

**RATE BASED POWER PURCHASE AGREEMENT FOR
RENEWABLE ENERGY**

Between

NOVA SCOTIA POWER INCORPORATED

And

[Insert name of Seller]

interest in the project held by an eligible Indigenous group), this will be reflected by a “yes” response in item 16.]

1. Term: Twenty-five (25) years;
2. Site: ●;
3. Name Plate Capacity of Facility: ●;
4. Energy Rate: ● (\$/MWh);
5. Energy Bid: ● (MWh/year);
6. Energy Source: ●;
7. Scheduled Commercial Operation Date: ●;
8. Intentionally Deleted;
9. Pre-COD Amount \$25,000 multiplied by the number of megawatts of Name Plate Capacity of the Facility;
10. Post COD Amount: \$20,000 multiplied by the number of megawatts of Name Plate Capacity of the Facility;
11. Intentionally Deleted;
12. Project has selected the Congestion Management Alternative: Yes / No;
13. Project has selected the Forgo Network Upgrade Reimbursement Alternative: Yes / No;
 - (a) Transmission Credits Security: \$50,000 multiplied by the number of megawatts of Name Plate Capacity of the Facility
14. Equipment Certification Security Required: Yes / No;
 - (b) Equipment Certification Security: \$25,000 multiplied by the number of megawatts of Name Plate Capacity of the Facility;
15. Zone: 1 / 2 / 3 / 4 / 5
16. Project has been awarded priority points under the “ownership” portion of the Proposal’s evaluation: Yes / No;
17. Each of the following schedules, appendices and exhibits form part of the Agreement:
General Terms and Conditions

- Exhibit “A” – Project Description
- Exhibit “B” – Intentionally Deleted
- Exhibit “C” – Form of Confidentiality Undertaking
- Exhibit “D” – Form of Project Lender Agreement
- Exhibit “E” – Form of Letter of Credit
- Exhibit “F” – Form of Reimbursement Agreement

Capitalized terms used herein but not otherwise defined have the meaning ascribed to them in the General Terms and Conditions attached hereto.

- (iv) -

(Signature Page Follows)

EXECUTED by the Parties the day and year first above written.

**NOVA SCOTIA POWER
INCORPORATED**

[INSERT NAME OF SELLER]

By:
Name:

By:
Name:

Title:

Title:

By:
Name:

By:
Name:

Title:

Title:

I/We have the authority to bind the corporation.

I/We have the authority to bind the
●.

GENERAL TERMS AND CONDITIONS
FOR THE PURCHASE AND SALE OF RENEWABLE ENERGY
TABLE OF CONTENTS

1	DEFINITIONS AND RULES OF INTERPRETATION	1
1.1	Definitions	1
1.2	General Rules of Interpretation	15
1.3	Severability	16
1.4	Entire Agreement.....	16
1.5	Waiver, Amendment.....	16
1.6	Preparation of Agreement.....	16
1.7	Governing Law	16
2	DEVELOPMENT OF THE FACILITY	17
2.1	Design and Construction of the Project.....	17
2.2	Facility Interconnection.....	18
2.3	Obtaining and Maintaining Electricity Standard Approval.....	20
2.4	Requirements for Commercial Operation.....	20
2.5	Scheduled Date for Commercial Operation.....	21
2.6	NSPI Information During Design and Construction	22
2.7	Equipment Certification	22
3	OPERATION OF THE PROJECT	23
3.1	Operation Covenants	23
3.2	Insurance Covenants.....	24
3.3	Reporting of Seller and Forecasting Facility Output.....	25
3.4	Renewable Energy Credits	26
3.5	Records and Audit Rights.....	27
4	DELIVERY AND ACCEPTANCE OF ENERGY	28
4.1	Required Sale and Delivery of Energy	28
4.2	Acceptance of Energy.....	30
4.3	Automatic Generation Control	31
5	PAYMENTS AND COSTS AND ANCILLARY SERVICES.....	32
5.1	Energy Payment.....	32
5.2	Ancillary Services.....	33
5.3	Billing, Meter Reading and Payment	33

5.4	Metering.....	34
5.5	Premiums and Incentives.....	34
6	PERFORMANCE SECURITY.....	34
6.1	Performance Security	34
7	REPRESENTATIONS.....	36
7.1	Representations and Warranties of Seller.....	36
7.2	Representations and Warranties of NSPI	38
8	CONFIDENTIALITY	40
8.1	Confidentiality.....	40
9	TERM.....	41
9.1	Term.....	41
10	DEFAULT AND TERMINATION.....	42
10.1	Seller Events of Default	42
10.2	Remedies of NSPI	43
10.3	NSPI Events of Default.....	44
10.4	Remedies of the Seller.....	44
10.5	NSPI’s Termination Payment(s)	46
10.6	Saving Provision	46
11	FORCE MAJEURE	46
11.1	Definition of Force Majeure.....	46
11.2	Effect of Force Majeure	49
11.3	Termination for Force Majeure	50
12	PROJECT LENDER PROVISIONS	50
12.1	Project Lender Security	50
12.2	Rights and Obligations of Project Lenders	52
12.3	Cooperation	55
13	CHANGE IN LAW.....	55
13.1	Change in Law	55
13.2	Consequences of Change in Law	57
14	DISPUTE RESOLUTION	57
14.1	Dispute Resolution	57
14.2	Disputed Payments and Netting.....	58
15	INDEMNIFICATION, LIABILITY, ETC.	59
15.1	Indemnification	59

15.2	Consequential Loss	60
15.3	Liquidated Damages.....	60
15.4	Remedies	61
15.5	Joint and Several Liability.....	61
15.6	Mitigation.....	61
16	MISCELLANEOUS PROVISIONS.....	61
16.1	General	61
16.2	Assignment.....	63
16.3	Change of Control	65
16.4	Ownership	66
16.5	Interest.....	66
16.6	HST and Other Tax Matters	66
16.7	Notices.....	67
16.8	Survival and Enurement.....	67

1 DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions

In addition to the terms defined elsewhere in this Agreement, capitalized terms shall have the meanings ascribed to them below:

Additional Interconnection Equipment – means interconnection equipment from the Delivery Point to the Point of Isolation.

Affected Party – has the meaning set forth in Section 11.1(a).

Affiliate – means, with respect to any Person, any other Person which, directly or indirectly, (i) Controls the first Person, (ii) is Controlled by the first Person, or (iii) is under common Control with the first Person.

AGC or Automatic Generation Control – means a system, or a component of a system, that allows the System Operator to adjusting the power output of multiple generators connected to the System, including the generators comprising the Facility.

AGC Default – has the meaning set forth in Section 4.3(d).

Agreement – means the Power Purchase Agreement executed by the Parties, including the General Terms and Conditions and the appendices, exhibits, schedules and any other attachments to the Agreement, as amended, restated, or supplemented from time to time in accordance with the provisions of the Agreement.

Ancillary Services – means those services that are necessary to support the transmission of capacity and Energy from resources to loads while maintaining reliable operation of the System in accordance with Good Utility Practice, as more particularly set out in the Generator Interconnection Procedure.

Annual Average Marginal Cost Rate – means, for a Contract Year, the Marginal Cost Rate for each day in the Contract Year, averaged over the Contract Year, as calculated by NSPI in accordance with Good Utility Practice and consistent with the development of annual average marginal cost calculations conducted by NSPI for reporting to the Board.

Arm's Length – has the meaning specified under the *Income Tax Act* (Canada), as in effect on the date hereof.

Board – means the Nova Scotia Utility and Review Board and any successor thereto.

Business Day – means a day, other than a Saturday or a Sunday or a statutory holiday, on which banks are open for business in the Province of Nova Scotia.

Buy Back Payment – means a payment of \$150 multiplied by the number of megawatts of the Name Plate Capacity of the Facility for each calendar day that Commercial Operation is delayed beyond the Scheduled Commercial Operation Date.

Certification or Certified – means, if the Energy Source is wind or photovoltaic Energy, type certification of the Generating Technology by Det Norske Veritas, TUV Nord, DEWI-UL or another comparable, internationally recognized certifying body as reasonably determined by NSPI, and the photovoltaic Generating Technology having achieved industry standard certification(s) under International Electrotechnical Commission (IEC) protocols appropriate for such Generating Technology.

Change in Law – shall have the meaning set out in Section 13.1(a).

Claimant – shall have the meaning set forth in Section 14.1(b).

Commencement Date – means the first day of the calendar month following Commercial Operation.

Commercial Operation – shall have the meaning set out in Section 2.4(a).

Commercial Terms – means the commercial terms itemized on pages (i) and (ii) of the Agreement.

Commercially Reasonable Efforts – means, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent (and in respect of Section 2.2(e) and Section 4.1(b) are in accordance with Good Utility Practice) and are otherwise substantially equivalent to those a Party would use to protect its own interest.

Congestion Management Alternative – means, if there is a “Yes” response in item 12 of the Commercial Terms, the Seller’s requirement to (i) proceed with both Energy Resource Interconnection Service and Network Resource Interconnection Service for the Interconnection System Impact Study under the Generator Interconnection Procedure; (ii) acknowledge the right of NSPI to require the Seller to pursue Energy Resource Interconnection Service should the Project Related Network Upgrade Costs exceed the Threshold Amount; and (iii) acknowledge that no compensation will be provided through this Agreement for curtailment, in each case as set out in this Agreement.

Contract Energy – means the Energy Bid for each Contract Year during the Remaining Term assuming no material variability in monthly generation and delivery and applying a reasonable factor for transmission losses (that will be provided by the System Operator, together with an explanation for and documentation supporting the loss factor that is applied for the Facility) up to the Delivery Point based on data compiled prior to the Early Termination Date. Where applicable, the Energy Bid will be prorated for any portion of a Contract Year.

Contract Year – means a twelve-month period during the Term, starting on the Commencement Date or an anniversary thereof.

Control – means (i) in relation to a Person that is a corporation, the ownership, directly or indirectly, of (A) voting securities of the Person carrying more than 50% of the voting rights attaching to all voting shares of the Person and which are sufficient, if exercised, to

elect a majority of its board of directors, or (B) securities representing greater than 50% of the economic value of the Person; (ii) in relation to a Person that is a partnership, limited partnership, trust or other similar entity, the ownership, directly or indirectly, of (A) voting securities of such Person carrying more than 50% of the voting rights attaching to all voting securities of the Person or (B) securities representing greater than 50% of the economic value of the Person; and (iii) for any other Person, the ownership of securities or other interests entitling the holder to exercise direction over the activities of the Person (and “**Controls**”, “**Controlling**” and “**Controlled**” are defined accordingly).

Convention – means United Nations Framework Convention on Climate Change and such amendments, additions or substitutions thereto which may be in effect from time to time throughout the Interim Period and the Term.

CPI or Consumer Price Index – means the consumer price index for “All Items excluding Energy” published or established by Statistics Canada (or its successor) for any relevant calendar month in relation to the Province of Nova Scotia.

Daily Energy Bid – means, in respect of a Contract Year, the Energy Bid divided by the number of days in the Contract Year.

Delivery Point – means the point of interconnection between the Facility and the System where Energy from the Facility enters the System; provided that, for certainty, if Additional Interconnection Equipment is required for the interconnection between an existing portion of the System and the Point of Isolation then the Delivery Point will be where the Additional Interconnection Equipment interconnects with such portion of the existing System.

Dissolution Event – means, with respect to a Person, an effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of that Person.

Early Termination Date – means the date of termination of the Agreement prior to the end of the Term.

Early Termination Payment – means an amount equal to:

- (a) NSPI’s Termination Costs, plus
- (b) an amount equal to the Renewable Attribute Loss Rate times the Contract Energy (except to the extent that NSPI mitigative measures replace the Contract Energy or any portion thereof with renewable energy from a renewable energy generation facility with an Electricity Standard Approval), plus
- (c) the amount (if any) by which:

(i) the Present Value for the Contract Energy at relevant market pricing (either quoted by a bona fide third party offer or which is reasonably expected to be available in the market under a replacement contract for the Agreement that, in each case, does not include replacement of the Renewable Attribute Loss), exceeds

(ii) the Present Value for the Contract Energy at the Energy Rate.

To ascertain the market pricing of a replacement contract for purposes of calculating the Early Termination Payment, NSPI shall consider, among other valuations, at least two quotations from leading dealers or brokers in power purchase and sale contracts and other bona fide Arm's Length offers, all adjusted for the length of the Remaining Term and any transmission differential and having regard to any mitigative measures available to NSPI including, as applicable, replacement contracts or transactions.

Effective Date – means the date of this Agreement, being the date first mentioned on page (i) of the Agreement.

Electricity Standard Approval – means the issuance and maintenance of the electricity standard approval pursuant to the Renewable Electricity Regulations (N.S. Reg 155/2010).

Energy – means electric energy measured as units of watt hours (kWh, MWh, GWh).

Energy Bid – means the Net Output to be delivered in each Contract Year, as specified in item 5 of the Commercial Terms (or (i) if revised per Section 4.1(c), Energy Bid means the Restated Energy Bid; (ii) if revised per Section 4.1(e)(i), Energy Bid means the Seller Revised Energy Bid, and (iii) if revised per Section 4.1(e)(ii), Energy Bid means the NSPI Revised Energy Bid).

Energy Rate – means the rate in \$/MWh, as specified in item 4 of the Commercial Terms.

Energy Resource Interconnection Service – shall have the meaning ascribed to that term in the Generator Interconnection Agreement.

Energy Source – means the source used to generate Energy from the Facility, as specified in item 6 of the Commercial Terms.

Equipment Certification Security – means the Performance Security as specified in item 14 of the Commercial Terms.

Event of Insolvency – means an event or circumstance in respect of a Person where: (i) that Person admits its insolvency in a judicial procedure or makes a general assignment for the benefit of creditors or any proceeding is instituted by that Person seeking relief or giving notice of its intention to seek relief on its behalf as debtor, or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, re-organization, arrangement, adjustment or composition of it or its debts under any Insolvency Legislation, or seeking appointment of a receiver, receiver and manager, trustee, custodian or other similar official for it or any substantial part of its property and assets or that Person takes any action to

authorize any of the foregoing; or (ii) any proceeding is instituted against that Person seeking to have an order for relief entered against it as a debtor or to adjudicate it a bankrupt or insolvent or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition of it or its debts under any Insolvency Legislation, or seeking appointment of a receiver, receiver and manager, trustee, custodian or similar official for that Person or any substantial part of its property and assets, and: (A) such proceeding results in an entry of an order for such relief or any such adjudication or appointment, or (B) if such proceeding is not being contested, or is being contested in good faith, such proceeding continues undismissed, or unstayed and in effect, longer than 30 days from the institution of any such proceeding.

Excepted Relief Event – shall have the meaning set forth in Section 11.1(b).

Excess Energy – means, in respect of a Contract Year, the amount of Energy by which the Net Output for that Contract Year exceeds 1.20 multiplied by the Energy Bid.

Expected Output – means the hourly Energy that a Facility would reasonably have been expected to produce, as determined by NSPI, acting reasonably, using energy output methodologies that are consistent with Good Utility Practice, including by using the operating and meteorological data of, as well as forecasts for, the Facility to which NSPI has access pursuant to Section 3.3, the available Energy output data referred to in Section 4.3(b)(ii), as well as any additional information that NSPI may reasonably request from the Seller. Calculations of Expected Output must account for appropriate Energy losses occurring in the production and delivery of Energy, such that the calculation is a reasonable approximation of the Energy output that would have been expected to be delivered by the Facility to the Delivery Point during an identified time period. Expected Output excludes any Energy that a Facility would have reasonably been expected to deliver during any hours of a Facility Interruption or Forced Outage.

Facility – means one or more generators described in the Project Description having, in the aggregate, the Name Plate Capacity, which generate Energy exclusively from the Energy Source and deliver Energy through a meter to the Delivery Point and includes, without limitation, all the electrical apparatus and equipment owned and operated by Seller and used for the purpose of generating and delivering Energy, and all protective and other associated equipment and improvements (including all transmission lines and substation equipment up to the Point of Change of Ownership (as such term is defined in the Generator Interconnection Agreement)).

Facility Interruption – means any curtailment, reduction or interruption which arises due to the operation of the Facility in a manner that is inconsistent with Good Utility Practice or in a manner which is non-compliant with the Generator Interconnection Agreement.

Fiscal Year – means the fiscal year of NSPI as further described in Section 1.2(g).

Force Majeure Event or Force Majeure – shall have the meaning set forth in Section 11.1(a).

Forgo Network Upgrade Reimbursement Alternative – means, if there is a “Yes” response in item 13 of the Commercial Terms, the Seller’s requirement to (i) pay the costs of required Network Upgrades; (ii) promptly return to NSPI any and all repayment for Network Upgrades, including interest, that the Seller receives pursuant to Article 11.4 of the Generator Interconnection Agreement; and (iii) be bound to provisions contained in Section 2.2(d) of this Agreement.

Forced Outage – means (a) any partial or total curtailment, interruption or reduction of the generation or delivery of Energy by the Facility that is due to a total or partial breakdown or other failure of any electrical system or any machinery or equipment comprising the Facility that results in or requires, in accordance with Good Utility Practice, the Facility or any part thereof to be removed from service, curtailed, or reduced for inspection, maintenance, repairs and/or replacements to restore normal operability; or (b) any error in the operation, maintenance or rehabilitation of any such system, machinery or equipment or which is inherent in the use or operation of that type of system, machinery or equipment over time.

Generating Technology – means the equipment identified in Exhibit “A” .

Generator Interconnection Agreement – means the standard generator interconnection and operating agreement prescribed by the Generator Interconnection Procedure.

Generator Interconnection Procedure – means the standard generator interconnection procedures published from time to time by the System Operator and approved by the Board.

Good Utility Practice – has the meaning set out in the Generator Interconnection Agreement.

Government Agency – means any national, international, federal, provincial, state, municipal, county, regional or local government, organization or duly constituted authority, having jurisdiction, and includes:

- (i) any department, commission, bureau, board, administrative agency or regulatory body of any government;
- (ii) any International Agency; and
- (iii) any Person acting as an authorized representative of any of the foregoing, including in the capacity as registrar in connection with any emission reduction registry.

Group – means, in the case of NSPI, the NSPI Group and, in the case of the Seller, the Seller Group.

HST – means the harmonized sales tax exigible and any interest and penalties charged thereon pursuant to the *Excise Tax Act* (Canada) and the regulations made thereunder.

Incidental Service – means, as required for the Facility and the Site, the Energy used to service the Site and the Facility, including Energy for construction, excitation, on-site maintenance and operation of auxiliary equipment.

Incremental Energy Rate – means the rate in \$/MWh which is equal to NSPI's cost of generating or purchasing one more MWh of Energy from sources other than the Facility as calculated by NSPI in accordance with Good Utility Practice and consistent with NSPI's development of incremental energy rate calculations for similar purposes averaged over the 12 month period immediately preceding the relevant time.

Indemnitee – shall have the meaning set out in Section 15.1.

Indemnitor – shall have the meaning set out in Section 15.1.

Independent Engineer – means an engineer that is (i) a professional engineer duly qualified and licensed to practice engineering in the Province of Nova Scotia; and (ii) employed by an independent engineering firm which holds a certificate of compliance issued by Engineers Nova Scotia that is not affiliated with or directly Controlled by the Seller and that does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the Facility.

Insolvency Legislation – means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada) and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law).

Interconnection Request – shall have the meaning ascribed to that term in the Generator Interconnection Procedures.

Interconnection System Impact Study – shall have the meaning ascribed to that term in the Generator Interconnection Agreement.

Interim Period – means any period prior to the Commencement Date, but after interconnection of the Facility to the System in accordance with the Generator Interconnection Agreement, when the Facility is capable of generating Energy and delivering that Energy to the Delivery Point.

International Agency – means the parties to the Convention, the Intergovernmental Panel on Climate Change, and any other international commission, bureau, board, administrative agency or regulatory body responsible for measures to achieve objectives of the Convention.

Laws and Regulations – means:

- (i) applicable federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;

- (ii) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Government Agency or other Person having jurisdiction;
- (iii) applicable rulings and conditions or any license, permit certificate, registration, authorization, consent and approval of any Government Agency (including the Permits); and
- (iv) any requirements under or prescribed by applicable common law.

Letter of Credit – means one or more irrevocable and unconditional standby letters of credit substantially in the form attached hereto as Exhibit “E” issued by a financial institution, with an office or branch in Halifax, Nova Scotia, listed in either Schedule I or II of the *Bank Act* (Canada) or having a minimum credit rating of (i) A-with Standard and Poors Rating Group (a division of McGraw-Hill Inc.) or its successor, (ii) A3 with Moody’s Investors Service, Inc. or its successor, (iii) A-low with Dominion Bond Rating Service Limited or its successor, or (iv) A-with Fitch IBCA, Duff and Phelps, a division of Fitch Inc. or its successor.

Marginal Cost Rate – means the rate in \$/MWh, which at the relevant time, is equal to NSPI’s cost of generating or purchasing one more MWh of Energy from sources other than the Facility, as calculated by NSPI in accordance with Good Utility Practice and consistent with NSPI’s development of marginal costs for similar purposes.

Meter Location – means the physical location where Energy is measured by the revenue class meter referred to in Section 5.3(a)

Name Plate Capacity – means the name plate capacity of the Facility, as specified in item 3 of the Commercial Terms.

Net Output – means the Energy output of the Facility at the Delivery Point, as determined in accordance with Section 5.3, provided, however, that for purposes of calculating Net Output under Sections 4.1(d), 4.1(e), and 10.4(e), the Seller will be deemed to be delivering Energy in an amount equal to the Expected Output: (i) for each hour during which a Force Majeure Event is ongoing; and (ii) for each hour that the Seller has been curtailed, interrupted, or reduced in the generation or delivery of Energy by the Facility (whether partial or total) by the System Operator due to transmission limits to manage congestion on the System or for each hour that the Seller is not to be dispatched as part of the day ahead or intraday (three or four hours ahead) schedule.

Network Resource Interconnection Service – shall have the meaning ascribed to that term in the Generator Interconnection Agreement.

Network Upgrades – shall have the meaning ascribed to that term in the Generator Interconnection Agreement.

NSPI – means Nova Scotia Power Incorporated.

NSPI Event of Default – shall have the meaning set forth in Section 10.3.

NSPI Group – means any of NSPI and its Affiliates and the respective directors, officers, partners, employees, representatives or agents of NSPI and its Affiliates.

NSPI Revised Energy Bid – has the meaning set forth in Section 4.1(e)(ii).

NSPI's Termination Costs – means any costs and expenses reasonably incurred by NSPI associated with terminating the arrangements and transactions provided for in the Agreement and having regard to any mitigative measures available to it. NSPI's Termination Costs excludes the portion of any costs charged by a Person who does not deal with NSPI at Arm's Length that is in excess of the costs that would have been charged had such Person been at Arm's Length from NSPI, and profits. In each case, NSPI's Termination Costs must be the actual, reasonable, and verifiable out-of-pocket costs incurred by NSPI.

Open Access Transmission Tariff means NSPI's Open Access Transmission Tariff, as approved by the Board.

Partial Termination Payment – means an amount equal to the Renewable Attribute Loss Rate times the Shortfall Contract Energy (except to the extent that NSPI mitigative measures replace the Contract Energy or any portion thereof with renewable energy from a renewable energy generation facility with an Electricity Standard Approval), plus the amount (if any) by which:

- (i) the Present Value for the Shortfall Contract Energy at relevant market pricing (either quoted by a bona fide third party or which is reasonably expected to be available in the market under a replacement contract for the Agreement that, in each case, does not include replacement of the Renewable Attribute Loss), exceeds
- (ii) the Present Value for the Shortfall Contract Energy at the Energy Rate.

To ascertain the market pricing of a replacement contract for purposes of calculating the Partial Termination Payment, NSPI shall consider, among other valuations, at least two (2) quotations from leading dealers or brokers in power purchase and sale contracts and other bona fide Arm's Length offers, all adjusted for the length of the remainder of the Term and any transmission differential and having regard to any mitigative measures available to NSPI including, as applicable, replacement contracts or transactions.

Party – means either the Seller or NSPI and Parties refers to both the Seller and NSPI.

Performance Security – means the security for the performance of the obligations of the Seller under the Agreement to be provided and maintained by the Seller for the benefit of NSPI in accordance with the Agreement.

Performance Security Default – means a failure of the Seller to provide and maintain the Performance Security in accordance with Article 6 (including, where applicable, any

failure to renew or replace the Performance Security by no later than 15 Business Days prior to the expiry thereof) or an Event of Insolvency occurs in respect of the issuer of the Performance Security or the issuer fails to comply with or perform its obligations under the Performance Security or disclaims or repudiates, or challenges the validity, in whole or in part, of the Performance Security, or the Performance Security otherwise fails or ceases to be in full force and effect.

Permits – means permits, certificates, licences and other approvals required for the ownership, design, construction, operation, maintenance, rehabilitation or modification of the Facility and, if applicable, the delivery of Energy to the Delivery Point.

Person – means a natural person, firm, a company, a sole proprietorship, a corporation, a partnership, a limited partnership, a joint venture, a trust, a Government Agency or other entity of any kind.

Point of Isolation – means the designated disconnect switch that securely isolates the Facility from the System.

Post COD Amount – means the amount of the Performance Security as specified in item 10 of the Commercial Terms.

Pre-COD Amount – means the amount of the Performance Security, as specified in item 9 of the Commercial Terms.

Present Value – means the present value of a future stream of payments for Energy, as discounted to the Early Termination Date, or the date that the NSPI Revised Energy Bid comes into operation, as applicable, at the PV Discount Rate, with the timing of such payments reflecting (or substantially reflecting) the timing of payments for Energy under the Agreement.

Prime Rate – means the annual rate of interest established by the Bank of Nova Scotia or its successor, from time to time, as the interest rate it will charge for demand loans in Canadian Dollars to its commercial customers in Canada and which it designates as its “**prime rate**” based on a year of 365 or 366 days, as applicable. Any change in such interest rate shall be effective automatically on the date such change is announced by the Bank of Nova Scotia. Such rate of interest shall be calculated (but not compounded) daily, and compounded monthly, both before and after default, arbitral award and judgement.

Procurement Administrator – has the meaning set out in the Renewable Electricity Regulations (N.S. Reg 155/2010).

Project – means the Facility and any rights, property and assets, whether real or personal and whether tangible or intangible, required by the Seller to design, construct, operate, maintain, rehabilitate or modify the Facility, or required by the Seller for use of the Site, including any contract or engagement for such purpose, Permits, roads, and any land tenure and land tenure agreements.

Project Amendment - means any material modification, variation, or amendment of the Project Description or the information provided in items 1 through 7, inclusive, or 15 of the Commercial Terms.

Project Description – means the specifications and description of the Facility attached to the Agreement as Exhibit “A”.

Project Lender – means one or more Persons providing debt financing for the development, design, construction, acquisition, operation, maintenance, rehabilitation or modification of the Facility (including any senior, subordinate, mezzanine, bridge, construction, term or permanent financing or refinancing) and includes any agent or trustee of such Persons.

Project Lender Agent – shall have the meaning set out in Section 12.2(e).

Project Lender Agreement – means an agreement substantially in the form of Exhibit “D” among the Seller, NSPI and the Project Lender setting forth arrangements in respect of the interest of the Project Lender in the Agreement by way of security for the financing provided by the Project Lender.

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

Project Related Network Upgrades Costs – means the calculated comparable cost of Network Upgrades attributed to a Project based on the identified Network Upgrade costs, the Energy Bid and the Transmission Capital Recovery Factor. The Project Related Network Upgrade Costs is calculated by multiplying the Network Upgrade costs by the Transmission Capital Recovery Factor and dividing the product of this by the Project’s Energy Bid.

Proposal – means the proposal submitted by the Seller to the Procurement Administrator appointed by the Governor in Council in connection with the Province of Nova Scotia’s Request for Proposal issued on [●], as amended from time to time.

PV Discount Rate – means the weighted average before tax cost of capital of NSPI plus 100 basis points.

Quarterly Report – means a quarterly progress report described in Section 2.6.

Reimbursement Agreement – means the reimbursement agreement in the form attached as Exhibit “F”.

Remaining Term – means the remaining Term from and after the Early Termination Date without regard to termination of the Agreement.

Renewable Attribute Loss – means the loss of the benefit of Renewable Energy Credits referred to in Section 3.4, relative to the Contract Energy, relative to Shortfall Energy, relative to Shortfall Contract Energy, and/or during any period in which the Seller fails to maintain the Electricity Standard Approval for the Facility.

Renewable Attribute Loss Rate – means an amount equal to [**\$20/MWh**] increased based on cumulative increases in the consumer price index for “All Items” published or established by Statistics Canada (or its successor) in relation to the Province of Nova Scotia between January 2010 and the relevant calendar month. **[NTD: Amount is not final and is subject to further review.]**

Renewable Energy Credits – means all rights, title and interest in and to all benefits, rewards, credits, premiums, incentives, and other advantages, whether now or in the future, that are related, in whole or in part, to (i) benefits associated with a renewable generating facility; (ii) attributes or characteristics relating to the environmental impacts associated with a renewable energy facility or its generation of Energy; or (iii) benefits attributable to the direct displacement by Energy from renewable sources of emissions from fossil-fuelled thermal electrical generation, including:

- (a) all right, title, interest in and to all renewable energy certificates, credit reduction rights, offsets, allocated pollution rights, emission reduction allowances or other proprietary or contractual rights, whether or not tradeable, that, now or in the future, result from the actual or assumed displacement of emissions by the production of Energy from the Facility as a result of the utilization of renewable energy technology;
- (b) all right, title, interest in and to all interests that, now or in the future, relate to the nature or attributes (fungible or non-fungible) or pertain to the source of renewable Energy generation pursuant to the Agreement as may be defined and awarded through Laws and Regulations or voluntary programs, including “**green tags**”, “**tradable renewable energy credits**”, or “**renewable portfolio standard tags**”;
- (c) the sole right to quantify and register, claim, file, bank or use emissions reductions in any reporting program or registry system established or maintained by any Government Agency or non-governmental organization or entity;
- (d) the sole right to claim, bank, or use emission reductions for any and all purposes, (including offsetting anthropogenic greenhouse gases or claiming credit against any compliance requirement) and in any manner or form whatsoever now or in the future; and
- (e) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing which may be available in connection with the Facility.

Renewable Energy Credits do not include any Seller Benefits.

Reporting Date – means the date which is six months prior to each Fiscal Year during the Term.

Respondent – shall have the meaning set forth in Section 14.1(b)

Restated Energy Bid – has the meaning set forth in Section 4.1(c).

Scheduled Commercial Operation Date – means the date scheduled for achieving Commercial Operation, as specified in item 7 of the Commercial Terms.

Seller – means the Person or Persons identified as the “**Seller**” in the Agreement and includes its successors and permitted assigns.

Seller Benefits – means any federal or provincial tax credits, benefits, incentives, subsidies, deductions or allowances, including without limitation, the treatment of Canadian Renewable and Conservation Expenses under the *Income Tax Act* (Canada) and accelerated write-off provided in respect of property which is described in Class 43.1 of Schedule II of the Income Tax Regulations of the *Income Tax Act* (Canada) and any successor program.

Seller Claimable Amount – means the loss of the economic benefit of the Agreement based on the Present Value for Contract Energy at the Energy Rate having regard to any mitigative measures available to the Seller including, as applicable, replacement revenue which reduces or eliminates such loss, avoided costs and salvage as determined in a commercially reasonable manner. The Seller Claimable Amount shall be exclusive of the Seller’s Termination Costs.

Seller Event of Default – shall have the meaning set forth in Section 10.1.

Seller Group – means any of the Seller, its Affiliates, its partners, the officers and directors of its partners, and Seller Personnel.

Seller’s Interest – shall have the meaning set out in Section 12.2(d).

Seller Personnel – means any Person providing, on behalf of the Seller, any design, construction, operation, maintenance or other services in connection with the Facility, including any Person contracted or engaged at any lower tier for such purpose, and any employees, representatives or agents thereof, and any employees, representatives or agents of the Seller and its Affiliates.

Seller Revised Energy Bid – has the meaning set out in Section 4.1(e)(i).

Seller’s Termination Costs – means any costs and expenses reasonably incurred by the Seller associated with terminating the arrangements and transactions provided for in the Agreement and having regard to any mitigative measures available to it. Seller’s Termination Costs excludes the cost of generating equipment, the portion of any costs charged by a Person who does not deal with the Seller at Arm’s Length that is in excess of the costs that would have been charged had such Person been at Arm’s Length from the

Seller, and profits. In each case, Seller's Termination Costs must be the actual, reasonable, and verifiable out-of-pocket costs incurred by the Seller. Seller's Termination Costs shall be exclusive of the Seller Claimable Amounts.

Shortfall Contract Energy – means the shortfall between the Energy Bid as of the Effective Date and the NSPI Revised Energy Bid for each Contract Year during the remainder of the Term assuming no material variability in monthly generation and delivery and applying a reasonable factor for transmission losses up to the Delivery Point based on data compiled prior to the date that the Energy Bid was so revised pursuant to Section 4.1(e). Where applicable, the Energy Bid and NSPI Revised Energy Bid will be prorated for any portion of a Contract Year.

Shortfall Energy – means (i) for the purposes of Section 4.1(c), the shortfall between 100% of the Energy Bid and the Restated Energy Bid; (ii) for the purposes of Section 4.1(d), the shortfall between 80% of the Energy Bid and the Net Output during the applicable Contract Year; (iii) for the purposes of Section 4.1(e)(i), the shortfall between 100% of the Energy Bid and the Seller Revised Energy Bid; and (iv) for the purposes of Section 4.1(e)(ii), the shortfall between 100% of the Energy Bid and the NSPI Revised Energy Bid.

Site – means the lands upon which the Project will be located, as specified in item 2 of the Commercial Terms.

System – means the Energy transmission system operated by the System Operator.

System Operator – means that functional part of NSPI which controls and operates the System within the Province of Nova Scotia pursuant to the Open Access Transmission Tariff as approved by the Board.

Term – means the term of the Agreement as specified in item 1 of the Commercial Terms and Section 9.1(b), subject to early termination in accordance with the provisions of the Agreement.

Threshold Amount – means the threshold cost of Project Related Network Upgrades associated with the applicable Zone of the Facility, as identified as item 15 of the Commercial Terms, being: **[NTD: The Threshold Amounts identified below are expected to be consistent with past PPAs in Nova Scotia.]**

- (i) \$[●/MWh] in respect of Zone 1 provided the Seller has not selected the Congestion Management Alternative;
- (ii) \$30.32/MWh in respect of Zone 1 provided the Seller has selected the Congestion Management Alternative;
- (iii) \$17.09/ MWh in respect of Zones 2 and 4;
- (iv) \$9.60/ MWh in respect of Zone 3;

- (v) \$[●/MWh] in respect of Zone 5 provided the Seller has not selected the Congestion Management Alternative; and
- (vi) \$37.23/ MWh in respect of Zone 5 provided the Seller has selected the Congestion Management Alternative.

Transmission Capital Recovery Factor – means 9 percent, as calculated by the Procurement Administrator.

Transmission Credits Security – means the Performance Security as specified in item 13 of the Commercial Terms.

Workers' Compensation Act – means the *Workers' Compensation Act*, SNS 1994-95, c 10.

Zone – means the zone of the Project, as identified as item 15 of the Commercial Terms. In connection with the Proposal, a zone was assigned to the Project on the basis of the location of the point of interconnection (such point of interconnection being identified by the Seller or its predecessor in the Proposal) on a transmission zone map.

1.2 General Rules of Interpretation

For the purposes of interpreting the Agreement:

- (a) Words in the singular include the plural and vice versa.
- (b) The use of the words “**including**” and “**include**” are not limiting.
- (c) The words “**herein**”, “**hereof**” and “**hereunder**” and other words of similar import refer to the Agreement as a whole and not to any particular Article, section or other subdivision.
- (d) The division of the Agreement into Articles, sections or other parts and the insertion of headings are for convenience only and do not affect the construction or interpretation of the Agreement.
- (e) References to monetary amounts are in Canadian Dollars unless otherwise stated.
- (f) Reference to any legislation (including Laws and Regulations) is a reference to that legislation in force from time to time and to any subsequent legislation which has the effect of supplementing or superseding that legislation.
- (g) The current Fiscal Year is January 1 to December 31. During the Term, NSPI may, from time to time, modify the Fiscal Year for the purposes of this Agreement upon notice to the Seller advising the Seller of such change, provided such notice shall be given not less than 30 days prior to the Reporting Date.

- (h) No consent or approval contemplated under the Agreement shall be effective unless given in writing.
- (i) Time shall be of the essence.

1.3 Severability

If any provision of the Agreement is declared or held to be illegal, invalid or unenforceable, such provision shall be considered stricken and the remainder of the Agreement shall remain in full force and effect. The Parties shall negotiate in good faith to replace the stricken provision with a legal, valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

1.4 Entire Agreement

All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of the Agreement are superseded by the Agreement and the Agreement constitutes the entire agreement between the Parties with respect to such subject matter. The Agreement shall not be amended or supplemented except by subsequent written agreement between the Parties.

1.5 Waiver, Amendment

No waiver of any provision of the Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of the Agreement shall constitute a waiver of any other provision thereof, nor shall any such waiver constitute a continuing waiver or waiver of any subsequent failure to comply, unless otherwise expressly provided in such written waiver. No inspection, review, comment, verification, or audit by NSPI or any Government Agency, or anyone on their behalf, nor any failure to do so, shall relieve the Seller from performing or fulfilling any of its obligations under the Agreement.

1.6 Preparation of Agreement

The Parties acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of the Agreement, including provisions relating to the validity, interpretation or construction of the Agreement and the respective obligations, rights and remedies of the Parties under the Agreement, shall not be constructed or interpreted against one Party or in favour of the other Party when interpreting such term or provision as a result of the preparation or other event of negotiation, drafting or execution of the Agreement.

1.7 Governing Law

The laws of the Province of Nova Scotia and the federal laws of Canada applicable therein (without regard to any conflict of law principles which would apply the laws of another jurisdiction) shall govern all matters arising out of or related to the Agreement including damages and enforcement.

For such matters, the Parties shall, subject to Article 14, attorn to the non-exclusive jurisdiction of the courts of Nova Scotia located in Halifax.

2 DEVELOPMENT OF THE FACILITY

2.1 Design and Construction of the Project

- (a) The Seller shall perform, or cause to be performed, all activities necessary to complete the design, construction and commissioning of the Project at the Site using Good Utility Practice and in compliance with Laws and Regulations and all applicable provisions of the Agreement (including the Project Description) and so as to achieve Commercial Operation by the Scheduled Commercial Operation Date. Without limitation, the Seller shall ensure that the Project is designed and constructed to operate in accordance with the requirements of the Agreement from Commercial Operation until expiry of the Term and the Seller shall ensure that the design, construction and commissioning of the Project is performed by personnel, consultants, contractors and subcontractors that are experienced and properly qualified to perform their respective obligations in accordance with the requirements of the Agreement.
- (b) Subject to the provisions of Section 4.1(c) and Section 4.1(e), the Seller shall not make or cause to be made a Project Amendment without the prior written consent of NSPI, which consent may not be unreasonably withheld, delayed, or conditioned, but which may be given subject to commercially reasonable conditions including the condition that any such Project Amendment be carried out using Good Utility Practice and in compliance with Laws and Regulations and all applicable provisions of the Agreement (including the requirements of this Agreement for the Facility to obtain Electricity Standard Approval). For greater certainty, NSPI shall not be obliged to provide any such consent if the Project Amendment could reasonably be expected to have a material adverse effect on the Energy Bid or the Name Plate Capacity (other than in accordance with Section 4.1(c) or Section 4.1(e)). The Seller is responsible for NSPI's reasonable legal expenses incurred in reviewing the Seller's request for consent in relation to any Project Amendment.
- (c) The Seller agrees to obtain and maintain, or to cause to be obtained and maintained, all relevant Permits required in connection with the design, development, construction, interconnection, and commissioning of the Project.
- (d) The Seller agrees to arrange, at its expense, for the interconnection of the Facility in accordance with the terms of the Generator Interconnection Agreement and the Generator Interconnection Procedure.
- (e) For the purposes of this Agreement, as between the Seller and NSPI, the Seller reserves all property rights and interests with respect to the Project and the Site, and the Seller shall be solely responsible for the development, design, construction, operation, maintenance, rehabilitation and modification of the Project. Except as otherwise expressly provided in this Agreement or by Laws and Regulations or by

subsequent written agreement of the Parties, NSPI shall have no property rights or interests with respect to the Project or the Site or any authority to affect or control any such activities which are the responsibility of the Seller.

2.2 Facility Interconnection

- (a) By the earlier of (i) **[DATE]**; and (ii) the interconnection of the Facility to the System, the Seller shall execute and deliver the Generator Interconnection Agreement.
- (b) Property in and all risk relating to the Energy generated and delivered to NSPI by the Seller pursuant to the Agreement will pass from the Seller to NSPI at the Delivery Point. The Seller shall be responsible for all costs (including any applicable taxes) and losses of transmission of such Energy up to the Delivery Point and NSPI shall be responsible for all costs (including any applicable taxes) and losses of transmission of such Energy from and beyond the Delivery Point.
- (c) If the Congestion Management Alternative applies (as indicated by a “yes” response in item 12 of the Commercial Terms):
 - (i) the Seller shall submit, as part of the Interconnection System Impact Study, an Interconnection Request selecting both Energy Resource Interconnection Service and Network Resource Interconnection Service;
 - (ii) subject to Section 2.2(e), if the Interconnection System Impact Study prepared by the System Operator for the Network Resource Interconnection Service provides written estimates of Network Upgrades costs that result in the calculation of Project Related Network Upgrades Costs in excess of the Threshold Amount, then the Seller shall withdraw its Interconnection Request for Network Resource Interconnection Service and shall be obligated to proceed with Energy Resource Interconnection Service. If the Interconnection System Impact Study prepared by the System Operator for the Network Resource Interconnection Service provides an estimate for the cost of Network Upgrades that result in the calculation of Project Related Network Upgrades Costs that are less than or equal to the Threshold Amount the Seller shall be entitled to proceed with either Network Resource Interconnection Service or Energy Resource Interconnection Service; and
 - (iii) the Seller acknowledges and agrees that Section 4.2(d) does not apply if the Seller has selected the Congestion Management Alternative.
- (d) If Forgo Network Upgrade Reimbursement applies (as indicated by a “yes” response in item 13 of the Commercial Terms):
 - (i) the Seller will be responsible to pay the costs of any required Network Upgrades and agrees to promptly return to NSPI any and all repayment for Network Upgrades, including interest, that the Seller receives pursuant to Article 11.4 of the Generator Interconnection Agreement;

- (ii) the Parties acknowledge and agree that Section 2.2(e) hereof does not apply;
 - (iii) within 20 days of the Effective Date, the Seller will deliver to NSPI the Reimbursement Agreement in the form attached as Exhibit "F";
 - (iv) the Seller will deliver and maintain Transmission Credits Security as required under Section 6.1(a)(iii);
 - (v) if the Seller receives a cash repayment for Network Upgrades relating to the Facility and does not reimburse same to NSPI as contemplated by the Reimbursement Agreement, then NSPI can draw upon or otherwise enforce the Performance Security (including the Transmission Credits Security) to recover any amount of such cash repayment that remains owing to NSPI, without derogating from any other recourse available to NSPI against the Seller for payment thereof; and
 - (vi) to best protect the public interest by preventing double recovery, the Seller agrees not to seek relief at any time from its obligation to (i) pay for the costs of any required Network Upgrades and/or (ii) to return to NSPI any repayment it receives in respect of such Network Upgrades, in each case, as required by this Section 2.2(d) on the understanding that the Seller expressly acknowledges and agrees that this Section 2.2(d) takes precedence over Article 11.4 of the Generator Interconnection Agreement, to the extent that there is conflict.
- (e) Within 20 Business Days of the completion of the Interconnection System Impact Study, if the Interconnection System Impact Study provides written estimates of the cost of Network Upgrades that result in the calculation of Project Related Network Upgrades Costs in excess of the Threshold Amount, then the Parties shall enter into good faith negotiations, whereby the Parties will use Commercially Reasonable Efforts to consider amendments to the Project (including the Delivery Point) and/or negotiate amendments to this Agreement. If, within 40 Business Days following the commencement of such negotiations, the Parties are unable to reach agreement on such amendments, either Party may submit the dispute to arbitration pursuant to Section 14.1(b). In the event that the arbitrator determines that the Project Related Network Upgrades Costs will remain in excess of the Threshold Amount, notwithstanding reasonable amendments to the Project and/or the Agreement, NSPI may terminate the Agreement, in which event (i) the Agreement will automatically terminate without any costs or payments of any kind to either Party, except that the Seller will be entitled to claim the actual, reasonable, prudent, and verifiable out-of-pocket costs of developing the Project that the Seller incurred during the period commencing on the date the Proposal was submitted and ending on the date that the Interconnection System Impact Study was completed up to a maximum of \$100,000; and (ii) the Performance Security shall be returned to the Seller within 20 Business Days following a request by Seller for the return of the Performance Security.

2.3 Obtaining and Maintaining Electricity Standard Approval

- (a) On or prior to Commercial Operation, the Seller shall obtain an Electricity Standard Approval for the Facility. NSPI shall provide the Seller, at the Seller's expense, assistance reasonably requested by the Seller in connection with obtaining such Electricity Standard Approval. The Seller shall maintain such Electricity Standard Approval in good standing from the date of its issuance throughout the remainder of the Term and, upon the request of NSPI from time to time, promptly provide verification to NSPI that such is the case. The Seller shall immediately notify NSPI in the event that such Electricity Standard Approval is no longer in good standing.
- (b) If the application for Electricity Standard Approval of the Facility by the Seller is rejected or if the Seller fails to maintain Electricity Standard Approval of the Facility during the Term as required by Section 2.3(a) then the Seller shall be liable to NSPI, as liquidated damages on account of the Renewable Attribute Loss resulting from such failure, for an amount equal to the Renewable Attribute Loss Rate times the Daily Energy Bid for each day that such failure is continuing. Such liquidated damages shall be payable by the Seller upon the demand of NSPI, which demand shall include a calculation of such liquidated damages. Other than any right of NSPI to terminate the Agreement pursuant to Article 10, the right of NSPI to recover such liquidated damages (including accrued interest thereon), either by drawing upon the Performance Security or seeking recourse against the Seller for payment thereof, shall be the sole and exclusive remedy of NSPI in respect of such Renewable Attribute Loss; provided that, for certainty, any recovery of such liquidated damages shall not be construed as: (i) relieving the Seller of its other obligations under the Agreement; or (ii) affecting any other rights and remedies of NSPI in respect of any other breach by the Seller of such obligations. If the provisions of this Section and the provisions of Sections 4.1(c), 4.1(d), or 4.1(e) apply during the same period then, during such period, NSPI shall be entitled to liquidated damages under this section or the others but not both.

2.4 Requirements for Commercial Operation

- (a) Notwithstanding the definition of "**Commercial Operation Date**" in the Generator Interconnection Agreement, the Facility will be deemed to have achieved "**Commercial Operation**" for the purposes of this Agreement at the date indicated by the Seller in a notice to NSPI confirming that:
 - (i) The Minister of the Environment has released a decision approving the Project, pursuant to Part IV of the *Environment Act (Nova Scotia)* and the Seller has delivered evidence of the same to NSPI;
 - (ii) The Seller has completed the design, construction and commissioning of the Project in accordance with this Agreement and the Independent Engineer has certified in writing that the Facility is complete in all material respects and that the Facility is available, and that the Facility has installed Generating Technology with a rated capacity equivalent to at least 90% of

the Name Plate Capacity of the Facility and the Seller has provided NSPI reasonable evidence of the same;

- (iii) The Facility has been interconnected to the System at the Delivery Point; and
- (iv) The Seller has provided NSPI the Performance Security as required by Article 6.

Within 10 Business Days after receiving such notice, NSPI shall notify the Seller in writing (1) that it confirms the date of Commercial Operation set out in the notice and that the notice and evidence required above is otherwise acceptable to NSPI, acting reasonably, or (2) that it contests the date of Commercial Operation set out in such notice or such notice or evidence is otherwise deficient, in which case, NSPI's notice shall also provide reasonable particulars in respect of the deficiencies of such documentation. If the Seller and NSPI, each acting reasonably and in good faith, cannot agree on the date of Commercial Operation or the sufficiency of the notice of Commercial Operation provided to NSPI under Section 2.4(a), either Party may refer the dispute for resolution pursuant to Article 14.

- (b) No later than 60 days before the Facility is expected to interconnect to the System, the Seller shall deliver NSPI written notice indicating the expected date that the Facility will be interconnected with the System and the expected date that the Facility will achieve Commercial Operation.

2.5 Scheduled Date for Commercial Operation

- (a) The Seller agrees to obtain Commercial Operation of the Facility by the Scheduled Commercial Operation Date; however, for greater certainty, if the Seller has failed to obtain Commercial Operation of the Facility by the Scheduled Commercial Operation Date, such failure will not be a Seller Event of Default unless and until there occurs a Seller Event of Default described in Section 10.1(j) or 10.1(k).
- (b) Notwithstanding Section 9.1(b), if the Facility has not achieved Commercial Operation by the Scheduled Commercial Operation Date, NSPI shall have the right to extend the Term such that the Term will expire on the day before the 25th anniversary of the Commencement Date, by providing notice to the Seller no later than 12 months prior to the expiration of the Term.
- (c) Notwithstanding Section 9.1(b), if the Facility has not achieved Commercial Operation by the Scheduled Commercial Operation Date, then the Seller has the option to extend the Term such that the Term will expire on the day before the 25th anniversary of the Commencement Date, exercisable upon delivering NSPI notice no later than 60 days after the Commencement Date, together with the Buy Back Payment.
- (d) If Commercial Operation fails to occur by the Scheduled Commercial Operation Date then the Seller shall be liable to NSPI for liquidated damages in the amount of \$150 multiplied by the number of megawatts of the Name Plate Capacity of the

Facility for each calendar day that Commercial Operation is delayed beyond the Scheduled Commercial Operation Date. With respect to such liquidated damages:

- (i) The maximum time period that liquidated damages shall be calculated and payable under this Section 2.5(d) shall be 365 days.
- (ii) Such liquidated damages shall be payable by the Seller upon demand of NSPI, which demand shall include a calculation of such liquidated damages. NSPI shall be entitled to draw or otherwise rely upon the Performance Security and seek recourse against the Seller to recover such liquidated damages.
- (iii) Other than any right of NSPI to terminate the Agreement pursuant to Article 10, the right of NSPI to recover such liquidated damages as described in this Section 2.5(d) (including accrued interest thereon) shall be the sole and exclusive remedy of NSPI in respect of such delay; provided that, for certainty, any recovery of such liquidated damages shall not be construed as: (i) relieving the Seller of its other obligations under the Agreement (including the obligation to complete the design, construction and commissioning of the Project and to obtain Electricity Standard Approval of the Facility); or (ii) affecting any other rights and remedies of NSPI in respect of any breach by the Seller of such other obligations.
- (iv) For greater certainty, the liquidated damages in this Section 2.5(d) shall be in addition to any Buy Back Payment made by the Seller pursuant to Section 2.5(c).

2.6 NSPI Information During Design and Construction

By the fifteenth day of each quarter of the Fiscal Year following the Effective Date and continuing until Commercial Operation, the Seller shall provide NSPI with quarterly progress reports (each a “**Quarterly Report**”) describing the status of efforts made by the Seller to meet the Scheduled Commercial Operation Date and the progress of the design and construction work. At NSPI’s request, the Seller shall provide an opportunity for NSPI to meet with appropriate personnel of the Seller to discuss and assess the contents of any such Quarterly Report. Subject to Section 3.5(d) and upon reasonable prior notice to the Seller, the Seller shall provide NSPI rights to access the Site during the construction period for the purpose of verifying such Quarterly Report, which access will be at NSPI’s own risk and expense and during normal business hours.

2.7 Equipment Certification

- (a) The Seller confirms that the Generating Technology either (i) has been employed in commercial applications and operated reliably for three years before the date of the submission of the Proposal; or (ii) if the Energy Source is wind or photovoltaic

Energy, will be Certified on or prior to the date which is one year prior to the Scheduled Commercial Operation Date.

- (b) If the Generating Technology has not been employed in commercial applications and operated reliably for three years before the date of the submission of the Proposal, then
 - (i) if, as of the Effective Date, the Generating Technology has not yet received Certification, the Seller is required to deliver Equipment Certification Security hereunder as well as a statement from the Original Equipment Manufacturer (OEM) of the Generating Technology that they reasonably expect to receive such Certification by the Scheduled Commercial Operation Date; and
 - (ii) if, as of the date which is one year prior to the Scheduled Commercial Operation Date, the Generating Technology has not received Certification, the Seller shall pay to NSPI an amount equal to the Equipment Certification Security as liquidated damages on account of the Generating Technology not being so Certified, and thereafter the Seller shall exercise Commercially Reasonable Efforts to cause the Generating Technology to be Certified on or prior to the Commercial Operation Date.
- (c) The right of NSPI to recover such liquidated damages (including accrued interest thereon), either by drawing upon the Equipment Certification Security or seeking recourse against the Seller for payment thereof, shall be the sole and exclusive remedy of NSPI in respect of such failure; provided that, for certainty, any recovery of such liquidated damages shall not be construed as: (A) relieving the Seller of its other obligations under the Agreement or (B) affecting any other rights and remedies of NSPI in respect of any breach by the Seller of such other obligations.

3 OPERATION OF THE PROJECT

3.1 Operation Covenants

- (a) During the Interim Period and the Term, the Seller shall have, through ownership, leasehold interest, easement or right of way, all land tenure or land tenure agreements in respect of the Site which are required to carry out its obligations under the Agreement.
- (b) Subject to the Seller's rights to divest the Facility and any restrictions thereon provided in the Agreement, during the Interim Period and the Term, the Seller shall own the Facility and shall ensure that the Facility is operated and maintained in a manner consistent with the Electricity Standard Approval, using Good Utility Practice, and in compliance with Laws and Regulations and the applicable provisions of the Agreement (including the Project Description). Without limitation, the Seller shall ensure that the sufficient operating personnel are available and adequately experienced and qualified to operate the Project in accordance with the requirements of the Agreement.

- (c) The Seller shall furnish, in a timely manner, information to Government Agencies and shall obtain and maintain in good standing any Permit required to operate the Project and to perform or comply with its obligations under the Agreement.
- (d) The Seller shall connect the Facility, or shall cause the Facility to connect, exclusively to the Delivery Point. Without limiting or modifying the provisions of the Generator Interconnection Agreement, the Seller shall be solely responsible for protecting the Facility from any damage caused by faults or disturbances of the System.
- (e) Except for Incidental Service, (i) the Seller shall not permit the Facility to use any source for generation other than the Energy Source; and (ii) the Seller shall not permit the Facility to draw any Energy from the System directly.
- (f) The Seller has sole responsibility for the decommissioning and rehabilitation of the Project to the standards required by Laws and Regulations and Good Utility Practice. The rights and obligations of the Seller pursuant to this Section 3.1(f) shall survive termination of this Agreement.

3.2 Insurance Covenants

- (a) The Seller shall put in effect and maintain (or cause its contractors, where appropriate, to maintain), from the commencement of the construction of the Project to the expiry of the Term, at its own cost and expense, all the necessary and appropriate construction and operational insurance that a prudent Person in the business of developing and operating a project similar to the Project would maintain, including;
 - (i) Property insurance, including machinery/equipment breakdown insurance, which shall cover not less than full replacement cost for property owned by the Seller;
 - (ii) At minimum \$5,000,000 each occurrence and in the annual aggregate Commercial General Liability policy to cover bodily injury, personal injury, and property damage including loss of use thereof. Coverage shall specifically include at a minimum, but not limited to the following:
 - (A) Product & Completed operations and Personal Injury;
 - (B) Broad Form Property Damage;
 - (C) Contingent Employer's Liability;
 - (D) Cross Liability and Severability of Interest;
 - (E) Blanket Contractual Liability;
 - (F) Sudden & Accidental Pollution Liability; and

- (G) NSPI shall be shown as Additional Insured on the Seller's Commercial General Liability policy;
- (b) Any such insurance policies must:
 - (i) for any property insurance, contain a waiver of subrogation in favour of the NSPI Group;
 - (ii) not be subject to invalidation (as regards the interest of the NSPI Group), by reason of any breach or violation of any warranties, representations, declarations or conditions;
 - (iii) be at Seller's expense and be primary, non-contributing with, and not excess of, any other insurance available to the NSPI Group;
 - (iv) be with insurers licensed to operate in Nova Scotia;
 - (v) provide that insurers will endeavour to provide at least 30 days' prior notice to NSPI in the event of cancellation or material change that reduces or restricts the insurance; and
 - (vi) remain in full force and effect at all times during the term of this Agreement.
- (c) In the event of any insurable loss, Seller shall use the insurance proceeds of any construction property insurance or operational property insurance to repair, rebuild, or restore the Project.
- (d) The Seller shall provide NSPI with a certificate of insurance from the insurer or broker on or prior to the execution of this Agreement and annually thereafter., NSPI's acceptance or approval of the certificate of insurance will not in any way limit or satisfy Seller's covenant to obtain and maintain insurance.
- (e) The Seller shall submit a valid clearance letter of *Workers' Compensation Act* coverage to NSPI prior to the commencement of construction of the Project. In addition, the Seller shall, from time to time at the request of NSPI, provide additional *Workers' Compensation Act* clearance letters. The Seller shall pay when due, and shall ensure that each of its contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and subcontractors, from time to time from the commencement of construction of the Project, under the *Workers' Compensation Act*.

3.3 Reporting of Seller and Forecasting Facility Output

- (a) If the Energy Source is wind or photovoltaic Energy, then NSPI shall cause a third-party vendor to provide meteorological forecasting services for the Facility. As of the date of this Agreement, NSPI will cause the third-party vendor that provides NSPI with meteorological forecasting service for existing wind generation facilities to add the Facility as a site covered by such meteorological forecasting services.

Subject to any non-disclosure or non-dissemination restrictions imposed by any such third-party vendor, NSPI shall make the meteorological forecast information specific to the Facility available to the Seller. The third-party vendor's monthly service fee for the Facility (equal to [●] per month as of the date of this Agreement), as billed to NSPI, plus an administrative markup of [●], shall be to the Seller's account and credited to NSPI on any invoice issued pursuant to Section 5.3. **[NTD: The service fee is expected to be in the hundreds of dollars per month. The administrative markup is expected to be between 15-19% of service fee.]**

- (b) The Seller shall:
 - (i) For each day of the Interim Period and the Term, provide to NSPI by 8:30 am Atlantic Prevailing Time of the previous day, an hourly forecast of (i) the number of generators at the Facility that will be available to produce Energy during each hour of such production day, and (ii) any deratings affecting any such generators, including the magnitude of any such deratings;
 - (ii) promptly update and report to NSPI any material changes to the information provided pursuant to Section 3.3(b)(i) upon the Seller becoming aware of any such change and without limiting the generality of the foregoing, provide to NSPI a mid-day and/or morning same day updated forecast with respect to any anticipated material variation from the previous forecast if the variation is attributable to sudden changes in Energy Source availability, including unexpected or unplanned outages, unforeseen or abrupt changes in weather, and other circumstances that may affect the System Operator's ability to provide reliable transmission service;
 - (iii) if the Energy Source is wind Energy, make available to NSPI electronic access on a real time basis to Facility-derived data such as wind speed and wind direction information affecting the operation of the Facility; and
 - (iv) comply with reasonable requirements and requests by NSPI for information in respect of the daily operation of the Facility.
- (c) It is intended that the information provided to or obtained by NSPI pursuant to Section 3.3(b) is to be used by NSPI for the purpose of dispatch and operating the System in accordance with Good Utility Practice.
- (d) In respect of each day for which the Seller fails to provide NSPI with any of the information and forecasts provided for by Section 3.3(b), the applicable rate to be paid for the Net Output in respect of all hours of such day shall be 50% of the applicable rate specified by Section 5.1.

3.4 Renewable Energy Credits

The Seller hereby assigns, unconditionally and absolutely, all of its right, title and interest in and to all of the Renewable Energy Credits attributable to all of the Energy purchased by NSPI from the Seller pursuant to the Agreement (including any Energy purchased during the Interim Period). The Renewable Energy Credits shall be assigned by the Seller free of any liens, encumbrances or adverse claims. The Seller shall, upon the request of NSPI from time to time, execute and deliver (or cause to be executed and delivered) all such further documents and instruments and do all acts and things as NSPI may reasonably require to better effect, evidence or perfect such assignment or to allow NSPI to otherwise deal with the Renewable Energy Credits (or if such assignment is not permitted, to hold such right, title and interest in trust for NSPI). Any expense incurred by the Seller (including reasonable legal expenses) pursuant to any such request of NSPI shall be for the account of NSPI and NSPI shall promptly reimburse the Seller for any such expenditure upon the Seller providing to NSPI evidence satisfactory to NSPI (acting reasonably) of the amount and purpose of the expenditure.

3.5 Records and Audit Rights

- (a) Each Party shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement and which may be necessary to establish, substantiate or maintain any claim or title of NSPI to Renewable Energy Credits pursuant to Section 3.4. All such records shall be maintained as required by Laws and Regulations but for no less than seven years after the expiration or earlier termination of this Agreement. Each Party shall provide or cause to be provided to the other Party reasonable access (within normal business hours and with advance notice) on a confidential basis as provided for in Article 8 to the relevant and appropriate financial and operating records or data kept by it or on its behalf relating to the Agreement as reasonably required for the other Party to comply with its obligations to Government Agencies or to verify billings or information provided in accordance with the Agreement, or to otherwise verify compliance with the Agreement.
- (b) Either Party may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 8. Alternatively, and at the election of either Party, access shall be through the use of a mutually agreed upon third party auditor provided that the auditor is bound by the confidentiality requirements provided for in Article 8. Each Party shall pay the fees and expenses associated with use of its own third party auditor, as applicable.
- (c) In addition to NSPI's rights pursuant to Section 2.6, NSPI shall have the right, from the Effective Date through to the end of the Term, upon two Business Days' advance notice and acting reasonably, to access the Site during normal business hours for the purpose of reading, inspecting, installing or maintaining revenue metering equipment, examining the Project or the construction thereof or for any other purpose related to performance of the respective obligations of the Parties under the Agreement. Such access shall not unreasonably interfere with the activities at the Site.

- (d) While accessing the Site, all personnel of NSPI shall follow all Site safety rules and procedures which the Seller has previously communicated to NSPI.
- (e) Without limiting Section 1.5, the inspection of the Site or the Facility or the exercise of any audit rights or the failure to inspect the Site or the Facility or to exercise audit rights by or on behalf of NSPI shall not relieve the Seller of any of its obligations to comply with the terms of this Agreement. No Seller Event of Default will be waived or deemed to have been waived by any inspection of the Site or the Facility or the exercise of any audit rights by or on behalf of NSPI. In no event will any inspection of the Site or the Facility or the exercise of any audit by or on behalf of NSPI hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

4 DELIVERY AND ACCEPTANCE OF ENERGY

4.1 Required Sale and Delivery of Energy

- (a) Subject to, and in accordance with, the terms and conditions of the Agreement, the Seller shall sell and deliver to NSPI and NSPI shall purchase and take delivery at the Delivery Point, the entire Net Output of the Facility (including the entire Net Output during the Interim Period). The Net Output shall be sold and delivered by the Seller free of any liens, encumbrances or adverse claims.
- (b) Recognizing that the availability of the Energy Source may vary and, consequently, the resulting Net Output may vary, the Seller hereby certifies that the Facility shall be designed and constructed so as to be capable of generating and delivering, throughout the Term, an average yearly Net Output not less than the Energy Bid and the Seller shall use Commercially Reasonable Efforts to operate, maintain and rehabilitate the Facility in a manner which meets the foregoing requirement.
- (c) The Seller has the option to restate the Energy Bid to no less than 90% of the Energy Bid and no more than 100% of the Energy Bid (the “**Restated Energy Bid**”) in the first Contract Year; provided that the Seller delivers notice to NSPI no later than 30 days following the first day of the second Contract Year, together with a payment to NSPI equal to the Renewable Attribute Loss Rate times three times the Shortfall Energy, as liquidated damages resulting from such deficiency.
- (d) If the Net Output of the Facility during any Contract Year (excluding the first Contract Year) is less than 80% of the Energy Bid, then the Seller shall be liable to NSPI, as liquidated damages resulting from such deficiency for (i) an amount equal to the Renewable Attribute Loss Rate times the Shortfall Energy, plus (ii) an amount equal to the Shortfall Energy times the difference between Annual Average Marginal Cost Rate for that Contract Year and the Energy Rate (if the Annual Average Marginal Cost Rate for that Contract Year is greater than the Energy Rate).
- (e) In respect of the period commencing on the first day of the second Contract Year and ending on the last day of the fifth Contract Year, if the Net Output during any

consecutive period of 36 months therein is less than an amount equal to 80% of three times the Energy Bid, then:

- (i) the Seller has the option to restate the Energy Bid to no more than 100% of the Energy Bid (the “**Seller Revised Energy Bid**”); provided that the Seller delivers notice to NSPI no later than 30 days following the first day of the Contract Year immediately following such 36 month period, together with a payment to NSPI equal to the Renewable Attribute Loss Rate times three times the Shortfall Energy, as liquidated damages resulting from such deficiency.
- (ii) If the Seller does not exercise its option under Section 4.1(e)(i), then within 60 days of receipt of a request of NSPI, the Seller shall deliver a certificate by an Independent Engineer certifying in writing to the satisfaction of NSPI (acting reasonably): (i) that the Facility was designed and constructed to maintain an average yearly Net Output equal to the Energy Bid; (ii) that the design and construction of the Facility was based upon adequate resource availability studies specific to the Site which were compiled and interpreted in accordance with Good Utility Practice; and (iii) that the deficient Net Output was attributable to recorded anomalies in the availability of the Energy Source which could not have been reasonably anticipated based upon such interpretation; failing which the generating capacity of the Facility will be deemed insufficient and will be restated to the average Net Output of the Facility over the 36 month period (the “**NSPI Revised Energy Bid**”) and the Seller will be liable to NSPI, as liquidated damages in respect of such deficiency, for the Partial Termination Payment. The Partial Termination Payment shall be payable by the Seller upon the demand of NSPI, which demand shall include a calculation of such liquidated damages.
- (f) If the Energy Bid is restated to the Restated Energy Bid, Seller Revised Energy Bid, or NSPI Revised Energy Bid, as applicable, the provisions of this Agreement shall apply in respect of the Restated Energy Bid, Seller Revised Energy Bid, or NSPI Revised Energy Bid, as applicable, mutatis mutandis.
- (g) For the purposes of Sections 4.1(c), 4.1(d) and 4.1(e) (and, in the case of liquidated damages payable under Section 4.1(d), without prejudice to the rights of NSPI under Section 4.1(e)), the right of NSPI to recover such liquidated damages (including accrued interest thereon), either by drawing upon the Performance Security or seeking recourse against the Seller for payment thereof, shall be the sole and exclusive remedy of NSPI in respect of such Renewable Attribute Loss and any incremental cost of replacement Energy; provided that, for certainty, any recovery of such liquidated damages shall not be construed as: (A) relieving the Seller of its other obligations under the Agreement or (B) affecting any other rights and remedies of NSPI in respect of any breach by the Seller of such obligations.
- (h) With respect to Sections 4.1(c), 4.1(d), and 4.1(e), any deficiency in Net Output will be measured in accordance with Section 5.3 and such records and calculations

shall, in the absence of manifest error, be conclusive for the purposes of determining whether there is any deficiency in Net Output.

4.2 Acceptance of Energy

- (a) Subject to, and in accordance with, the terms and conditions of the Agreement, NSPI shall purchase and take the entire Net Output of the Facility (including the entire Net Output during the Interim Period), provided that NSPI may, on seven days prior written notice to the Seller, acting reasonably and in good faith, suspend such obligation for so long as the Facility is not operated, maintained or rehabilitated in a manner consistent with Good Utility Practice or in a manner which is compliant with the Generator Interconnection Agreement.
- (b) Subject to Section 4.2(d), the Seller's exclusive remedy for any failure of NSPI to take or purchase any Net Output in accordance with the Agreement (which Net Output in such case will be calculated based on the meter readings in accordance with Section 5.3(a) or Section 5.3(b), as applicable, or otherwise using reasonable assumptions, data and conversion factors) is a claim for the price that would have been payable by NSPI for such Net Output in accordance with Section 5.1(a) (and any interest on any such amount owing by NSPI to the Seller), provided that the foregoing does not affect any rights of the Seller under Section 14.2 or any right of the Seller to terminate the Agreement in accordance with the provisions of Article 10.
- (c) The Seller shall not be entitled to any claim (for compensation or otherwise) in respect of any curtailment, interruption or reduction of the generation or delivery of Energy by the Facility (whether partial or total) which is effected pursuant to the Generator Interconnection Agreement in effect as at the date of this Agreement.
- (d) Provided that the Seller has not selected the Congestion Management Alternative:
 - (i) if the Seller's Facility is available for dispatch as part of the day ahead or intraday (three or four hours ahead) schedule and the Seller is not to be dispatched as part of the day ahead or intraday (three or four hours ahead) schedule, or
 - (ii) if the Seller has selected Network Resource Interconnection Service and the Seller has been curtailed, interrupted, or reduced in the generation or delivery of Energy by the Facility (whether partial or total) by the System Operator other than pursuant to the Generator Interconnection Agreement in effect as at the date of this Agreement as provided for by Section 4.2(c),

then, the Seller will be entitled to payment, for each hour that such non-dispatch, curtailment, interruption or reduction exists, of an amount equal to the Energy Rate multiplied by the difference between (a) the Expected Output; and (b) the actual Net Output for that hour. Such payments will be in addition to any payments owing to the Seller for the Net Output and will be made in accordance with the payment provisions set out in Article 5.

- (e) For greater certainty, the Seller is not entitled to the payment contemplated by Section 4.2(d) in the event of Facility Interruption or a Forced Outage.

4.3 Automatic Generation Control

- (a) The Seller shall cause the Facility to be equipped with Automatic Generation Control (AGC) equipment and software that is suitable and sufficient, in accordance with Good Utility Practice, to provide the System Operator with the ability to (i) adjust the level of power output delivered by the Facility to the System in real time, and (ii) meet the other requirements of this Section 4.3. Seller shall maintain the AGC equipment and supporting systems such that the full functionality of the AGC system is available to the System Operator throughout the Interim Period and the Term. NSPI shall be entitled to perform diagnostic analysis from time to time to ensure the accuracy and proper functioning of the Facility's AGC system (including telemetry functions) and its compliance with the provisions of this Section 4.3, and the Seller shall reasonably assist and cooperate with NSPI in its performance of such analyses.
- (b) The Seller shall cause the Facility's ACG equipment to be configured such that:
 - (i) AGC signals will be sent from the NSPI Supervisory Control and Data Acquisition (SCADA)/Energy Management System (EMS) system to the Facility control system as real power setpoint controls;
 - (ii) the Facility control system will telemeter real power setpoint feedback and available Energy output to the NSPI SCADA/EMS; and
 - (iii) the Facility's AGC regulating range will be from a minimum of 5% of the Facility's Name Plate Capacity to 100% of the Facility's Name Plate Capacity with a ramp rate of at least 10% of the Facility's Name Plate Capacity per minute.
- (c) NSPI, through its System Operator function, shall be entitled to reduce the Expected Output of the Facility utilizing the AGC functionality provided pursuant to this Section 4.3. The following provisions apply to NSPI's utilization of AGC in respect of the Facility:
 - (i) NSPI shall utilize AGC within the technical limits and MW range specific to the AGC system incorporated into the Facility.
 - (ii) Seller will be compensated, at the then-prevailing rate for Net Output as provided for by Section 5.1(a), for the Expected Output that would have been delivered to the System but for the reduction of such Expected Output by means of AGC. The Expected Output to be compensated will be calculated as the difference, in MWh, between the Expected Output and the actual Net Output during the period in which Expected Output is reduced by means of AGC. For greater certainty, such payments will be in addition

to any payments owing to the Seller for the Net Output and will be made in accordance with the provisions set out in Article 5.

- (iii) NSPI shall record the actual Net Output produced by the Facility and the amount of Expected Output reduced by means of AGC, and report this to the Seller and shall provide Seller with a report of the application of AGC and the amount of, and supporting calculations of, the amount of Expected Output reduced by means of AGC, as calculated in accordance with Section 4.3(c)(i).
- (d) If NSPI intends or desires to utilize the Facility's AGC but is unable to do so due to the Seller having failed to maintain its AGC functionality in operable condition or due to any other breach of this Agreement by the Seller ("AGC Default"), then, notwithstanding Section 5.1 or any other provision of this Agreement, Seller shall not be entitled to payment for any Net Output delivered during the whole or partial hours in which the AGC Default existed.

5 PAYMENTS AND COSTS AND ANCILLARY SERVICES

5.1 Energy Payment

- (a) Subject to, and in accordance with, the terms and conditions of the Agreement:
 - (i) for Net Output during the Interim Period, NSPI shall pay the Seller the lower of:
 - (A) 75% of the Incremental Energy Rate, and
 - (B) 75% of the Energy Rate; and
 - (ii) for Excess Energy during the Term, NSPI shall pay the Seller the lower of:
 - (A) 50% of the Incremental Energy Rate, and
 - (B) 50% of the Energy Rate; and
 - (iii) for Net Output during any period where the Seller is in breach of Section 2.3(b), NSPI shall pay the Seller the lower of:
 - (A) the Incremental Energy Rate, and
 - (B) the Energy Rate; and
 - (iv) from the Commencement Date, NSPI shall pay the Seller the Energy Rate for Net Output during the Term (other than as contemplated by Section 5.1(a)(i), 5.1(a)(ii), or 5.1(a)(iii)).

- (b) Other than Excess Energy which is calculated and billed once annually, such amounts payable shall be billed monthly in arrears in accordance with the provisions of Section 5.3.
- (c) For greater certainty, this Agreement relates to the sale and purchase of the Net Output of the Facility and payments contemplated by Sections 4.2(d) and 4.3(c)(ii) only.

5.2 Ancillary Services

If NSPI or the System Operator requests or directs the Seller to provide Ancillary Services (other than those Ancillary Services required to be provided by the Facility pursuant to the terms of this Agreement, or by the provisions of the Generator Interconnection Agreement, Transmission Services Interconnection Requirements or Generator Interconnection Procedures, in each case, in effect as of the Effective Date, or as a requirement of Laws and Regulations in effect as of the Effective Date), then NSPI and the Seller shall negotiate in good faith to reach agreement as to the terms and conditions that shall govern such transactions (including any obligations and payments relating thereto). To the extent the Seller is required to provide Ancillary Services by the provisions of one or more of the foregoing documents or instruments, the provisions of the applicable document or instrument shall govern the provision of Ancillary Services by the Seller. For clarity, unless such document or instrument expressly provides that Seller is to be paid for the provision of Ancillary Services, no additional payment will be made by NSPI beyond the payments provided for by Section 5.1(a).

5.3 Billing, Meter Reading and Payment

- (a) The amount of Energy delivered by the Seller to the Delivery Point will be determined by NSPI through revenue class metering installed or approved by NSPI, with adjustment for Energy losses between the Meter Location and the Delivery Point. NSPI shall read the meters on a monthly basis for determination of the Energy purchased from the Seller during that month and shall issue an invoice to the Seller within 15 Business Days of obtaining meter information for that month and NSPI shall pay the amount of such invoice within 30 days thereafter. In the event that NSPI is late reading the meters for any month then such 30 day period will be reduced by the number of days of that delay. Seller and NSPI shall have access to meters for reading and verification purposes.
- (b) In the event of any failure of the metering equipment which prevents a determination pursuant to Section 5.3(a), NSPI and the Seller agree to accept a reasonable estimate of the Net Output during the period of such failure, which is based on other recognized metering or measurement equipment at the Facility.
- (c) Each invoice shall be subject to adjustment for errors in arithmetic, computation or other errors or omissions raised by a Party during the period of one year following the end of the calendar year in which such invoice was issued. If no complaints are raised, then such invoice will be subject to no further adjustment.

- (d) Subject to Sections 5.3(c), 5.4, and 14.2, in the event that a meter reading error has occurred or if there was an error or omission on the invoice, the Party benefiting from such error or omission shall account to the other Party for the amount which is in error.

5.4 Metering

All Facility revenue class metering equipment shall be routinely tested by NSPI. At any time, either Party may request a test of the accuracy of the metering equipment at its own expense. The results of meter calibrations or tests shall be available for examination by the Parties upon reasonable request. If at any time, any meter equipment is found to be outside of the accuracy requirements for revenue class meters as per NSP-DOC-026 of the “NSPI Metering Quality Assurance Program” in which Measurement Canada’s error limits are identified, NSPI shall cause such metering equipment to be made accurate or replaced as soon as possible. If the meter is found to be accurate within 2%, no financial adjustment will be required. Each Party shall be given reasonable opportunity to be represented in person at any time that a meter is sealed or unsealed for whatever reason from time to time (reasonable notice shall be provided by the initiating Party to the other Party for this purpose), and shall comply with any reasonable request of the other concerning the sealing of meters and other matters affecting the accuracy of the measurement of Energy delivered. If either Party believes that a meter is operating inaccurately, it shall immediately notify the other Party. In the event that a meter’s accuracy, by testing, is found to be subject to variances of greater than 2%, a financial adjustment will be made to compensate for any excess variance over the 2% limit for a period not to exceed 90 days.

5.5 Premiums and Incentives

The rates payable by NSPI for the purchase of Energy are set forth in this Agreement and, without limitation:

- (a) the Seller shall not be entitled to any remuneration which NSPI receives from any of its customers on the re-sale of such Energy,
- (b) NSPI shall be entitled to the full benefit of all premiums and incentives associated with any such re-sale,
- (c) the Seller shall not be entitled to any additional compensation for the assignment to NSPI of the Renewable Energy Credits pursuant to Section 3.4, and
- (d) NSPI shall be entitled to any incentives, payments, grants or other benefits which are attributable to such Renewable Energy Credits, but without prejudice to any entitlement of the Seller to Seller Benefits.

6 PERFORMANCE SECURITY

6.1 Performance Security

- (a) The Seller shall maintain Performance Security throughout the Term as follows:

- (i) Within 10 Business Days of the Effective Date, the Seller shall provide NSPI Performance Security in the amount of the Pre-COD Amount;
 - (ii) The Seller shall be obligated to provide to and maintain with NSPI Performance Security in the amount of the Post COD Amount from Commercial Operation until the end of the Term;
 - (iii) If the Seller selected the Forgo Network Upgrade Reimbursement Alternative, then the Seller shall deliver to NSPI, within 10 Business Days of the Effective Date, the Transmission Credits Security; and
 - (iv) If required by Section 2.7(b)(i), the Seller shall deliver to NSPI, within 10 Business Days of the Effective Date, the Equipment Certification Security.
- (b) Within 20 Business Days of a request by Seller, NSPI shall return the Performance Security to the Seller in the following circumstances:
- (i) NSPI shall return the Pre-COD Amount after Commercial Operation, provided that the Seller has provided Performance Security in the amount of the Post-COD Amount and provided that any liquidated damages payable by the Seller under Section 2.5(d) have been paid by Seller;
 - (ii) NSPI shall return the Transmission Credits Security after NSPI receives reimbursement of the cash repayment paid to the Seller for Network Upgrades related to the Facility, as contemplated by the Reimbursement Agreement;
 - (iii) NSPI shall return the Equipment Certification Security after the Generating Technology is Certified and a copy of such Certification is provided to NSPI; and
 - (iv) NSPI shall return or release all Performance Security then held by NSPI after the end of the Term or after early termination of the Agreement in accordance with the provisions of the Agreement, provided all obligations and liabilities of the Seller which have accrued up to such time, as well as those which have arisen upon early termination of the Agreement, have been discharged.
- (c) The Performance Security shall be in the form of a Letter of Credit and the Seller shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit; and (ii) if the financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a replacement Letter of Credit at least 15 Business Days prior to the expiration of the outstanding Letter of Credit.
- (d) Within 20 Business Days of a request by Seller, NSPI shall return or release all or any part of the Performance Security held by NSPI provided the Seller has delivered replacement Performance Security for the Performance Security to be returned or

released and such replacement Performance Security, together with any Performance Security not being returned or released, meets all the applicable requirements of this Article 6 and there is no Performance Security Default in respect of any Performance Security not being returned or released.

- (e) The Performance Security secures the obligations of the Seller under the Agreement and, in the event of any breach by the Seller of such obligations, the Performance Security may be drawn upon or otherwise enforced as provided herein without prejudice to any other rights or remedies of NSPI in respect of such breach or any other breach of such obligations.
- (f) NSPI shall be entitled to draw upon or otherwise enforce the Performance Security in the event of any Performance Security Default and to hold any proceeds of such enforcement as Performance Security in lieu of the Performance Security which has been enforced, until the Seller provides replacement Performance Security as provided in Section 6.1(h).
- (g) If there is a Performance Security Default, then NSPI shall be entitled to withhold payment of any amount owing by NSPI to the Seller under the Agreement as Performance Security in lieu of the Performance Security in respect of which there is a Performance Security Default until the Seller provides replacement Performance Security as provided in Section 6.1(h).
- (h) If NSPI draws upon or otherwise enforces the Performance Security as permitted hereunder, then the Seller shall provide additional or replacement Performance Security which is sufficient to restore the Performance Security to an amount equal to: (i) the Pre-COD Amount or, following Commercial Operation, the Post COD Amount; plus (ii) the Transmission Credits Security, if applicable, provided that NSPI has not drawn upon or enforced the Performance Security under Section 2.2(d)(v); plus (iii) the Equipment Certification Security, if applicable, provided that NSPI has not drawn upon or enforced the Performance Security pursuant to Section 2.7(b)(ii).

7 REPRESENTATIONS

7.1 Representations and Warranties of Seller

The Seller represents and warrants to NSPI as follows, and acknowledges that NSPI is relying on such representations and warranties in entering into the Agreement:

- (a) The Seller is a ● under the laws of ● and is registered or otherwise qualified to carry out business in the Province of Nova Scotia, or will be registered or otherwise qualified to carry out business in the Province of Nova Scotia on or prior to the date that the Facility is interconnected to the System.
- (b) The Seller has the requisite power, authority and capacity to enter into the Agreement and to carry out its obligations under the Agreement.

- (c) The Agreement has been duly authorized, executed, and delivered by it and, assuming the due execution and delivery by NSPI, the Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, except as such enforcement may be limited by Insolvency Legislation or other Laws and Regulations affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (d) The execution and delivery of the Agreement by it and the consummation of the transactions contemplated hereby will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of, its material obligations under:
 - (i) any contract or obligation to which the Seller is a party or by which it or its assets may be bound, except for such defaults or conflicts to which requisite waivers or consents have been obtained;
 - (ii) the articles, by-laws, or other constating documents or resolutions of the directors, partners or shareholders of the Seller;
 - (iii) any judgment, decree, order or award of any Government Agency or arbitrator;
 - (iv) any Permit held by the Seller; or
 - (v) any Laws and Regulations.
- (e) It is not subject to an Event of Insolvency.
- (f) As of the date hereof, there are no actions, suits, proceedings, judgments, rulings or orders by or before any Government Agency or arbitrator, or, to its knowledge, threatened against it, that could have a material adverse effect on its ability to perform its obligations under the Agreement.
- (g) As of the date hereof, all requirements for the Seller to make any declaration, filing or registration with, give any notice to, or to obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Government Agency as a condition to entering into the Agreement have been satisfied.
- (h) The information provided in the Commercial Terms is complete and accurate and all statements, specifications, data, confirmations and information that have been set out in the Project Description are complete and accurate in all material respects.
- (i) The Seller has no reason to believe, acting reasonably, that the Facility cannot achieve Commercial Operation by the Scheduled Commercial Operation Date.
- (j) The Seller is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a materially

adverse effect on the ability of the Seller to perform its obligations under this Agreement.

- (k) The Seller is an “independent power producer” as that term is defined in the Renewable Electricity Regulations (N.S. Reg. 155/2010).
- (l) A “public utility” as that term is defined in the *Electricity Act, S.N.S. 2004, c. 25* (Nova Scotia) is not the legal or beneficial owner of more than 49% of all or any part of the Project and/or is not otherwise entitled to more than 49% of revenues of the Seller under this Agreement.
- (m) The Project and the Delivery Point are located at the Site and within the Province of Nova Scotia.
- (n) Except as disclosed to NSPI in writing, all material statements, specifications, data, confirmations and information that have been set out in the Proposal are complete and accurate in all material respects and are hereby restated and reaffirmed by the Seller as representations made to NSPI hereunder and there is no material information omitted from the Proposal which makes the information in the Proposal misleading or inaccurate.
- (o) The Seller is the legal and beneficial owner of the Renewable Energy Credits, if any, free and clear of all liens, encumbrances and adverse claims.
- (p) The Seller has procured, or will have procured prior to commencement of construction of the Project, either through ownership, leasehold interest, option, easement or right of way, all land tenure or land tenure agreements in respect of the Site which are required to carry out its obligations under the Agreement.
- (q) The Seller is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- (r) The Project is a “renewable low impact generation facility” as that term is defined in the Renewable Electricity Regulations (N.S. Reg. 155/2010).

The representations and warranties contained in this Section 7.1 shall survive execution of this Agreement and the Seller covenants and agrees to ensure that each representation and warranty contained in this Section 7.1 remains true throughout the Term of the Agreement.

7.2 Representations and Warranties of NSPI

NSPI represents and warrants to the Seller, and acknowledges that the Seller is relying on such representations and warranties in entering into the Agreement:

- (a) NSPI is a corporation formed under the laws of Nova Scotia and has the requisite power, authority and capacity to enter into the Agreement and to carry out its obligations under the Agreement.

- (b) The Agreement has been duly authorized, executed, and delivered by it and, assuming the due execution and delivery by the Seller, the Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, except as such enforcement may be limited by Insolvency Legislation or other Laws and Regulations affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of the Agreement by it and the consummation of the transactions contemplated hereby will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of, its material obligations under:
 - (i) any contract or obligation to which NSPI is a party or by which it or its assets may be bound, except for such defaults of conflicts to which requisite waivers or consents have been obtained;
 - (ii) the articles, by-laws, or other constating documents or resolutions of the directors or shareholders of NSPI;
 - (iii) any judgment, decree, order or award of any Government Agency or arbitrator;
 - (iv) any Permit held by NSPI; or
 - (v) any Laws and Regulations.
- (d) It is not subject to an Event of Insolvency.
- (e) As of the date hereof, there are no actions, suits, proceedings, judgments, rulings or orders by or before any Government Agency or arbitrator, or, to its knowledge, threatened against it, that could have a material adverse effect on its ability to perform its obligations under the Agreement.
- (f) As of the date hereof, all requirements for NSPI to make any declaration, filing or registration with, give any notice to, or to obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Government Agency as a condition to entering into the Agreement have been satisfied.
- (g) NSPI is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a materially adverse effect on the ability of NSPI to perform its obligations under this Agreement.

The representations and warranties contained in this Section 7.2 shall survive execution of this Agreement and NSPI covenants and agrees to ensure that each representation and warranty contained in this Section 7.2 remains true throughout the Term of the Agreement.

8 CONFIDENTIALITY

8.1 Confidentiality

- (a) Any and all information and knowledge relating to the Project, the Energy generated therefrom, the ownership or use of the Project, forecasting data relating to the Project, and any and all information emanating from the other Party's business in any form that a Party may acquire under the terms of the Agreement, or by virtue of the relationship between the Parties created by the Agreement (collectively, "**Confidential Information**"), shall be considered confidential and, except as permitted elsewhere in this Article 8, shall not be used, revealed or divulged to any other Person, or published in any manner whatsoever, without first obtaining the written consent of the other Party.
- (b) Notwithstanding the provisions of Section 8.1(a), a Party may reveal or divulge Confidential Information:
 - (i) that is already in the public domain when disclosed to a Party or becomes, after having been disclosed to a Party, generally available to the public through publication or otherwise unless the publication or other disclosure was made directly or indirectly by a Party in breach of this Agreement;
 - (ii) to its Affiliates and to its and their officers, directors, employees, agents or other representatives who need to know Confidential Information for the purposes of this Agreement and provided they have agreed in writing to maintain such Confidential Information in confidence;
 - (iii) as required by applicable Laws and Regulations, including as required by the Board, the orders or directions of courts or tribunals having jurisdiction or stock exchange or clearing house requirements, provided that, subject to applicable Laws and Regulations, where circumstances permit, prior to any disclosure, the other Party shall be notified of any such proposed divulgence and the divulging Party shall at the other Party's request, take reasonable steps to allow the other Party to contest the requirement for disclosure or to obtain an order or ruling to preserve the confidentiality of such Confidential Information;
 - (iv) as necessary in connection with any dispute resolution commenced pursuant to this Agreement, any litigation commenced in respect of this Agreement, or any enforcement of any security granted pursuant to any Project Lender's Security Agreement, subject to such confidentiality protection as is appropriate and available in the circumstances;
 - (v) in confidence, and only to the extent necessary:
 - (A) to any consultants, contractors, lenders, financial institutions or advisors of such Party, Project Lenders or any potential investors in the Seller or the Project; or

- (B) on prior notice to the Seller, to third parties to enable NSPI to obtain or realize the full benefit of the Renewable Energy Credits, including sales of same to third parties; or
- (C) for the purposes of Section 3.5(b), to a third-party auditor;

provided that in each case such third party has been informed of the Party's confidentiality obligations hereunder and such third party (other than legal advisors) has completed and executed a confidentiality undertaking in the form attached as Exhibit "C".

- (c) Each Party acknowledges that breach of any provisions of this Article 8 may cause irreparable harm to the other Party or to any third party to whom a Party owes a duty of confidence and that the injury may be difficult to calculate and is inadequately compensable in damages. The Parties agree that they are entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any remedy against any actual or potential breach of the provisions of this Article 8.
- (d) The confidentiality obligations of the Parties under this Article 8 shall not extend beyond that date which is the fifth anniversary of the end of the Term or the Early Termination Date; however, this provision shall not affect any rights of either Party in respect of any breach by the other Party of its obligations under this Article 8 which arises prior thereto.

9 TERM

9.1 Term

- (a) The Agreement shall become effective upon the Effective Date.
- (b) Without prejudice to the provisions of the Agreement which pertain to that period prior to the commencement of the Term, the Term shall commence on the Commencement Date and expire on the [●] anniversary of the Commencement Date, provided however that if the Facility has not achieved Commercial Operation by the Scheduled Commercial Operation Date (other than by reason of a Force Majeure Event pursuant to Section 11.2(c) or if NSPI or the Seller has elected to extend the Term in accordance with Section 2.5(b) or Section 2.5(c) respectively), the Term shall nevertheless expire on the day before the 25th anniversary of the Scheduled Commercial Operation Date.
- (c) Not later than 18 months before the end of the Term, the Parties agree to exclusively negotiate in good faith the terms of a new power purchase agreement in respect of Energy generated by the Facility. If NSPI waives the Seller's obligation to negotiate or the Parties are unable to agree on the terms of a new power purchase agreement prior to the last 12 months of the Term, then the Seller shall be at liberty to negotiate the sale of Energy from the Facility to another Person.

10 DEFAULT AND TERMINATION

10.1 Seller Events of Default

Each of the following will constitute an event of default by the Seller (“**Seller Event of Default**”):

- (a) The Seller fails to make any payment when due (other than a payment which is subject to a bona fide dispute pursuant to the provisions of Article 14) and such failure or default is not remedied within 10 Business Days after written notice of such failure or default from NSPI.
- (b) There is a Performance Security Default and the failure or default is not remedied within 10 Business Days after written notice of such failure or default from NSPI.
- (c) An Event of Insolvency occurs with respect to the Seller.
- (d) A Dissolution Event occurs with respect to the Seller unless there has been a permitted and valid assignment of the entire interest of the Seller in the Agreement (along with the Project) pursuant to Section 16.2.
- (e) The Seller breaches the provisions of Section 2.1(b), Section 16.2, Section 16.3 or Section 16.4.
- (f) The Generator Interconnection Agreement is terminated in accordance with its terms other than for a default of NSPI thereunder.
- (g) The Seller ceases Energy production at the Facility for a continuous period of 30 days due to an event other than (i) a Force Majeure Event, or (ii) an interruption or curtailment caused by NSPI, and the Seller does not, within such 30 day period, demonstrate to the satisfaction of NSPI, acting reasonably and having regard to the nature of the event giving rise to the cessation of Energy production, that the Seller is using best efforts to restore the Facility to commercial operation, and following such 30 day period, that it is continuing to use best efforts to restore the Facility to commercial operation;
- (h) Either of the representations provided by the Seller under Section 7.1(k) or Section 7.1(l) are or becomes untrue at any time during the Term.
- (i) The Seller is in breach of any of its representations, warranties or obligations (other than a Seller Event of Default set forth above in Sections 10.1(a) through 10.1(g), inclusive), which breach has, or could reasonably be expected to have, a material adverse effect on the rights and interests of NSPI under the Agreement or a material adverse effect on the ability of the Seller to perform its obligations under the Agreement, and the breach is not remedied within 30 days after written notice of such breach from NSPI or, if the breach cannot be remedied within such 30 day period, the Seller fails to demonstrate to the satisfaction of NSPI, acting reasonably, that the Seller is diligently and expeditiously taking steps to remedy the breach and,

in any event, if the breach has not been remedied within 90 days after such notice from NSPI.

- (j) Commercial Operation has not occurred on or before the Scheduled Commercial Operation Date, other than by reason of an occurrence of a Force Majeure Event, unless the Seller has paid, or has arranged to pay within 10 Business Days after written notice of such breach from NSPI, liquidated damages pursuant to Section 2.5(d) and the full amount of the Pre-COD Amount is being held by NSPI in accordance with Article 6.
- (k) Commercial Operation has not occurred on or before the date which is 12 months after the Scheduled Commercial Operation Date (other than by reason of an occurrence of a Force Majeure Event).
- (l) The Seller fails to obtain or maintain Electricity Standard Approval of the Facility during any period of the Term in accordance with the terms of this Agreement and such failure or default is not remedied within 90 Business Days, or if the breach cannot be remedied within such 90 day period, the Seller fails to demonstrate to the reasonable satisfaction of NSPI that the Seller is diligently and expeditiously taking steps to remedy the breach.

10.2 Remedies of NSPI

- (a) If a Seller Event of Default occurs, other than a Seller Event of Default under Sections 10.1(c), 10.1(d), and 10.1(k), and has not been remedied or cured within the time, if any, allowed pursuant to this Agreement and is continuing after such time, NSPI may, subject to Section 12.2(b), terminate the Agreement upon five days advance notice to the Seller. Such notice shall be given no later than 60 days after the discovery of the Seller Event of Default.
- (b) If a Seller Event of Default occurs under Section 10.1(c) or Section 10.1(k), NSPI may, subject to Section 12.2(a), terminate this Agreement upon notice to the Seller within 15 days after the discovery of such Seller Event of Default, in which case the Agreement shall be deemed terminated effective immediately before the occurrence of such Seller Event of Default and the obligations of NSPI under the Agreement shall be deemed suspended after the Early Termination Date. Upon the occurrence of a Seller Event of Default under Section 10.1(d), the Agreement shall automatically terminate effective immediately before the occurrence of such Seller Event of Default and the obligations of NSPI under the Agreement shall be deemed suspended after the Early Termination Date.
- (c) If the Agreement is terminated pursuant to Section 10.2(a) or Section 10.2(b), NSPI shall be entitled to the Early Termination Payment.
- (d) If a Seller Event of Default occurs and has not been remedied or cured within the time allowed pursuant to this Agreement and is continuing after such time, NSPI may:

- (i) set off any payments due to the Seller against any amounts payable by the Seller to NSPI pursuant to this Agreement;
- (ii) draw upon or otherwise enforce the Performance Security and, if NSPI has not exercised its rights of termination, require the Seller to provide additional or replacement Performance Security in accordance with Section 6.1(h); and/or
- (iii) suspend its obligations under the Agreement, including the suspension of any further payments to the Seller under this Agreement and any other obligation which is not otherwise suspended pursuant to Section 10.2(b).

10.3 NSPI Events of Default

Each of the following will constitute an event of default by NSPI (“**NSPI Event of Default**”):

- (a) NSPI fails to make any payment when due, other than a payment which is subject to a bona fide dispute pursuant to the provisions of Article 14, and the failure is not remedied within 10 Business Days after written notice of such failure from the Seller.
- (b) An Event of Insolvency occurs with respect to NSPI.
- (c) A Dissolution Event occurs with respect to NSPI unless there has been a valid assignment of the entire interest of NSPI in the Agreement pursuant to Section 16.2.
- (d) NSPI is in breach of any of its representations, warranties or obligations, other than a NSPI Event of Default set forth above in Sections 10.3(a) through 10.3(c) inclusive, which breach has, or could reasonably be expected to have, a material adverse effect on the rights and interests of the Seller under the Agreement or a material adverse effect on the ability of NSPI to perform its obligations under this Agreement, and the breach is not remedied within 30 days after written notice of such breach from the Seller or, if the breach cannot be remedied within such 30 day period, NSPI fails to demonstrate to the satisfaction of the Seller, acting reasonably, that NSPI is diligently and expeditiously taking steps to remedy the breach and, in any event, if the breach has not been remedied within 90 days after such notice from the Seller.
- (e) NSPI breaches the provisions of Section 16.2.

10.4 Remedies of the Seller

- (a) If a NSPI Event of Default occurs, other than a NSPI Event of Default under Sections 10.3(b) and 10.3(c), and has not been remedied or cured within the time allowed pursuant to this Agreement and is continuing after such time, the Seller may terminate the Agreement upon five days advance notice to NSPI. Such notice of termination shall be given no later than 60 days after the discovery of the NSPI Event of Default.

- (b) If a NSPI Event of Default occurs under Section 10.3(b), the Seller may terminate the Agreement upon notice to NSPI within 15 days after the discovery of such NSPI Event of Default, in which case the Agreement shall be deemed terminated effective immediately before the occurrence of such NSPI Event of Default and the obligations of the Seller under the Agreement shall be deemed suspended after the Early Termination Date. Upon the occurrence of a NSPI Event of Default under Section 10.3(c), the Agreement shall automatically terminate effective immediately before the occurrence of such NSPI Event of Default and the obligations of the Seller under the Agreement shall be deemed suspended after the Early Termination Date.
- (c) If a NSPI Event of Default occurs and has not been remedied or cured within the time allowed pursuant to this Agreement and is continuing after such time, the Seller may set off any payments due to NSPI against any amounts payable by NSPI to the Seller and suspend the performance of its obligations under the Agreement including any obligation which is not otherwise suspended pursuant to Section 10.4(b).
- (d) The Seller shall be entitled to any payment owing to the Seller under this Agreement up to the Early Termination Date (including the costs contemplated by Section 2.2(e) upon termination of the Agreement pursuant to Section 2.2(e)) and shall be entitled to claim, without duplication of any involved amounts, the Seller's Termination Costs and the Seller Claimable Amount upon the termination of this Agreement pursuant to this Section 10.4.
- (e) For the purposes of calculating the Seller Claimable Amount:
 - (i) if the total Net Output during the 12 months immediately preceding the Early Termination Date is less than the Energy Bid, or
 - (ii) if, at such time, two or more Contract Years have expired, the average Net Output for those Contract Years is less than the Energy Bid, excluding from either determination any deficiency in Net Output due to any event or circumstance in which the Seller has exercised its rights under this Article 10, then the Energy Bid shall be reduced to such total or average, as the case may be, for the purpose of determining Contract Energy.
- (f) If, within 15 Business Days of presentation of the Seller's Termination Costs and/or Seller Claimable Amount to NSPI, NSPI notifies the Seller that it is disputing such amount or NSPI fails to notify the Seller of its acceptance of such amount, in which case the Seller's Termination Costs and/or Seller Claimable Amount, as applicable, shall be deemed in dispute, then the Seller may refer the dispute for resolution pursuant to Article 14. During such period, the Seller shall promptly provide such information relative to the determination of the Seller's Termination Costs and/or Seller Claimable Amount, as applicable, as NSPI may reasonably require. If NSPI notifies the Seller of its acceptance of the Seller's Termination Costs and/or Seller Claimable Amount, or the Parties agree to another amount then, within 10 Business

Days of such notice or agreement, or upon other resolution of any dispute under this Section 10.4(f), NSPI shall pay to the Seller the Seller's Termination Costs and/or Seller Claimable Amount, as applicable, or such other amount, as the case may be, together with interest at the Prime Rate from and including the Early Termination Date until and including the date of payment.

- (g) Notwithstanding anything to the contrary, but without prejudice to Section 16.8(b) or to the Seller's rights under Section 10.4(d), upon termination of the Agreement pursuant to this Section 10.4, NSPI shall only be responsible for payment of amounts accruing to the Seller under the Agreement up to the Early Termination Date (including, for clarity, those amounts set out in Section 10.4(d), as applicable).

10.5 NSPI's Termination Payment(s)

- (a) If NSPI terminates the Agreement pursuant to Section 10.2, NSPI shall, in good faith and having regard to any mitigative measures available to it, determine NSPI's Termination Costs and calculate its Early Termination Payment.
- (b) NSPI shall give to the Seller the amount of the Early Termination Payment, together with a statement showing the determination of the amount thereof. If, within 15 Business Days of presentation of the Early Termination Payment to the Seller, the Seller notifies NSPI that it is disputing the Early Termination Payment or the Seller fails to notify NSPI of its acceptance of the Early Termination Payment (in which case the Early Termination Payment shall be deemed in dispute), then NSPI may refer the dispute for resolution pursuant to Article 14. During such period, NSPI shall promptly provide such information relative to the determination of the Early Termination Payment as the Seller may reasonably require. If the Seller notifies NSPI of its acceptance of the Early Termination Payment or the Parties agree to another amount then, within 10 Business Days of such notice or agreement, or upon other resolution of any dispute under this Section 10.5(b), the Seller shall pay to NSPI the Early Termination Payment or such other amount, as the case may be, together with interest at the Prime Rate from and including the Early Termination Date until and including the date of payment.
- (c) For certainty, the Seller shall not be entitled to dispute the methodology for calculating the Early Termination Payment as set forth in this Section 10.5 but may dispute the reasonableness of the inputs to the calculation or any material departure from such methodology.

10.6 Saving Provision

For certainty, the rights of the Parties under this Article 10 will be in addition to the rights of the Parties set forth in Sections 16.8(b) and 15.4, provided that no provision of this Agreement shall be deemed to allow any double recovery.

11 FORCE MAJEURE

11.1 Definition of Force Majeure

- (a) For purposes of the Agreement, “**Force Majeure**” or a “**Force Majeure Event**” means any event or circumstance that is beyond the control of the affected Party (“**Affected Party**”) and that has not been wholly or partly caused, or attributed to, by the act or omission or negligence of the Affected Party, including (provided that the foregoing criteria are met):
- (i) subject to Section 11.1(b)(iv), acts of God (including ice storms and other storms, lightning, floods, earthquakes, volcanic eruptions and landslides),
 - (ii) epidemics, labour disputes, war (whether declared or not), blockades, acts of public enemies, acts of sabotage, civil insurrection, terrorism, revolution, riots and civil disobedience,
 - (iii) explosions and fires,
 - (iv) an order, judgement, legislation, ruling or direction by any Government Agency prohibiting a Party from performing its obligations under this Agreement, provided that the Affected Party’s acts or omissions have not resulted in such order and provided that the Affected Party has not applied for or assisted in the application for, and has used Commercially Reasonable Efforts to oppose said order, judgement, legislation, ruling or direction,
 - (v) if the Seller is the Affected Party only, any delay in the completion of, or inability to complete, the interconnection of the Facility to the System or Network Upgrades,
 - (vi) action or non-action by a Government Agency, whether federal, provincial or local (including expropriation, requisition, regulatory required curtailment), and failure to grant, renew or amend, or revocation of, any governmental authorization, approval, consent, license or permit, provided that
 - (A) such action or non-action was caused by the applicable Government Agency,
 - (B) the Affected Party did not in any way contribute to or cause such action or non-action, and
 - (C) the Affected Party did not consent or acquiesce to such action or non-action, and
 - (vii) inability of NSPI to accept or receive Energy resulting from a Force Majeure Event under this Agreement or the Generator Interconnection Agreement.
- (b) Notwithstanding anything to the contrary, the Affected Party shall not be entitled to claim any relief under this Article 11 in respect of any of the following events or circumstances (an “**Excepted Relief Event**”):

- (i) economic hardship or lack of funds.
- (ii) Forced Outage, unless the cause of such outage was a Force Majeure Event.
- (iii) Facility Interruption.
- (iv) any weather condition which (A) could be anticipated by an experienced Person familiar with constructing and operating projects similar to the Project and at locations and under conditions similar to those pertaining to the Project; and/or (B) does not exceed the 20 year severity for that weather condition in the area where the Project is located, as determined by or according to the records of the Meteorological Service of Canada (or its successor), or any event or circumstance arising from such weather condition.
- (v) any strikes, work stoppages or deteriorations, slowdowns or other labour actions directed solely at the Project or the Affected Party or at all or any other members of its Group other than those which have not been caused, or attributed to, by the act or omission or negligence of the Affected Party.
- (vi) any direct or indirect delay in obtaining, or failure to obtain, any labour, materials, equipment or other resources, except where such delay or failure is caused by another event which is not an Excepted Relief Event but otherwise falls within the definition of Force Majeure Event.
- (vii) any failure, financial or otherwise, or delay of any Seller Personnel, including any breach by any Seller Personnel of their contractual obligations or the terms upon which they are engaged, except where such failure or delay is caused by another event which is not an Excepted Relief Event but otherwise would fall within the definition of Force Majeure Event if any such Seller Personnel were the Affected Party.
- (viii) any event or circumstance attributable to the unreasonable delay or lack of reasonable diligence of the Affected Party or any other member of its Group, including any event or circumstance which the Affected Party or any other member of its Group, acting diligently, could reasonably have been expected to avoid or overcome in the performance of its obligations, provided that nothing herein shall be construed to require either Party to settle any strike or labour dispute.
- (ix) any event or circumstance caused by the breach of the obligations of the Affected Party or its fault or negligence or the fault or negligence of any other member of its Group, or by violation of Laws and Regulations by the Affected Party or any other member of its Group.
- (x) any unavailability of the Energy Source or variation in the availability of the Energy Source.

- (xi) any direct or indirect delay in obtaining, or failure to obtain, Certification.

11.2 Effect of Force Majeure

- (a) If an Affected Party is unable, by reason of a Force Majeure Event, to perform or comply with its obligations under the Agreement, including a failure to achieve Commercial Operation by the Scheduled Commercial Operation Date as provided for in Section 11.2(c), either wholly or in part, the Affected Party shall be excused from such performance or compliance to the extent such performance or compliance is impacted by the Force Majeure Event, provided in the case of a Force Majeure Event the Affected Party shall:
 - (i) give prompt notice to the other Party of the occurrence of the Force Majeure Event, including a description of the Force Majeure Event and reasonable evidence verifying its occurrence together with an estimation of its expected duration and the probable impact of the Force Majeure Event on the performance of the obligations of the Affected Party;
 - (ii) provide regular reports updating any information previously submitted regarding the expected duration or impact of the Force Majeure Event;
 - (iii) exercise all reasonable efforts to mitigate the impact of the Force Majeure Event including, to the extent reasonably practicable, continuing with its obligations which are partially impacted by the Force Majeure Event and, as soon as reasonably practicable, resuming the performance of its obligations which are wholly impacted by the Force Majeure Event; and
 - (iv) provide prompt notice to the other Party of the cessation of the Force Majeure Event or the cessation of the impact of the Force Majeure Event on the performance of the obligations of the Affected Party.
- (b) Nothing in this Article 11 shall relieve a Party of its obligation to make any payment of any amount that was due and owing before the occurrence of the Force Majeure Event or that otherwise becomes due and payable during any period when the Force Majeure Event is continuing or while the obligations of the Affected Party are impacted by the Force Majeure Event.
- (c) Notwithstanding anything to the contrary herein, (i) if a Force Majeure Event causes the Seller to fail to achieve Commercial Operation by the Scheduled Commercial Operation Date, then the Scheduled Commercial Operation Date shall be deemed to be extended for such reasonable period of delay directly resulting from the impact of the Force Majeure Event and the Term shall be correspondingly extended; and (ii) if a dispute under Section 2.2(e) is submitted to arbitration by either Party, then the Scheduled Commercial Operation Date shall be deemed to be extended for such reasonable period of delay directly resulting from the impact of the arbitration proceedings and the Term shall be correspondingly extended.

- (d) In the event that the Parties, each acting reasonably and in good faith, do not agree that a Force Majeure Event has occurred, the Parties shall resolve the dispute in accordance with Article 14, provided that the burden of proof as to whether a Force Majeure Event has occurred shall be upon the Party claiming a Force Majeure Event.

11.3 Termination for Force Majeure

If the Seller is entitled to relief from its obligations under this Article 11, and the occurrence or impact of the Force Majeure Event has a material adverse effect on the Seller's performance of, or compliance with, its obligations under the Agreement, then NSPI may terminate the Agreement upon 30 days advance notice to the Seller in the following circumstances and to the extent that the applicable Force Majeure Event is continuing:

- (a) If the Force Majeure Event affecting the Seller begins before the Commencement Date and extends for a continuous period of more than 12 months, including any delay in achieving Commercial Operation by the Scheduled Commercial Operation Date, without consideration of any extension of the Scheduled Commercial Operation Date pursuant to Section 11.2(c), or
- (b) If the Force Majeure Event affecting the Seller begins following the Commencement Date and extends for an aggregate of 30 months in any 60 month consecutive period during the Term, in each case, from the date the Seller gives notice of the occurrence of the Force Majeure Event pursuant to Section 11.2(a)(i).

If NSPI exercises its right to terminate the Agreement pursuant to this Section 11.3, such termination will be without any costs or payments of any kind to either Party, including, for greater certainty, any damages for early termination of this Agreement, and all Performance Security shall be returned forthwith.

12 PROJECT LENDER PROVISIONS

12.1 Project Lender Security

The Seller, from time to time on or after the Effective Date shall have the right, at its cost, to enter into a Project Lender's Security Agreement. For greater certainty, if such Project Lender's Security Agreement is in the form of a deed of trust or a similar instrument securing bonds or debentures in which the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Project Lender's Security Agreement as the Project Lender on behalf of the lenders. A Project Lender's Security Agreement shall be subject to the following conditions:

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

- (b) A Project Lender's Security Agreement may not secure any indebtedness, liability or obligation of the Seller that is not directly related to the Project or cover any real or personal property of the Seller not a component of the Project. For greater certainty, a Project Lender's Security Agreement may include, pledges of shares or partnership interests in the capital of the Seller and guarantees of payment of the Seller's indebtedness.
- (c) NSPI shall have no liability whatsoever for any obligation secured by any Project Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and the Project Lender shall not be entitled to seek any damages from, or to obtain any other recourse from NSPI for any liability arising under the Project Lender's Security Agreement.
- (d) No Project Lender's Security Agreement shall limit NSPI in the enforcement of its rights and remedies under this Agreement, or by Laws and Regulations, unless and until each of the following have been delivered to NSPI: (i) a copy of the original Project Lender's Security Agreement; (ii) details of any applicable registrations of the security interests created by the Project Lender's Security Agreement; and (iii) written notice of the address of the Project Lender to which notices pursuant to this Agreement may be sent.
- (e) No assignment of a Project Lender's Security Agreement shall be binding upon NSPI unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee to which notices may be sent, have been delivered to NSPI by the Seller or the Project Lender.
- (f) If the Seller is in default under or pursuant to the Project Lender's Security Agreement and the Project Lender intends to exercise any rights afforded to the Project Lender under this Agreement, then the Project Lender shall give written notice of such default to NSPI at least five Business Days prior to exercising any such rights.
- (g) Any Project Lender's Security Agreement permitted hereunder may secure two or more separate debts, liabilities or obligations in favour of two or more separate Project Lenders, provided that such Project Lender's Security Agreement complies with the provisions of this Article 12.
- (h) Any number of permitted Project Lender's Security Agreements may be outstanding at any one time, provided that each such Project Lender's Security Agreement complies with the provisions of this Article 12.
- (i) All rights acquired by a Project Lender under any Project Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Project Lender's Security Agreement is in effect, NSPI and the Seller shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Project Lender, which consent shall not be unreasonably withheld, conditioned or

delayed. Prior to any such amendment, supplement or termination, the Seller shall provide to NSPI such Project Lender's consent in writing. A Project Lender must respond within 15 Business Days to any request to amend or supplement or terminate this Agreement.

- (j) Despite any enforcement of any Project Lender's Security Agreement, the Seller shall remain liable to NSPI for the payment of all sums owing to NSPI under this Agreement and for the performance of all of the Seller's obligations under this Agreement.

12.2 Rights and Obligations of Project Lenders

While any Project Lender's Security Agreement remains in effect, and provided that NSPI has received the notices referred to in Section 12.1(d), the following provisions shall apply:

- (a) No Seller Event of Default (other than those referred to in Sections 10.1(c) and 10.1(d)) shall be grounds for the termination by NSPI of this Agreement until:
 - (i) any notices required to be given under Sections 10.1 and 10.2 have been given to the Seller and to the Project Lender; and
 - (ii) any applicable cure period set out in Section 10.1 and any applicable notice period set out in Section 10.2 has expired without a cure having been completed and without the Project Lender having taken the actions contemplated therein.
- (b) In the event NSPI has given any notice required to be given under Section 10.1, the Project Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and NSPI shall accept such performance by such Project Lender as if the same had been performed by the Seller.
- (c) Any payment to be made or action to be taken by a Project Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed to have been properly made or taken by the Project Lender if such payment is made or action is taken within the prescribed time period by a Project Lender Agent.
- (d) A Project Lender shall: (i) be entitled to the Seller's rights and benefits contained in this Agreement, and (ii) become liable for the Seller's obligations, solely as provided in this Section 12.2. A Project Lender may, subject to the provisions of this Agreement, enforce any Project Lender's Security Agreement and acquire the right, title and interest of the Seller in or to the Project and the Agreement (the "**Seller's Interest**") in any lawful way and, without limitation, a Project Lender, or a Project Lender Agent, may take possession of and manage the Project and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Project Lender's Security Agreement, may sell or assign the Seller's Interest in accordance with Section 12.2(f).

- (e) Until a Project Lender:
 - (i) exercises its foreclosure rights or has otherwise taken ownership of the Seller's Interest, or
 - (ii) has taken possession or control of the Seller's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Seller's Interest by reference to the Project Lender's Security Agreement, the Project Lender shall not be liable for any of the Seller's obligations or be entitled to any of the Seller's rights and benefits contained in this Agreement, except by way of security. During any period in which the Project Lender itself, or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Project Lender ("**Project Lender Agent**"), is the owner or is in lawful control or possession of the Seller's Interest, then such individual or entity shall be bound by all of the Seller's obligations and be entitled to any rights and benefits of Seller contained in this Agreement as existing on and from the date the Project Lender Agent assumes lawful control or possession of the Seller's Interest. Upon the Project Lender or Project Lender Agent no longer being in lawful possession or control of the Seller's Interest, or upon the Project Lender or Project Lender Agent transferring the Seller's Interest in accordance with this Agreement to another Person who is at Arm's Length from the Project Lender, the Project Lender shall cease to be liable for any of the Seller's obligations and shall cease to be entitled to any of the Seller's rights and benefits contained in this Agreement, unless the Project Lender's Security Agreement remains in effect by way of continuing security.
- (f) Notwithstanding Section 16.2, the Project Lender may not transfer, sell or dispose of the Seller's Interest or any other interest in the Project to any Person (other than, for greater certainty, any interest in the Project by way of security) unless NSPI is satisfied, acting reasonably, that the transferee or purchaser has the technical expertise and financial capability to perform the Seller's obligations under this Agreement, and until the transferee or purchaser has entered into an agreement with NSPI in form and substance satisfactory to NSPI, acting reasonably, wherein the transferee or purchaser agrees to assume and to perform the obligations of the Seller hereunder, whether arising before or after the transfer, sale or disposition, including the posting of Performance Security required under Article 6, but excluding any obligation of the Seller arising before the transfer, sale or disposition to pay NSPI the Early Termination Payment or Partial Termination Payment.
- (g) If this Agreement is terminated prior to the end of the Term due to a Seller Event of Default, then NSPI shall, within 20 Business Days after the date of such termination, deliver to each Project Lender that is at Arm's Length from the Seller (i) a statement of all sums then known to NSPI that would at that time be due under this Agreement by Seller to NSPI but for the termination (including any amounts then outstanding and owing pursuant to Section 4.1(d), but excluding, for clarity,

any obligation of Seller to pay NSPI the Early Termination Payment or Partial Termination Payment), and (ii) a notice to each such Project Lender stating that NSPI is willing to enter into a new agreement substantially in the form of the Agreement for a period of time equivalent to the Remaining Term. Subject to the provisions of this Article 12, each such Project Lender or transferee approved by NSPI pursuant to Section 12.2(f) shall thereupon have the option to obtain from NSPI such new agreement in accordance with the following terms:

- (i) Upon receipt of the written request of the Project Lender within 30 days after the date on which it received the aforementioned statement of all sums due, NSPI shall enter into such new agreement.
- (ii) Such new agreement shall be effective as of later of the Early Termination Date and the agreement's date of execution and shall be for the Remaining Term and otherwise upon the terms contained in this Agreement. NSPI's obligation to enter into such new agreement is conditional upon the Project Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement to NSPI but for the early termination (including any amounts then outstanding and owing pursuant to Section 4.1(d), but excluding, for clarity, any obligation of Seller to pay NSPI the Early Termination Payment or Partial Termination Payment); (B) otherwise fully curing any defaults under this Agreement existing immediately prior to the Early Termination Date that are capable of being cured; and (C) paying all reasonable costs and expenses, including legal fees (so as to provide a full indemnity and not only substantial indemnity), incurred by NSPI in connection with the preparation, execution and delivery of such new agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Project Lender until it obtains possession, such Project Lender shall have the applicable cure period commencing on the date that it obtains possession to cure such default.
- (iii) The Project Lender shall reimburse NSPI for all costs, including legal costs, reasonably incurred by NSPI in responding to the Project Lender's request for a new agreement pursuant to this Section 12.2(g), without duplication of any costs or expenses set out in Section 12.2(g)(ii).
- (h) If the Project Lender has appointed a Project Lender Agent or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Project Lender's security, then that Person may exercise any of the Project Lender's rights under this Section 12.2.
- (i) Despite anything to the contrary contained in this Agreement, the provisions of this Article 12 shall enure only to the benefit of the holders of a Project Lender's Security Agreement. If the holders of more than one such Project Lender's Security Agreement who are at Arm's Length from the Seller make written requests to NSPI in accordance with this Article 12 to obtain a new agreement, NSPI shall accept the

request of the holder whose Project Lender's Security Agreement had priority immediately prior to the Early Termination Date over the Project Lender's Security Agreements of the other Project Lenders making such requests, provided that such Project Lender delivers evidence satisfactory to NSPI, acting reasonably, of such priority. Thereafter, the written requests of each other Project Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Project Lender's Security Agreements, NSPI may rely upon the opinion as to such priorities of any law firm qualified to practise law in the Province of Nova Scotia and with experience in such matters, as retained by NSPI in its absolute discretion, or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

12.3 Cooperation

- (a) NSPI and the Seller shall enter into a Project Lender Agreement with any Project Lender substantially in the form of Exhibit "D" for the purpose of implementing the Project Lender's Security Agreement protection provisions contained in this Agreement. NSPI, acting reasonably, shall consider and provide its consent to any request jointly made by the Seller and a Project Lender or proposed Project Lender to facilitate a provision of a Project Lender's Security Agreement or proposed Project Lender's Security Agreement that may require an amendment to this Article 12, provided that the rights of NSPI are not adversely affected thereby in any material respect, the obligations of the Seller to NSPI are not altered thereby and the consent of any other Project Lender to such amendment has been obtained by the Seller or the Project Lender making the request for the amendment. The Seller is responsible for NSPI's reasonable legal expenses incurred in reviewing any such request by the Seller or Project Lender.
- (b) For greater certainty, no amendments to this Agreement may be made pursuant to Section 12.3(a) that affect the substantive rights or obligations of the Parties under any of the other Articles of this Agreement.

13 CHANGE IN LAW

13.1 Change in Law

- (a) A "**Change in Law**" shall occur if:
 - (i) either (A) the Legislative Assembly of Nova Scotia causes to come into force any statute that was introduced as a bill in the House of Assembly of Nova Scotia or the Government of Nova Scotia causes to come into force or makes any order-in-council or regulation first having legal effect on or after the Effective Date; or (B) the House of Assembly of Nova Scotia directly or indirectly amends this Agreement without the consent of the Seller; and

(ii) such action increases the costs that the Seller would reasonably be expected to incur under this Agreement in respect of generating or delivering Energy to the Delivery Point, except where such action is in response to any act or omission on the part of the Seller that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement.

(b) Notwithstanding the foregoing, none of the following shall be a Change in Law:

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

(ii) any such statute that prior to five Business Days prior to the Effective Date:

(A) has been introduced as a bill in the House of Assembly of Nova Scotia in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement; and

(B) has been made public in a discussion or consultation paper, press release or announcement issued by NSPI, the Government of Nova Scotia, and/or the Departments of Energy or Environment that appeared on the website of NSPI, the Government of Nova Scotia and/or the Departments of Energy or Environment, provided that any amendments made to such public form, in becoming such statute, do not have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement;

(iii) any of such Laws and Regulations that prior to five Business Days prior to the Effective Date:

(A) have been published in the Nova Scotia Royal Gazette but by the terms of such Laws and Regulations come into force on or after five Business Days prior to the Effective Date; or

(B) have been referred to in a press release issued by NSPI, the Government of Nova Scotia and/or the Department of Energy that appeared on the website of NSPI, the Government of Nova Scotia or the Department of Energy, provided that any amendments made to such Laws and Regulations in coming into force do not have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement; and

(iv) any new orders-in-council or Laws and Regulations, the authority for the promulgation of which was created by the *Electricity Act, S.N.S. 2004, c. 25* (Nova Scotia), or the first amendment to any existing regulation, where

the authority for such amendment was created by the *Electricity Act, S.N.S. 2004, c. 25* (Nova Scotia); except if the effect of such new orders-in-council or Laws and Regulations or such amendments is borne principally by the Seller.

13.2 Consequences of Change in Law

- (a) To the extent that there is a Change in Law, then:
 - (i) the Seller, upon becoming aware of the consequences of such Change in Law, shall promptly notify NSPI;
 - (ii) the Parties shall engage in good faith negotiations to amend this Agreement on the basis that such amendments together with the Change in Law will substantially reflect the expected economics of the Seller as contemplated hereunder prior to the introduction of the Change in Law; if the Parties fail to reach agreement on the amendments described in Section 13.2(a)(ii), the matter shall be determined in accordance with the dispute resolution procedures set out in Article 14.

14 DISPUTE RESOLUTION

14.1 Dispute Resolution

- (a) If either Party considers that a dispute arising between the Parties as to the subject matter of this Agreement cannot be resolved between them, then such Party may deliver notice to the other Party describing the nature and particulars of the dispute. Within 10 Business Days following delivery of such notice to the other Party, a senior executive of the Seller and NSPI shall meet, either directly or by telephone or electronic means, to attempt to resolve the dispute. Notwithstanding the foregoing, in the event of an emergency, the Parties will use Commercially Reasonable Efforts to cause a senior executive of the Seller and NSPI to meet within four Business Days following delivery of such notice to the other Party, either directly or by telephone or electronic means, to attempt to resolve the dispute. If the dispute is not so resolved, either Party may submit the dispute to be settled by arbitration pursuant to Section 14.1(a).
- (b) The Parties agree to submit the dispute to binding arbitration, pursuant to the terms of the *Commercial Arbitration Act* (Nova Scotia). In particular, the Parties agree to utilize the arbitration procedure attached as Schedule “A” to the *Commercial Arbitration Act* (Nova Scotia) in the conduct of the arbitration. The Party wishing to have any dispute submitted to arbitration (the “**Claimant**”) shall give notice to the other Party (the “**Respondent**”) specifying the particulars of any issue in dispute and proposing the name of the individual it wishes to be the single arbitrator. Within 15 days thereafter, the Respondent shall give notice to the Claimant advising whether the Respondent accepts the arbitrator proposed by the Claimant. If notice is not given within the 15 day period, the Respondent shall be deemed to have accepted the arbitrator proposed by the Claimant. In the event that

the Parties cannot agree on a single arbitrator within the 15 day period, the arbitrator shall be selected in accordance with the *Commercial Arbitration Act* (Nova Scotia). No such arbitrator shall have previously been employed by either Party and shall not have a direct or indirect interest in either Party or the subject matter of the arbitration. The cost of the arbitration (excluding a Party's legal fees and disbursements) shall, unless otherwise ordered by the arbitrator, be borne equally by the Parties. The decision of the arbitrator shall be final and binding and the beneficiary of any award of the arbitrator may bring proceedings in any jurisdiction to enforce the award or any judgment enforcing the award. If it is necessary for a Party to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. The bringing of such proceedings in one or more jurisdictions shall not preclude the bringing of enforcement proceedings in any other jurisdiction. In connection with any such proceeding, each Party waives any right to de novo review of the award against that Party.

- (c) All performance required under this Agreement shall continue during the dispute resolution proceeding contemplated by this Article 14, provided that, unless otherwise expressly provided, this provision shall not be interpreted or applied to delay or restrict the exercise of any rights or remedies of the Parties under this Agreement. With respect to any dispute regarding amounts owed under this Agreement, the Parties agree to pay any undisputed amounts in accordance with the provisions of this Agreement and shall otherwise continue to perform any undisputed obligations under the Agreement.

14.2 Disputed Payments and Netting

In respect of amounts owing by one Party to the other pursuant to this Agreement:

- (a) Both Parties have the right to withhold that portion of payment in dispute until resolution is reached.
- (b) If a dispute with respect to any payment to be made by NSPI is resolved in favour of the Seller, NSPI will pay such disputed and/or withheld amount, plus interest thereon at the Prime Rate from the due date to the date payment is made. If resolution is in favour of NSPI with respect to any payment to be made by the Seller, the Seller will pay any disputed and/or withheld amount, plus interest thereon at the Prime Rate from the due date to the date the payment is made. All such payments shall be made within 15 days of the date of such resolution.
- (c) NSPI reserves the right to net amounts previously invoiced and owed to the Seller against amounts owed by the Seller to NSPI, provided however, that if there is a dispute over the amounts involved, then NSPI shall not net any amounts without the dispute being resolved.
- (d) The Seller reserves the right to net amounts previously invoiced and owed to NSPI against amounts owed by NSPI to the Seller, provided; however, that if there is a

dispute over the amounts involved, then the Seller shall not net any amounts without the dispute being resolved.

- (e) For certainty, nothing in this Section 14.2 shall derogate from or affect any right of set off of either Party under the Agreement.

15 INDEMNIFICATION, LIABILITY, ETC.

15.1 Indemnification

- (a) Each Party (an “**Indemnitor**”) shall indemnify and hold harmless the other Party and the other members of its Group (each an “**Indemnitee**”) from and against all losses, damages and liabilities suffered by the Indemnitee and all judgments, fines, penalties, charges, settlement amounts, costs, expenses and reasonable legal fees (on a solicitor and own client basis, including reasonable disbursements) incurred by the Indemnitee in connection with any causes of action, claim, suit, inquiry, proceeding, or investigation or appeal therefrom, to the extent attributable to the wilful acts or omissions, fault or negligence of the Indemnitor or any other member of its Group, or the breach of its obligations under this Agreement, or, if the Seller is the Indemnitor, arising in connection with any emissions or other environmental contamination from or at the Facility, or relating or attributable to Energy prior to its delivery to the Delivery Point, or if NSPI is the Indemnitor, relating or attributable to Energy after it has been delivered to the Delivery Point.
- (b) In respect of any indemnity obligation of the Indemnitor under this Agreement, the Indemnitee shall give notice to the Indemnitor of any claim or other proceeding which may give rise to such obligation within such reasonable period following the Indemnitee becoming aware of such claim or proceeding which does not, by virtue of a delay in providing such notice, materially prejudice the rights of the Indemnitor under this Article 15, whereupon the Indemnitor shall, at its own cost, be entitled to take carriage of the defence of any such claim or other proceeding, provided the Indemnitor undertakes such defence promptly upon receiving such notice or otherwise becoming aware of any such claim or other proceeding. If the Indemnitee fails to give the Indemnitor the notice required by this Section 15.1(b) with respect to any claim then, to the extent that the Indemnitor is materially prejudiced by such failure, the obligation of the Indemnitor to indemnify the Indemnitee pursuant to this Article 15 shall cease with respect to the extent of such liabilities that would not have been incurred had timely notice been given.
- (c) If, within a reasonable time after becoming aware of such claim or other proceeding, and having regard to any limitation period for responding to same, the Indemnitor fails to undertake the defence of such claim or other proceeding without any reservation of rights, the Indemnitee shall have the right to undertake the defence, settlement or compromise of such claim or other proceeding for the account of Indemnitor. If the Indemnitor has undertaken such defence and:

- (i) there is reasonable expectation that the claim or other proceeding may materially and adversely affect the Indemnitee other than as the result of monetary damages or payments, or
 - (ii) there is reasonable expectation that the outcome of the claim or proceeding will be beyond any limit of liability of the Indemnitor set forth in the Agreement, or
 - (iii) there is reasonable expectation that Indemnitor does not have sufficient resources, financial or otherwise, to satisfy its indemnity obligation, or
 - (iv) the Indemnitee has legal defences or counter-claims available that are different from or additional to any defences or counter-claims available to the Indemnitor, or
 - (v) the insurers of the Indemnitee exercise any right of defence under any policy responding to such claim or other proceeding, then the Indemnitee shall have the right, at the cost and expense of the Indemnitor, if and to the extent the proceeds of any such insurance do not cover such cost and expense, to participate in the negotiation, settlement, compromise or defence of the claim or other proceeding and to retain counsel to act on behalf of the Indemnitee, provided that, in any other circumstance, the Indemnitee shall reserve the right to such participation at its own cost and expense. In any event, the Indemnitor shall not, without the consent of the Indemnitee, which consent will not be unreasonably withheld, conditioned or delayed, admit liability, settle, compromise or take any similar action in respect of the claim or other proceeding. At all times, the Indemnitor shall keep the Indemnitee apprised of the carriage of the defence and provide the Indemnitee with such other information in respect thereof as the Indemnitee may reasonably require.
- (d) In respect of any indemnity obligation of a Party under this Agreement, the other Party holds the benefit of such indemnity in its own right and in trust for the other members of its Group.

15.2 Consequential Loss

Neither Party shall be liable to the other Party under any theory of liability for any incidental, exemplary, punitive, consequential or indirect damages, of any nature whatsoever, arising out of or in connection with this Agreement, including loss of use, loss of revenue, loss of profit, loss of contract, or loss of goodwill. For certainty, this provision shall not apply to liability for liquidated damages, the right of the Seller to claim payment for Net Output purchased or taken or to be purchased or taken by NSPI hereunder, the right of the Seller to claim payment under Section 2.2(e) or Section 4.2(d) or Section 4.3(c)(ii), the right of the Seller to claim Seller's Termination Costs and/or Seller Claimable Amount, or the right of NSPI to claim NSPI's Termination Costs or Early Termination Payment.

15.3 Liquidated Damages

The Parties acknowledge and agree that in circumstances where liquidated damages are payable by one Party to the other hereunder, the other Party will suffer financial damage in such circumstances and that such financial damage will be proximate and substantial, but the actual amount thereof will be very difficult, if not impossible, to ascertain and accordingly, the amount, or method of determining the amount, of the liquidated damages is a genuine pre-estimate or a methodology for arriving at a genuine pre-estimate of the amount of such financial damage and shall not be considered penal. In circumstances in which either Party is responsible to calculate liquidated damages pursuant to this Agreement, the amount of such damages and the methodology of determining such amounts must be reasonable and based on Good Utility Practice.

15.4 Remedies

Unless otherwise expressly provided, any duties and obligations imposed by this Agreement and any rights and remedies available under this Agreement shall be in addition to and not a limitation of any other duties, obligations, rights and remedies imposed or available under this Agreement or under Laws and Regulations or otherwise at law or in equity. Without limitation, the termination of this Agreement by either Party and all amounts then due and owing to the other Party as expressly provided in this Agreement shall not limit, waive, or extinguish in any way the recourse of either Party to any remedies available to it in relation to such termination at law, in equity or otherwise.

15.5 Joint and Several Liability

If the Seller is not a single entity then all entities comprising the Seller shall be jointly and severally liable to NSPI for all representations, warranties, indemnities, obligations and liabilities of the Seller under the Agreement.

15.6 Mitigation

Each Party will use Commercially Reasonable Efforts, acting in good faith, to mitigate its damages, losses, liabilities, expenses, and costs in the event of the other Party's breach of its obligations hereunder.

16 MISCELLANEOUS PROVISIONS

16.1 General

- (a) The Parties shall, at all times, comply with all Laws and Regulations in the performance or fulfilment of their obligations hereunder.
- (b) The relationship between the Parties shall be that of independent contractors for the sale and purchase of the Net Output. Nothing in this Agreement shall be interpreted as creating between the Parties any partnership, joint venture, fiduciary or similar relationship, or any other arrangement regarding the conduct of their respective affairs which is not expressly stated herein.
- (c) Unless otherwise expressly provided herein, the Seller shall pay all taxes, levies, and charges imposed on it by Laws and Regulations in respect of the Project, and

all costs and expenses whatsoever in respect of the Project, and shall be solely responsible for all liabilities associated with performing or fulfilling its obligations hereunder, including payment of: real property taxes levied in respect of the Site, municipal taxes levied in respect of the personal property of the Seller comprised in the Site or any occupancy thereof, rent, charges or fees levied in respect of the availability or use of the Site and the Energy Source by the Seller, and costs associated with the design, construction, maintenance, operating, rehabilitation and modification of the Project, including utility costs.

- (d) The Agreement may be executed by the Parties in counterparts, each of which, when so executed and delivered to the other, shall be deemed an original and when taken together shall be deemed one and the same instrument.
- (e) The facsimile or electronic transmission of any signed original of the Agreement shall be the same as the delivery of an original hereunder. At the request of any Party, the Parties shall immediately deliver to each other, an original executed copy of the Agreement.
- (f) Each Party shall, from time to time, execute and deliver all such further documents and instruments and do all acts and things as the other Party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of the Agreement.
- (g) In connection with the negotiation of, the entering into, and the performance under the Agreement, each Party represents to the other Party that:
 - (i) it is acting as principal and not as agent or in any other capacity, fiduciary or otherwise;
 - (ii) it is not relying upon any representations, whether written or oral, of the other Party other than the representations expressly set forth in the Agreement;
 - (iii) the other Party has not given to it, directly or indirectly through any other Person, any advice, counsel, assurance, guarantee, or representation whatsoever, whether legal, regulatory, tax, financial, accounting or otherwise, as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit of the Agreement;
 - (iv) it has consulted with its own legal, financial, technical and other advisors to the extent it has deemed necessary; and
 - (v) it is entering into the Agreement with a full understanding of all the risks associated with the transactions hereunder and it is capable of assuming, and willing to assume, those risks. In this regard, and without limitation, the Seller shall be solely responsible for determining the suitability of the Site for the purposes of the Agreement.

16.2 Assignment

- (a) Prior to the first anniversary of the Commencement Date, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the Seller, except (i) with the consent of NSPI, which consent may be unreasonably withheld or conditioned; (ii) to an Affiliate as permitted under Section 16.2(f); or (iii) to a Project Lender as permitted under Article 12.
- (b) Following the first anniversary of the Commencement Date, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the Seller, except: (i) with the consent of NSPI, which consent may not be unreasonably withheld, delayed or conditioned; (ii) to an Affiliate as permitted under Section 16.2(f); or (iii) to a Project Lender as permitted under Article 12.
- (c) For the purposes of Section 16.2(b), it shall not be unreasonable for NSPI to withhold its consent if the proposed assignment would result, or could reasonably be expected to result, in a material adverse effect on the Seller's ability to perform its obligations, whether financial, technical or otherwise, under this Agreement, as determined by NSPI, acting reasonably.
- (d) The Seller must provide to NSPI a notice of a request for consent to any assignment contemplated in Section 16.2(a) and Section 16.2(b), other than an assignment to a Project Lender or Affiliate, not less than 60 days before the proposed assignment. Such notice shall be accompanied by evidence of the capability of the assignee as required by Section 16.2(e).
- (e) NSPI's consent to any assignment contemplated in Section 16.2(a) and Section 16.2(b), other than an assignment to a Project Lender or Affiliate, is subject to the following conditions:
 - (i) the Seller not being in default of its obligations under the Agreement;
 - (ii) the assignee of the Seller entering into and becoming bound by the Agreement, assuming all the obligations and liabilities of the Seller under the Agreement, whether arising before or after the assignment, and providing replacement Performance Security in accordance with the provisions of Article 6 at the time of assignment; and the representation in Section 7.1(a) accurately applying to the assignee with any necessary amendments to reflect the corporate form of the assignee and the manner in which it was established;
 - (iii) all of the representations set out in Section 7.1, as may be amended pursuant to Section 16.2(e)(ii), shall be deemed to be made by the assignee to NSPI at the time of such assignment and assumption; and
 - (iv) the assignee demonstrating, to the satisfaction of NSPI, acting reasonably, its capability (financial, technical and otherwise) to fulfil and assume all such obligations and liabilities of the Seller or, in the case of a merger,

amalgamation or reorganization of the Seller, the parties to that transaction demonstrating to the reasonable satisfaction of NSPI, the continued ability of the Seller, or the party arising out of the merger, amalgamation or reorganization, to perform and discharge the Seller's obligations and liabilities under the Agreement.

Upon satisfaction of such conditions, the Seller shall be released from obligations and liabilities arising following the assignment under the Agreement, and any Performance Security provided by it will be returned or released.

- (f) The Seller may, subject to compliance with Laws and Regulations, assign this Agreement to an Affiliate acquiring the Project; provided that there is not a Seller Event of Default that has not been remedied, and provided that the Seller gives NSPI not less than 10 Business Days prior notice of such assignment. No such assignment shall be valid or effective unless and until:
 - (i) such Affiliate and the Seller agree with NSPI in writing to assume, jointly and severally, all of the Seller's obligations and liabilities under the Agreement, arising both before and after the assignment, and be bound by the terms of this Agreement; and
 - (ii) the arrangements and obligations of the Seller set forth in Article 6 have been satisfied.
- (g) No consent to any assignment given by NSPI under this Section 16.2 implies or constitutes a consent to the exercise by the assignee, or any Affiliate of the assignee, whether or not a Project Lender, of any right, if the exercise of that right, at the time it was acquired, would require the consent of NSPI under this Section 16.2, and the exercise of any such right will require a further or subsequent consent of NSPI.
- (h) NSPI shall have the right to assign this Agreement and all benefits and obligations hereunder for the balance of the Term without the consent of the Seller to an assignee who shall assume the obligations and liability of NSPI under this Agreement and who shall be novated into the Agreement in the place and stead of NSPI, except for NSPI's obligation in Section 16.2(h)(iii) which shall remain in force, provided (i) that the assignee is in a business that is similar to that of NSPI with a similar rate recovery framework and that has an equivalent or higher credit rating to that of NSPI; and (ii) that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, whereupon:
 - (i) The representation set forth in Section 7.2(a) accurately applying to the assignee with any necessary amendments to reflect the corporate form of the assignee and the manner in which it was established;
 - (ii) All of the representations set out in Section 7.2, as may be amended pursuant to Section 16.2(h)(i), shall be deemed to be made by the assignee to the Seller at the time of such assignment and assumption;

- (iii) NSPI shall be relieved of all obligations and liability arising pursuant to this Agreement. However, notwithstanding the foregoing, NSPI shall remain liable to the Seller for remedying any payment defaults under Section 10.3(a) and shall remain liable for any obligations and liabilities of the assignee arising from any NSPI Event of Default occurring prior the assignment by NSPI.
- (i) For the purpose of this Section 16.2, an “**assignment**” includes an assignment or disposition of the Agreement or any direct or indirect interest in the Agreement (including a mortgage, pledge, charge or grant of a security interest) or a merger, amalgamation or reorganization of the Seller.
- (j) The Party seeking consent shall reimburse the other Party for all costs reasonably incurred by the other Party in (i) reviewing a request for consent in relation to this Section 16.2, and (ii) the negotiation, preparation, review and execution of all documentation associated with any assignment hereunder.

16.3 Change of Control

- (a) During the Term, the Seller shall not permit or allow a change of Control, except with the consent of NSPI, which consent may not be unreasonably withheld or conditioned . NSPI may withhold consent to any change in Control of the Seller in either of the following circumstances:
 - (i) the Seller is in default of any of its obligations under this Agreement; or
 - (ii) the Seller fails to demonstrate, to the satisfaction of NSPI, acting reasonably, that its capability (financial, technical and otherwise) to fulfil and perform all obligations and liabilities of the Seller hereunder will not be materially reduced by virtue of the change in Control; or
 - (iii) if any of the representations set out in Section 7.1 would not be true if such representations were deemed to be made by the Seller immediately following the change in Control.
- (b) Notice of a request for a consent to a change of Control pursuant to Section 16.3(a) shall be given by the Seller to NSPI not less than 60 days before the date of such change of Control and shall include:
 - (i) a description of the change of Control and a detailed organizational structure of the Seller following the proposed change of Control; and
 - (ii) evidence, to the satisfaction of NSPI, acting reasonably, of the continued ability of the Seller to perform and discharge its obligations (whether financial, technical or otherwise) and liabilities under the Agreement, following the proposed change of Control.
- (c) For the purposes of this Section 16.3, a change of Control shall:

- (i) exclude a change in the ownership of shares or units of ownership that are listed on a recognized stock exchange; and
 - (ii) include a change from no Person having Control of the Seller to any Person having Control of the Seller, as well as a change from any Person having Control of the Seller to no Person having Control of the Seller.
- (d) The Party seeking consent shall reimburse the other Party for all costs reasonably incurred by the other Party in (i) reviewing a request for consent in relation to this Section 16.3, and (ii) the negotiation, preparation, review and execution of any documentation associated with the proposed change of Control.

16.4 Ownership

- (a) Notwithstanding Section 16.2 and Section 16.3, but subject to Article 12, if the Project was awarded priority points on the basis of the "ownership" portion of the Proposal's evaluation (as indicated by a "yes" response in item 16 of the Commercial Terms), there shall not be a change to the ownership of the Project as set out in the Proposal until the first anniversary of the Commencement Date without the consent of NSPI, which consent may be withheld in NSPI's sole discretion. **[NTD: Stakeholders are encouraged to provide feedback on the above restriction on the change of ownership.]**
- (b) The Party seeking consent shall reimburse the other Party for all costs reasonably incurred by the other Party in (i) reviewing a request for consent in relation to this Section 16.4, and (ii) the negotiation, preparation, review and execution of any documentation associated with the proposed change of ownership.

16.5 Interest

If either Party fails to make payments as they become due under the Agreement or pursuant to an arbitral award, interest on such unpaid amounts shall also become due and payable, until paid, at a rate equal to the Prime Rate.

16.6 HST and Other Tax Matters

- (a) Subject to Section 16.6(b), amounts payable pursuant to this Agreement are exclusive of HST or similar tax and each Party shall pay to the other, in addition to such amounts, HST or similar tax properly exigible on such amounts.
- (b) Each Party shall be a registrant in accordance with the provisions of the *Excise Tax Act* (Canada) from the beginning of the Interim Period or, if there is no Interim Period, prior to commencement of the Term, and will continue to be a registrant throughout the Interim Period and the Term. If any payment made pursuant to this Agreement is deemed by the *Excise Tax Act* (Canada) to include HST or is deemed by Laws and Regulations to include a similar tax, the amount of such payment shall be increased accordingly.

- (c) Each Party shall provide notice to the other of its HST registration number prior to the commencement of the Interim Period or, if there is no Interim Period, prior to the commencement of the Term.
- (d) The Seller shall indemnify and hold NSPI harmless from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any taxes for which the Seller is responsible under Section 16.1(c) or relating to any withholding tax arising on account of Seller becoming a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

16.7 Notices

Every communication provided for herein shall be in writing and delivered to, sent by recognized overnight delivery service or mailed by postage prepaid, or faxed, or e-mailed to, the Party to whom it is intended to be given at the address stipulated on the cover page or such other address or facsimile number or e-mail address as a Party shall hereafter designate by written notice to the other from time to time. Notice shall be given when received during business hours in Nova Scotia on a Business Day of the addressee. In the absence of proof of the actual receipt date, the following presumptions shall apply. Any communication personally delivered shall be deemed to have been received upon actual delivery. Any communication sent by overnight delivery service shall be deemed to have been received two Business Days after being sent. Any communication sent by mail shall be deemed to have been received five Business Days after having been mailed. Any communication sent by facsimile shall be deemed to have been received on the Business Day following the date of transmission, provided that the sending Party has received a positive transmittal record of such transmission and has promptly sent the original of such communication by prepaid mail or recognized overnight delivery service. Any communication sent by e-mail shall be deemed to have been received on the Business Day following the date of sending, provided that the sending Party has not received a delivery failure notification with respect to the e-mail and has promptly sent the original of such communication by prepaid mail or recognized overnight delivery service.

16.8 Survival and Enurement

- (a) Except as otherwise expressly provided in this Agreement, this Agreement shall not confer upon any other Person any rights, interests, obligations or remedies under the Agreement except the Parties and, subject to Section 16.2, their respective successors and assigns and, where applicable, the NSPI Group and the Seller Group. The Agreement shall be binding upon and enure to the benefit of the Parties and, subject to an assignment undertaken in compliance with Section 16.2, their respective successors and assigns.
- (b) All provisions of this Agreement which by their express terms or nature are continuing shall survive expiration or termination of this Agreement, including this provision, the provisions of Article 5 and 6, any provisions relating to Performance Security, confidentiality, indemnification, termination, dispute resolution, and any provisions that are required to determine, or which exclude or limit, any liability or

which are otherwise required to give effect to or interpret any such provisions. For certainty, expiration or termination of this Agreement shall not affect or prejudice:

- (i) any rights or obligations of the Parties that have accrued or arisen under this Agreement prior to the time of expiration or termination, including any amounts owing by one Party to the other (whether or not due at the time of expiration or termination) together with interest thereon;
- (ii) the right of either Party (or, as the case may be, any other member of its Group) to the benefit of any indemnity given by the other Party in respect of any event or circumstance occurring before the time of expiration or termination to which any such indemnity applies, even though such event or circumstance or any claim or liability in respect thereof does not manifest until after the time of expiration or termination;
- (iii) the right of either Party to the benefit of any confidentiality provisions whether the breach of such provisions by the other Party occurs before or after the time of expiration or termination; or
- (iv) the right of either Party to claim the reasonable cost of enforcing its rights under the Agreement, whether such enforcement arises prior to or after the time of expiration or termination.

EXHIBIT "A"
PROJECT DESCRIPTION

EXHIBIT "B"
INTENTIONALLY DELETED

EXHIBIT "C"
FORM OF CONFIDENTIALITY UNDERTAKING

EXHIBIT "D"
FORM OF PROJECT LENDER AGREEMENT

EXHIBIT "E"
FORM OF LETTER OF CREDIT

EXHIBIT "F"
FORM OF REIMBURSEMENT AGREEMENT