

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

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

BETWEEN:

[insert Supplier name],

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

(the “**Supplier**”)

- and -

[insert Security Agent name],

in its capacity as **[{Secured Lender under the Contracts} or**

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

(the “**Security Agent**”)

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR,

a statutory corporation without share capital amalgamated
under the laws of the Province of Ontario

(the “**IESO**”)

RECITALS:

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

underlying debt instrument(s)] (the “Secured Debt”); and [Note to finalization: if the Collateral Assignment is to occur after the execution date of this Agreement, include the language highlighted in green.]

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

THEREFORE, the parties agree as follows:

1. Defined Terms

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

2. Acknowledgement and Confirmation of Rights of Security Agent

- (a) The IESO, the Security Agent and the Supplier each acknowledge and confirm that ***[, from and after the later of (i) the Effective Date and (ii) the date the Supplier and Security Agent provide the IESO with the joint notice set out in Section 2(c) below,]*** :
- (i) the Supplier has delivered to the IESO copies of the Security Agreements listed on Schedule “A”;
 - (ii) the Security Agreements listed on Schedule “A” are acknowledged to be Security Agreements to which the provisions of **Article 11** of the Contract apply; and
 - (iii) subject to Section 2(b), the Security Agent constitutes the Secured Lender for purposes of the Contract and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 11 of the Contract in favour of a Secured Lender and is entitled to enforce the same as if the Security Agent were a party to the Contract, until such time as IESO has received notice from the Security Agent that the Security Agreements have been terminated.
- (b) The Security Agent acknowledges, confirms and agrees that:
- (i) it has read and understood the requirements and restrictions set out in Article 11 of the Contract.
 - (ii) the IESO’s recognition of the Secured Lender’s rights under this agreement does not extend to security for indebtedness or liability other than indebtedness or liability relating to the Facility, nor does it extend to security over assets unrelated thereto, ***[except in relation to one or more renewable generating facilities (excluding any such facility that is the subject of a contract under the microFIT Program) in Ontario that are the subject of a contract with the IESO and that are owned by the Supplier or an Affiliate thereof,]*** and the Secured Lender is only entitled to the protections of this agreement to the extent that the indebtedness

being enforced and giving rise to the exercise of security is indebtedness relating only to the financing of the Facility; and **[Note to finalization: include the language highlighted in pink if the contract allows cross-collateralization of other renewable generating facilities; and also include the language highlighted in blue if the contract has a carve-out for mFIT contracts].**

- (iii) it shall not exercise its rights under the Secured Lender Security Agreements to acquire or dispose of the Facility except in respect of liability or indebtedness of the Supplier relating to that Facility.

(c) [The Supplier and the Security Agent shall notify the IESO in writing by notice executed jointly by the Supplier and the Security Agent, not more than sixty (60) days after the date hereof, providing confirmation of the completion of the Collateral Assignment and the time thereof (the date of such Collateral Assignment being the "Effective Date");

(d) The Collateral Assignment shall have taken place by no later than sixty (60) dates after the date hereof, following which date, if such Collateral Assignment has not occurred, this agreement shall be null and void and of no further effect.]

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

3. Covenants, Representations and Warranties of the Security Agent

The Security Agent covenants, agrees, represents and warrants, as applicable, to the IESO as follows:

- (a) The Security Agent will comply with the requirements and restrictions set out in Article 11 of the Contract as they relate to the Security Agent's execution and administration of financing and security documentation with the Supplier, including the Secured Lender's Security Agreements, or otherwise as it relates to the Security Agent's security interests in the Contract or any enforcement thereof.
- (b) The Security Agent **[is and, unless otherwise disclosed to the IESO, will be] or [is not, and, unless otherwise disclosed to the IESO, will not be]** at Arm's Length from the Supplier.
- (c) The Security Agreements listed on Schedule "A" constitute all of the security granted by the Supplier in favour of the Security Agent as at the date first written above.
- (d) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule "A".
- (e) If the Supplier is in default under or pursuant to any Security Agreement and the Security Agent intends to exercise any rights afforded to it with respect to the Contract, then the

Security Agent will give notice of such default to the IESO at least 10 Business Days prior to exercising any such rights under the Contract.

- (f) The Security Agent has entered into this agreement and holds ***[, or will hold from and after the Effective Date,]*** the security granted pursuant to the Security Agreements on behalf of all parties having any right, title or interest in the Security Agreements.
- (g) The address of the Security Agent to which notices may be sent pursuant to Section 11.1(d) of the Contract is set forth in Section 6 of this agreement.
- (h) The Security Agent will provide the IESO with written notice of any change in the identity or address of the Security Agent, and the Security Agent agrees to promptly notify IESO in writing of any discharge or termination of all or any of the Security Agreements listed on Schedule "A".
- (i) The recitals to this agreement are true and accurate.
- (j) The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Security Agent acknowledges that any acknowledgement, agreement or confirmation of the IESO hereunder is not and shall not be construed as a consent to any assignment of the Contract or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement as provided for in Article 11 of the Contract.

4. Covenants, Representations and Warranties of the Supplier

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

- (a) The Security Agreements are subject to the terms and conditions applicable to a Secured Lender's Security Agreement that are contained in Section 11.1(b) of the Contract, and comply therewith.
- (b) The Supplier has provided to the IESO true and complete copies of the Security Agreements listed on Schedule "A", and such Security Agreements constitute Secured Lender's Security Agreements and the Security Agent constitutes a Secured Lender for purposes of the Contract.
- (c) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule "A".
- (d) The recitals to this agreement are true and accurate and the Supplier agrees that all Secured Debt will have been incurred in connection with the acquisition, construction, re-development, ownership, operation and maintenance of the Facility or the Facility together with one or more other renewable generating facilities in Ontario and any refinancing of any such debt.
- (e) The Supplier will provide the IESO with true and complete copies of any new agreements relating to, or amendments to, any Secured Lender's Security Agreement.

- (f) The Security Agreements do not and will not secure any indebtedness, liability or obligation of the Supplier that is not related to the Facility or cover any real or personal property of the Supplier not related to the Facility, **[except in relation to one or more renewable generating facilities (excluding any such facility that is the subject of a contract under the microFIT Program) in Ontario that are the subject of a contract with the IESO and that are owned by the Supplier or an Affiliate thereof]**.
- (g) There is no existing unremedied Supplier Event(s) of Default.
- (h) The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Supplier acknowledges that any acknowledgement, agreement or confirmation of the IESO hereunder is not and shall not be construed as a consent to any assignment of the Contract or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement.

5. Notice of Default by Security Agent

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

6. Notice

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

If to the Supplier:

[insert Supplier's mailing address]

Attention: **[insert name of contact person or position title]**

Email: **[insert e-mail address]**

If to the IESO:

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

Attention: Director, Contract Management
Email: contract.management@ieso.ca

If to the Security Agent:

[insert Security Agent's mailing address]

Attention: [insert name of contact person or position title]
Email: [insert e-mail address]

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

7. Successors and Assigns

The benefits of this agreement that accrue to a party will extend to all of its successors and permitted assigns (including, for greater certainty, by way of corporate amalgamation, if applicable), provided that (i) the assigning party gives notice to each other party of such assignment and requires its successors and permitted assigns to expressly acknowledge and agree in favour of each other party to be bound by this agreement; (ii) in the case of the Security Agent, it has complied with Section 11.1(d) of the Contract in respect of such assignment, and in the case of the Supplier or the IESO, it has complied with **Section 16.1** of the Contract, as the context requires, in respect of such assignment; and (iii) upon the acquisition by any such successor or permitted assign of such an interest, such successor or permitted assign has agreed to be joined as a party benefiting and bound by this agreement, by an appropriate further agreement supplementary to this agreement in form and substance acceptable to the IESO, acting reasonably.

8. No Waiver

The parties hereto confirm that the Contract remains in full force and effect in accordance with its terms and that this agreement shall not be deemed to waive or modify in any respect any rights of the IESO under the Contract **[or the FIT Rules]**. Without limiting the forgoing, this agreement shall not constitute nor shall it be deemed to constitute a waiver of any Supplier Event of Default or other default of the Supplier.

The parties hereto acknowledge and agree that this agreement is being entered into pursuant to, and with respect to, the Contract only and shall not be construed as an amendment or waiver of any other agreement. This agreement, and any notice delivered pursuant to this agreement, shall not be deemed to

be notice for any other purpose, including any obligation to provide notice to the System Operator pursuant to the IESO Market Rules.

9. Execution and Delivery

This agreement may be executed by the parties hereto in counterparts and may be executed and delivered by e-mail or other electronic means and all such counterparts shall together constitute one and the same agreement.

10. Governing Law

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

[EXECUTION PAGE IMMEDIATELY FOLLOWS]

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

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR**

[insert Supplier name]

By: _____
Name: [insert name]
Title: [insert position title]

By: _____
Name: [insert name]
Title: [insert position title]

By: _____
Name: [insert name]
Title: [insert position title]

[insert Security Agent name]

By: _____
Name: [insert name]
Title: [insert position title]

By: _____
Name: [insert name]
Title: [insert position title]

SCHEDULE "A"

LIST OF SECURITY AGREEMENTS AND REGISTRATION DETAILS

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

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

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

- [REDACTED]