest between such Indemnitee and the Proponent, and in such event (other than with respect to disputes between such Indemnitee and another Indemnitee) the Proponent shall pay the reasonable expenses of such Indemnitee in such defense; provided that the Proponent shall not be required to pay any such expenses of more than one counsel, and provided further that the Proponent shall be entitled, at its expense, to participate in any Claim the defense of which has been assumed by such Indemnitee.

- (e) The Proponent shall report to such Indemnitee on the status of such Claim as developments shall occur and at least within thirty (30) days of the previous report. The Proponent shall, unless prohibited by law or court order, deliver to such Indemnitee a copy of each document filed or served on any party in such Claim, and each material document which the Proponent possesses relating to such Claim.
- (f) Notwithstanding the Proponent's rights hereunder to control certain Claims, unless the Proponent has provided Indemnitee such security as is adequate, in such Indemnitee's reasonable judgment, to cover any potential unfavourable determination of any such Claim, any Indemnitee against whom any Claim is made shall be entitled to compromise or settle any such Claim if such Indemnitee determines in its reasonable discretion that failure to compromise or settle such Claim could be reasonably expected to have a material adverse effect on such Indemnitee, the Project or such indemnitee's interest in the Project. Any such compromise or settlement shall be binding upon the Proponent for purposes of this Section 10.27.
- (g) Upon payment of any Claim by the Proponent pursuant to this Section 10.27, the Proponent, without any further action, shall be subrogated to any and all Claims that such Indemnitee may have relating thereto, and such Indemnitee shall cooperate with the Proponent and give such further assurances as are necessary or advisable to enable the Proponent vigorously to pursue such Claims.
- (h) Any amounts payable by the Proponent pursuant to this Section 10.27 shall be payable within thirty (30) days after the Proponent receives an invoice for such amounts from any applicable Indemnitee and, if not paid within such thirty (30) day period, shall bear interest at the Default Rate.

#### **10.28 Monitoring**

The Proponent shall install, operate and maintain at the Project, check meters, SCADA systems or other monitoring equipment, consistent with Prudent Industry Practices, in order to monitor and verify the meter readings and statements provided pursuant to the PPA, and provide to CIB, upon request, all testing, calibration and other reports and documentation in respect thereof.

### **ARTICLE 11 NEGATIVE COVENANTS**

The Proponent covenants and agrees that so long as this Agreement is in effect and any Obligations remain outstanding, it will not, without the prior written consent of the CIB:

### **11.1 Limitations on Liens**

Create, assume or suffer to exist any Lien, securing a charge or obligation on the Project or on any of the Collateral in which the Proponent has legal or beneficial interest, real or personal, whether now owned or hereafter acquired, except Permitted Liens.

### **11.2 Indebtedness**

Incur, create, assume or permit to exist any Debt except: (a) the Obligations, (b) trade or other similar indebtedness incurred in the ordinary course of business under the Project Documents in accordance with the applicable Annual Operating Plan and Budget and not more than ninety (90) days past due (unless being contested in good faith and with appropriate proceedings with an adequate reserve therefor in accordance with GAAP having been placed on Proponent's books), (c) Taxes and trade payables, (d) contingent liabilities incurred in accordance with the terms of any Permit or Project Document, (e) Debt in respect of Purchase Money Security Interests and financing leases provided that the aggregate outstanding amount of Debt in respect thereof does not exceed [\$250,000] at any time, (f) Inter-Company Debt, and (g) Debt incurred under the Senior Lenders Credit Agreement.

### **11.3 Disposition of Assets**

Sell, lease, assign, transfer or otherwise dispose of assets, whether now owned or hereafter acquired (a) except in the ordinary course of its business and at fair market value; (b) except for obsolete, worn out or replaced property not used or useful in its business; and (c) except as otherwise permitted under the Financing Documents. Subject to any other restrictions set forth in this Agreement or the other Financing Documents, this Section 11.3 will not apply to prevent the Proponent from using its cash to pay its obligations in the ordinary course of business.

### **11.4 Changes to Business**

Change the nature of its business or expand its business beyond the business contemplated in the Operative Documents. Without limiting the generality of the foregoing, the Proponent shall not carry on, directly or indirectly, any business or engage in any activity or otherwise purchase or acquire any business other than in respect to the Project.

### **11.5 Transactions with Affiliates**

Other than as contemplated in the Material Project Documents and the Additional Material Project Documents, directly or indirectly, enter into any transaction or series of transactions with or for the benefit of an Affiliate without the prior written consent of the CIB, unless such transactions contain terms no less favourable to the Proponent than those that would be included in an arm's length transaction entered into by a prudent Person with a non-affiliated third party. The Proponent shall provide to the CIB a certified copy of any agreements relating to any such transaction or series of transactions as soon as possible following the execution and delivery thereof.

### **11.6 Dissolution**

Liquidate or dissolve, or sell or lease or otherwise transfer or dispose of all or any substantial part of its property, assets or business, or combine, amalgamate, merge or consolidate with or into any other entity.

### **11.7 Insolvency Proceedings**

Make or commence any assignment in bankruptcy or any other assignment for the benefit of creditors; make any proposal under any Bankruptcy Law; file a petition or proposal to take advantage of any act of insolvency; consent to or acquiesce in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets; or file a petition or otherwise commence any proceeding seeking any reorganization, arrangement, composition or readjustment under any Bankruptcy Law or other similar law affecting creditors' rights or consent to, or acquiesce in, the filing of such a petition.

### **11.8 Amendments, Change Orders**

- (a) Subject to Section 11.8(b) cause, consent to, or permit, any termination, amendment, modification, variance or waiver of timely compliance with any terms or conditions of any Material Project Document or any Applicable Permit to which the Proponent is a party, other than (i) any amendments or modifications to cure any defective provisions contained therein or to permit other minor deviations from the terms thereof, (ii) those amendments, modifications or waivers that are in the best interest of the Project and are not materially inconsistent with the prevailing Annual Operating Plan and Budget, so long as a copy of any such amendment, modification or waiver is delivered to the CIB not less than ten (10) Business Days prior to the execution thereof, and (iii) change orders which are not prohibited under Section 11.8(b).
- (b) Unless compliance herewith is waived in writing by the CIB, direct or consent to any change order under any Material Project Document if such change order:
  - (i) will by itself, or together with all previous change orders, exceed the contingency amount set forth in the Project Budget;
  - (ii) will delay the Final Completion beyond the Outside Date;
  - (iii) could reasonably be expected to permit or result in any material adverse modification of, or materially impair the enforceability of any warranty under the Material Project Documents;
  - (iv) is not permitted by any other Material Project Document, or could reasonably be expected to materially diminish any obligation of any Major Project Participant;
  - (v) could reasonably be expected to present a significant risk of the revocation or material adverse modification of any Applicable Permit; or
  - (vi) could reasonably be expected to cause the Project not to comply or lessen the Project's ability to comply with Legal Requirements, in any material respect.
- (c) Enter into any Additional Material Project Document without the prior written consent of the CIB, which shall not be unreasonably withheld, delayed or conditioned. Without limiting the generality of the foregoing, the CIB shall be entitled to confirm the relevant experience and expertise of any replacement counterparty for an existing Material Project Document (other than the Material

Project Documents entered into prior to or concurrent with Financial Close), as applicable, in determining whether or not to provide its consent hereunder.

### **11.9 Additional Power Purchase Agreement**

Enter into any new or additional power purchase agreement or other agreement in respect of the sale or other disposition of energy, capacity, or any other output or product generated by the Project (including, for greater certainty, any renewable energy credits, GHG credits, or other environmental credits or attributes of any kind whatsoever) without the prior written consent of the CIB, which consent shall not be unreasonably withheld. For greater certainty, it shall not be unreasonable for the CIB to withhold its consent unless the Proponent and the counterparty to any such new power purchase agreement or other agreement enter into a consent, acknowledgement and irrevocable direction to pay among the Proponent, the CIB, and such counterparty on substantially the same terms and conditions as set out in the NSPI Consent & Direction.

### **11.10 Compliance with Operative Documents**

Do or permit to be done any act under or in respect of the Operative Documents, or omit to do any act under the Operative Documents where such act done or permitted to be done, or such omission would have a Material Adverse Effect.

### **11.11 Name and Location; Fiscal Year**

Change its name or the location of its chief executive office and principal place of business (as such terms are used in the PPSA from time to time) without written notice to the CIB at least thirty (30) days prior to such change and providing immediately thereafter evidence of compliance with Section 10.17, or change its fiscal year without the prior written consent of the CIB, such consent shall not be unreasonably withheld, delayed or conditioned.

### **11.12 Use of Site**

Use or permit to be used, its rights in respect of the Site for any purpose other than for the construction, operation and maintenance of the Project as contemplated by the Operative Documents, or as contemplated by the Real Property Documents, without the prior written consent of the CIB, or locate any portion of the Project on a site other than the Site or as otherwise provided under the Project Documents.

### **11.13 Assignment**

Assign its rights hereunder or under any of the Project Documents to which it is a party to any Person without the prior written consent of the CIB, which consent shall not be unreasonably withheld or delayed.

### **11.14 Abandonment of Project**

Wilfully and voluntarily abandon construction or operation of the Project for a continuous period of more than ten (10) days, except in the case of Force Majeure where such period shall be extended until it causes the occurrence of a default under any Material Project Document provided that shutdown or cessation of operation in the ordinary course of business or as a result of a casualty or for maintenance or repair shall not constitute abandonment.

**11.15 Restricted Persons**

Become a Restricted Person or issue any equity or other ownership interest in itself to any Restricted Person.

**11.16 Hazardous Substances**

Release any Hazardous Substances in material violation of any Hazardous Substances Laws, Legal Requirements or Applicable Permits.

**ARTICLE 12**  
**PROPONENT GP'S OBLIGATIONS**

**12.1 Proponent GP's Covenant**

Proponent GP hereby covenants and agrees with the CIB that the covenants, representations, warranties, agreements and obligations of Proponent herein are and shall be deemed to be the joint and several covenants, representations, warranties, agreements and obligations of Proponent GP and the Proponent, including the payment of or performance of all of the Obligations. The Proponent GP shall be held liable as a co-obligor for all covenants, representations, warranties, agreements and obligations of Proponent contained herein.

**12.2 Additional Representations and Warranties of Proponent GP**

In addition to the representations and warranties deemed to be made by Proponent GP pursuant to Section 12.1, Proponent GP (acting in its personal capacity and not as general partner of Proponent) makes the following representations and warranties to and in favour of the CIB as of the date hereof and, except as otherwise provided herein, as of such date as such representations and warranties are required to be made pursuant to Section 8.1(i)(iv) and Section 8.2(c)(iv). All of these representations and warranties shall survive the Closing Date and the making of the Contribution:

- (a) The Proponent GP has duly authorized, executed and delivered each Operative Document to which it is a party as general partner of the Proponent, and neither its execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof or performance of its obligation thereunder (a) does or will contravene (i) the Proponent Partnership Agreement or any other Material Project Document or any Applicable Permit to which it is a party or (ii) any other material Legal Requirement applicable to or binding on it or any of its properties, (b) does or will contravene or result in any material breach of or constitute any material default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected or (c) does or will require the consent or approval of any Person which has not already been obtained.
- (b) All documents, instruments, certificates, agreements, contracts, notices, correspondence or the like executed by Proponent GP as general partner of Proponent have been validly executed on behalf of Proponent.
- (c) Proponent GP has not conducted any business other than the business of being the general partner of the Proponent, it has no assets (other than owning the



general partner interest in Proponent and legal title to property held for the benefit of the Proponent), it has no outstanding Debt or other material liabilities and is not a party to or bound by any material contract other than the Operative Documents to which it is a party.

### **12.3 Authority of Proponent GP**

The CIB shall be entitled to rely on any certificate, notice or other document, or other advice, statement, direction or instruction provided to it by Proponent GP and shall be entitled to deal with Proponent GP with respect to matters under this Agreement and the other Financing Documents without any obligation whatsoever to satisfy itself as to the authority of the Proponent GP to act on behalf of the Proponent and without any liability whatsoever to the other partners of Proponent for so doing, notwithstanding any lack of authority by the Proponent GP to provide same.

### **12.4 Additional General Partners**

Other than the Proponent GP, the Proponent will not create or suffer to exist any Person becoming a general partner of the Proponent without the consent of the CIB. Such consent, if granted, shall be subject to such conditions that the CIB deem necessary and appropriate in its discretion.

## **ARTICLE 13 INTEGRITY & LOBBYING**

### **13.1 Integrity**

- (a) No Proponent Group Member shall pay, offer, promise to pay, or authorize the payment of, directly or indirectly through any other person or firm, partnership, company or other entity, any money, financial instruments or anything of material value to any Person or other entity employed by or acting for or on behalf of any Material Project Party, whether private or governmental, or any government official or employee or any political party or candidate for political office, for the purpose of illegally inducing or rewarding any action by a potential employer, contractor or official favorable to any Proponent Group Member or any party to a Material Project Document.
- (b) The Proponent Group Members shall, in the promotion of activities under this Agreement and the Project, maintain ethical standards of business conduct, and shall not engage in corrupt practices and will comply at all times with all Anti-Corruption Laws.
- (c) The Proponent Group Members shall: (i) avoid any actual or potential conflict of interest in the performance of their obligations under the Financing Documents and the Material Project Documents; (ii) disclose to the CIB without delay any actual or potential conflict of interest that arises during the performance of their obligations under the Financing Documents and Material Project Documents; and (iii) comply with any reasonable requirements prescribed by the CIB to resolve any actual or potential conflict of interest. For greater certainty, and without limiting the generality of the foregoing, a conflict of interest includes a situation where anyone associated with a Proponent Group Member owns or has an interest in an organization that is carrying out work related to the Project, except

as contemplated in the Material Project Documents or the Additional Material Project Documents.

- (d) The Proponent Group Members shall ensure that any equity holder in any of the Proponent Group Members, any contractor or subcontractor undertaking any part of the Project and any such contractor's or subcontractor's Affiliates, directors, officers, employees and agents are not persons whose standing or activities (i) are inconsistent with the CIB's role and mandate; (ii) may compromise the reputation or integrity of the CIB or the Federal Government of Canada; or (iii) are inconsistent with the nature of the Project, so as to negatively affect public perception of the Project or have committed a Prohibited Act.
- (e) In the event that a Proponent Group Member breaches any of the provisions in paragraphs (b), (c) or (d) of this Section 13.1, such Proponent Group Member shall, within five (5) Business Days of such breach, put forward a reasonable plan and schedule for diligently remedying such breach, which plan and schedule shall specify in reasonable detail the manner in, and the latest date by, which such breach is proposed to be remedied (which may include terminating the applicable contractor or subcontractor or other person who caused the breach), which date shall not be later than thirty (30) days following the applicable breach, or if the applicable breach is not capable of being remedied in thirty (30) days then such longer period as is acceptable to the CIB, acting reasonably. Thereafter, such Proponent Group Member shall achieve all elements of such plan and schedule in accordance with their terms.

### **13.2 Lobbying & Private Benefits**

Each Proponent Group Members represents and warrants that:

- (a) it has not paid, nor agreed to pay, nor will it pay or agree to pay, to any Person, either directly or indirectly, a commission, fee or other consideration that is contingent upon the execution of this Agreement, or upon the Person arranging a meeting with a Public Office Holder;
- (b) it, and any Persons who are or have been engaged by it to communicate or arrange meetings with Public Office Holders, regarding the Project or this Agreement, are in full compliance with all requirements of the *Lobbying Act*, R.S.C., 1985, c. 44 (4th Supp.);
- (c) any persons who may be engaged by it to communicate or arrange meetings with Public Office Holders, regarding the Project or this Agreement, will at all times be in full compliance with the requirements of the *Lobbying Act*; and
- (d) it shall not knowingly consent to or permit any member of the Senate or of the House of Commons of Canada to derive any direct benefit from this Agreement or any other Material Project Document and shall also ensure that no other Person derives any direct benefit from this Agreement or any Project Document who, as a result thereof, would not be in compliance with the provisions of Applicable Law, including the *Conflict of Interest Act*, S.C. 2006, c. 9, s. 2.

## **ARTICLE 14 INSURANCE PROCEEDS**

### **14.1 Application of Insurance Proceeds**

- (a) The Proponent shall notify the CIB of any material casualty and keep the CIB timely apprised of insurance claim proceedings. All amounts and proceeds of any insurance policy covering physical loss or damage to Project property required to be maintained by the Proponent ("**Insurance Proceeds**") shall be applied as provided in this Section 14.1. In the event Insurance Proceeds are not to be paid to the Proponent as provided herein, such Insurance Proceeds shall be paid by the insurers directly to the CIB (as loss payee as provided in Section 6.2), and if paid to the Proponent, such Insurance Proceeds shall be received only in trust for the CIB, shall be segregated from other funds of the Proponent, and shall be forthwith paid over to the CIB in the same form as received (with any necessary or requested endorsement), in all cases, subject to the terms of the Intercreditor Agreement. To the fullest extent that it effectively may do so under Applicable Law, the CIB shall apply all such Insurance Proceeds received in accordance with the provisions of this Section 14.1.
- (b) Any business interruption Insurance Proceeds shall be deemed to be Project Revenue. Any other Insurance Proceeds received by the CIB or the Proponent in respect of the Project shall be deemed not to be Project Revenues, except to the extent that such Insurance Proceeds are in respect of a casualty loss suffered by the Project that is not to be rebuilt or restored, in which case, such Insurance Proceeds shall be deemed to be Project Revenues.

### **14.2 Application of Expropriation Proceeds**

All amounts, proceeds and property of every kind received in respect of any Event of Expropriation ("**Expropriation Proceeds**") shall be subject to the same treatment as Insurance Proceeds as provided in Section 14.1, provided, however, that if no or insufficient replacement property is available to restore the operation of all or a portion of the Project so expropriated, then such Expropriation Proceeds shall be deemed to be Project Revenues.

## **ARTICLE 15 CHANGE OF CONTROL; ASSIGNMENT**

### **15.1 Prohibition on Transfer or Change of Control**

No Proponent Group Member shall cause, make, suffer, permit or consent to any Transfer or Change of Control, other than a Transfer or Change of Control to an Acceptable Counterparty, without the prior written consent of the CIB. Notwithstanding the foregoing sentence, no Transfer or Change of Control of a Proponent Group Member shall occur prior to the Commercial Operation Date.

### **15.2 Indigenous Ownership**

No Proponent Group Member shall, prior to the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date, cause, make, suffer, permit or consent to any Change of Control of a Proponent Limited Partner that is controlled by an Indigenous Group if such Change of Control would result in such Proponent Limited Partner no longer being controlled by an Indigenous Group, without the prior written consent of the CIB.

### **15.3 Assignment by Proponent Group Member**

No Proponent Group Member shall assign or otherwise transfer any of its rights under or interest in any of the Financing Documents without the prior written consent of the CIB.

### **15.4 Assignment by the CIB**

The CIB shall not be entitled to assign, directly or indirectly, any of its rights or obligations under this Agreement and the other Financing Documents other than (i) to the Government of Canada, (ii) as may be required to comply with Applicable Law, (iii) to any minister of the Government of Canada, (iv) to an agency of the Government of Canada having the legal capacity, power, authority and ability to become a party to and to perform the obligations of the CIB under this Agreement and the other Financing Documents, provided that such person confirms in writing to the Proponent that it will perform all of the CIB's obligations under this Agreement and the other Financing Documents in respect of the period from and after the assignment and (v), after disbursement in full of the Contribution by the CIB, to a securitization vehicle formed by the CIB or (vi) in circumstances other than those described in paragraphs (i) to (v) above, with the prior written consent of the Proponent, such consent not to be unreasonably withheld, delayed or conditioned and it being understood that no such consent of the Proponent shall be required where an Event of Default has occurred and is continuing.

## **ARTICLE 16 EVENTS OF DEFAULT; REMEDIES**

### **16.1 Events of Default**

The occurrence of any of the following events shall constitute an event of default (individually, an "**Event of Default**", and collectively, "**Events of Default**") hereunder:

- (a) Proponent shall fail to pay, in accordance with the terms of this Agreement, (a) any Royalty payment within two (2) Business Days of the date that such sum is due; or (b) any other fee, cost, charge or other sum, due under this Agreement or any other Financing Document within thirty (30) days after written notification that such sum is due.
- (b) Any Proponent Group Member shall fail to perform or observe any covenant to be performed or observed by it hereunder or under any Financing Document to which it is a party and not otherwise specifically provided for elsewhere in this Article 16, and such failure shall continue unremedied for a period of thirty (30) days after such Person becomes aware thereof or receives written notice thereof from the CIB; provided that if, in the reasonable judgement of the CIB, such Person is working diligently and in good faith to remedy such failure to perform or observe such covenant to the reasonable satisfaction of the CIB, such thirty (30) day period may be extended for a further thirty (30) day period.
- (c) Any financial statement (other than a budget projection or financial projection which was prepared in good faith), representation, warranty or certificate made or prepared by, under the control of or on behalf of the Proponent and furnished to the CIB pursuant to this Agreement or any other Financing Document shall contain an untrue or misleading statement of a material fact as of the date made.
- (d) If a Proponent Group Member is in default of any of its material obligations under the Senior Lenders Credit Agreement, or if the Senior Lender enforces, or gives

notice that it intends to enforce, any of its security or other rights under the Senior Lenders Credit Agreement.

- (e) If in respect of any Proponent Group Member the following shall occur:
  - (i) a decree or order of a court of competent jurisdiction is entered adjudging such Proponent Group Member a bankrupt or insolvent or approving as properly filed a petition seeking the winding-up of a Proponent Group Member under any Bankruptcy Law or issuing sequestration or process of execution against any substantial part of the assets of a Proponent Group Member or ordering the winding up or liquidation of its affairs; or
  - (ii) any Proponent Group Member becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under any Bankruptcy Law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any Bankruptcy Law or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition.
- (f) A Proponent Group Member shall default for a period beyond any applicable grace period (i) in the payment of any principal, interest or other amount due under any agreement (other than the Financing Documents) involving the borrowing of money or the advance of credit and the outstanding amount or amounts payable under all such agreements equals or exceeds [\$200,000] in the aggregate, or (ii) in the payment of any amount or performance of any obligation due under any guarantee or other agreement (other than the Financing Documents) if, in either case, the indebtedness evidenced thereby equals or exceeds [\$200,000]; provided that a default of a Proponent Group Member under any Inter-Company Debt meeting the conditions set forth in clause (i) or (ii) above shall not be considered as an Event of Default hereunder if the lender of such Inter-Company Debt is in compliance with its obligations under its Inter-Company Subordination Agreement.
- (g) Any Proponent Group Member breaches or defaults on any material term of any Material Project Document to which it is a party and such breach is not remedied or fully mitigated within the Cure Period; provided that, for the purposes of the foregoing, any cure by the CIB or the Senior Lenders (or their agent) on such Person's behalf with respect to a breach or default by such Person under a Material Project Document shall not be considered a remedy under this Agreement for any such breach or default of such Material Project Document.
- (h) The Proponent breaches or defaults on any material term of the PPA or the Interconnection Agreement and such breach is not remedied within the Cure Period.
- (i) Any Equity Contribution required to be made in order to provide for sufficient funds available to the Proponent to fund the Costs to Complete is not made, or

Equity Letters of Credit are not maintained at all times prior to the Commercial Operation Date in an amount equal to the difference between the Costs to Complete and the Available Construction funds.

- (j) If, other than as a result of the bankruptcy or insolvency of a Proponent Group Member which is specifically provided for in Section 16.1(e)
  - (i) the PPA or the Interconnection Agreement shall cease for any reason to be in full force and effect, or
  - (ii) any other Material Project Document shall cease for any reason to be in full force and effect, and in each such case, the applicable Proponent Group Member, shall, within thirty (30) days after such Material Project Document referred to in this Section 16.1(j)(ii) ceasing to be in effect, fails to replace such Material Project Document with an Additional Material Project Document containing substantially the same terms as such other Material Project Document and acceptable to the CIB in its reasonable discretion; provided that if, in the reasonable judgment of the CIB, such Proponent Group Member, as applicable, is working diligently and in good faith to replace such Material Project Document during such thirty (30) day period and no Material Adverse Effect shall have occurred during such period, such thirty (30) day period may be extended for a further thirty (30) day period.
- (k) A final non-appealable judgment shall be entered against any Proponent Group Member or the Project in the aggregate amount of [\$250,000] or more (net of any insurance proceeds such Proponent Group Member reasonably expects to receive and can so demonstrate to the reasonable satisfaction of the CIB) other than (i) a judgment which is covered by insurance or satisfied in full or discharged within thirty (30) days after its entry, or (ii) a judgment, the execution of which is effectively stayed within thirty (30) days after its entry (but only for thirty (30) days after the date on which such stay is terminated or expires) or (iii) a judgment which could not reasonably be expected to have a Material Adverse Effect on the Project or the financial viability of the Project or the Proponent Group Member's ability to meet the Obligations as and when they come due.
- (l) Any of the Collateral Documents, once executed and delivered, shall, except as the result solely of the acts or omissions of the CIB, in any material respect fail to provide the CIB the Liens, security interest, rights, titles, interest, remedies, powers or privileges intended to be created thereby or cease to be in full force and effect, or the validity thereof shall be disaffirmed by or on behalf of Proponent or any other party thereto.
- (m) Any Applicable Permit of a material nature that is then necessary for the construction or operation of the Project shall be refused to be issued, materially adversely modified, suspended, revoked or cancelled by the issuing agency or any other Governmental Authority having jurisdiction, provided, however, that the foregoing shall not result in an Event of Default under this Section 16.1(m) if the Proponent diligently pursues, or causes such diligent pursuit, and obtains such Applicable Permit or a replacement of such Applicable Permit within forty-five (45) days after its refusal, modification, suspension, revocation or cancellation; provided that if, in the reasonable judgment of the CIB, the Proponent is working

diligently, or causing such diligent work, in good faith to obtain or replace such Applicable Permit during such forty-five (45) day period and no Material Adverse Effect shall have occurred during such period, such forty-five (45) day period may be extended for a further forty-five (45) day period.

- (n) If at any time, any Transfer or Change of Control in respect of a Proponent Group Member occurs other than in compliance with Article 15; or if the Proponent GP ceases to be a special purpose entity carrying on business as sole general partner of the Proponent or carries on any other business.
- (o) If at any time, the Proponent breaches Section 13.1, and fails to put forward a plan and schedule, or to achieve all elements of such plan and schedule in accordance with Section 13.1.
- (p) Any substantial portion of any Proponent Group Member's property is seized or any material portion of the Project is seized, or appropriated without fair value being paid therefor such as to allow replacement of such property and/or to allow such Proponent Group Member, in the reasonable judgment of the CIB, to continue satisfying its obligations hereunder and under the other Operative Documents.
- (q) A Proponent Group Member denies, to any material extent, its obligations under any Financing Document or claims any of the Financing Documents to be invalid or withdrawn in whole or in part.
- (r) If any Proponent Group Member ceases or threatens to cease to carry on business generally, abandons the Project, or admits its inability to pay or fails to pay its debts generally.
- (s) If all or any material part of the property of any Proponent Group Member or the Project becomes subject to any writ of execution or distress warrant, or any sheriff or other Governmental Authority becomes lawfully entitled to otherwise seize, garnish or exercise any right of seizure upon all or any material part of the property of such Proponent Group Member and such seizure, enforcement, execution, attachment, garnishment, distraint or other seizure right continues in effect and is not released, discharged or stayed within sixty (60) days after such Proponent Group Member becomes aware thereof or receives written notice thereof from the CIB and during such time such event has not had, does not have and could not be expected to have a Material Adverse Effect.
- (t) If the Final Completion Date has not occurred on or prior to the Outside Date.
- (u) The occurrence of a Material Adverse Effect.
- (v) If the Commercial Operation Date has not occurred in accordance with the terms of the PPA unless otherwise extended by NSPI in accordance with the terms of the PPA.

## **16.2 Exercise of Remedies**

Upon the occurrence, and during the continuation of, an Event of Default, the CIB may, without further notice of default or demand of any kind, exercise any or all of the following rights

and remedies, in any combination or order that the CIB may elect, in addition to such other rights or remedies as the CIB may have hereunder, under the Collateral Documents or at law:

- (a) Refuse to make, and the CIB shall not be obligated to make, any additional Contributions;
- (b) Without any obligation to do so, cure any default and render any performance under any Project Documents as the CIB in its sole discretion may consider necessary or appropriate, whether to preserve and protect the Collateral or the CIB's interests therein or for any other reason, and all sums so expended, together with interest on such total amount at the Default Rate, shall be repaid by Proponent to the CIB on demand and shall be secured by the Financing Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Commitment;
- (c) Enter into possession of the Project and perform any and all work and labour necessary to complete the Project substantially according to the Material Project Documents and the Plans and Specifications or to operate and maintain the Project, and all sums expended by the CIB in so doing, together with interest on such total amount at the Default Rate, shall be repaid by Proponent to the CIB upon demand and shall be secured by the Financing Documents;
- (d) By written notice to the Proponent, cancel the CIB's commitment to make any further Contributions and provide notice to the Proponent of the termination of this Agreement and the Royalty in which case, the Proponent shall pay to the CIB, within thirty (30) days of such notice, an amount which shall result in the CIB receiving an IRR equal to 5%, and upon the payment of such amount, this Agreement and the Royalty shall terminate without further act or notice; and
- (e) Exercise all remedies under the Financing Documents or otherwise available at law.

## **ARTICLE 17** **MISCELLANEOUS**

### **17.1 Notices & Addresses**

Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

#### **If to the CIB:**

Canada Infrastructure Bank  
150 King Street West, P.O. Box 15,  
Toronto, ON M5H 1J9  
Attention: Head, Asset Management and  
E-mail: [assetmanagement@cib-bic.ca](mailto:assetmanagement@cib-bic.ca)

with a copy to:

Attention: General Counsel & Corporate Secretary  
E-mail: [CIBLegal@cib-bic.ca](mailto:CIBLegal@cib-bic.ca)



**If to Proponent:**

[insert]

**If to Proponent GP:**

[insert]

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed to be properly given (a) if delivered in person, (b) if sent by overnight courier service, (c) in the event overnight courier services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by e-mail. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by e-mail shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 4 p.m., recipient's time, and if transmitted after that time, on the next following Business Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within Canada by giving thirty (30) days' written notice to the other parties in the manner set forth herein above.

**17.2 Delay and Waiver**

No delay or omission to exercise any right, power or remedy accruing to the CIB upon the occurrence of any Event of Default or any breach or default of Proponent under this Agreement or any other Financing Document shall impair any such right, power or remedy of the CIB, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring, nor shall any waiver of any single Event of Default or other breach or default be deemed a waiver of any other Event of Default or other breach or default. Any waiver, indulgence, permit, consent or approval of any kind or character on the part of the CIB of any Event of Default or other breach or default under this Agreement or any other Financing Document, or any waiver on the part of the CIB of any provision or condition of this Agreement or any other Financing Document, must be in a writing expressly referencing this Agreement and shall be effective only to the extent specifically set forth therein. All remedies, either under this Agreement or any other Financing Document or by law or otherwise afforded to the CIB, shall be cumulative and not alternative.

**17.3 Costs, Expenses and Fees**

- (a) Proponent will pay to the CIB all of its reasonable costs and expenses in connection with the preparation, negotiation, closing and administering and costs of enforcing its rights and remedies under this Agreement and the Financing Documents and undertaking a legal due diligence review in connection therewith, including the reasonable fees, expenses and disbursements of the CIB's Counsel and other counsel retained by the CIB in connection with the preparation of such documents and any amendments hereof or thereof, or the negotiation, closing, or administration or costs of enforcing its rights and remedies under this Agreement, and the reasonable fees, expenses and disbursements of the Independent Consultants and any other engineering, insurance, environmental and construction consultants to the CIB incurred in connection with this Agreement

and the reasonable travel and out of pocket costs incurred by the CIB, whether or not the transactions contemplated by this Agreement proceed or the conditions precedent set forth in Section 8.1 are ever met; provided, however, that the CIB shall endeavour to provide Proponent, upon Proponent's reasonable request, with fee estimates of the Independent Consultants and shall consult in good faith with Proponent regarding the CIB's costs hereunder (provided that the foregoing shall not be deemed to modify or impair Proponent's payment obligations hereunder). Proponent will reimburse the CIB for all costs and expenses, including reasonable legal fees, expended or incurred by the CIB in enforcing this Agreement or the other Financing Documents in connection with an Event of Default, in actions for declaratory relief in any way related to this Agreement, in collecting any sum which becomes due to the CIB under this Agreement or the other Financing Documents.

#### **17.4 Entire Agreement**

This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail. This Agreement and the other Financing Documents may only be amended or modified by an instrument in writing signed by the Proponent, the CIB and each other party thereto and in accordance with the terms of this Agreement.

#### **17.5 Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable therein (without prejudice to or limitation of any other rights or remedies available to the CIB (but not the Proponent) under the laws of any jurisdiction where property or assets of the Proponent may be found).

#### **17.6 Severability**

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties hereto shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision with a valid, legal and enforceable provision that, to the fullest extent possible, puts the parties in substantially the same position they would have been in but for such invalidity, illegality or unenforceability.

#### **17.7 Limitation on Interest Rate**

If any provision of this Agreement would obligate the Proponent to make any payment of interest or other amount payable to the CIB in an amount or calculated at a rate which would be prohibited by Applicable Law or would result in a receipt by the CIB of interest or yield at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest or yield, as the case may be, as would not be so prohibited by Applicable Law or so result in a receipt by the CIB of interest or yield at a criminal rate, such adjustment to be effected, to the extent necessary, if any, as follows: (a) firstly, by reducing the amount or rate of interest required to be paid to the CIB

hereunder; and (b) thereafter, by reducing any fees and other amounts required to be paid to the CIB hereunder which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).

### **17.8 Headings**

Paragraph headings and a table of contents have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

### **17.9 Accounting Terms**

All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by Proponent to the CIB, and (unless otherwise indicated) all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

### **17.10 No Partnership, Etc.**

Nothing contained in this Agreement or in any of the other Financing Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by, between or among the CIB and Proponent or any other Person.

### **17.11 Limitation on Liability**

EXCEPT AS PROVIDED HEREIN OR IN ANY OTHER FINANCING DOCUMENT, NO CLAIM SHALL BE MADE BY ANY PROPONENT GROUP MEMBER AGAINST THE CIB OR ANY OF ITS AFFILIATES, DIRECTORS, EMPLOYEES, ATTORNEYS OR AGENTS FOR ANY INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (WHETHER OR NOT THE CLAIM THEREFOR IS BASED ON CONTRACT, TORT, DUTY IMPOSED BY LAW OR OTHERWISE), IN CONNECTION WITH, ARISING OUT OF OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE OTHER OPERATIVE DOCUMENTS OR ANY ACT OR OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH; AND EACH PROPONENT GROUP MEMBER HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY SUCH CLAIM FOR ANY SUCH INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOUR.

### **17.12 Consent to Jurisdiction**

The Proponent Group Members irrevocably submit to the exclusive jurisdiction of the courts of the Province of Nova Scotia and irrevocably agree that, at the CIB's discretion, any Claims, actions or proceedings in respect of the Financing Documents will be heard and determined in such courts. The Proponent Group Members hereby waive, to the fullest extent they may effectively do so, the defence of an inconvenient forum to the maintenance of any such action or proceeding. The foregoing is without prejudice to the rights of the CIB to, in its discretion, bring Claims, actions or proceedings in respect of the Financing Documents before any other court of competent jurisdiction.

**17.13 Successors and Assigns**

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**17.14 Access to Information Act**

- (a) The Proponent Group Members acknowledge that the *Access to Information Act*, R.S.C., 1985, c. A-1, applies to this Agreement and to other documents and records under the control of the CIB, including documents and records relating to this Agreement, and that the CIB is required to comply with the *Access to Information Act*. If a request is made under the *Access to Information Act*, the Proponent Group Members will cooperate with the CIB and make reasonable efforts to assist the CIB in complying with its duties and obligations as set out in and which arise from the *Access to Information Act* as it may relate to this Agreement. The Proponent Group Members waive any right they may have to make any Claim or take any action against the CIB as a result of any action taken or required to be taken by the CIB for the purpose of complying with the *Access to Information Act* or any final and non-appealable court or tribunal order in respect thereof.
- (b) Nothing in this Agreement shall prohibit the CIB's public disclosure, following the signing of the Agreement, of the following information: the principal counterparty and/or counterparties; the description of the type and amount of the CIB's financing product; a description of the Project and its intended environmental, social and economic outcomes.

**17.15 Language**

The parties expressly acknowledge that they have requested that this Agreement be drafted in the English language only. Les parties aux présentes reconnaissent avoir exigé que la présente entente soit rédigée en anglais seulement.

**17.16 Counterparts**

This Agreement may be executed in one or more duplicate counterparts and by facsimile or portable document format (PDF) and when signed by all of the parties listed below shall constitute a single binding agreement.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF the parties have caused this Agreement to be duly executed by their officers thereunto duly authorized as of the day and year first above written

[insert], by its General Partner  
[insert], as Proponent

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

[insert]  
as Proponent GP

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**CANADA INFRASTRUCTURE BANK**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT 1**  
**FORM OF CONTRIBUTION PAYMENT REQUEST**

**EXHIBIT 2**  
**FORM OF INSURANCE CONSULTANT'S CERTIFICATE**

**EXHIBIT 3**  
**FORM OF INDEPENDENT ENGINEER'S CLOSING CERTIFICATE**



**EXHIBIT 4**  
**FORM OF INDEPENDENT ENGINEER'S CONTRIBUTION PAYMENT CERTIFICATE**

**EXHIBIT 5**  
**FORM OF INDEPENDENT ENGINEER'S FINAL COMPLETION CERTIFICATE**

**EXHIBIT 6**  
**SCHEDULE OF APPLICABLE PERMITS**

**EXHIBIT 7**  
**MATERIAL PROJECT DOCUMENTS**

**EXHIBIT 8  
PROJECT BUDGET**

**EXHIBIT 9**  
**LOCATION OF FILINGS**

**EXHIBIT 10  
PROJECT SCHEDULE**

**EXHIBIT 11**  
**INSURANCE REQUIREMENTS**



**EXHIBIT 12  
PERMITTED LIENS**

**EXHIBIT 13**  
**INTER-CREDITOR AGREEMENT PRINCIPLES**

The following is a list of principles which are to be reflected in the Intercreditor Agreement and the other Financing Documents, as required:

1. Principles. The Senior Lenders consent to the incurrence by the Proponent Group Members of the obligations pursuant to the Financing Documents. The CIB consents to the incurrence by the Proponent Group Members of the obligations pursuant to the Senior Lenders Credit Agreement and the documents delivered collateral thereto. The CIB shall not be entitled to have the benefit of any Collateral Documents or to commence any Enforcement Action on the basis of Events of Default set out in the Financing Documents other than in accordance with the process set out herein.

2. Subordination. In the event and during the continuation of any "event of default" under the Senior Lenders Credit Agreement of which CIB has received written notice, other than the payments made pursuant to the NSPI Consent & Direction, no payment shall be made by the Proponent in respect of the Royalty until the amount owing under the Senior Lenders Credit Agreement is indefeasibly paid in full or such "event of default" is properly cured. In the absence of an event of default under the Senior Lenders Credit Agreement, all Royalty payments and/or any other amounts owing from time to time may be made by the Proponent to CIB as required under the Agreement free of any claim or security interest of the Senior Lenders.

3. Security Ranking. The security of the Senior Lenders shall be postponed and subordinated in all respects to the security of the CIB in respect of the payments contemplated under the NSPI Consent & Direction. The CIB's security shall be postponed and subordinated in all respects to the security of the Senior Lenders in all respects on all other property, assets and undertaking of any Proponent Group Member, both present and future, other than the payments contemplated under the NSPI Consent & Direction.

4. Information. The CIB shall be entitled to receive:

(a) a copy of any notice of default or event of default under the Senior Lenders Credit Agreement if notice thereof is given to or received from any Proponent Group Member;

(b) notice of any acceleration of any amounts owing under the Senior Lenders Credit Agreement or demand in respect of any amounts owing under the Senior Lenders Credit Agreement made by any Senior Lender to any Proponent Group Member;

(c) copies of all information and reports received under the Senior Lenders Credit Agreement including but not limited to all documents prepared by consultants of the Senior Lenders; and

(d) upon request from time to time by the CIB, information on the status of the amounts owing under the Senior Lenders Credit Agreement and the security of the Senior Lenders with respect thereto.

5. CIB Financing Document Amendment Restrictions. Without the consent of the Senior Lenders, the CIB shall not amend, alter, vary, supplement or revise any of the terms or provisions of, or add any new or additional terms or provisions to, any of the Financing Documents in any manner which would:

- (a) increase the Default Rate, the Royalty Rate or fees payable under the Agreement, or take any action (including the imposition of additional fees, penalties or premiums) which would have the same economic effect but excluding in any event increases resulting from the accrual of interest at the Default Rate;
- (b) accelerate the time for any payment thereunder;
- (c) increase or make more onerous any of the indemnity, reimbursement or other similar or comparable obligations or liabilities of the Proponent thereunder, or in any other way change any of the payment terms thereunder in a manner which is more onerous or restrictive on, or increases the liabilities payable by, the Proponent;
- (d) result in any representation, warranty, covenant, agreement, indemnity, obligation, liability, default, provision, acceleration right or other term under such documents which are (i) any more favourable to the CIB, individually or in the aggregate, than the representations, warranties, covenants, agreements, indemnities, obligations, liabilities, defaults, acceleration rights and other terms and provisions of the Senior Lenders Credit Agreement or the documents delivered collateral thereto, or (ii) more onerous, individually or in the aggregate, on the Proponent than the corresponding terms and provisions of the applicable Senior Lenders Credit Agreement or document delivered collateral thereto; or
- (e) otherwise be prejudicial in any material respect to the Senior Lenders.

6. Meetings/Voting. The CIB shall be entitled to timely notice of, and to attend any meeting of Senior Lenders. Should any resolution be put to a vote at a meeting of creditors of the Proponent or any class thereof, the CIB must be present to constitute quorum.

7. Common Terms Matters Requiring Approval of CIB as a Separate Class. Each of the following matters in respect of or related to the Senior Lenders Credit Agreement or any document delivered collateral thereto shall require the approval of the CIB by way of a separate class vote:

- (a) any approval, consent, decision or other vote:
  - (i) to permit the Proponent to incur additional Debt (including for greater certainty any new indebtedness, readvance, reborrowing or increase in availability under the Senior Lenders Credit Agreement or any document delivered collateral thereto) except as may be permitted by the Financing Documents;
  - (ii) to amend the due date or maturity date for any principal amount under the Senior Lenders Credit Agreement or any document delivered collateral thereto beyond the date specified therefor as at the date that the Senior Lenders Credit Agreement is entered into;
  - (iii) to increase the rate of interest, fees or applicable margin in respect of any amounts owing (including the default rate) under the Senior Lenders Credit Agreement or any document delivered collateral thereto by more than an aggregate of [NUMBER] basis points from the analogous rate payable under the Senior Lenders Credit Agreement or any document delivered collateral as in effect as at the date that the Senior Lenders Credit Agreement is entered into, or take any action (including the imposition of additional fees, penalties or premiums) which would have

the same economic effect but excluding in any event (i) consent fees payable in connection with amendments permitted hereunder, and (ii) waiver fees payable in connection with any default under the Senior Lenders Credit Agreement or any document delivered collateral thereto; or

- (iv) to amend any provision in any Project Document including but not limited to any provision related to compensation on termination.

9. True-Up. The CIB will have no true-up obligations in favour of the Senior Lenders.

10. Enforcement. The CIB shall be entitled to accelerate the time for payment of any of the Obligations owing by the Proponent to it in accordance with the terms of any Financing Documents (including by way of the making of demand under any guarantee, indemnity or other assurance against loss in respect of any Proponent Group Member) if, but only if:

(a) the time for payment of all of the amounts owing under the Senior Lenders Credit Agreement has been accelerated; or

(b) an Insolvency Event [**NTD: To be defined as per the Senior Lenders Credit Agreements**] is initiated or commenced with respect to any Proponent Group Member;

and if such acceleration by the CIB has occurred, then the CIB shall be entitled to take any Enforcement Action in respect of the Obligations if:

(i) CIB has given an enforcement notice (a "**Junior Enforcement Notice**") to the Senior Lenders;

(ii) a period (a "**Standstill Period**") of not less than **[90]** days has elapsed from the date on which the Senior Lenders received such Junior Enforcement Notice; and

(iii) the Event of Default identified in such Junior Enforcement Notice is continuing at the end of such Standstill Period,

provided that:

(A) any and all proceeds of realization received by the CIB pursuant to any such Enforcement Action shall be applied in accordance with Section 3 of this Exhibit;

(B) if the Senior Lenders are realizing upon or have commenced (and are diligently advancing) steps to realize upon their security prior to the expiry of the Standstill Period, then the CIB shall not take any Enforcement Action with respect to the Collateral Documents that would be reasonably likely to materially affect such actions of the Senior Lenders; and

(C) if any security held by the Senior Lenders issued pursuant to the Senior Lenders Credit Agreement becomes enforceable, the Senior Lenders may exercise all rights and remedies provided for in such security at their sole discretion. Nothing shall require or obligate the Senior Lenders or any of them to enforce or realize upon, or continue any enforcement or realization upon, any security held by the Senior Lenders issued pursuant to the Senior Lenders Credit Agreement.

11. Right to Acquire Senior Debt. If a Standstill Period has been continuing for thirty (30) days or more, the CIB may at any time while the corresponding Event of Default is continuing

deliver irrevocable written notice (a "**Purchase Notice**") to the Senior Lenders advising it of the intention of the CIB to purchase the amounts owing to the Senior Lenders pursuant to the Senior Lenders Credit Agreement (the date of delivery of the notice being the "**Purchase Notification Date**"). If the applicable Standstill Period has not terminated within fifteen (15) days from and including the Purchase Notification Date (such fifteenth (15<sup>th</sup>) day being the "**Purchase Notice Expiration Date**"), the CIB shall purchase from the Senior Lenders, and the Senior Lenders shall sell to the CIB, on the tenth (10<sup>th</sup>) Business Day following the Purchase Notice Expiration Date, in cash for an amount equal to 100% of the outstanding amount thereof (including any breakage or make-whole amounts then applicable), all but not less than all of the amounts owing to the Senior Lenders pursuant to the Senior Lenders Credit Agreement at time of purchase (including for greater certainty all contingent liabilities forming part of the amounts owing to the Senior Lenders pursuant to the Senior Lenders Credit Agreement at such time).

12. Voting Upon Insolvency. In any insolvency proceeding, the CIB shall have the right to vote and otherwise exercise rights with respect to the Obligations, provided that:

(a) it shall not seek to have any stay of proceedings lifted with respect to the Proponent Group Member property; and

(b) it shall not obtain an additional lien on any Proponent Group Member property as security for any of the Obligations (other than the payments contemplated under the NSPI Consent & Direction).

13. Additional Provisions. The Intercreditor Agreement will contain provisions with respect to the following:

(a) a no contest clause (no Senior Lender shall dispute or contest the validity or enforceability of the Financing Documents and the CIB shall not dispute or contest the validity or enforceability of the Senior Lenders Credit Agreement or any document delivered collateral thereto); and

(b) a "redistribution/over payment" clause (if a Senior Lender or the CIB erroneously receives a payment or if a court claws back a payment, payments will be redistributed in accordance with the provisions of the Intercreditor Agreement; and if a Senior Lender or the CIB applies/sets-off funds from a bank or other account held by it against indebtedness owed by the Proponent to such Senior Lender or the CIB, as applicable, the set-off amount will be taken into account in the payment distributions).

14. CIB Assignment. The CIB shall not sell, assign, or otherwise transfer, in whole or in part, any of the Obligations or the security held pursuant to the Collateral Documents or any right, title or interest therein to any person unless (a) such action is made expressly subject to the Intercreditor Agreement, and (b) such person acknowledges the subordination provided for herein and agrees in writing to be bound by all of the terms hereof, such acknowledgement and agreement to be in favour of and in form and substance satisfactory to the Senior Lenders, acting reasonably.

For the Purposes of this Exhibit, "**Enforcement Action**" means any claim, demand, commencing of any action or proceeding or taking any step (including exercising any right of set-off, initiating any bankruptcy or insolvency proceedings or any step or proceeding to challenge the validity or enforceability of any of the Collateral Documents or the security issued to the Senior Lenders pursuant to the Senior Lenders Credit Agreement, as applicable, or otherwise) to enforce any right of the CIB or the Senior Lenders, as applicable, pursuant to or in respect of the Collateral Documents or the security issued to the Senior Lenders pursuant to the Senior Lenders Credit Agreement, as applicable (including the collection thereof and the

realization thereof on any collateral secured thereby) provided however, that Enforcement Action shall not include (i) the filing of any proof of claim; (ii) imposition of default interest; (iii) consent to any action taken by any Proponent Group Member, including in an insolvency proceeding; (iv) exercising any unsecured creditor remedies; and (v) any steps to preserve, protect or defend the rights of CIB to the payments contemplated under the NSPI Consent & Direction and to apply the proceeds thereof to the Obligations.

**EXHIBIT 14**  
**NSPI CONSENT & DIRECTION TO PAY**

**EXHIBIT 15**  
**REAL PROPERTY DOCUMENTS**