Court File No. CV-17-580840-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDEX ENERGY MILLS ROAD CORPORATION

(the "**Applicant**")

AFFIDAVIT OF RICKARD HARALDSSON SWORN August 15, 2017

I, Rickard Haraldsson, of the City of Stockholm, Sweden, MAKE OATH AND SAY:

1. I am a director of Index Energy Mills Road Corporation ("**Index Energy Ajax**" or the "**Applicant**"), a position I have held since June 2, 2016 and I am a director and the Chief Executive Officer of Index Equity Sweden AB, the parent company of Index Energy Sweden AB (publ) ("**Index Sweden**"). Index Sweden is the majority shareholder of Index Energy Ajax, and as such, I have personal knowledge of the facts to which I depose, except where I have indicated that I have obtained facts from other sources, in which case I verily believe those facts to be true.

INTRODUCTION

2. Index Energy Ajax owns and operates an electrical co-generation facility located in Ajax, Ontario that generates electricity by burning wood waste from the construction industry to produce steam to drive turbine generators (the "**Biomass Facility**").

3. Unfortunately, as a result of various design and construction issues, as discussed below, Index Energy Ajax encountered difficulties in retrofitting the Biomass Facility and actual energy output has been lower and operational costs have been higher than anticipated. Index Energy Ajax has been engaged in protracted litigation with its former engineering, procurement and construction contractor, HMI Construction Inc. ("**HMI**"), and has been forced to deal with numerous liens arising from the construction at the Biomass Facility including a lien claim of approximately $31.3 million (the amount of security required to vacate this lien claim was recently reduced by Court order) registered by HMI (the "**HMI**

Lien Claim"). With less than forecast output, the Applicant is in default of various obligations to its secured lenders, defined below as the Syndicate, who have made demand for payment of amounts in excess of $45 million. As well, Index Energy Ajax is experiencing significant liquidity constraints, and the existence of the HMI Lien Claim has impaired the Applicant's ability to obtain additional financing.

4. Over the past couple of years, Index Sweden and a related Swedish company, Index Residence AB (formerly Index International AB (publ)) ("**Index Residence**") have funded significant operating losses and capital requirements of Index Energy Ajax, but they are no longer prepared to do so other than through the DIP Financing (defined below) offered by a related party on a priority basis. A short term solution to Index Energy Ajax's restricted liquidity and a long term solution to the operational issues and funding is required.

5. Index Energy Ajax has recently made several changes to its management, which has included the addition of expertise to address the operational issues with the Biomass Facility, including increasing output and reliability, as well as reducing utility input costs.

6. The Applicant and Index Equity US LLC ("**Index US**") are currently in negotiations with the Syndicate to reach agreement on terms:

   (A) of a mutually acceptable sale and investment solicitation process ("**SISP**") which would include a stalking horse bid; and

   (B) to allow further advances under the DIP Financing (defined below) beyond the initial permitted draw amount, on a consensual basis

   all of which would be subject to further court approval.

7. In these circumstances, Index Energy Ajax needs a period of time to move forward with a SISP to explore potential restructuring and/or sale transactions and also urgently requires interim financing on a priority basis to preserve value, create stability and to ensure its viability as a going-concern.

8. Accordingly, this affidavit is sworn in support of an application by the Applicant pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") for an initial order substantially in the form included in the application record (the "**Initial Order**") granting certain relief including, among other things:

(a) a declaration that the CCAA applies to Index Energy Ajax;

(b) a stay of all proceedings and remedies taken or that might be taken in respect of the Applicant or any of its property, except where otherwise set forth in the Initial Order or otherwise permitted by law;

(c) authorising the Applicant to carry on business in a manner consistent with the preservation of its property and business and to make certain payments in connection with its business;

(d) appointing Grant Thornton Limited ("**GT**") as the court-appointed monitor (the "**Monitor**") in these proceedings; and

(e) authorising Index Energy Ajax to borrow the maximum sum of $5,000,000 pursuant to a credit facility (the "**DIP Financing**") as interim financing from Index US (in such capacity the "**DIP Lender**") with a maximum amount of $1.6 million being advanced by the DIP Lender prior to the CCAA comeback hearing (the "**Comeback Hearing**").

9. As noted above, Index Energy Ajax intends to return to court shortly to seek approval of a SISP in order for it to ultimately emerge as a restructured business, either through an investment or a going-concern sale, and approval of the DIP Financing on a final basis.

10. All references to currency in this affidavit are references to Canadian dollars unless otherwise indicated.

CORPORATE STRUCTURE AND SHAREHOLDERS

11. Index Energy Ajax was incorporated pursuant to the laws of Ontario on November 7, 2006. Its registered office is located at 170 Mills Road, Ajax, Ontario.

12. Index Energy Ajax is owned by three shareholders:

(a) Index Sweden is the owner of 70% of the issued common shares and certain non-voting second preferred shares in the capital stock of Index Energy Ajax;

(b) R. Andrews Investment Company, LLC ("**R. Andrews**") is the owner of 10% of the issued common shares in the capital stock of Index Energy Ajax; and

(c) Jacqueline Kerr ("**J. Kerr**") is the owner of 20% of the issued common shares in the capital stock of Index Energy Ajax.

13. Index Sweden acquired its interest in Index Energy Ajax from Index Residence pursuant to a share purchase agreement dated March 31, 2016 (the “**Index Sweden Transaction**”). Attached hereto and marked as **Exhibit “A”** is an organisational chart showing the current owners of Index Energy Ajax .

14. The directors of Index Energy Ajax are as follows:

    (a) Rickard Haraldsson; and

    (b) Colin Davies.

15. The officers of Index Energy Ajax, and their titles, are as follows:

    (a) Derek Blais, President and Secretary; and

    (b) Joseph Aletto, Chief Executive Officer.

16. Index Residence and Index Sweden are part of an affiliated global real estate, energy and investment group based in Sweden (collectively, the “**Index Group**”).

HISTORY AND BACKGROUND

The Biomass Facility

17. Index Energy Ajax was incorporated to retrofit and operate an energy production facility located at 170 Mills Road and 176 Mills Road, Ajax, Ontario (the “**Property**”). The facility was originally built in 1941 to provide the steam required for the nearby Defence Industries Limited’s shell filling plant. This business grew, and eventually the plant was providing steam to a number of industries and others in the vicinity.

18. Index Energy Ajax acquired the facility in 2008, with a plan to retrofit it (the “**Retrofit**”) to replace the existing plant with the Biomass Facility as a bio-mass fired, co-generation facility that would supply steam to industrial clients and generate electricity for delivery to Ontario’s power grid.

19. Index Energy Ajax entered into a feed-in-tariff contract with the Ontario Power Authority dated May 5, 2010 (the “**FIT Contract**”) with contract capacity of 17.8 megawatts. Attached hereto as **Exhibit "B"** is a copy of the FIT Contract cover page unique to Index Energy Ajax and the applicable form of FIT contract.

20. In order to complete the Retrofit to meet the performance targets in the time periods

required under the FIT Contract, Index Energy Ajax entered into an engineering, procurement and construction contract with HMI dated December 21, 2012 (as amended from time to time, the "**EPC Contract**").

21. As set out below, the Retrofit commenced following execution of the EPC Contract. However, disputes arose between HMI and Index Energy Ajax regarding HMI's work on the Biomass Facility.

22. The Biomass Facility is the entirety of Index Energy Ajax 's business. Index Energy Ajax does not operate outside of Ontario.

The HMI Litigation

23. Under the EPC Contract, HMI was required to, among other things, design, supply and install the items necessary to construct a 17.8 megawatt biomass power plant, and then to commission and start-up the completed plant. The EPC Contract was a fixed price contract.

24. HMI began work on the project in mid-2013. From the start of work by HMI until August 2015 when Index Energy Ajax was forced to terminate the EPC Contract, Index Energy Ajax had substantial concerns with the work done by HMI. Specifically, I believe that HMI failed, among other things, to coordinate design work for the Biomass Facility, to design and construct the foundation properly, to comply with the EPC Contract's design criteria and specifications, to construct the plant properly, to install the boilers properly and to meet project milestones set out in the EPC Contract (collectively, the "**Deficiencies**").

25. Index Energy Ajax issued notices of default to HMI on May 1, 2015, informed HMI of its decision to take over the plant operations on May 19, 2015 despite the work under the EPC Contract not being completed, and by letter dated July 28, 2015 advised HMI of its decision to terminate the EPC Contract as a result of HMI's default.

26. While HMI was working on the project, HMI's subcontractors began to register claims for construction liens on title to the Property (the "**Subcontractor Lien Claims**"). On or about April 28, 2015, HMI also registered the HMI Lien Claim on title to the Property in the amount of approximately $31.3 million.

27. On September 22, 2015, Index Energy Ajax filed a statement of defence and counterclaim to HMI Lien's Claim. Given the fixed price nature of the EPC Contract,

Index Energy Ajax's position was that the HMI Lien Claim was, among other things, greatly exaggerated.

28. After substantial litigation, on November 23, 2016, Justice Salmers of the Ontario Superior Court of Justice (Oshawa) released an endorsement-ruling where he agreed that '...HMI significantly exaggerated the lienable amount with respect to work done on this project' (see para 4) and found that 'HMI exaggerated its lien by approximately $19,000,000, far more than twice the maximum lienable amount.' (see para 33). He further ordered that Index Energy Ajax would be able to vacate the HMI lien by payment of $16 million dollars. A copy of Justice Salmers' endorsement-ruling dated November 23, 2016 is attached hereto as **Exhibit "C"**.

29. HMI filed an appeal that was heard by the Divisional Court in Toronto on June 22, 2017. The Divisional Court upheld Justice Salmers' ruling. A copy of the Divisional Court decision is attached hereto as **Exhibit "D"**.

30. As well, on March 24, 2017, Justice Salmers granted a consent order pursuant to which all of the Subcontractor Lien Claims have been vacated from title to the Property following the payment into Court by Index Energy Ajax of the agreed holdback amount for those subcontractor lien claims as further described below. A copy of Justice Salmers' consent order dated March 24, 2017 is attached hereto as **Exhibit "E"**.

31. Since 2015, Index Energy Ajax has spent a significant amount of money on this litigation regarding the HMI Lien. Along with the counterclaim mentioned above Index Energy Ajax engaged Ricketts Harris LLP as its counsel to commence a claim against Daniel Joseph Leduc, HMI's legal counsel, in connection with the HMI litigation. Such statement of claim was issued on issued April 26, 2017.

Current Status of the Biomass Facility

32. As a result of the Deficiencies, the Biomass Facility has not been operating as intended following the Retrofit. In particular, it produced far less power than it was projected to. As originally planned, the Biomass Facility should be producing between 16 to 17.8 megawatts. Initially after the Retrofit, the Biomass Facility was producing significantly less. For example, from June to August 2015, the average output was less than one megawatt.

33. After its decision to take over plant operations on May 19, 2015, Index Energy Ajax

began substantial work to complete the Retrofit and improve output at the Biomass Facility. On June 16, 2015, Index Energy Ajax obtained Commercial Operation under the FIT Contract.

34. Significant mitigation work continued following that time, including the following:

(a) adding controls and defining operational settings for the combusters;

(b) overhauling and modifying the wood and ash conveyors; and

(c) modifying the soot blowers to address excess carry over.

35. To date significant funds have been spent on mitigation work and Index Energy Ajax has also incurred operating losses as a result of the Deficiencies. However, the Biomass Facility continues to produce far less electricity than it was intended to. Between January 1, 2017 and June 30, 2017, its output averaged 8.3 megawatts with a peak as high as 16.8 megawatts during a specified one hour period. Absent the dispute with HMI, I verily believe that the defects in the Biomass Facility resulting in reduced output, would have been covered by warranty.

Recent Management Change**s**

36. Index Energy Ajax undertook an extensive management change in July and August 2017. It appointed two new officers (as discussed below): a new chief executive officer, with over 40 years experience in various capacities on power-generation facilities and a previous employee with extensive experience with the Biomass Facility returned in the role of Plant Manager and President and Secretary.

CREDITORS AND OTHER STAKEHOLDERS

37. Attached hereto and marked as **Exhibit "F"** is a copy of the interim financial statements of Index Energy Ajax prepared as at June 30, 2017 (the "**Interim Financial Statements**").

38. Attached hereto and marked as **Exhibit "G"** is a copy of the draft financial statements of Index Energy Ajax prepared as at December 31, 2016. Due to the management changes, these financial statements have not been signed.

39. Based on the Interim Financial Statements, as at June 30, 2017, the book value of the assets of Index Energy Ajax were $122,743,129.02. The most significant categories of

assets were the following:

Building	$116,773,429.50
Plant Equipment	$254,429.64
Current Assets	$2,655,150.17

40. Based on the Interim Financial Statements and the amounts owing on the credit facilities discussed below, as at June 30, 2017 the liabilities of Index Energy Ajax totalled $155,840,904.91. The most significant categories of liabilities were the following:

Syndicate Facilities (defined below)	$44,086,831.54
Index Residence Facilities (defined below)	$102,496,654
Other Accounts Payable	$3,495,517.54

Lending Syndicate

41. On or about July 15, 2013, Index Energy Ajax entered into a credit agreement (the "**Syndicate Credit Agreement**") with a syndicate of lenders composed of National Bank of Canada, Canadian Western Bank, Laurentian Bank of Canada and Business Development Bank of Canada (collectively, the "**Syndicate**"). National Bank of Canada is also the agent of the Syndicate (in that capacity, the "**Agent**").

42. Pursuant to the Syndicate Credit Agreement, the Syndicate agreed to provide Index Energy Ajax with the following credit facilities:

(a) a non-revolving construction facility in the maximum sum of $60,000,000 (the "**Construction Facility**"). The Construction Facility was payable in advances pursuant to the terms set out in the Syndicate Credit Agreement to fund the Retrofit project costs. The Syndicate Credit Agreement provides a number of events of default, including if the Retrofit was not completed by May 5, 2015 (the "**Outside Date**"); and

(b) a non-revolving term facility available once the Retrofit was satisfactorily completed, which was to consist of the balance owing under the Construction Facility. However, as set out below, the conversion to a term facility did not occur due to certain defaults in relation to the Construction Facility,

(collectively the “**Syndicate Facilities**”).

43. An interest hedging facility with National Bank of Canada and Laurentian Bank of Canada as lenders (the “**Interest Hedging Facility**”) was also established as required by the Syndicate Facilities.

44. Interest is payable on the Syndicate Facilities at the Canadian Dollar Offered Rate (“**CDOR**”) plus 3% per annum.

45. The obligations of Index Energy Ajax under the Syndicate Facilities and the Syndicate Credit Agreement and the Interest Hedging Facility were secured by, among other things, the following:

(a) a demand debenture in the principal amount of $210,000,000 dated July 15, 2013 and charging all of the Applicant’s property, assets, and undertakings, including the Property;

(b) a debenture delivery agreement dated July 15, 2013;

(c) an assignment of material contracts and an assignment of insurance, each dated July 15, 2013;

(d) a limited recourse guarantee and pledge agreement from Index Sweden (the “**Index Sweden Guarantee**”) as a replacement for the limited recourse guarantee and pledge agreement from Index Residence (the “**Index Residence Guarantee**”), discussed below;

(e) a limited recourse guarantee and pledge agreement from J. Kerr;

(f) a limited recourse guarantee and pledge agreement from R. Andrews; and

(g) liquid security in the amount of $10 million provided by Index Residence (the “**Liquid Security**”).

(collectively the “**Syndicate Security**”).

46. Recourse under the guarantees and pledge agreements from Index Sweden, J. Kerr and

R. Andrews is limited to the shares held by those parties in Index Energy Ajax.

47. Certain waivers and accommodations were made by the Syndicate in relation to the Syndicate Facilities, as evidenced by waiver and consent agreements dated September 12, 2013, October 11, 2013 and December 13, 2013. These related primarily to deferrals in payments to the Syndicate and the financing of ongoing construction costs.

48. On or about January 28, 2015, the Syndicate and Index Energy Ajax entered into a Waiver, Consent and First Amending Agreement to the Syndicate Credit Agreement which, *inter alia*, updated the financial model and project budget and acknowledged the contribution of Index Residence of an additional $2,750,000 in December 2014.

49. The failure of HMI to complete the Retrofit as set out in the EPC Contract and the Deficiencies resulted in numerous delays, and these circumstances continue to plague Index Energy Ajax . This further resulted in the Retrofit not being completed by the Outside Date, which was a default under the Credit Agreement.

50. Accordingly, on May 12, 2015, the Agent issued a notice of default pursuant to the Syndicate Credit Agreement (the "**First Default Letter**") regarding, among other things, the failure of the Retrofit to be completed by the Outside Date and an alleged material adverse change resulting from the Deficiencies and the registration of construction liens against the Property. Attached hereto as **Exhibit "H"** is a copy of the First Default Letter.

51. On May 21, 2015, counsel to the Syndicate appointed Alvarez & Marsal Canada ULC ("**Alvarez**") as consultant for the Syndicate.

52. On October 9, 2015, Index Energy Ajax, Index Residence, R. Andrews, J. Kerr, and the Syndicate entered into an accommodation agreement (the "**First Accommodation Agreement**") whereby the Syndicate agreed to forbear from enforcing the Syndicate Security until November 30, 2015 provided that, among other things, Index Residence contributed additional funds of at least $2,600,000.

53. The First Accommodation Agreement further permitted the Index Sweden Transaction, provided that certain conditions were met, including the delivery of the Index Sweden Guarantee as a replacement to the Index Residence Guarantee. Attached hereto and marked as **Exhibit "I"** is a copy of the First Accommodation Agreement.

54. Following the expiration of the forbearance pursuant to the First Accommodation Agreement, a number of defaults remained, including the failure of the Retrofit to be completed satisfactorily. Management of Index Energy Ajax prepared a revised plan (the "**Mitigation**") to address the Deficiencies. During the period from November 30, 2015 to August 11, 2016, Index Energy Ajax was in regular contact with the Syndicate in order to advance the Mitigation, and attempt to address the various issues with the project, including the HMI Lien Claim and the Subcontractor Lien Claims.

55. On February 11, 2016, the Agent informed Index Energy Ajax that, among other things, Index Energy Ajax had failed to satisfy the conditions of the First Accommodation Agreement and that certain defaults were continuing (the "**Second Default Letter**"). Attached hereto and marked as **Exhibit "J"** is a copy of the Second Default Letter.

56. On August 12, 2016, Index Energy Ajax, Index Sweden (as the replacement guarantor and pledgor for Index Residence), R. Andrews, J. Kerr, and the Syndicate entered into a further accommodation agreement (the "**Second Accommodation Agreement**") whereby the Syndicate agreed to forbear from enforcing the Syndicate Security until December 31, 2016 (the "**Second Forbearance Date**") to allow Index Energy Ajax to implement the Mitigation Plan (as defined in the Second Accommodation Agreement) and to take steps to refinance the Syndicate Facilities. Attached hereto and marked as **Exhibit "K"** is a copy of the Second Accommodation Agreement.

57. Following the expiry of the forbearance period on December 31, 2016, and given its liquidity constraints, Index Energy Ajax missed a payment under the Interest Hedging Facility. On January 16, 2017, the Interest Hedging Facility was terminated but there remain certain outstanding amounts related thereto.

58. On January 18, 2017, the Agent sent Index Energy Ajax a letter (the "**Demand Letter**") demanding payment in full of all amounts owing to the Syndicate under the Syndicate Facilities, which at that date totalled $49,427,871.94, with interest continuing to accrue. Enclosed with the Demand Letter was a notice of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the "**BIA Notice**"). Attached hereto and marked, collectively, as **Exhibit "L"** is a copy of the Demand Letter and the BIA Notice.

59. On January 23, 2017, the Agent notified Index Energy Ajax that the Agent had exercised its rights with respect to the Liquid Security (at that time in the total amount of

approximately $14.5 million), which were applied to reduce amounts outstanding under the Interest Hedging Facility and the Syndicate Facilities. The remaining amount owing to the Syndicate is approximately $44 million (plus interest and charges continuing to accrue).

60. On January 30, 2017, counsel for the Syndicate wrote to counsel for Index Energy Ajax advising that the 10 day notice period pursuant to the BIA Notice expired on that date, and that the Syndicate would extend the notice period on a day-to-day basis provided, among other things, that the Agent could terminate the notice period on one business day's prior notice in writing to Index Energy Ajax or its counsel (the "**Daily Extension Letter**"). Attached hereto and marked as **Exhibit "M"** is a copy of the Daily Extension Letter.

61. From the date of the Daily Extension Letter to the date hereof, the parties have been acting in accordance with the Daily Extension Letter, and the Agent has not given notice that the notice period is terminated.

Index Residence

62. Prior to entering into the Syndicate Credit Agreement, Index Energy Ajax had borrowed certain funds from Index Residence pursuant to a loan letter dated May 10, 2008, amended May 29, 2008, January 31, 2011 and amended and restated July 7, 2013 (as amended and restated, the "**Index Residence Credit Agreement**").

63. Pursuant to the Index Residence Credit Agreement, Index Residence made certain credit facilities initially available to Index Energy Ajax, including the following:

(a) Loan 1: a demand loan in the principal sum of $5,000,000, which at the date of the Index Residence Credit Agreement had been fully advanced; and

(b) Loan 2: a demand loan in the original principal sum of $25,366,348.47, which at the date of the Index Residence Credit Agreement had been fully advanced, together with any further funds advanced by Index Residence to Index Energy Ajax

(collectively the "**Index Residence Facilities**").

64. Absent an event of default, both of the Index Residence Facilities were payable 366 days after demand.

65. The Index Residence Facilities, and all other amounts owing pursuant to the Index Residence Credit Agreement, are secured by

(a) a general security agreement charging all present and after-acquired assets, personal property and undertakings of Index Energy Ajax; and

(b) a mortgage of the Property in the principal amount of $35,000,000,

(collectively, the "**Index Residence Security**").

66. Pursuant to a Subordination and Assignment Agreement dated July 15, 2013, Index Residence fully subordinated and assigned the Index Residence Facilities and the Index Residence Security to, and as security for, the Syndicate Facilities and the Syndicate Security.

67. The defaults in relation to the Syndicate Credit Agreement, the Interest Hedging Facility, and the Syndicate Security discussed above also constitute defaults under the Index Residence Credit Agreement and Index Residence Security.

68. As at the date hereof, the total amount owing by Index Energy Ajax to Index Residence pursuant to the Index Credit Agreement and the Index Security totals $102,496,654. Attached hereto and marked as **Exhibit "N"** is a copy of a ledger showing a breakdown of the total amount owing.

Other Secured Creditors

69. Attached hereto and marked as **Exhibit "O"** are the registrations made against Index Energy Ajax pursuant to the *Personal Property Security Act* (Ontario) as at March 14, 2017 and as updated to August 3, 2017. Other than the Syndicate Security and the Index Residence Security, the only other registration is by Caterpillar Financial Services Limited ("**Caterpillar**"), which is the lessor of a 2014 Caterpillar 950K wheel loader (the "**Loader**").

Lien Claimants

70. As noted above, there were a number of construction liens including the HMI Lien registered against the Biomass Facility by various contractors pursuant to the *Construction Lien Act* (Ontario) (the "**CLA**"). As of March 24, 2017, based on the consent order of Justice Salmers obtained on that date, Index Energy Ajax has paid $7,053,890 (the "**Holdback Funds**") plus HST into Court to vacate such construction

lien claims other than the HMI Lien Claim.

Other Creditors

71. I am advised by Shannon Crumb, the accounting manager of Index Energy Ajax, that Index Energy Ajax is indebted to a number of suppliers associated with its ongoing operations, including trade suppliers and professional and administrative services providers. As at August 8, 2017, these obligations totalled $4,002,654.92.

72. A number of the suppliers to Index Energy Ajax are vital to its ongoing operations, its potential value in a SISP, and its ultimate success as a restructured business (the "**Required Suppliers**"). Some of the Required Suppliers are very small and due to the nature of their business are highly reliant on Index Energy Ajax. It may be necessary for them to be paid all or a portion of the obligations arising prior to the date of the Initial Order, if granted, to ensure their survival and their continued ability to provide supplies to Index Energy Ajax.

73. Members of the Index Group are minority shareholders of two of the Required Suppliers, Durham Disposal Services Ltd. (**"Durham**") and Simtor Environmental Ltd. ("**Simtor**" together with Durham, the "**Related Suppliers**"), but these Related Suppliers are not majority controlled by any member of the Index Group.

74. I am advised by Derek Blais that Durham is the sole contractor responsible for removing the "fly ash" and "bottom ash" (the by-products created during the power generation cycle) created by the Biomass Facility. I understand that Simtor supplies wood to Index Energy Ajax and that it is the best quality wood supply for the Biomass Facility at the most affordable price on the market. I verily believe that the operation of the Biomass Facility, and the maximising of value for the stakeholders, would be materially prejudiced if the Related Suppliers ceased to carry on business. I also have been advised by Gordon Kerr, a previous officer of Index Energy Ajax, that the Related Suppliers are subject to government compliance requirements which require capital expenditures which, if not met, will result in them ceasing to carry on business. I understand that the Related Suppliers may be unable to afford these capital expenditures without being paid the amounts they are owed by Index Energy Ajax and therefore if the Related Suppliers do not receive a portion of the amounts owing to them they may be required to shut down operations.

Shareholder Loans

75. Index Sweden has extended numerous unsecured shareholder loans to Index Energy Ajax in excess of $4,000,000 in aggregate to permit the Applicant to continue operations while addressing the Deficiencies. Index Sweden is unwilling to inject further funds into Index Energy Ajax unless it restructures.

Employees

76. I am advised by Derek Blais that as of the date of this affidavit, Index Energy Ajax employs approximately 38 fulltime employees and two freelance workers as required, all of which are located in Ontario and none of whom are members of a union. Index Energy Ajax offers its employees an RRSP matching program (to a maximum of 3% of their salary per year), but does not maintain a pension plan. Employees are also provided with an extended health benefits plan.

77. As of the date of this affidavit, all scheduled payroll payments have been made as due.

Landlords

78. I am advised by Shannon Crumb, the accounting manager at Index Energy Ajax that the Applicant rents warehouse space at 2520 Haines Rd. Mississauga, Ontario for $1,819.30 per month (inclusive of HST). The rent accrued for May, June and July 2017, of approximately $5,457.90, has not been paid.

Canada Revenue Agency and Ontario Ministry of Finance

79. All amounts due from Index Energy Ajax to the Canada Revenue Agency ("**CRA**") and the Ontario Ministry of Finance for

(a) employee source deductions,

(b) sales tax, and

(c) corporate tax (other than as noted below)

are current and continue to be paid in the ordinary course of business, with the exception of approximately $33,201.61 in employee source deductions due August 10, 2017, that was not paid due to current liquidity constraints. However, this amount is intended to be paid using funds from the first advance of the DIP Financing if the Initial

Order is granted.

INDEX ENERGY AJAX IS INSOLVENT

80. Based on the foregoing, I do verily believe that Index Energy Ajax's liabilities exceed the current value of its assets. Index Energy Ajax has insufficient funds to meet its next payroll obligations or pay its other debts. The Applicant has ceased to meet its obligations as they become due and owing in the ordinary course of business. Index Energy Ajax will not be able to continue to operate unless CCAA protection is granted and the DIP Financing is approved.

PLAN OF ARRANGEMENT AND RESTRUCTURING

81. While the Retrofit has suffered a number of set-backs, including those related to the HMI Lien Claim, I believe that the Biomass Facility and Index Energy Ajax's business plan are viable. At present, the major obstacles facing Index Energy Ajax are the following:

(a) the demands of the Syndicate for the repayment of the Syndicate Facilities;

(b) the ongoing operational reliability issues at the Biomass Facility and the need for further investment to correct the Deficiencies and bring electricity production to an acceptable level for a prolonged and uninterrupted period of time;

(c) a shortage of liquidity to sustain the Retrofit and the ongoing operations; and

(d) the need to address the HMI Lien Claim so that new secured financing can be obtained.

82. While the precise terms of a restructuring will need to be finalised, Index Energy Ajax has taken a number of steps to address the current problems:

(a) Index Energy Ajax undertook an extensive management change in July and August 2017 to improve operations and profitability, including the addition of new management; and

(b) Index US is currently in negotiations with the Syndicate to reach agreement on a mutually acceptable SISP that would include a stalking horse bid. This would also permit further advances under the DIP Financing on a consensual basis (subject to further court approval).

83. The granting of an initial order is necessary to allow Index Energy Ajax the necessary time and breathing room to formulate and run a SISP to ensure that sufficient value is obtained for the stakeholders and to ensure that the Biomass Facility can continue as a going concern. I believe that a liquidation or receivership of the Biomass Facility would result in a disruption in the operations and remediation, a loss of value, and materially lower returns to the creditors. Accordingly, I believe that these proceedings and the relief being sought are in the interest of all stakeholders.

MANAGEMENT CHANGES

84. In July, 2017 Index Energy Ajax retained Joseph Aletto as a consultant. I am informed by Mr. Aletto, and believe, that he is an engineer with nearly 40 years of experience working in various capacities on power-generation facilities, including the design, construction, commissioning, and maintenance of various power-generation facilities in the United States and the United Kingdom.

85. Joseph Aletto was appointed as an officer of Index Energy Ajax in the role of Chief Executive Officer and Derek Blais, a former employee with extensive experience with the Biomass Facility, has returned as Plant Manager and was appointed as President and Secretary of Index Energy Ajax.

86. Given Aletto's strong qualifications and experience with power generation, plant design and maintenance, one of the first tasks he undertook with management was the development of a comprehensive plan and process to identify, prioritize and remedy the various issues facing the Biomass Facility, including increasing output and reliability, and reducing utility costs. Aletto has identified a number of areas where substantial savings and improvements can be made, including adding redundancy to the feed supply, exploring alternate steam-generation methods, and looking to enter into utility agreements with nearby industries. By having the appropriate expertise, and a clear plan forward, I believe that Index Energy Ajax can be a profitable, reliable, and sustainable going-concern enterprise once restructured.

87. It is clear that in order to completely achieve the modifications required, Index Energy Ajax must attract either new investment or a purchaser willing to inject further capital, given that the Syndicate, Index Residence, and Index Sweden have each stated that they will not provide further funding based on the current situation.

CASH-FLOW STATEMENTS

88. The Applicant has conducted a cash flow analysis to determine the amount required to finance the Applicant's operations for the next 13 weeks assuming the relief sought is granted, which the proposed Monitor, GT, has reviewed. The 13-week cash flow analysis is attached at **Exhibit "P"** to this my affidavit.

89. Based on the cash flow projections, if the DIP Financing is approved, Index Energy Ajax will have enough liquidity to meet its cash flow needs through to the end of the 13-week forecast period.

RELIEF SOUGHT

90. Index Energy Ajax seeks the Initial Order under the CCAA in the form of the model order adopted for proceedings commenced in Toronto, subject to certain changes as reflected in the proposed form of order contained in the Application Record.

DIP Financing

91. As noted above, Index Energy Ajax requires debtor-in-possession financing to provide an immediate source of cash to stabilize its operations and continue to address the Deficiencies to improve cash flow and to maximize returns for stakeholders.

92. In April 2017, once Index Energy Ajax determined that it required DIP financing, it engaged GT to locate and secure appropriate financing. The Syndicate declined to provide DIP financing.

93. As described in the Pre-Filing Report of the Proposed Monitor (the "**Pre-Filing Report**") the Monitor assisted the Company with an extensive solicitation process to locate an appropriate DIP financier. Among other things, the Proposed Monitor contacted approximately nine prospective lenders, and, once they had signed a non-disclosure statement, provided them with due diligence information. The Proposed Monitor also had numerous discussions with prospective lenders. Four prospective lenders submitted term sheets and thereafter improved term sheets.

94. After consultation with Index Sweden and Index Residence, one party was selected as a potential DIP lender (the "**Potential Lender**"). An indicative term sheet was entered into with the Potential Lender, Index Sweden (on behalf of Index Energy Ajax given the lack of liquidity at Index Energy Ajax) paid a $75,000 work fee to the Potential Lender, and negotiations ensued regarding a DIP credit agreement. However, the Potential Lender

and Index Energy Ajax were not able to come to terms on a credit agreement and unfortunately those negotiations ceased approximately 48 hours prior to the time that I am swearing this affidavit. As an alternative, Index US has agreed to act as DIP Lender on terms more favourable to Index Energy Ajax than those offered by the Potential Lender.

95. The DIP Lender has agreed to provide Index Energy Ajax with DIP Financing, subject to certain conditions. Accordingly, Index Energy Ajax has made arrangements, subject to the approval of the Court and the satisfaction of certain other conditions, to obtain up to a maximum of $5,000,000 (the "**Principal Amount**") pursuant to a credit agreement dated as of August 14, 2017 (the "**DIP Credit Agreement**"). However, the Applicant has agreed with the Syndicate that a maximum amount of $1.6 million will be advanced prior to the Comeback Hearing, and approval of a mutually acceptable SISP or a further order of the Court. The DIP Credit Agreement is attached at **Exhibit "Q"** to this my affidavit.

96. Other key terms of the DIP Financing, if approved, are as follows:

(a) **Interest:** Index Energy Ajax will pay interest at 6% per annum, calculated daily and payable monthly in arrears, on all advances.

(b) **Term:** The term of the DIP Financing will end on the earlier of: a) 6 months after the Closing Date (as defined in the DIP Credit Agreement), b) the date the stay of proceedings granted under the Initial Order expires, is terminated or lifted, and c) the date on which the DIP Lender demands repayment of the DIP Facility after the occurrence of an Event of Default (as defined in the DIP Credit Agreement).

(c) **Security:** The DIP Financing will be secured by a priority charge (the "**DIP Lender's Charge**"), which charge will attach to all of the Index Energy Ajax property, other than the Holdback Funds to the extent they are subject to valid lien claims, to rank ahead of all secured and unsecured creditors of Index other than Caterpillar in relation to the Loader or the proceeds thereof.

97. The funds available from the DIP Financing and specifically the $1.6 million to be advanced prior to the Comeback Hearing, will be used to meet Index Energy Ajax's immediate funding requirements during these proceedings in accordance with the cash flow projection discussed above, including costs and expenses in connection with these proceedings. Index Energy Ajax consulted with the proposed Monitor on the DIP

Financing and believes that the DIP Financing will meet Index Energy Ajax 's funding requirements during the CCAA process.

98. As noted in the cash-flow projections, Index Energy Ajax requires that the DIP Facility be available immediately in order to have sufficient liquidity. Without the protections set out in the DIP Facility, the Index Group is unwilling to invest further funds in Index Energy Ajax.

The Proposed Monitor

99. In January 2017, GT was engaged as an adviser by Index Energy Ajax. As detailed in the Pre-Filing Report, GT assisted Index Energy Ajax with, among other things, the preparation of a financial forecast model.

100. In addition, as described above and in the Pre-Filing Report, GT assisted Index Energy Ajax securing the DIP Financing and GT also assisted the company in preparing for a potential CCAA filing including the preparation of a cash flow projection.

101. In accordance with the requirements of the CCAA, GT is a licenced insolvency trustee and has consented to act as Monitor (the "**Monitor's Consent**") if so appointed. A copy of the Monitor's Consent is attached to this my affidavit as **Exhibit "R"**.

Required Suppliers

102. As noted above, there are a number of Required Suppliers, including the Related Suppliers who are vital to the ongoing operations of Index Energy Ajax. Accordingly, Index Energy Ajax seeks the authority to pay the Required Suppliers such amounts as are required, including amounts owing prior to the date of the Initial Order, to ensure continued supply and a successful restructuring. In order to ensure transparency, and that such payments are limited to those which are necessary, the form of Initial Order sought requires that any such payments must be reviewed and approved by the Monitor prior to being made and includes a cap on the aggregate amount that may be paid to Required Suppliers.

Charges

103. The Applicant seeks the following charges in the proposed Initial Order: an Administration Charge in the maximum amount of $1,000,000; the DIP Lender's Charge; and a Directors' Charge in the amount of $250,000 (each as defined below, together, the

"**Charges**"). The Applicant proposes that the Charges attach to all of its property, other than the Holdback Funds to the extent they are subject to valid lien claims, to rank ahead of all secured and unsecured creditors of Index other than Caterpillar in relation to the Loader or the proceeds thereof.

(a) Administration Charge

104. It is proposed that the Monitor, its counsel, and the Applicant's counsel, be granted a court-ordered charge on the assets of Index Energy Ajax as security for their fees and disbursements relating to services rendered in respect of Index Energy Ajax in an amount not to exceed $1,000,000 (collectively, the "**Administration Charge**"). The Administration Charge is intended to cover the fees of the Monitor, its counsel, and the Applicant's counsel associated with the preparation for these CCAA proceedings and activities during the proceedings. The Administrative Charge will rank in priority to the DIP Lender's Charge.

105. I believe that the amount of the proposed Administration Charge is commensurate with the complexity of Index Energy Ajax 's business and the tasks required to effect a successful restructuring.

(b) DIP Lender's Charge

106. The DIP Financing and the DIP Lender's Charge are described in detail above. The granting of the DIP Lender's Charge is a condition precedent under the DIP Credit Agreement and is an integral part of the negotiated consideration for the DIP Financing.

(c) Directors and Officers Indemnification and Charge

107. The proposed Initial Order contemplates a stay of proceedings against the directors and officers of the Applicant (the "**D&Os**") relating to obligations of Index Energy Ajax . The proposed Initial Order also contemplates the indemnification of the D&Os and the creation of a charge on the assets of the Applicant (the "**Directors' Charge**"), to the maximum amount of $250,000, to protect such individuals from all obligations and liabilities that they may incur as D&Os of the Applicant in the CCAA proceedings. The Director's Charge will rank subordinate to the DIP Lender's Charge. Index Energy Ajax does not have any Directors and Officers insurance in place.

108. The D&Os are intimately familiar with the Biomass Facility, the Retrofit, the Deficiencies, the Mitigation and the business of Index Energy Ajax generally. Having the D&Os remain

and assist in the restructuring will increase the prospect of a successful restructuring, which in turn will maximize value for stakeholders. To address legitimate concerns expressed by the D&Os with respect to their potential exposure if they continue to act (rather than resign before a significant portion of the liability can be triggered), the D&Os have requested reasonable protection against personal liability if they are to remain and assist in the restructuring activities. In light of the statutory and other liabilities to which the D&Os may be exposed in the future and having regard to the overall indebtedness (actual and contingent) of Index Energy Ajax, the D&Os' indemnity and charge is an important protection to provide to them, but at the same time a fair balancing of the interests of various stakeholders.

CONCLUSION

109. Index Energy Ajax requires the assistance and protection of this Court urgently to stabilize its business and obtain additional funding on a priority basis through the DIP Financing. The HMI Lien Claim has prevented Index Energy Ajax from otherwise obtaining funds on a priority secured basis to fund ongoing operations.

110. Once funding is secured and Index Energy Ajax has sufficient liquidity to stabilize its operations, Index Energy Ajax intends to request authority from the Court to proceed with a SISP to preserve value for all stakeholders and to allow Index Energy Ajax to emerge as a restructured business.

111. I swear this affidavit in support of an application by Index Energy Ajax for protection under the CCAA and for no other or improper purpose.

SWORN BEFORE ME, this 15th day of August, 2017.

A notary for taking affidavits in and for the courts in Stockholm, Sweden
Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

RICKARD HARALDSSON

This is **Exhibit "A"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....
A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

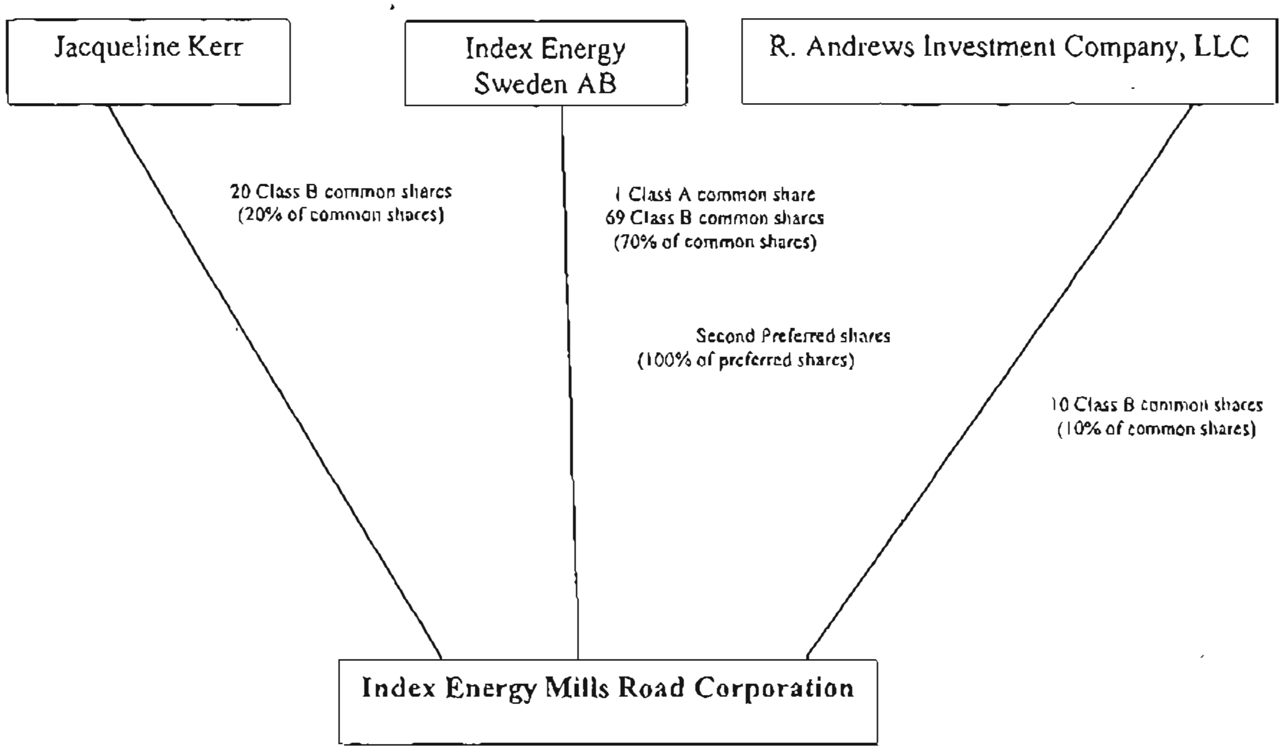
Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

Corporate Organizational Chart

Index Energy Mills Road Corporation



This is **Exhibit "B"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....

A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

Ontario Power Authority

FEED-IN TARIFF CONTRACT (FIT CONTRACT)

Version 1.3.0 (March 9, 2010)

1.	**CONTRACT IDENTIFICATION #**	F-000683-BIM-130-101	
2.	**FIT REFERENCE #**	FIT-F8U3T2Z	
3.	**CONTRACT DATE**	May 5, 2010	
4.	**SUPPLIER**	**Index Energy Mills Road Corporation**	
5.	**SUPPLIER'S ADDRESS**	**170 Mills Road** **Ajax ON L1S2H1** **Canada** Contact Person: Gordon Kerr	Fax: (905) 683-1335 Phone: (905) 683-2550 Email: gtkerr@hotmail.com
6.	**SUPPLIER INFORMATION**	Not a Non-Resident of Canada	
7.	**RENEWABLE FUEL**	**Renewable Biomass**	
8.	**CONTRACT CAPACITY**	17812 kW	
9.	**INCREMENTAL PROJECT**	No	
10.	**GROSS NAMEPLATE CAPACITY**	17812 kW	
11.	**CONTRACT PRICE**	13.0 ¢/kWh	Peak Performance Factor Applies
12.	**(a) ABORIGINAL PRICE ADDER (as of the Contract Date)**	0.00 ¢/kWh	Aboriginal Participation Level (if applicable) __ %
	(b) COMMUNITY PRICE ADDER (as of the Contract Date)	0.00 ¢/kWh	Community Participation Level (if applicable) _ %
13.	**PERCENTAGE ESCALATED**	20 %	

GK

14.	MINIMUM REQUIRED DOMESTIC CONTENT LEVEL	0 %
15.	BASE DATE	September 30, 2009
16.	AUTOMATIC NTP FACILITY	No
17.	LOCATION:	Municipal Address: Index Energy Mills Road Corporation 170 Mills Road Ajax ON L1S2H1
		Legal Description:
		Registered Plan M30, Part of Lot 3 40R4883, Part 1. Part Lot 3, 40R4882, Part 2, Plan 512, Part of Lot 3, 40R8366
18.	IMPACT ASSESSMENT PRIORITY START TIME	June 3, 2010 8:00
	IMPACT ASSESSMENT PRIORITY STOP TIME	June 3, 2010 9:00
19.	CONNECTION POINT	Distribution System - LDC: Veridian Connections Inc.
20.	HOST FACILITY (IF APPLICABLE)	Name: Municipal Address: Legal Description:
21.	FIT RULES	Applicable version: Version 1.3
22.	INCORPORATED SCHEDULES, APPENDICES AND EXHIBITS	FIT Contract Execution Instructions FIT Contract Offer Notice Schedule 1 – General Terms and Conditions, Version 1.3 Exhibit A – Technology-Specific Provisions, Type 4: Biomass Exhibit B – Metering and Settlement, Type 3 A Exhibit C – Form of Irrevocable Standby Letter of Credit Exhibit D – Domestic Content, Version 1.3 Exhibit E – Arbitration Provisions Applicable to Sections 1.7, 1.8, 2.10 & 12.2 Exhibit F – Form of Supplier Certificate re: Commercial Operation Exhibit G – Form of Independent Engineer Certificate re: Commercial Operation Exhibit H – Form of Secured Lender Consent and Acknowledgement Appendix 1 – Standard Definitions, Version 1.3 Anticipated Notice To Proceed (NTP) Request Date Form

JK

For valuable consideration, the OPA and the Supplier hereby mutually agree to be bound by the terms and conditions set out in this FIT Contract and the Schedules, Appendices and Exhibits attached hereto as noted in item 22 above (the "**Agreement**"). Each of the OPA and the Supplier confirms that it has received a copy of and has reviewed this Agreement, and that its representations and warranties set out herein are true and correct.

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

Index Energy Mills Road Corporation

By: Jacqueline Kerr

Name: JACQUELINE KERR

Title: DIRECTOR

By:

Name:

Title:

I/We have authority to bind the corporation.

ONTARIO POWER AUTHORITY

By: Michael Killeavy

Name: Michael Killeavy

Title: Director, Contract Manageme[nt] Electricity Resources

I have authority to bind the corporation.

Ontario Power Authority

FEED-IN TARIFF CONTRACT (FIT CONTRACT)

SCHEDULE 1

GENERAL TERMS AND CONDITIONS

VERSION 1.3.0

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FIT CONTRACT

GENERAL TERMS AND CONDITIONS

ARTICLE 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 given to them in the attached Appendix – Standard Definitions.

1.2 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, references to Articles, Sections and Exhibits are references to Articles, Sections and Exhibits in this Agreement.

1.3 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.4 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated, and shall be paid, in Dollars and Cents, and shall be rounded to the nearest Cent.

1.5 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done, shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

1.6 Statutory References

A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.

1.7 IESO Market Rules

In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency. To the extent that there is a change in the IESO Market Rules that was not published by the IESO in its approved form 30 days prior to the Contract Date, which such change has the effect of materially affecting the Supplier’s Economics, then:

(a) either Party may, within 15 days following the date such amendment is published by the IESO in its approved form, notify the other Party that such change materially affects the Supplier's Economics (a "**Material IESO Market Rule Amendment**"). For greater certainty, if a Party does not provide notice within 15 days following the date such amendment is published by the IESO in its approved form, then such Party shall not be entitled to any amendments to this Agreement as a result of such IESO Market Rule amendment;

(b) the Supplier shall, within 60 days following the date of any notice sent pursuant to Section 1.7(a), provide to the OPA all such information as may be required or otherwise requested by the OPA to assess the impact of such Material IESO Market Rule Amendment on the Supplier's Economics;

(c) the OPA shall, within 60 days following receipt of all information required to be provided by the Supplier and those Other Suppliers that are required to provide information pursuant to Section 1.7(b) of their respective FIT Contracts, but in any event no later than 120 days following receipt of all information required to be provided by the Supplier, either:

(i) advise the Supplier that the applicable IESO Market Rule amendment is not a Material IESO Market Rule Amendment; or

(ii) propose amendments to this Agreement and the respective agreements of any Other Suppliers that are so affected, on the basis that such amendments together with the change in the IESO Market Rules will substantially reflect the Supplier's Economics as contemplated hereunder and, at the OPA's discretion, that of such Other Suppliers, prior to the introduction of such change in the IESO Market Rules;

(d) if by the date that is 60 days following the date that the OPA makes a determination or proposes amendments in accordance with Section 1.7(c), as applicable, the Parties do not agree to the amendments proposed pursuant to Section 1.7(c), or do not agree as to whether an IESO Market Rule amendment is a Material IESO Market Rule Amendment, as applicable, then the Parties and, at the OPA's discretion, such Other Suppliers who are so affected, that are required by the OPA to participate, shall engage in good faith negotiations to reach agreement;

(e) if by the date that is 120 days following the date that the OPA makes a determination or proposes amendments in accordance with Section 1.7(c), as applicable, the Parties fail to reach agreement on the amendments described in Section 1.7(c) or do not agree as to whether an IESO Market Rule amendment is a Material IESO Market Rule Amendment, as applicable, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit E. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel; and

(f) this Section 1.7 shall not apply to the circumstances addressed in Section 2.10 or in respect of the establishment of any Future Contract Related Products.

1.8 Invalidity, Unenforceability or Inapplicability of Provisions

In the event that a court of competent jurisdiction determines that any provision of this Agreement is invalid, inapplicable or unenforceable, then either Party may propose, by notice to the other Party, a replacement provision, and the OPA and the Supplier and, at the OPA's discretion, those Other Suppliers that are required by the OPA to participate shall engage in good faith negotiations to replace such provision with a valid, enforceable and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable or inapplicable provision which it replaces (the "**Replacement Provision(s)**"). If the Parties are unable to agree on the Replacement Provisions within 30 days after the commencement of negotiations under this Section 1.8 then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit E. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the OPA to implement such award of the Arbitration Panel. This Section 1.8 shall not apply to the circumstances addressed in Section 2.10.

1.9 Entire Agreement

(a) This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement, except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by a Party to this Agreement, or its Representatives, to the other Party to this Agreement, or its Representatives, except to the extent that the same has been reduced to writing and included as a term of this Agreement.

(b) Where this Agreement explicitly incorporates by reference any definitions set out in the FIT Rules, such reference shall be to the FIT Rules in effect on the Contract Date.

1.10 Waiver, Amendment

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

1.11 Governing Law

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

1.12 Preparation of Agreement

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

1.13 Exhibits

Each of the exhibits set out in item 22 on the FIT Contract Cover Page are referenced in and form part of this Agreement.

ARTICLE 2
DEVELOPMENT AND OPERATION OF THE FACILITY

2.1 Design and Construction of the Facility

(a) The Supplier shall design and build the Contract Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Distribution System Code, Transmission System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations. The Supplier shall ensure that the Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement.

(b) The Supplier shall at no time after the date of this Agreement modify, vary or amend in any material respect any of the features or specifications of the Contract Facility or the Facility as outlined in the Application or the FIT Contract Cover Page (including for greater certainty, the Site) or make any change as to the Facility's status as a Registered Facility (a "**Contract Facility Amendment**"), without first notifying the OPA in writing and obtaining the OPA's consent in writing, which consent shall not be unreasonably withheld. For the purpose of this Section 2.1(b), it shall not be unreasonable for the OPA to withhold its consent to any modification, variation or amendment which would, or would be likely to,

(i) materially adversely affect the ability of the Supplier to comply with its obligations under this Agreement;

(ii) increase the Gross Nameplate Capacity of the Facility or otherwise cause Electricity generated by another facility to affect the Facility's meter reading, until such time as the Supplier and the OPA agree, acting reasonably, on any changes to the metering configuration or Exhibit B that are necessary to ensure that payments under this Agreement reflect only Delivered Electricity from the Contract Facility prior to any such Contract Facility Amendment; or

(iii) increase the Gross Nameplate Capacity of the Facility such that a lower Contract Price would have applied to the Contract Facility if, at the time of the original Application, the Contract Facility had an increased Contract Capacity corresponding to such increased Gross Nameplate Capacity.

(c) Notwithstanding Section 2.1(b), prior to the Supplier delivering its NTP Request pursuant to Section 2.4, the Supplier may, on a single occasion, elect to reduce the Contract Capacity to a lower amount by giving notice to the OPA, provided that such lower amount is no less than 75% of the original Contract Capacity. If the Supplier provides such notice, the Contract Capacity shall be reduced to the lower amount. The OPA shall have no obligation to consent to a request to alter the Contract Capacity other than as set out in this Section 2.1(c). Any such reduction in Contract Capacity shall only affect the amount of Completion and Performance Security that is required to be provided to the OPA after the date of the request for such reduction.

(d) Where the Facility is a Capacity Allocation Exempt Facility, the applicable LDC has sought direction from the OEB prior to connecting such Capacity Allocation Exempt Facility in accordance with Section 6.2.8B of the Distribution System Code, and the outcome of the resulting OEB process has, or is reasonably expected to have, a Material Adverse Effect, then prior to delivering an NTP Request and within 20 Business Days of become of become aware of such Material Adverse Effect, the Supplier may submit a written request to the OPA to terminate this Agreement, along with such evidence as the OPA may reasonably require.

(e) Where the Facility is not a Capacity Allocation Exempt Facility, and the Supplier receives from a Transmitter or an LDC, written estimates of the Supplier's Network Upgrade Costs, Transmitter Connection Costs or LDC Connection Costs, as applicable, that are substantially more than the costs that would have been reasonably foreseeable by a prudent Supplier taking Commercially Reasonable Efforts to estimate such costs, the Supplier may, prior to delivering an NTP Request and within 20 Business Days of receiving any such written estimate, submit a written request to the OPA to terminate this Agreement, along with such evidence as the OPA may reasonably require.

(f) If, on or prior to the Contract Date, the Supplier has provided an Aboriginal Participation Project Declaration confirming that the Aboriginal Participation Level in respect of the Project is greater than or equal to 50%, and the Supplier is subsequently denied financing for the Facility requested from Aboriginal Loan Guarantee Program after having taken Commercially Reasonable Efforts to secure such financing, and such denial is reasonably anticipated to have Material Adverse Effect, then the Supplier may, prior to delivering an NTP Request and within 60 days of receiving any such denial, submit a written request to the OPA to terminate this Agreement, along with such evidence as the OPA may reasonably require.

(g) Where the OPA receives a request from a Supplier pursuant to Section 2.1(d), 2.1(e) or 2.1(f), the OPA shall, acting reasonably, within 20 Business Days of any such request, either:

(i) approve the request, in which case this Agreement shall be terminated without any costs or payments of any kind to either Party, and all Completion and Performance Security shall be returned or refunded (as applicable) to the Supplier within 20 Business Days following receipt by the OPA of a written request for the return or refund (as applicable) of such Completion and Performance Security; or

(ii) deny the request, in which case the Supplier may continue under this Agreement, terminate this Agreement in accordance with Section 2.4(a), or request a Senior Conference pursuant to the terms of Section 15.1.

2.2 Additional Development and Construction Covenants

(a) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall have a Connection Point as set out in the

Application and shall affect supply or demand on the IESO-Controlled Grid, a Distribution System or a Host Facility, as applicable.

(b) The Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as more specifically set out in the applicable type of Exhibit B identified as the metering and settlement exhibit in respect of the Contract Facility on the FIT Contract Cover Page.

(c) Where the Facility is described by Section 4.2(a), the Supplier shall have a Metering Plan in the Prescribed Form approved by the OPA and shall deliver a copy to the OPA for its approval no later than 90 days prior to the Milestone Date for Commercial Operation. Where the Facility is not described by Section 4.2(a), the OPA may require the Supplier to provide a Metering Plan in a Prescribed Form by providing the Supplier with 60 days' prior notice of such request. In either case, the OPA shall review the Metering Plan submitted by the Supplier and either approve the Metering Plan or provide the Supplier with its comments within 30 days after receipt. The OPA shall, when considering whether to approve the Metering Plan, have regard to those Electricity matters in the Metering Plan that have received IESO or LDC approval, as applicable. If, within 15 days after the OPA has delivered its comments on the Metering Plan to the Supplier, the Parties are not able to agree on the final terms of the Metering Plan, the Parties shall submit the matter for determination by an Independent Engineer agreed upon by the Parties, acting reasonably, whose determination on the terms of the Metering Plan shall be final and binding on the Parties (and from whose determination there shall be no recourse to the dispute resolution provisions of this Agreement).

(d) If required to provide a Metering Plan pursuant to Section 2.2(c), the Supplier will provide the OPA with a commissioning report for all revenue meter(s) referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Section 2.6. The OPA retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan, and the meter data of the Facility to confirm the accuracy of such data. The Supplier shall not make any material changes to the Metering Plan following approval by the OPA or determination by the Independent Engineer (as applicable) without the prior written approval of the OPA, acting reasonably.

(e) The Supplier shall provide, at its expense, all power system components on the Supplier's side of the Connection Point, including all transformation, switching and auxiliary equipment, such as synchronizing and protection and control equipment, pursuant to Laws and Regulations and any requirements deemed necessary by the IESO, the Transmitter, the LDC or the Host Facility, as applicable, from time to time to protect the safety and security of the IESO-Controlled Grid, the Distribution System, each of their customers and the Host Facility, each as the case may be. The Supplier shall install protective equipment to protect its own personnel, property, and equipment from variations in frequency and voltage or from temporary delivery of other than three-phase power, whether caused by the Facility or otherwise.

(f) Where the FIT Contract Cover Page identifies the Renewable Fuel of the Contract Facility as windpower or solar (PV), the Supplier shall develop and construct the Contract Facility such that the Domestic Content Level is equal to or greater than the Minimum Required Domestic Content Level.

2.3 Connection Assessments, Connection Costs and Network Upgrade Costs

(a) The Supplier shall arrange, at its sole expense, for all Facility connection requirements in accordance with Laws and Regulations to permit the delivery of Delivered Electricity to the Connection Point.

(b) All Connection Costs shall be for the account of the Supplier and, as applicable, the Transmitter and/or LDC with which the Supplier has arranged connection of the Facility pursuant to the Connection Agreement, the Distribution System Code and the Transmission System Code, as applicable. The Supplier acknowledges that the responsibility for any Network Upgrade Costs associated with the connection of the Facility shall be allocated as set forth in the Distribution System Code and Transmission System Code.

(c) Where the Facility is not a Capacity Allocation Exempt Facility,

(i) the Supplier shall not apply for any Impact Assessments in respect of the Contract Facility until after the Impact Assessment Priority Start Time;

(ii) the OPA shall use its best efforts to not issue to any Other Supplier that is offered a FIT Contract after this Agreement was offered, an Impact Assessment Priority Start Time before the Impact Assessment Priority Stop Time under this Agreement; and

(iii) the Supplier acknowledges that if it applies for any required Impact Assessment after the Impact Assessment Priority Stop Time, Other Suppliers that were offered a FIT Contract after the Supplier may have already applied for an Impact Assessment, which may have cost and resource availability implications for the Supplier.

2.4 Notice to Proceed

(a) Until the OPA issues Notice to Proceed to the Supplier, and the Supplier has provided to the OPA the Incremental NTP Security in accordance with Section 2.4(g), the OPA may terminate this Agreement in its sole and absolute discretion by notice to the Supplier and all Completion and Performance Security shall be returned or refunded (as applicable) to the Supplier within 20 Business Days following receipt of a written request for such return or refund (as applicable) from the Supplier. Until the OPA issues Notice to Proceed to the Supplier, the Supplier may terminate this Agreement in its sole and absolute discretion by notice to the OPA.

(i) If the OPA terminates this Agreement in accordance with Section 2.4(a), the Supplier shall, within 60 days of such termination, provide to the OPA a written statement documenting the Pre-Construction Development Costs incurred prior to the Termination Date. The OPA shall, within 60 days of receiving such statement from the Supplier, pay to the Supplier as the sole and exclusive remedy for terminating this Agreement in accordance with this Section 2.4(a), an amount equal to the Pre-Construction Development Costs set out in such statement, as confirmed by the OPA, acting reasonably, and in any case the amount shall not exceed the Pre-Construction Liability Limit. For greater certainty, the Supplier acknowledges that any costs it may incur in excess of the Pre-Construction

Liability Limit prior to the issuance of Notice to Proceed and the subsequent receipt by the OPA of the Incremental NTP Security are the exclusive responsibility of the Supplier and shall not be included in any such payment.

(ii) If the Supplier terminates this Agreement in accordance with Section 2.4(a), then notwithstanding Section 9.5, as the OPA's sole and exclusive remedy for such termination, the Supplier shall pay as liquidated damages and not as a penalty, a sum equivalent to the amount of all Completion and Performance Security required to be provided by the Supplier as of the date of such termination.

(b) The OPA shall not issue Notice to Proceed in accordance with this Section 2.4 until the Supplier provides the OPA with an NTP Request in the Prescribed Form, and provided such NTP Request is complete in all respects. An NTP Request shall not be complete unless it includes all of the following (the "**NTP Pre-requisites**"):

(i) documentation of the completed Renewable Energy Approval, if applicable, and any other equivalent environmental and site plan approvals or permits necessary for the construction of the Contract Facility to commence;

(ii) a completed financing plan in the Prescribed Form, listing all sources of equity or debt financing for the development of the Contract Facility along with signed commitment letters from sources of financing representing collectively at least 50% of the expected development costs, stating their agreement in principle to provide the necessary financing, which commitment(s) may be conditional on the issuance of Notice to Proceed (the "**Financing Plan**");

(iii) where (A) the FIT Contract Cover Page identifies the Renewable Fuel of the Contract Facility as solar (PV) or (B) the FIT Contract Cover Page identifies the Renewable Fuel of the Contract Facility as wind power and the Contract Capacity is greater than 10 kW, a plan in the Prescribed Form setting out how the Supplier intends to meet the Minimum Required Domestic Content Level (the "**Domestic Content Plan**"); and

(iv) documentation of the time and date of application for, and the completion of, all Impact Assessments required by the Distribution System Code or the Transmission System Code, as applicable.

(c) The Supplier must provide the OPA with a completed NTP Request no later than six months prior to the Milestone Date for Commercial Operation. Notwithstanding the foregoing, where the Contract Facility is a Capacity Allocation Exempt Facility, the Supplier must provide the OPA with a completed NTP Request no later than the Milestone Date for Commercial Operation. For greater certainty, in the event that this Agreement is terminated in accordance with Section 9.2 as a result of the Supplier's failure to comply with the obligation in this Section 2.4(c), the sole and exclusive remedy of the OPA in such circumstance shall be its entitlement to retain the Initial Security pursuant to Section 9.2(d)(i).

(d) If the OPA determines, acting reasonably, that an NTP Request is incomplete, the OPA will notify the Supplier providing particulars in respect of the deficiencies in such documentation within 20 Business Days following the OPA's receipt of the Supplier's NTP Request.

(e) If the Contract Facility is an Automatic NTP Facility as identified on the FIT Contract Cover Page, the OPA shall either terminate this Agreement in accordance with Section 2.4(a) or issue Notice to Proceed to the Supplier no later than 20 Business Days following the OPA's receipt of the Supplier's completed NTP Request.

(f) If the Contract Facility is not an Automatic NTP Facility, the OPA shall be required to either issue Notice to Proceed, deliver an NTP Deferral Notice to the Supplier, or terminate this Agreement in accordance with Section 2.4(a), by the later of (A) the NTP Response Date and (B) 20 Business Days following the OPA's receipt of the Supplier's completed NTP Request.

(i) If the OPA provides the Supplier with an NTP Deferral Notice in accordance with this Section 2.4(f), the Pre-Construction Liability Limit shall increase by the NTP Daily Delay Amount for each day following the issuance of the NTP Deferral Notice until the OPA either issues Notice to Proceed or terminates this Agreement in accordance with Section 2.4(a).

(ii) The OPA shall be required to either issue Notice to Proceed or terminate this Agreement in accordance with Section 2.4(a) no later than 365 days following its delivery of an NTP Deferral Notice.

(iii) Where the OPA has issued an NTP Deferral Notice, the Milestone Date for Commercial Operation shall be extended on a day-for-day basis corresponding to the number of days following the issuance of the NTP Deferral Notice up to and including the day on which Notice to Proceed is issued (the "**NTP Delay**") or shall otherwise be extended by such longer reasonable period of time directly resulting from the NTP Delay.

Notwithstanding Section 10.1, the OPA's requirement to respond to a completed NTP Request pursuant to this Section 2.4(f) shall not be extended by an event of Force Majeure described in Section 10.3(f).

(g) The Supplier shall deliver to the OPA the additional amount of Completion and Performance Security identified as the "**Incremental NTP Security**" in Exhibit A within 30 days of receiving Notice to Proceed.

2.5 Milestone Date for Commercial Operation

The Supplier acknowledges that time is of the essence to the OPA with respect to attaining Commercial Operation of the Contract Facility by the Milestone Date for Commercial Operation set out in Exhibit A. The Parties agree that Commercial Operation shall be achieved in a timely manner and by the Milestone Date for Commercial Operation. The Supplier acknowledges that even if the Contract Facility has not achieved Commercial Operation by the Milestone Date for Commercial Operation, the Term shall nevertheless expire on the day before the twentieth or fortieth anniversary (as applicable) of the Milestone Date for Commercial Operation, pursuant to Section 8.1.

2.6 Requirements for Commercial Operation

(a) The Contract Facility will be deemed to have achieved "**Commercial Operation**" at the point in time when, as subsequently confirmed by the OPA in a written notice to the Supplier as described in Section 2.6(c):

(i) the OPA has issued Notice to Proceed to the Supplier pursuant to Section 2.4;

(ii) if the Supplier is required to submit a Metering Plan pursuant to Section 2.2(c), the OPA has received the Metering Plan in the Prescribed Form, and has approved it, acting reasonably;

(iii) the OPA has received a single line electrical drawing which identifies the as-built Connection Point, clearly showing area transmission and distribution facilities, including the transformer station(s) that is electrically closest to the Facility;

(iv) the OPA has received an IE Certificate in the form set out in Exhibit G directly from the Independent Engineer, stating that:

(A) the Contract Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Contract Facility to operate in accordance with this Agreement and the up to 10% allowance in Contract Capacity set out in Section 2.6(a)(iv)(C);

(B) the Connection Point of the Contract Facility is that set out on the FIT Contract Cover Page; and

(C) the Contract Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, a Distribution System or a Host Facility, as applicable, such that at least 90% of the Contract Capacity is available to Deliver Electricity in compliance with Good Engineering and Operating Practices and Laws and Regulations; and

(v) the OPA has received a certificate addressed to it from the Supplier in the form set out in Exhibit F with respect to the Commercial Operation of the Contract Facility, together with such documentation required to be provided under such form to the OPA.

(b) The OPA or its Representative shall be entitled, at the OPA's option, to attend any performance and generation test(s) for purposes of Section 2.6(a)(iv)(C) and the Supplier shall provide to the OPA confirmation in writing of the timing of such test(s) at least 10 Business Days in advance.

(c) The OPA shall notify the Supplier in writing within 20 Business Days following receipt of all of the documentation required by Section 2.6(a) as to whether such documentation is acceptable to the OPA, acting reasonably. If the OPA determines that such documentation is not acceptable, the OPA shall provide to the Supplier reasonable particulars in respect of the deficiencies in such documentation.

(d) If the Contract Facility has achieved Commercial Operation under Section 2.6(a) where less than one hundred percent (100%) of the Contract Capacity is available to Deliver Electricity, the Supplier shall, on or before the date which is one year after the Commercial Operation Date provide the OPA with an IE Certificate stating that one hundred percent (100%) of the Contract Capacity is available to Deliver Electricity in compliance with Good Engineering and Operating Practices and Laws and Regulations, failing which the Contract Capacity shall be reduced to the highest amount of capacity, which for greater certainty shall not exceed the Contract Capacity, that has been demonstrated to be available as of such date.

2.7 Operation Covenants

(a) The Supplier shall own or lease the Facility during the Term and shall operate and maintain the Facility during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the Distribution System Code, the Transmission System Code, the Connection Agreement, each as may be applicable, and all other Laws and Regulations.

(b) The Supplier shall connect the Facility exclusively to the Connection Point. For greater certainty, the Supplier shall deliver all Delivered Electricity through the Connection Point.

(c) The Supplier covenants and agrees that the Facility shall not utilize any sources or fuels other than the Renewable Fuel(s) identified on the FIT Contract Cover Page.

2.8 Insurance Covenants

(a) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain, from the commencement of the construction of the Contract Facility to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance that a prudent Person in the business of developing and operating the Contract Facility would maintain including policies for "all-risk" property insurance covering not less than the full replacement value of the Contract Facility, equipment breakdown insurance, commercial general liability insurance and environmental impairment liability insurance. Any such policies must (i) for any property insurance, contain a waiver of subrogation in favour of the Indemnitees and (ii) for any liability insurance, include the Indemnitees as additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement, in which case the policy shall be non-contributing and primary with respect to coverage in favour of the Indemnitees.

(b) Upon the request of the OPA, the Supplier will provide the OPA with a copy of each insurance policy, to be furnished within 10 Business Days of such request being made by the OPA.

(c) If the Supplier is subject to the *Workplace Safety and Insurance Act, 1997* (Ontario), it shall submit a valid clearance certificate of Workplace Safety and Insurance Act coverage to the OPA prior to the commencement of construction of the Contract Facility. In addition, the Supplier shall, from time to time at the request of the OPA, provide additional Workplace Safety and Insurance Act clearance certificates. The Supplier 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 Contract Facility, under the *Workplace Safety and Insurance Act, 1997* (Ontario), failing which the OPA has the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the *Workplace Safety and Insurance Act, 1997* (Ontario) and unpaid by the Supplier or its contractors and subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the OPA in connection therewith.

2.9 Compliance with Laws and Regulations and Registration with the IESO

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

(b) The OPA and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licencing as is required by the OEB.

(c) Unless required by Laws and Regulations, participation by the Supplier as a Market Participant and registration of the Facility with the IESO is optional. If the IESO requires or the Supplier chooses such participation and/or registration:

(i) the settlement of Market Settlement Charges shall take place directly between the “Metered Market Participant” and the IESO, and any costs incurred by the Supplier pursuant to the IESO Market Rules in respect of this Agreement shall be the sole responsibility of the Supplier; and

(ii) the Supplier shall meet all applicable Facility registration requirements as specified in the IESO Market Rules.

2.10 Environmental Attributes

(a) The Supplier hereby transfers and assigns to, or to the extent transfer or assignment is not permitted, holds in trust for, the OPA who thereafter shall, subject to Section 2.10(d), retain, all rights, title, and interest in all Environmental Attributes associated with the Contract Facility during the Term of this Agreement. For greater certainty, where the Contract Facility is an Incremental Project and Environmental Attributes are created and allocated or credited with respect to the Facility, the requirements of this Section 2.10 shall apply only to that portion of such Environmental Attributes corresponding to the Incremental Project Ratio.

(b) The Supplier shall from time to time, upon written direction of the OPA, take all such actions and do all such things necessary to effect the transfer and assignment to, or holding in trust for, the OPA, all rights, title, and interest in all Environmental Attributes as set out in Section 2.10(a).

(c) The Supplier shall from time to time, upon written direction of the OPA, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies Environmental Attributes that are created and allocated or credited with respect to the Contract Facility pursuant to Laws and Regulations from time to time (collectively, the “**Regulatory Environmental Attributes**”) for the purposes of transferring such Regulatory Environmental Attributes to the OPA in accordance with Section 2.10(a). The Supplier shall be entitled to reimbursement of the cost of complying with a direction under this Section 2.10(c), provided that the OPA, acting reasonably, approved such cost in writing prior to the cost being incurred by the Supplier.

(d) To the extent that Laws and Regulations requires the Contract Facility to utilize, consume or obtain Regulatory Environmental Attributes in connection with Delivering Electricity, then the OPA shall propose such amendments to this Agreement to the Supplier and, at the OPA's discretion, to all of the Other Suppliers who are required by the OPA to participate, based on the principle that the OPA will permit the Supplier to retain any Regulatory Environmental Attributes that may be created and allocated or credited with respect to the Contract Facility and that are required by such Laws and Regulations in order for the Contract Facility to Deliver Electricity. If the Parties are unable to agree on the OPA's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within 60 days after the delivery or communication of the OPA's proposal for such amendments, then such amendments shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit E. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the OPA to implement such award of the Arbitration Panel.

2.11 Supplier's Reporting Requirements

(a) Prior to the Contract Facility achieving Commercial Operation, the OPA may request up to four times per calendar year that, within 30 days of any such request, the Supplier provide the OPA with a status report (i) describing the efforts made by the Supplier to prepare the NTP Pre-requisites (as applicable) and to meet the Milestone Date for Commercial Operation, (ii) setting out the progress of the design and construction work and the status of permitting and approvals related to the Facility, and (iii) containing photographs showing the status of the Facility or the construction work. At the OPA's request, the Supplier shall provide an opportunity for the OPA to meet with personnel of the Supplier familiar with the information presented in such status report. The Supplier acknowledges that photographs of the Facility or the construction work may be posted or printed by the OPA on the Website or in publications.

(b) At any time and from time to time the Supplier shall, within 30 days of receiving a written request from the OPA, provide to the OPA all resource data relating to the availability and relevant physical properties of the Renewable Fuel that is then in the possession of the Supplier or is otherwise available to the Supplier using Commercially Reasonable Efforts. In the case of a Facility using a Renewable Fuel other than wind, solar or waterpower, the Supplier must provide this information in the form of a written plan detailing the types, supplier(s) and thermal properties of the Renewable Fuel(s) that the Supplier intends to utilize and all steps that have been undertaken to procure such Renewable Fuel.

(c) Where (A) the FIT Contract Cover Page identifies the Renewable Fuel of the Contract Facility as solar (PV) or (B) the FIT Contract Cover Page identifies the Renewable Fuel of the Contract Facility as wind power and the Contract Capacity is greater than 10 kW, the Supplier shall, within 60 days following the Commercial Operation Date, provide the OPA with a report detailing how the Contract Facility has achieved the Minimum Required Domestic Content Level and containing the evidence prescribed by Section 1.2

of Exhibit D (such report, the "**Domestic Content Report**"), together with a statutory declaration in the Prescribed Form declaring that the Domestic Content Report is complete and accurate in all material respects and that the Domestic Content Level of the Contract Facility satisfies the requirements set out in Section 2.2(f). Within 60 days following receipt of a Domestic Content Report, the OPA shall either notify the Supplier that the Domestic Content Report is complete, or request additional information or documentation substantiating that one or more Designated Activities set out in the Domestic Content Report as having been performed, were in fact performed in relation to the Contract Facility.

(i) Where the OPA has requested such additional information or documentation, the Supplier shall provide it to the OPA within 30 days of any such request, failing which, the applicable Domestic Content Level shall be recalculated excluding the applicable Designated Activity. Where the Supplier provides such additional information or documentation within 30 days and to the satisfaction of the OPA, acting reasonably, the OPA shall, within 30 days of receipt of such additional information or documentation, notify the Supplier that the Domestic Content Report is complete.

(d) Notwithstanding Section 2.11(c), the OPA may, in accordance with Section 14.2, request any additional information or documentation relating to any Designated Activity set out in a Domestic Content Report as having been performed. Where the Supplier fails to provide such information or documentation to the satisfaction of the OPA, acting reasonably, the Domestic Content Level shall be recalculated excluding the applicable Designated Activity.

ARTICLE 3
ELECTRICITY, RELATED PRODUCTS DELIVERY AND PAYMENT OBLIGATIONS

3.1 Contract Payment and Settlement

The Contract Payments shall be made, and all details relating to the settlement of Contract Payments under this Agreement shall be handled in accordance with, the version of Exhibit B applicable to the Contract Facility as specified on the FIT Contract Cover Page.

3.2 EcoENERGY Payments

If the Supplier receives any payments under the ecoENERGY for Renewable Power Program attributable to the Contract Facility, the Supplier, within 30 days of receipt of such payment, shall pay to the OPA 50% of the amount of such payment, failing which, the OPA may set off any such payments due to the OPA against any amounts payable by the OPA to the Supplier.

3.3 Future Contract Related Products

(a) All Related Products, other than Future Contract Related Products and any benefits associated therewith, shall belong to the Supplier.

(b) The Supplier will provide the OPA with prior written notice of the development by the Supplier of any Future Contract Related Products from time to time.

(c) The Supplier shall sell, supply or deliver all Future Contract Related Products as requested, directed or approved by the OPA, provided that the OPA shall not require the Supplier to sell, supply or deliver any Future Contract Related Product where the Approved Incremental Costs in relation to such Future Contract Related Product are reasonably expected to exceed the total revenues received by the Supplier from the sale, supply or delivery of such Future Contract Related Product.

(d) The Supplier covenants not to sell, supply or deliver any Future Contract Related Products unless such sale, supply or delivery has been requested, directed or approved by the OPA.

(e) The Supplier will notify the OPA of any revenue received by the Supplier in connection with the sale, supply or delivery of any Future Contract Related Products.

(f) The OPA may, in its sole and absolute discretion, deem any Ancillary Service or other Related Product that is a Future Contract Related Product not to be a Future Contract Related Product.

3.4 Supplier's Responsibility for Taxes

The Supplier is liable for and shall pay, or cause to be paid, or reimburse the OPA if the OPA has paid, all Taxes applicable to the Delivered Electricity and Future Contract Related Products sold hereunder which may be imposed up to the Connection Point and in respect of which a credit, rebate, or refund has not and may not be obtained by the OPA. In the event that the OPA is required to remit such Taxes and the OPA is not entitled to a credit, rebate, or refund in respect of such payment of Taxes, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder.

3.5 OPA's Responsibility for Taxes

The OPA is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid any Taxes applicable to the Delivered Electricity and Future Contract Related Products sold hereunder which may be imposed at and from the Connection Point, and Taxes applicable to or associated with the transfer or assignment of Environmental Attributes from the Supplier to the OPA. The Contract Price does not include any Sales Tax payable by the OPA in respect of the Electricity and Future Contract Related Products purchased hereunder. If any Sales Tax is payable in connection with the Delivered Electricity and Future Contract Related Products purchased hereunder, such Sales Tax shall be paid by the OPA. In the event that the Supplier is required to pay or remit such Taxes and no credit, rebate, or refund is available (or, in the event that the Supplier has assigned this Agreement, that no credit, rebate, or rebate would have been available to the Supplier had it not assigned this Agreement) in respect of such payment or remittance of Taxes, the amount thereof shall be deducted from any sums becoming due to the OPA hereunder.

3.6 Non-residency

(a) If the Supplier is a non-resident of Canada, as that term is defined in the ITA, then payments under this Agreement by the OPA shall be reduced by the amount of any applicable withholding or other similar Taxes and the OPA shall remit such withholding or other similar Taxes to the applicable taxing authorities. The OPA shall, within 60 days after remitting such Taxes, notify the Supplier in writing, providing reasonable detail of such payment so that the Supplier may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If, after the OPA has paid such amounts, the OPA receives a refund, rebate or credit on account of such Taxes, then the OPA shall promptly remit such refund, rebate or credit amount to the Supplier.

(b) If the Supplier is or becomes a non-resident of Canada, as that term is defined in the ITA, the Supplier shall notify the OPA forthwith of such status and shall provide the OPA with all such information reasonably required by the OPA to comply with any withholding tax or other tax obligations to which the OPA is or may become subject as a result of thereof.

ARTICLE 4
STATEMENTS AND PAYMENTS

4.1 Meter and Other Data

The Supplier shall provide to the OPA access to the meter(s) in any Metering Plan to accommodate remote interrogation of the metered data on a daily basis. If the Supplier is not a Market Participant, the Supplier shall provide to the OPA access at all times to any data or information relating to the Facility (including information related to Outages), that would have been provided to the IESO if the Supplier were a Market Participant, forthwith upon request by the OPA. The Supplier shall notify the OPA of any material errors and omissions in any such data or information on a timely basis so as to permit the OPA, within a reasonable time, to advise the IESO, if applicable, to correct such errors and omissions pursuant to the IESO Market Rules. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 4.1, such Party shall notify the other Party and, if applicable, the IESO in accordance with the IESO Market Rules, on a timely basis.

4.2 Settlement for IESO Market Participants

(a) This Section 4.2 shall apply only to a Facility that:

(i) is directly connected to the IESO-Controlled Grid;

(ii) is a Behind-the-Meter Facility and has one or more Registered Facilities connected between it and the IESO-Controlled Grid; or

(iii) is otherwise a Registered Facility.

(b) The OPA shall prepare and deliver a settlement statement (the "**Statement**") to the Supplier, within 20 Business Days after the end of each calendar month in the Term that is the subject of the Statement (the "**Settlement Period**"), setting out the basis for the Contract Payment with respect to the Settlement Period, as well as the basis for any other payments owing under this Agreement by either Party to the other Party in the Settlement Period. If the Term begins on a day other than the first day of the Settlement Period, the initial Contract Payment may be deferred and incorporated with that of the first full Settlement Period following the commencement of the Term. A Statement may be delivered by the OPA to the Supplier by facsimile, e-mail or other electronic means and shall include the reference number assigned to this Agreement by the OPA and a description of the components of the Contract Payment and other payments owing to the Supplier for the Settlement Period.

(c) The Party owing the Contract Payment shall remit to the other Party full payment in respect of the Statement no later than the last Business Day of the month following the end of the Settlement Period to which the Statement relates, provided that where the

Supplier owes the Contract Payment, the Supplier shall not be required to make such payment earlier than five Business Days following delivery of the Statement (the "**Payment Date**"). Any and all payments required to be made by either Party under any provision of this Agreement shall be made by wire transfer to either the account designated by the Supplier in the Prescribed Form, or to the account designated by the OPA, as applicable. The account information and GST registration numbers of the Supplier and the OPA constitute Supplier's Confidential Information and OPA's Confidential Information, respectively, and are subject to the obligations as set out in Article 7. The Supplier shall provide its account information and GST number to the OPA in the Prescribed Form prior to achieving Commercial Operation. Either Party may change its account information from time to time by notice to the other in accordance with Section 14.6.

(d) If the Supplier disputes a Statement or any portion thereof, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement to the other Party. The Supplier shall provide notice to the OPA setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the OPA will promptly prepare a revised Statement. Any overpayment or underpayment of any amount due under a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the tenth Business Day following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five Business Days after receipt of notice of such dispute by the OPA, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 15.1.

4.3 Settlement for Non-IESO Market Participants

(a) This Section 4.3 shall apply only to a Facility that is not a Facility described in Section 4.2(a).

(b) The Parties agree that all Contract Payments shall be settled in accordance with the Retail Settlement Code by the LDC to which the Facility or the Host Facility (as applicable) is connected.

(c) The Contract Payments shall be settled periodically and on a schedule consistent with the monthly, bimonthly, quarterly or other periodic billing cycle of the applicable LDC (the "**Settlement Period**"), provided that if the Term begins on a day other than the first day of the Settlement Period, the initial Contract Payment may be deferred and incorporated with that of the first full Settlement Period following the commencement of the Term. All settlement documentation, requirements and details, including the date that any Contract Payment is due (the "**Payment Date**") and the statement of amounts owing (the "**Statement**") shall be governed by the applicable LDC. The Supplier shall provide its account information and GST number to the LDC responsible for settling Contract Payments, in the form and manner specified by such LDC, prior to achieving Commercial Operation.

(d) Where a Facility is a Behind-the-Meter Facility, the Supplier must maintain a settlement account with the applicable LDC in accordance with the Retail Settlement Code. If the

Supplier does not maintain a direct settlement account with the applicable LDC, the Supplier shall, and shall cause the applicable Host Facility, to provide a written consent to the LDC to permit settlement of this Agreement through the account of the Host Facility, in which case such Supplier shall bear all risks associated with settlement of this Agreement through the account of the Host Facility, including the failure of the Host Facility to pay any amounts owing to the Supplier. In the event that this Agreement is being settled through the account of the Host Facility, where there are amounts owing by the Supplier under this Agreement, the Supplier shall remain ultimately liable for the payment of such amounts.

(e) If the Supplier disputes a Statement or any portion thereof, the Party (or, in the case of the OPA, the applicable LDC) owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement. Prior to engaging the OPA in a dispute, the Supplier shall make all reasonable efforts to resolve the dispute directly with the applicable LDC, failing which the Supplier shall provide notice to the OPA setting out the portions of the Statement that are in dispute with a brief explanation of the dispute and the steps taken towards resolving such dispute directly with the applicable LDC. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the OPA will work the applicable LDC to prepare a revised Statement. Any overpayment or underpayment of any amount due under a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the next Payment Date following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five Business Days after receipt of notice of such dispute by the OPA, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 15.1.

4.4 General Settlement Provisions

The OPA shall have the right to designate a settlement agent or implement such alternative settlement mechanisms other than as set out in Sections 4.2 and 4.3, as it may in its sole and absolute discretion determine, provided that such alternative arrangement does not have a Material Adverse Effect on the Supplier. The OPA shall provide 30 days' prior notice to the Supplier of any such designation or change.

4.5 Interest

The Party owing the Contract Payment shall pay interest on any late payment to the other Party, from the Payment Date to the date of payment, unless such late payment was through the fault of the other Party. The interest rate applicable to such late payment shall be the Interest Rate in effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.

4.6 Adjustment to Statement

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

(b) Notwithstanding the foregoing, if the Supplier is a Market Participant, the determination by the IESO of any information shall be final and binding on the Parties in accordance with the IESO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the IESO which the IESO has corrected, then the one year limit set forth in Section 4.6(a) shall not apply to the correction of such error or the OPA's ability to readjust the Statement.

(c) Subject to Sections 4.2(d) and 4.3(e), any adjustment to a Statement made pursuant to this Section 4.6 shall be made in the subsequent Statement.

4.7 Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and Contract Payment made thereunder as well as all settlement statements and records of Contract Payments issued by applicable LDCs in accordance with Section 14.2.

ARTICLE 5
SECURITY REQUIREMENTS

5.1 Pre-COD Completion and Performance Security

(a) The Parties acknowledge that the Supplier has, as of the date of this Agreement, provided to the OPA Completion and Performance Security in the amount of the Initial Security. The Supplier shall be required to maintain the Initial Security pursuant to this Section 5.1.

(b) The Supplier shall be required to provide to and maintain with the OPA additional Completion and Performance Security in the amount of the Incremental NTP Security pursuant to Section 2.4(g).

(c) After the Commercial Operation Date, the OPA shall return or refund (as applicable) the full amount of the Initial Security and the Incremental NTP Security within 20 Business Days following receipt of a written request from the Supplier, net of any amounts owing by the Supplier to the OPA.

5.2 Post-COD Completion and Performance Security

(a) If at any time during the first 12 Contract Years the average of HOEP over a contiguous six month period is greater than seventy-five percent (75%) of the Contract Price and provided that the Contract Capacity is greater than or equal to 1,000 kW, the OPA may at any time, by providing notice to the Supplier, require the Supplier to provide to and maintain with the OPA Completion and Performance Security (such Completion and Performance Security, the "**First Period Future Performance Security**") within 30 days of such notice. The amount of First Period Future Performance Security shall be calculated as the sum of the Initial Security and the Incremental NTP Security, effective at the time of any such request.

(b) If at any time after the end of the 12th Contract Year and prior to the start of the 17th Contract Year, the average of HOEP over a contiguous six month period is greater than seventy-five percent (75%) of the Contract Price and provided that the Contract Capacity is greater than or equal to 1,000 kW, the OPA may at any time, by providing notice to the Supplier, require the Supplier to provide to and maintain with the OPA Completion and

Performance Security (such Completion and Performance Security, the "**Second Period Future Performance Security**") within 30 days of such notice. The amount of Second Period Future Performance Security shall be calculated as the sum of the Initial Security and the Incremental NTP Security, effective at the time of any such request. For greater certainty, the Second Period Future Performance Security is in addition to the First Period Future Performance Security, if any.

(c) After the end of the Term, the OPA shall return or refund (as applicable) any First Period Future Performance Security and any Second Period Future Performance Security that has been provided by the Supplier within 20 Business Days following receipt of a written request from the Supplier, net of any amounts owing by the Supplier to the OPA.

5.3 Composition of Completion and Performance Security

(a) The obligation of the Supplier to post and maintain Completion and Performance Security as required by Sections 5.1 and 5.2 must be satisfied in accordance with this Section 5.3(a) by the Supplier providing such security in the form of a certified cheque, bank draft or an irrevocable and unconditional standby letter of credit in substantially the form referenced as Exhibit C issued by a financial institution listed in either Schedule I or II of the *Bank Act* (Canada), or such other financial institution having a minimum credit rating of (i) A– with S&P, (ii) A3 with Moody's, (iii) A low with DBRS, or (iv) A with Fitch IBCA. Notwithstanding the foregoing, where the amount of any component of the Completion and Performance Security exceeds $200,000, the Supplier must provide the Completion and Performance Security in the form of a letter of credit as described in this Section 5.3(a). For greater certainty, at any time the OPA holds a letter of credit as Completion and Performance Security, the Supplier shall ensure that such letter of credit does not expire or terminate for any reason prior to a date that is 60 days from such time.

(b) Where the Supplier has provided Completion and Performance Security to the OPA in the form of a certified cheque or bank draft, the Supplier acknowledges that such amounts shall be deemed to have been paid by the Supplier to the OPA and the OPA shall have the right to invest, use, commingle or otherwise dispose of any such amounts, free from any claim or right of any nature whatsoever of the Supplier, including any equity or right of redemption by Supplier, subject to Sections 5.1(c) and 5.2(c) above.

5.4 Adequacy of Security; Replacement Security

(a) The Supplier shall ensure that, at all times, the aggregate value of all Completion and Performance Security provided to the OPA is at least equal to the then currently required amount of Completion and Performance Security and that the Completion and Performance Security is current, valid, enforceable and in an acceptable form, including:

(i) following realization by the OPA of any amount of Completion and Performance Security, increasing the amount of Completion and Performance Security, by an amount equal to that realized by the OPA;

(ii) forthwith providing replacement security for any letter of credit (A) where the provider thereof has given notice that it does not wish to extend the letter of credit for an additional term, (B) which expires, terminates or fails, or ceases to be in full force and effect for the purposes hereof, (C) which is disaffirmed, disclaimed, dishonoured, repudiated or rejected in whole or in part by the provider thereof, or (D) the validity of which is challenged by the provider thereof.

(b) All costs associated with the requirement to provide and maintain Completion and Performance Security shall be borne by the Supplier.

(c) If existing Completion and Performance Security in the form of a letter of credit is replaced with new Completion and Performance Security, the OPA shall return the existing Completion and Performance Security held by the OPA to the Supplier, within 15 Business Days of the OPA's receipt of such new Completion and Performance Security. If existing Completion and Performance Security in the form of a certified cheque or bank draft has been paid to the OPA and the Supplier provides new Completion and Performance Security to the OPA in the form of a letter of credit, the OPA shall pay to the Supplier within 15 Business Days the amount of Completion and Performance Security that had been previously paid to the OPA in the form of a certified cheque or bank draft. A Supplier may from time to time consolidate any separate amounts of Completion and Performance Security held by the OPA by providing to the OPA replacement Completion and Performance Security in the cumulative amount of Completion and Performance Security outstanding, in which case the OPA shall return or refund (as applicable) the existing Completion and Performance Security in accordance with this Section 5.4(c).

(d) Notwithstanding any other provision of this Agreement, no delay, including a delay resulting from an event of Force Majeure shall extend the date by which any component of the Completion and Performance Security is required to be provided by the Supplier or returned or refunded (as applicable) by the OPA.

5.5 Interest on Completion and Performance Security

Any interest earned by the OPA on any Completion and Performance Security provided to the OPA shall be for the sole account of the OPA and the Supplier shall not have any right to such interest.

ARTICLE 6
REPRESENTATIONS

6.1 Representations of the Supplier

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

(a) The Supplier is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.

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

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

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

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

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

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

(v) any Laws and Regulations,

that could have a Material Adverse Effect on the Supplier.

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

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

(f) All statements, specifications, data, confirmations, and information that have been set out in the Application are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made to the OPA hereunder and there is no material information omitted from the Application which makes the information in the Application misleading or inaccurate.

(g) As of the Contract Date, there are no Renewable Generating Facilities that are the subject of an application or a contract pursuant to the FIT Program or the microFIT Program that are on the Property and utilize the same Renewable Fuel as the Facility, other than the Facility and any Renewable Generating Facilities for which the OPA has provided a written acknowledgment to the Supplier that it is aware of such other Renewable Generating Facilities.

(h) The Supplier is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Supplier.

(i) Unless the Supplier has otherwise notified the OPA pursuant to Section 3.6(b), the Supplier is not a non-resident of Canada for the purposes of the ITA.

6.2 Representations of the OPA

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

(a) The OPA is a corporation without share capital created under the laws of Ontario and has the requisite power to enter into this Agreement and to perform its obligations hereunder.

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

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

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

(ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholders of the OPA;

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

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

(v) any Laws and Regulations,

that could have a Material Adverse Effect on the OPA.

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

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

(f) The OPA is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the OPA.

ARTICLE 7
CONFIDENTIALITY AND FIPPA

7.1 Confidential Information

From the date of this Agreement to and following the expiry of the Term, the Receiving Party shall keep confidential and secure and not disclose Confidential Information, except as follows:

(a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 7 by any of its Representatives.

(b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any Law and Regulations, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by Laws and Regulations in accordance with Section 7.2.

(c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the Prescribed Form covenanting in favour of the OPA to hold such Confidential Information confidential on terms substantially similar to this Article 7.

(d) Notwithstanding the foregoing, the Supplier consents to the disclosure: (i) of the its name and contact particulars on the Website, (ii) of the Site, Contract Capacity, Renewable Fuel(s) and Connection Point on the Website, (iii) of its address for service and the name of its Company Representative to all Other Suppliers who have entered into a FIT Contract, for the purposes of Sections 1.7, 1.8, 2.10 and 12.2, (iv) on a confidential basis, of any information received by the OPA in respect of this Agreement for such internal purposes as the OPA may reasonably determine from time to time to the OPA's Representatives, and (v) of aggregated data relating to the FIT Program or the FIT Contracts.

7.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the

Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is required by law only to such Person or Persons to which the Receiving Party is legally compelled to disclose, and in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

7.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make, at its own expense, and retain one copy of, any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations and shall keep such retained copy subject to the terms of this Article 7.

7.4 Injunctive and Other Relief

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third party to whom the Disclosing Party owes a duty of confidence and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article 7.

7.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the Ontario Power Authority is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Ontario Power Authority ("**FIPPA Records**") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier shall provide a copy of any FIPPA Records that it previously provided to the Ontario Power Authority if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Ontario Power Authority's request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Ontario Power Authority. The provisions of this Section 7.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

ARTICLE 8
TERM

8.1 Term

(a) This Agreement shall become effective upon the Contract Date.

(b) The "**Term**" means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) of the date that is the Commercial Operation Date, and ending at the beginning of the hour ending 24:00 hours (EST) on the day before:

(i) in the case of Facilities utilizing Renewable Fuels other than waterpower, the 20th (twentieth) anniversary of the date that is the earlier of (A) the Milestone Date for Commercial Operation and (B) the Commercial Operation Date, or

(ii) in the case of Facilities utilizing waterpower for their Renewable Fuel, the 40th (fortieth) anniversary of the date that is the earlier of (A) the Milestone Date for Commercial Operation and (B) the Commercial Operation Date,

subject to earlier termination in accordance with the provisions hereof. Subject to Sections 8.1(c) and (d), neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

(c) Where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation, the OPA shall have the right, by providing notice to the Supplier no later than 180 days prior to the expiration of the Term, to extend the Term such that the Term will expire at the beginning of the hour ending 24:00 hours (EST) on the day before (i) the 20th (twentieth) anniversary of the Commercial Operation Date in the case of Facilities utilizing Renewable Fuels other than waterpower, or (ii) the 40th (fortieth) anniversary of the Commercial Operation Date in the case of Facilities utilizing waterpower for their Renewable Fuel.

(d) Where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation, the Supplier shall have the option to, no later than 60 days after the Commercial Operation Date, provide notice to the OPA along with a payment in the amount of 0.15 Dollars per kW multiplied by the Contract Capacity and multiplied by the number of calendar days that the Commercial Operation Date followed the Milestone Date for Commercial Operation. Where the Supplier exercises such option, the Term shall be extended such that the Term will expire at the beginning of the hour ending 24:00 hours (EST) on the day before (i) the 20th (twentieth) anniversary of the Commercial Operation Date in the case of Facilities utilizing Renewable Fuels other than waterpower, or (ii) the 40th (fortieth) anniversary of the Commercial Operation Date in the case of Facilities utilizing waterpower for their Renewable Fuel.

ARTICLE 9
TERMINATION AND DEFAULT

9.1 Events of Default by the Supplier

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

(a) The Supplier fails to make any payment when due or deliver, and/or maintain, the Completion and Performance Security as required under this Agreement, if such failure is not remedied within 10 Business Days after written notice of such failure from the OPA.

(b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within 15 Business Days after written notice of such failure from the OPA, provided that such cure period shall be extended by a further 15 Business Days if the Supplier is diligently remedying such failure and such failure is capable of being cured during such extended cure period.

(c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier or the Facility and is not remedied within 30 Business Days after receipt by the Supplier of written notice of such failure or cessation from the OPA, provided that such cure period shall be extended by a further 30 Business Days if the Supplier is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.

(d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within 30 Business Days after receipt by the Supplier of written notice of such fact from the OPA, provided that such cure period shall be extended by a further 30 Business Days if the Supplier, in the reasonable opinion of the OPA, is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.

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

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

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

(h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.

(i) The Supplier has made a Contract Facility Amendment that has not first been consented to by the OPA (other than in instances where such consent has been unreasonably withheld).

(j) The Commercial Operation Date has not occurred on or before the date which is 18 months after the Milestone Date for Commercial Operation, or otherwise as may be set out in Exhibit A.

(k) Where the Facility is not a Capacity Allocation Exempt Facility, and the Supplier applies for an Impact Assessment prior to the Impact Assessment Priority Start Time, and does not rescind any such Impact Assessment within 5 Business Days after receiving written notice from the OPA.

(l) The Supplier undergoes a change in Control without first obtaining the written approval of the OPA if required pursuant to this Agreement.

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

9.2 Remedies of the OPA

(a) If any Supplier Event of Default (other than a Supplier Event of Default relating to the Supplier referred to in Sections 9.1(e), 9.1(g) and 9.1(h)) occurs and is continuing, upon written notice to the Supplier, the OPA may terminate this Agreement.

(b) If a Supplier Event of Default occurs and is continuing, the OPA may, in addition to the remedy set out in Section 9.2(a):

(i) set off any payments due to the Supplier against any amounts payable by the Supplier to the OPA including, at the OPA’s option, the amount of any Completion and Performance Security provided to the OPA pursuant to Article 5; and

(ii) draw on all or part of the Completion and Performance Security, and if the remedy in Section 9.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.

(c) Notwithstanding Sections 9.2(a) and 9.2(b), upon the occurrence of a Supplier Event of Default relating to the Supplier referred to in Sections 9.1(e), 9.1(g) or 9.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 11.2(g).

(d) If the OPA terminates this Agreement pursuant to Section 9.2(a) or the Agreement is terminated pursuant to Section 9.2(c),

(i) if the Termination Date precedes the Commercial Operation Date, the OPA may, in its sole and absolute discretion, require the Supplier to pay as liquidated damages and not as a penalty, a sum equivalent to the amount of all Completion and Performance Security required to be provided by the Supplier as of the Termination Date, and the OPA shall be entitled to pursue a Claim for damages with respect to the amount of any portion of the Completion and Performance Security that the Supplier failed to provide but was required to provide to the OPA as of the Termination Date pursuant to Section 5.1; and in such circumstances, notwithstanding Section 9.5, the OPA's remedies against the Supplier in respect of the termination of the Agreement shall be limited to the amount of liquidated damages payable by the Supplier pursuant to this Section 9.2(d)(i); and

(ii) if the Termination Date is on or after the Commercial Operation Date, the OPA shall be entitled to retain all Completion and Performance Security provided by the Supplier and exercise all such other remedies available to the OPA, including pursuing a Claim for damages, as contemplated under Section 9.5.

(e) Termination shall not relieve the Supplier or the OPA of their respective responsibilities relating to the availability of the Facility and delivery of the Delivered Electricity and Environmental Attributes from the Facility that relate to the Delivered Electricity, and Future Contract Related Products from the Facility, or amounts payable under this Agreement, up to and including the Termination Date. The OPA shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the OPA may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

9.3 Events of Default by the OPA

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

(a) The OPA fails to make any payment under this Agreement when due, if such failure is not remedied within 10 Business Days after written notice of such failure from the Supplier.

(b) The OPA fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate OPA Event of Default), if such failure is not remedied within 15 Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further 15 Business Days if the OPA is diligently remedying such failure and such failure is capable of being cured during such extended cure period.

(c) The OPA fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the OPA and is not remedied within 30 Business Days after receipt by the OPA of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further 30 Business Days if the OPA is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.

(d) Any representation made by the OPA in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within 30 Business Days after receipt by the OPA of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further 30 Business Days if the OPA is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.

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

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

(g) The OPA makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.

(h) The OPA assigns this Agreement (other than an assignment made pursuant to Section 15.5(g)) without first obtaining the consent of the Supplier, if such consent is required pursuant to this Agreement.

9.4 Termination by the Supplier

(a) If any OPA Event of Default occurs and is continuing, then upon written notice to the OPA, the Supplier may (i) terminate this Agreement and (ii) set off any payments due to the OPA against any amounts payable by the OPA to the Supplier. Where the Supplier has so terminated this Agreement, the OPA shall return any Completion and Performance Security it holds within 20 Business Days following receipt of a written request from the Supplier.

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

9.5 Remedies for Termination Non-Exclusive

The termination of this Agreement by either Party and the payment of 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, nor shall such termination affect any rights that the Indemnitees may have pursuant to any indemnity given under this Agreement.

ARTICLE 10
FORCE MAJEURE

10.1 Effect of Invoking Force Majeure

(a) If, by reason of Force Majeure:

(i) the Supplier is unable to make available all or any part of the Contract Capacity or is unable to generate at the Facility, or is unable to deliver from the Facility to the Connection Point, all or any part of the Delivered Electricity or Future Contract Related Products;

(ii) all or any part of the Delivered Electricity cannot be received at or transmitted or distributed from the Connection Point; or

(iii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including the Supplier being unable to achieve Commercial Operation by the Milestone Date for Commercial Operation,

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

(b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt written notice in substantially the Prescribed Form, provided that such notice shall be given within 20 Business Days of the later of (i) the commencement of the event or circumstances constituting Force Majeure or (ii) the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the development or operation of the Contract Facility. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such 20 Business Day period, the Party invoking Force Majeure shall be allowed a further 10

Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars in substantially the Prescribed Form to the other Party.

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

(d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within 20 Business Days of the termination of the event or circumstances constituting Force Majeure.

(e) Nothing in this Section 10.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.

(f) If an event of Force Majeure causes the Supplier to not achieve Commercial Operation by the Milestone Date for Commercial Operation, then the Milestone Date for Commercial Operation shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. After the Commercial Operation Date, an event of Force Majeure shall not extend the Term.

(g) If, by reason of one or more events of Force Majeure, the Commercial Operation Date is delayed by such event(s) of Force Majeure for an aggregate of more than 24 months after the original Milestone Date for Commercial Operation (prior to any extension pursuant to Section 10.1(f)), then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and all Completion and Performance Security shall be returned or refunded (as applicable) to the Supplier forthwith.

(h) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of 36 months in any 60 month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned or refunded (as applicable) forthwith.

10.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 10, nor shall it be relieved of its obligations hereunder in any of the following circumstances:

(a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence;

(b) if and to the extent the Party is seeking to invoke Force Majeure because it is unable to procure or maintain any fuel supply to be utilized by the Facility;

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

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

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

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

(g) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 10.1(b) or 10.1(d).

10.3 Definition of Force Majeure

For the purposes of this Agreement, the term "**Force Majeure**" means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, that is beyond the affected Party's reasonable control, and shall include:

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

(b) fires or explosions;

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

(d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute);

(e) delays or disruptions in fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party), and provided that it shall be considered an event of Force Majeure if delays or disruptions in fuel supply arise as a result of the Supplier being unable to secure transportation capacity for fuel supply to the Facility after having made Commercially Reasonable Efforts to do so, but it shall not be considered an event of Force Majeure if such transportation capacity was available and the Supplier failed to secure it or failed to maintain it after having secured it;

(f) delays or disruptions (including those arising from events of Force Majeure referred to in this Section 10.3) in the construction of any Transmission System or Distribution System assets that are required for the Facility to Deliver Electricity;

(g) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;

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

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

(j) any unanticipated maintenance or outage affecting the Facility which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure.

ARTICLE 11
LENDER’S RIGHTS

11.1 Lender Security

Notwithstanding Section 15.5, the Supplier, from time to time on or after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender’s Security Agreement. For greater certainty, in the case of a deed of trust or similar instrument securing bonds or debentures where 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 Secured Lender’s Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender’s Security Agreement shall be based upon and subject to the following conditions:

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

(b) A Secured Lender’s Security Agreement may not secure any indebtedness, liability or obligation of the Supplier that is not related to the 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 in Ontario that are owned by the Supplier. For greater certainty, a Secured Lender’s Security Agreement may cover shares or partnership interests in the capital of the Supplier.

(c) The OPA shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender’s Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the OPA for any or all of the same.

(d) No Secured Lender’s Security Agreement shall be binding upon the OPA in the enforcement of the OPA’s rights and remedies provided in this Agreement or by Laws and Regulations, unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the OPA by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender’s Security Agreement, such assignment shall not be binding upon the OPA unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the OPA by the Supplier or the Secured Lender.

(e) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give written notice of such default to the OPA at least 10 Business Days prior to exercising any such rights.

(f) Any Secured Lender's Security Agreement permitted hereunder may secure two or more separate debts, liabilities or obligations in favour of two or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 11.

(g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 11.

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

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

11.2 Rights and Obligations of Secured Lenders

While any Secured Lender's Security Agreement remains outstanding, and if the OPA has received the notice referred to in Section 11.1(d) or the contents thereof are embodied in the agreement entered into by the OPA in accordance with Section 11.3, the following provisions shall apply:

(a) No Supplier Event of Default (other than those referred to in Section 9.2(c)) shall be grounds for the termination by the OPA of this Agreement until:

(i) any notice required to be given under Section 9.1 and 9.2(a) has been given to the Supplier and to the Secured Lender; and

(ii) the cure period set out in Section 11.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.

(b) In the event the OPA has given any notice required to be given under Section 9.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the OPA shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.

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

(d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in this Section 11.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the OPA as required under Section 11.2(f).

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

(f) Despite anything else contained in this Agreement, the Secured Lender agrees that it shall not transfer, sell or dispose of the Supplier's Interest or any other interest in the Contract Facility to any Person unless such transferee or purchaser takes the Supplier's Interest or other applicable interest subject to the Supplier's obligations pursuant to this Agreement. No transfer shall be effective unless the OPA:

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

  (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender, has approved of the transferee or purchaser and the transferee or purchaser has entered into an agreement with the OPA in form and substance satisfactory to the OPA, acting reasonably, wherein the transferee or purchaser agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest or the other applicable interest, whether arising before or after the transfer, sale or disposition and including the posting of the Completion and Performance Security, if any, required under Article 5.

(g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the OPA shall, within 20 Business Days after the date of such termination, deliver to each Secured Lender that is at Arm's Length with the Supplier, a statement of all sums then known to the OPA that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the OPA is willing to enter into a New Agreement (the "**OPA Statement**"). Subject to the provisions of this Article 11, each such Secured Lender or its transferee approved by the OPA pursuant to Section 11.2(f) shall thereupon have the option to obtain from the OPA a New Agreement in accordance with the following terms:

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

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

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Secured Lender's security, that Person may exercise any of the Secured Lender's rights under this Section 11.2(g).

(h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 11 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement who are at Arm's Length with the Supplier make written requests to the OPA in accordance with this Section 11.2 to obtain a New Agreement, the OPA shall accept the request of the holder whose Secured Lender's Security Agreement had priority immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the OPA may rely upon the opinion as to such priorities of any law firm qualified to practise law in the Province of Ontario retained by the OPA in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

11.3 Co-operation

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

ARTICLE 12
DISCRIMINATORY ACTION

12.1 Discriminatory Action

(a) A "**Discriminatory Action**" shall occur if:

(i) either (A) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a bill in the Legislative Assembly of Ontario or the Government of Ontario causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the Contract Date; or (B) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the consent of the Supplier;

(ii) the effect of the action referred to in Section 12.1(a)(i) is either (A) borne principally by the Supplier; or (B) borne principally by the Supplier and one or more Other Suppliers who have a FIT Contract or another bilateral arrangement with the OPA similar in nature to this Agreement; and

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

(b) Notwithstanding the foregoing, none of the following shall be a Discriminatory Action:

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

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

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

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

(iii) any of such regulations that prior to five Business Days prior to the Contract Date:

(A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five Business Days prior to the Contract Date; or

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

(iv) any new orders-in-council or regulations, the authority for the promulgation of which was created by the *Green Energy and Green Economy Act, 2009*, or the first amendment to any existing regulation, where the authority for such amendment was created by the *Green Energy and Green Economy Act, 2009*.

12.2 Consequences of Discriminatory Action

To the extent that there is a Discriminatory Action, then:

(a) the Supplier, upon becoming aware of the consequences of such Discriminatory Action, shall promptly notify the OPA;

(b) the Parties and, at the OPA's discretion, those Other Suppliers that are required by the OPA to participate, shall engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers on the basis that such amendments together with the Discriminatory Action will substantially reflect the Supplier's Economics and, at the OPA's discretion, those Other Suppliers, prior to the Discriminatory Action; and

(c) if the Parties fail to reach agreement on the amendments described in Section 12.2(b), the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit E. However, if the Supplier fails to participate in such arbitration, the

Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the OPA to implement such award of the Arbitration Panel.

12.3 Right of the OPA to Remedy a Discriminatory Action

If the OPA wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the OPA must give notice to the Supplier within 30 days after the date of receipt of notice of the Discriminatory Action. If the OPA gives such notice, the OPA must remedy or cause to be remedied the Discriminatory Action within 180 days after the date of receipt of the notice of the Discriminatory Action. If the OPA remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, compensation for any detrimental effect the Discriminatory Action had on the Supplier's Economics, adjusted to apply only to the period during which the Discriminatory Action detrimentally affected the Supplier's Economics.

ARTICLE 13
LIABILITY AND INDEMNIFICATION

13.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Sections 1.7, 1.8, 2.10 and 12.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

13.2 Liquidated Damages

The Supplier acknowledges and agrees that it would be extremely difficult and impracticable to determine precisely the amount of actual damages that would be suffered by the OPA and the Ontario ratepayer as result of a failure by the Supplier to meet its obligations under this Agreement. The Supplier further acknowledges and agrees that the liquidated damages set forth in this Agreement are a fair and reasonable approximation of the amount of actual damages that would be suffered by the OPA and the Ontario ratepayer as a result of a failure by the Supplier to meet its obligations under this Agreement, and does not constitute a penalty.

13.3 OPA Indemnification

The Supplier shall indemnify, defend and hold the OPA, the Government of Ontario, the members of the Government of Ontario's Executive Council and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all Claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of (i) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations, (ii) any breach by the Supplier of any representations, warranties and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees, and (iii) a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to Laws and Regulations, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

13.4 Defence of Claims

(a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding or investigation as to which the indemnity provided for in Section 13.3 may apply, the OPA shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.

(b) Should any of the Indemnitees be entitled to indemnification under Section 13.3 as a result of a Claim by a third party, and the Supplier fails to assume the defence of such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 13.4(a)), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the Supplier, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section 13.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 13.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

13.5 Joint and Several Liability

Other than in the case of an Ontario limited partnership, if the Supplier is not a single legal entity, then all such entities that constitute the Supplier shall be jointly and severally liable to the OPA for all representations, warranties, obligations, covenants and liabilities of the Supplier hereunder.

ARTICLE 14
CONTRACT OPERATION AND ADMINISTRATION

14.1 Company Representative

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

14.2 Record Retention; Audit Rights

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

14.3 Reports to the OPA

If the Supplier is required to report Outages directly to the IESO or an LDC, the Supplier shall deliver to the OPA a copy of all reports, plans and notices that the Supplier is required to provide to the IESO or such LDC with respect to Outages, at the same time or within one Business Day after such reports, plans and notices are delivered by the Supplier to the IESO or the LDC, as applicable.

14.4 Inspection of Facility

(a) The OPA and its Representatives shall, at all times upon two Business Days' prior notice, at any time after the Contract Date, have access to the Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Facility, to furnish the OPA with all reasonable assistance in inspecting the Facility for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the Facility, as applicable, and shall not interfere with the operation of the Facility.

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

14.5 Inspection Not Waiver

(a) Failure by the OPA to inspect the Facility or any part thereof under Section 14.4, or to exercise its audit rights under Section 14.2, shall not constitute a waiver of any of the rights of the OPA hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.

(b) Failure by the Supplier to exercise its audit rights under Section 14.2 shall not constitute or be deemed to constitute a waiver of any of the rights of the Supplier hereunder. An audit not followed by a notice of a OPA Event of Default shall not constitute or be deemed to constitute a waiver of any OPA Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the OPA with this Agreement.

14.6 Notices

(a) All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be addressed to the other Party as follows:

If to the Supplier, all contact details shall be as set out in the FIT Contract Cover Page.

If to the OPA: Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: Manager, FIT Contracts
Facsimile: 416-967-1947
E-mail: **FIT.Contract@powerauthority.on.ca**

Either Party may, by written notice to the other, change its respective Company Representative or the address to which notices are to be sent.

(b) Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is received or transmitted, provided that it is received or transmitted on a Business Day prior to 5:00 p.m. local time in the place of receipt. Otherwise such notice shall be deemed to have been given and received on the next following Business Day.

(c) Any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery.

ARTICLE 15
MISCELLANEOUS

15.1 Informal Dispute Resolution

If either Party considers that any dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within 20 Business Days following delivery of such notice to the other Party, a senior executive of the Supplier shall meet with (i) a manager of the OPA, where the Facility is a Capacity Allocation Exempt Facility, (ii) a director of the OPA, where the Facility is not a Capacity Allocation Exempt Facility and the Contract Capacity is less than 10 MW, or (iii) a vice-president of the OPA, where the Facility has a Contract Capacity greater than or equal to 10 MW, either in person or by telephone (the "**Senior Conference**"), to attempt to resolve the dispute. Each Party shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 15.2, if agreed to by both Parties.

15.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 15.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within 15 Business Days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within 90 days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

15.3 Business Relationship

Each Party shall be solely liable for the payment of all wages, Taxes and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the Persons employed by either Party shall be considered employees of the other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

15.4 Binding Agreement

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

15.5 Assignment

(a) Following the Commercial Operation Date, this Agreement along with all of the rights, interests and obligations under this Agreement (including for greater certainty those rights, interests and obligations relating to Environmental Attributes) may be assigned by either Party, with the prior written consent of the other Party, which consent shall not be unreasonably withheld, except as set out in Section 15.5(b) below and as provided in Article 11. Prior to the Commercial Operation Date, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the Supplier.

(b) For the purposes of Section 15.5(a), it shall not be unreasonable for the OPA to withhold its consent if the proposed assignment would (i) cause a Supplier to breach the obligation to own the Facility as set out in Section 2.7(a), or (ii) have or is likely to have, as determined by the OPA acting reasonably, a Material Adverse Effect on the Supplier’s ability to perform its obligations under this Agreement.

(c) Notwithstanding Section 15.5(a), the Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the OPA to an Affiliate acquiring the Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the OPA in writing to assume all of the Supplier’s obligations under this Agreement and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 5 have been met in accordance with the terms of Article 5.

(d) Notwithstanding Section 15.5(a), where the Facility is a Rooftop Facility, the Supplier may, prior to the Commercial Operation Date, assign this Agreement with the prior written consent of the OPA, which may not be unreasonably withheld, in circumstances where the building or structure to which the Facility is affixed is being sold, transferred or otherwise conveyed to the proposed assignee of this Agreement.

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

(f) If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 15.5, the OPA acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the OPA, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.

(g) The OPA shall have the right to assign this Agreement from time to time and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee which shall assume the obligations and liability of the OPA under this Agreement and be novated into this Agreement in the place and stead of the OPA (except for the OPA's obligation in Section 15.5(g)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement and further agrees not to make any material amendments to or terminate this Agreement after such assignment without the prior written consent of the OPA, whereupon:

 (i) the representation set forth in Section 6.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;

 (ii) all of the representations set forth in Section 6.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and

 (iii) the OPA shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the OPA shall remain liable to the Supplier for remedying any payment defaults under Section 9.3(a) and shall remain liable for any obligations and liabilities of the assignee arising from any OPA Event of Default, provided that any notice required to be given under Sections 9.3 and 9.4(a) is given on the same day to the assignee and to the OPA. The time periods in Section 9.3 shall not begin to run until both the assignee and the OPA have been so notified.

15.6 Change of Control

(a) Other than in accordance with Section 15.6(b), no change of Control of the Supplier shall be permitted prior to Commercial Operation, except with the prior written consent of the OPA, which consent may be withheld in the OPA's sole and absolute discretion. Following Commercial Operation, a change of Control of the Supplier shall be permitted, provided that the Supplier, within 10 Business Days following such change of Control having effect, provides the OPA with notice of such change of Control and such additional information as the OPA may reasonably require regarding the names of the Persons who Control or otherwise indirectly or directly have an ownership interest in the Supplier, following such change of Control.

(b) Provided there is not a Supplier Event of Default that has not been remedied, a change of Control of the Supplier prior to Commercial Operation, under one or more of the following circumstances, is permitted without the consent of the OPA, namely:

(i) the Person that is the direct subject of the transaction giving rise to the change of Control of the Supplier, is not a Special Purpose Entity,

(ii) each Person Controlling the Supplier following such change of Control is an Affiliate of one or more of the Persons Controlling the Supplier prior to such change of Control, or

(iii) the Economic Interest of the Person(s) that Control the Supplier as of the Contract Date is not less than 25% following such change of Control,

The Supplier shall, within 10 Business Days following such change of Control having effect, provide the OPA with notice of such change of Control and such additional information as the OPA may reasonably require regarding the names of the Persons who Control or otherwise indirectly or directly have an ownership interest in the Supplier, following such change of Control.

(c) For the purposes of Sections 15.6(a) and (b), a change of Control shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier, as well as a change from any Person having Control of the Supplier to no Person having Control of the Supplier.

(d) Without limiting the generality of Section 15.6(b)(i) and by way of example only, if entity A owns entity B, and A is sold to a third party, A is the direct subject of the transaction giving rise to the change of Control; therefore if B is the Supplier, then this change of Control may be permitted pursuant to Section 15.6(b)(i) so long as A is not a Special Purpose Entity.

15.7 Provisions for Aboriginal Participation Projects

(a) Notwithstanding Section 1.2(e) of Exhibit A, the amount of the Initial Security shall be $5.00 per kW of Contract Capacity if, prior to the Contract Date, the Supplier has provided an Aboriginal Participation Project Declaration confirming that the Aboriginal Participation Level in respect of the Project is greater than or equal to 50%.

(b) Notwithstanding Section 1.2(f) of Exhibit A, the amount of the Incremental NTP Security shall be $5.00 per kW of Contract Capacity if, prior to or commensurate with the NTP Request, the Supplier has provided an Aboriginal Participation Project Declaration confirming that the Aboriginal Participation Level in respect of the Contract Facility is greater than or equal to 50%.

(c) The Economic Interest of any Person contributing towards the Community Participation Level shall be excluded from the calculation of the Aboriginal Participation Level. The Aboriginal Price Adder shall only apply to a Project (i) that is an Aboriginal Participation Project at the time the Supplier submits its NTP Request, and (ii) for which the Supplier submits an Aboriginal Participation Project Declaration confirming such, prior to or commensurate with its NTP Request.

(d) Where a Project is not an Aboriginal Participation Project as of the date that the Supplier provides the OPA with its NTP Request, or where the Supplier fails to provide an Aboriginal Participation Project Declaration confirming such, the Aboriginal Price Adder shall not apply to such Project at any time, regardless of any change in the Aboriginal Participation Level.

(e) Where the Aboriginal Participation Level has increased since the last Aboriginal Participation Project Declaration, the Supplier may submit a revised Aboriginal Participation Project Declaration to the OPA, only at the following times:

(i) commensurate with its NTP Request;

(ii) together with the other documentation required to be provided to the OPA for the purpose of achieving Commercial Operation pursuant to Section 2.6; and

(iii) once per Contract Year;

following which, the Aboriginal Price Adder shall be recalculated based on the increased Aboriginal Participation Level, and such increased Aboriginal Price Adder shall be effective as of the date of submission of the revised Aboriginal Participation Project Declaration.

(f) Where the Aboriginal Participation Level has decreased since the last Aboriginal Participation Project Declaration, the Supplier shall submit a revised Aboriginal Participation Project Declaration to the OPA within 20 Business Days of such decrease, following which, the Aboriginal Price Adder shall be recalculated based on the decreased Aboriginal Participation Level, and such decreased Aboriginal Price Adder shall be effective as of the date of the decrease in the Aboriginal Participation Level. Where a Project that was an Aboriginal Participation Project as of the date that the Supplier provided the OPA with its NTP Request and for which the Supplier submitted an Aboriginal Participation Declaration along with its NTP Request ceases to be an Aboriginal Participation Project, the Aboriginal Price Adder shall cease to apply to such Project until such time as the Project restores its status as an Aboriginal Participation Project and the Supplier provides the OPA with a revised Aboriginal Participation Project Declaration confirming this.

(g) Where the Supplier has provided any Completion and Performance Security to the OPA that has not been returned or refunded (as applicable) to the Supplier, and the Supplier has obtained the benefit of reduced Completion and Performance Security pursuant to Sections 15.7(a) or (b), where the Aboriginal Participation Level decreases from greater than or equal to 50% to below 50%, then notwithstanding Sections 15.7(a) and (b), the Supplier shall, within 20 Business Days of any such decrease, provide and maintain additional Completion and Performance Security such that the total amount of Completion and Performance Security is in accordance with the amounts set out in Section 5.2 or Exhibit A, as applicable. For greater certainty, where the Aboriginal Participation Level increases from below 50% to greater than or equal to 50%, there shall be no reduction in the amount of Completion and Performance Security already provided to the OPA.

(h) A Supplier in respect of an Aboriginal Participation Project shall, within 20 Business Days of a request by the OPA, provide written evidence documenting the Aboriginal Participation Level that is to the satisfaction of the OPA, acting reasonably. If the evidence provided by the Supplier does not demonstrate to the satisfaction of the OPA, acting reasonably, that the actual Aboriginal Participation Level is not at least equal to the Aboriginal Participation Level being used to determine the Aboriginal Price Adder, then the Aboriginal Price Adder shall be recalculated in accordance with the documented Aboriginal Participation Level and applied retroactively to the latest date for which the Supplier can demonstrate that the Aboriginal Participation Level used to determine the Aboriginal Price Adder was accurate. Any overpayment that resulted from an inaccurate Aboriginal Participation Level shall be paid by the Supplier to the OPA forthwith, failing which the OPA may set off any such amounts from any future payments owing to the Supplier.

15.8 Provisions for Community Participation Projects

(a) Notwithstanding Section 1.2(e) of Exhibit A, the amount of the Initial Security shall be $5.00 per kW of Contract Capacity if, prior to the Contract Date, the Supplier has provided a Community Participation Project Declaration confirming that the Community Participation Level in respect of the Project is greater than or equal to 50%.

(b) Notwithstanding Section 1.2(f) of Exhibit A, the amount of the Incremental NTP Security shall be $5.00 per kW of Contract Capacity if, prior to or commensurate with the NTP Request, the Supplier has provided a Community Participation Project Declaration confirming that the Community Participation Level in respect of the Contract Facility is greater than or equal to 50%.

(c) The Economic Interest of any Person contributing towards the Aboriginal Participation Level shall be excluded from the calculation of the Community Participation Level. The Community Price Adder shall only apply to a Project (i) that is a Community Participation Project at the time the Supplier submits its NTP Request, and (ii) for which the Supplier submits a Community Participation Project Declaration confirming such, prior to or commensurate with its NTP Request.

(d) Where a Project is not a Community Participation Project as of the date that the Supplier provides the OPA with its NTP Request, or where the Supplier fails to provide a Community Participation Project Declaration confirming such, the Community Price Adder shall not apply to such Project at any time, regardless of any change in the Community Participation Level.

(e) Where the Community Participation Level has increased since the last Community Participation Project Declaration, the Supplier may submit a revised Community Participation Project Declaration to the OPA, only at the following times:

(i) commensurate with its NTP Request;

(ii) together with the other documentation to be provided to the OPA for the purpose of achieving Commercial Operation pursuant to Section 2.6; and

(iii) once per Contract Year,

following which, the Community Price Adder shall be recalculated based on the increased Community Participation Level, and such increased Community Price Adder shall be effective as of the date of submission of the revised Community Participation Project Declaration.

(f) Where the Community Participation Level has decreased since the last Community Participation Project Declaration, the Supplier shall submit a revised Community Participation Project Declaration to the OPA within 20 Business Days of such decrease, following which, the Community Price Adder shall be recalculated based on the decreased Community Participation Level, and such decreased Community Price Adder shall be effective as of the date of the decrease in the Community Participation Level. Where a Project that was a Community Participation Project as of the date that the Supplier provided the OPA with its NTP Request and for which the Supplier submitted a Community Participation Declaration along with its NTP Request ceases to be a Community Participation Project, the Community Price Adder shall cease to apply to such Project until such time as the Project restores its status as a Community Participation Project and the Supplier provides the OPA with a revised Community Participation Project Declaration confirming this.

(g) Where the Supplier has provided any Completion and Performance Security to the OPA that has not been returned or refunded (as applicable) to the Supplier, and the Supplier has obtained the benefit of reduced Completion and Performance Security pursuant to Sections 15.7(a) or (b), where the Community Participation Level decreases from greater than or equal to 50% to below 50%, then notwithstanding Sections 15.7(a) and (b), the Supplier shall, within 20 Business Days of any such decrease, provide and maintain additional Completion and Performance Security such that the total amount of Completion and Performance Security is in accordance with the amounts set out in Section 5.2 or Exhibit A, as applicable. For greater certainty, where the Community Participation Level increases from below 50% to greater than or equal to 50%, there shall be no reduction in the amount of Completion and Performance Security already provided to the OPA.

(h) A Supplier in respect of a Community Participation Project shall, within 20 Business Days of a request by the OPA, provide written evidence documenting the Community Participation Level that is to the satisfaction of the OPA, acting reasonably. If the evidence provided by the Supplier does not demonstrate to the satisfaction of the OPA, acting reasonably, that the actual Community Participation Level is not at least equal to the Community Participation Level being used to determine the Community Price Adder, then the Community Price Adder shall be recalculated in accordance with the documented Community Participation Level and applied retroactively to the latest date for which the Supplier can demonstrate that the Community Participation Level used to determine the Community Price Adder was accurate. Any overpayment that resulted from an inaccurate Community Participation Level shall be paid by the Supplier to the OPA forthwith, failing which the OPA may set off any such amounts from any future payments owing to the Supplier.

15.9 Combined Aboriginal Participation Projects and Community Participation Projects

(a) Notwithstanding Section 1.2(e) of Exhibit A, where a Contract Facility is in respect of an Aboriginal Participation Project and a Community Participation Project, the amount of the Initial Security shall be $5.00 per kW of Contract Capacity if, prior to the Contract Date, the Supplier has provided an Aboriginal Participation Project Declaration and a Community Participation Project Declaration, which together confirm that the total of the Aboriginal Participation Level and Community Participation Level in respect of the Project is greater than or equal to 50%.

(b) Notwithstanding Section 1.2(f) of Exhibit A, where a Contract Facility is in respect of an Aboriginal Participation Project and a Community Participation Project, the amount of the Incremental NTP Security shall be $5.00 per kW of Contract Capacity if, prior to or commensurate with the NTP Request, the Supplier has provided an Aboriginal Participation Project Declaration and a Community Participation Project Declaration, which together confirm that the total of the Aboriginal Participation Level and the Community Participation Level in respect of the Contract Facility is greater than or equal to 50%.

(c) Where the Supplier has provided any Completion and Performance Security to the OPA that has not been returned or refunded (as applicable) to the Supplier, and the Supplier has obtained the benefit of reduced Completion and Performance Security pursuant to Sections 15.9(a) or (b), where the total of the Aboriginal Participation Level and the Community Participation Level decreases from greater than or equal to 50% to below 50%, then notwithstanding Sections 15.9(a) or (b), the Supplier shall, within 20 Business Days of any such decrease, provide and maintain additional Completion and Performance Security such that the total amount of Completion and Performance Security is in accordance with the amounts set out in Section 5.2 or Exhibit A, as applicable. For greater certainty, where the total of the Aboriginal Participation Level and the Community Participation Level increases from below 50% to greater than or equal to 50%, there shall be no reduction in the amount of Completion and Performance Security already provided to the OPA.

15.10 Survival

The provisions of Sections 2.4(a), 2.10, 3.4, 3.5, 3.6, Article 4, Article 7, Section 11.2(g), Article 13, Sections 14.2, 15.1, and 15.2 shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

15.11 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile or electronic mail but such Party shall, within 10 Business Days of such delivery by facsimile or electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

15.12 Additional Rights of Set-Off

(a) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the OPA may set off any amounts owing by the Supplier to the OPA in connection with Sections 2.4, 3.1, 3.2, 3.4, 4.2(c), 4.3(c), 4.5, 9.2(d) and 15.5(c) against any monies owed by the OPA to the Supplier in connection with Sections 2.4, 2.10(c), 3.1, 3.5, 3.6(a), 4.2(c), 4.3(c), 4.5, 5.1(c). 5.2(c), 9.4(b), 12.3 and 15.5(c).

(b) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Supplier may set-off any amounts owing by the OPA to the Supplier in connection with Sections 2.4, 2.10(c), 3.1, 3.5, 3.6(a), 4.2(c), 4.3(c), 4.5, 5.1(c). 5.2(c), 9.4(b), 12.3 and 15.5(c) against any monies owed by the Supplier to the OPA in connection with Sections 2.4, 3.1, 3.2, 3.4, 4.2(c), 4.3(c), 4.5, 9.2(d) and 15.5(c).

15.13 Rights and Remedies Not Limited to Contract

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

15.14 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

[END OF STANDARD TERMS AND CONDITIONS]

EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
TYPE 1: BIOGAS FACILITIES

1.1 Application of Exhibit

This version of Exhibit A shall apply to a Biogas Facility.

1.2 Technology-Specific Values

(a) The Milestone Date for Commercial Operation is the date that is three years following the Contract Date.

(b) The NTP Response Date is the date that is 15 months following the Contract Date.

(c) The NTP Daily Delay Amount is $0.067 per kW of Contract Capacity.

(d) The Pre-Construction Liability Limit is $400,000.00 per Contract Facility plus $2.00 per kW of Contract Capacity.

(e) The amount of the Initial Security is $20.00 per kW of Contract Capacity.

(f) The amount of the Incremental NTP Security is $10.00 per kW of Contract Capacity.

EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
TYPE 2: BIOGAS (ON-FARM) FACILITIES

1.1 Application of Exhibit

This version of Exhibit A shall apply to an On-Farm Biogas Facility.

1.2 Technology-Specific Values

(a) The Milestone Date for Commercial Operation is the date that is three years following the Contract Date.

(b) The NTP Response Date is the date that is 15 months following the Contract Date.

(c) The NTP Daily Delay Amount is $0.067 per kW of Contract Capacity.

(d) The Pre-Construction Liability Limit is $400,000.00 per Contract Facility plus $2.00 per kW of Contract Capacity.

(e) The amount of the Initial Security is $20.00 per kW of Contract Capacity.

(f) The amount of the Incremental NTP Security is $10.00 per kW of Contract Capacity.

1.3 Technology-Specific Provisions

Where the FIT Contract Cover Page identifies the Facility as an "On-Farm" Biogas Facility, the Supplier covenants and agrees that at any time following the Commercial Operation Date where the Facility is generating Hourly Delivered Electricity, it shall be an On-Farm Biogas Facility.

EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
TYPE 3: LANDFILL GAS FACILITIES

1.1 Application of Exhibit

This version of Exhibit A shall apply to a landfill gas Facility.

1.2 Technology-Specific Values

(a) The Milestone Date for Commercial Operation is the date that is three years following the Contract Date.

(b) The NTP Response Date is the date that is 15 months following the Contract Date.

(c) The NTP Daily Delay Amount is $0.067 per kW of Contract Capacity.

(d) The Pre-Construction Liability Limit is $400,000.00 per Contract Facility plus $2.00 per kW of Contract Capacity.

(e) The amount of the Initial Security is $20.00 per kW of Contract Capacity.

(f) The amount of the Incremental NTP Security is $10.00 per kW of Contract Capacity.

EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
TYPE 4: RENEWABLE BIOMASS FACILITIES

1.1 Application of Exhibit

This version of Exhibit A shall apply to a Renewable Biomass Facility.

1.2 Technology-Specific Values

(a) The Milestone Date for Commercial Operation is the date that is three years following the Contract Date.

(b) The NTP Response Date is the date that is 15 months following the Contract Date.

(c) The NTP Daily Delay Amount is $0.067 per kW of Contract Capacity.

(d) The Pre-Construction Liability Limit is $400,000.00 per Contract Facility plus $2.00 per kW of Contract Capacity.

(e) The amount of the Initial Security is $20.00 per kW of Contract Capacity.

(f) The amount of the Incremental NTP Security is $10.00 per kW of Contract Capacity.

EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
TYPE 5: SOLAR (PV) ROOFTOP FACILITIES

1.1 Application of Exhibit

This version of Exhibit A shall apply to a solar (PV) Rooftop Facility.

1.2 Technology-Specific Values

(a) The Milestone Date for Commercial Operation is the date that is three years following the Contract Date.

(b) The NTP Response Date is the date that is 15 months following the Contract Date.

(c) The NTP Daily Delay Amount is $0.033 per kW of Contract Capacity.

(d) The Pre-Construction Liability Limit is $250,000.00 per Contract Facility plus $10.00 per kW of Contract Capacity.

(e) The amount of the Initial Security is $50.00 per kW of Contract Capacity.

(f) The amount of the Incremental NTP Security is $25.00 per kW of Contract Capacity.

1.3 Technology-Specific Provisions

(a) Notwithstanding Section 9.1(j), in the case of a Contract Facility that utilizes solar (PV) as its Renewable Fuel it shall be a Supplier Event of Default if the Commercial Operation Date has not occurred on or before the date which is six months after the Milestone Date for Commercial Operation.

(b) Where the FIT Contract Cover Page identifies the Facility as a “Rooftop” Facility, the Supplier covenants and agrees that at any time following the Commercial Operation Date where the Facility is generating Hourly Delivered Electricity, it shall be a Rooftop Facility.

EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
TYPE 6: SOLAR (PV) GROUND MOUNT FACILITIES

1.1 Application of Exhibit

This version of Exhibit A shall apply to a solar (PV) Facility.

1.2 Technology-Specific Values

(a) The Milestone Date for Commercial Operation is the date that is three years following the Contract Date.

(b) The NTP Response Date is the date that is 15 months following the Contract Date.

(c) The NTP Daily Delay Amount is $0.033 per kW of Contract Capacity.

(d) The Pre-Construction Liability Limit is $250,000.00 per Contract Facility plus $10.00 per kW of Contract Capacity.

(e) The amount of the Initial Security is $50.00 per kW of Contract Capacity.

(f) The amount of the Incremental NTP Security is $25.00 per kW of Contract Capacity.

1.3 Technology-Specific Provisions

Notwithstanding Section 9.1(j), in the case of a Contract Facility that utilizes solar (PV) as its Renewable Fuel it shall be a Supplier Event of Default if the Commercial Operation Date has not occurred on or before the date which is six months after the Milestone Date for Commercial Operation.

EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
TYPE 7: WATERPOWER FACILITIES

1.1 Application of Exhibit

This version of Exhibit A shall apply to a waterpower Facility.

1.2 Technology-Specific Values

(a) The Milestone Date for Commercial Operation is the date that is five years following the Contract Date.

(b) The NTP Response Date is the date that is 24 months following the Contract Date.

(c) The NTP Daily Delay Amount is $0.067 per kW of Contract Capacity.

(d) The Pre-Construction Liability Limit is $500,000.00 per Contract Facility plus $20.00 per kW of Contract Capacity.

(e) The amount of the Initial Security is $20.00 per kW of Contract Capacity.

(f) The amount of the Incremental NTP Security is $10.00 per kW of Contract Capacity.

1.3 Technology-Specific Provisions

(a) The Supplier shall ensure that any Waterpower Rights that are required for the operation of the Facility remain in effect throughout the Term. In the event that any Waterpower Rights that are required for the operation of the Facility expire while a renewal or replacement of such Waterpower Rights is pending finalization or execution such that the renewal or replacement is intended to be effective as of the expiry of the Waterpower Rights, then such Waterpower Rights shall not be deemed to have expired or been terminated.

(b) Where the Contract Capacity is equal to or greater than 10 MW**,** Supplier agrees to take all actions and provide all such reasonable assurances as may be required or requested by the OPA, acting reasonably, subsequent to the execution of this Agreement in order for the OPA to receive and perfect a security interest in and over the Supplier's Interest and any Waterpower Rights to secure the Supplier's obligations hereunder provided that:

(i) any and all such security shall be unconditionally and irrevocably deferred, postponed and subordinated in all respects to any interest of a Secured Lender pursuant to a Secured Lender's Security Agreement and the OPA shall enter into a subordination and postponement agreement that is consistent with the terms of this Agreement on such terms and conditions as the Secured Lender may require, acting reasonably, provided that the rights of the OPA under this Agreement (other than any security interest it obtains pursuant to this Section 1.3(b)(i) of this Exhibit A) are not adversely affected thereby and the obligations of the Supplier to the OPA are not altered thereby; and

(ii) the OPA shall not challenge, object to, compete with or impede in any manner any act taken or proceeding commenced by any Secured Lender in connection with the enforcement by a Secured Lender of its security interest under its Secured Lender Security Agreement.

EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
TYPE 8: WIND (OFF-SHORE) FACILITIES

1.1 Application of Exhibit

This version of Exhibit A shall apply to an Off-Shore Wind Facility.

1.2 Technology-Specific Values

(a) The Milestone Date for Commercial Operation is the date that is four years following the Contract Date.

(b) The NTP Response Date is the date that is 15 months following the Contract Date.

(c) The NTP Daily Delay Amount is $0.067 per kW of Contract Capacity.

(d) The Pre-Construction Liability Limit is $500,000.00 per Contract Facility plus $2.00 per kW of Contract Capacity.

(e) The amount of the Initial Security is $20.00 per kW of Contract Capacity.

(f) The amount of the Incremental NTP Security is $10.00 per kW of Contract Capacity.

1.3 Technology-Specific Provisions

Where the FIT Contract Cover Page identifies the Facility as an "Off-Shore" Facility, the Supplier covenants and agrees that at any time following the Commercial Operation Date where the Facility is generating Hourly Delivered Electricity, it shall be an Off-Shore Wind Facility.

EXHIBIT A – TECHNOLOGY-SPECIFIC PROVISIONS
TYPE 9: WIND (ON-SHORE) FACILITIES

1.1 Application of Exhibit

This version of Exhibit A shall apply to an On-Shore Wind Facility.

1.2 Technology-Specific Values

(a) The Milestone Date for Commercial Operation is the date that is three years following the Contract Date.

(b) The NTP Response Date is the date that is 15 months following the Contract Date.

(c) The NTP Daily Delay Amount is $0.033 per kW of Contract Capacity.

(d) The Pre-Construction Liability Limit is $400,000.00 per Contract Facility plus $2.00 per kW of Contract Capacity.

(e) The amount of the Initial Security is $20.00 per kW of Contract Capacity.

(f) The amount of the Incremental NTP Security is $10.00 per kW of Contract Capacity.

EXHIBIT B – METERING AND SETTLEMENT
TYPE 1: FACILITIES REGISTERED IN THE IESO-ADMINISTERED MARKETS (NOT BEHIND-THE-METER)

1.1 Application of Exhibit

This version of Exhibit B shall apply to a Facility that:

(a) is the whole of a Registered Facility; and

(b) is not a Behind-the-Meter Facility.

1.2 Metering

The Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the IESO Market Rules for Registered Facilities. The Supplier shall provide the OPA viewing access rights only to the revenue-quality interval meter data of the Facility to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss adjustment factors by establishing an Associated Relationship between the OPA and the Connection Point of the Facility within the MVPortal application tool or equivalent, at no cost to the OPA. For greater certainty, the OPA shall maintain in confidence in accordance with this Agreement and shall not access or use for any purpose (other than for the purposes of administering this Agreement) any information related to the Electricity usage of the Host Facility (if applicable).

1.3 Indexation

The "**Indexed Contract Price**" shall be determined as follows:

(a) Where the FIT Contract Cover Page indicates that the Percentage Escalated is zero percent (0%), the Indexed Contract Price shall be equal to the Contract Price for all years.

(b) For all other Facilities, the Indexed Contract Price in any year "y" shall be the greater of the Indexed Contract Price in the preceding year, "y-1", and the following calculation:

$$\mathbf{CP}_y = (1 - \mathrm{PE}) \times \left(\mathrm{TCP}_{BD} \times \frac{\mathrm{CPI}_x}{\mathrm{CPI}_{BD}} \right) + \mathrm{PE} \times \left(\mathrm{TCP}_{BD} \times \frac{\mathrm{CPI}_y}{\mathrm{CPI}_{BD}} \right)$$

where:

CP_y	is the Indexed Contract Price applicable in calendar year "y" during the Term;
CPI_x	is the CPI applicable in the month of December immediately preceding the calendar year "x", where "x" is the year that is the earlier of (i) year "y" and (ii) the calendar year corresponding to the Milestone Date for Commercial Operation, as such date was established on the Contract Date prior to any adjustment for Force Majeure or NTP Delay;
TCP_{BD}	is the Total Contract Price;

CPI_{BD}	is the CPI applicable to the month in which the Base Date occurs;
CPI_y	is the CPI for the month of December immediately preceding the commencement of calendar year "y"; and
PE	is the Percentage Escalated expressed as a decimal figure.

1.4 Calculation of Contract Payment

(a) For each hour in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to:

(i) the Hourly Delivered Electricity multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) where the FIT Contract Cover Page indicates that the Peak Performance Factor applies, the Peak Performance Factor applicable during the corresponding hour;

minus

(ii) the Hourly Delivered Electricity multiplied by the greater of (A) HOEP for such hour, and (B) zero;

provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one hour, then for the purposes of the calculation set out in this Section 1.4(a) of Exhibit B, the Contract Capacity times one hour shall be used instead of the Hourly Delivered Electricity.

(b) The Contract Payment in respect of a Settlement Period shall be:

(i) the sum of the Contract Payments in respect of each hour in such Settlement Period;

minus

(ii) in relation to the sale, supply or delivery of any Future Contract Related Products, an amount equal to eighty percent (80%) of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products for that Settlement Period, less the Approved Incremental Costs. For the purposes of this Section 1.4(b) of Exhibit B, "**Approved Incremental Costs**" means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the OPA.

(c) Where the Contract Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the OPA to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the OPA.

1.5 IESO Instructions

(a) Insofar as the IESO issues instructions to reduce all or part of the output of the Contract Facility on an economic basis in order to mitigate over generation on the entire IESO-Controlled Grid or substantially all of the IESO-Controlled Grid, then the calculation set out in Section 1.4 of this Exhibit B shall provide for an additional Contract Payment (the "**Additional Contract Payment**") for any hour, "h", in which:

(i) either (A) the Pre-Dispatch Price for such hour "h", as published in the immediately preceding hour "h-1" is less than $5.00/MWh or (B) the IESO has published an over generation advisory or equivalent notice in respect of such hour "h" for the entire IESO-Controlled Grid or substantially all of the IESO-Controlled Grid;

(ii) the IESO has issued an instruction on an economic basis to reduce the output of the Contract Facility to a level below that which it otherwise could have achieved for that hour "h", but for such instruction; and

(iii) the Supplier has complied with such instruction.

(b) The Additional Contract Payment for any such hour shall be the Hourly Delivered Electricity foregone as a result of compliance with the IESO's instruction multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) where the FIT Contract Cover Page indicates that the Peak Performance Factor applies, the Peak Performance Factor applicable during the corresponding hour, provided that such amount of foregone Hourly Delivered Electricity shall not in any case exceed the Contract Capacity times one hour. For greater certainty, waterpower Facilities shall not be considered to have foregone Hourly Delivered Electricity as a result of compliance with the IESO's instruction, where such Facility did not spill water in order to comply with such instruction.

(c) The OPA will, acting reasonably, develop a methodology for Contract Facilities using each type of Renewable Fuel to determine the Hourly Delivered Electricity foregone as a result of compliance with an instruction from the IESO pursuant to Section 1.5(a) of this Exhibit B.

(d) The implementation of this Section 1.5 of Exhibit B shall not trigger the amending provisions of Section 1.7 of the Agreement, except to the extent that any IESO Market Rule change has the effect of materially affecting the Supplier's Economics notwithstanding the implementation of this Section 1.5 of Exhibit B.

EXHIBIT B – METERING AND SETTLEMENT
TYPE 2: FACILITIES REGISTERED IN THE IESO-ADMINISTERED MARKETS (BEHIND-THE-METER)

1.1 Application of Exhibit

This version of Exhibit B shall apply to a Facility that:

(a) is a part of (but not the whole of) a Registered Facility; and

(b) is a Behind-the-Meter Facility.

1.2 Metering

(a) Where the Facility has a Gross Nameplate Capacity equal to or greater than 20 MW, the Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the IESO Market Rules for Registered Facilities. The Supplier shall provide the OPA viewing access rights only to the revenue-quality interval meter data of the Facility to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss adjustment factors by establishing an Associated Relationship between the OPA and the Connection Point of the Facility within the MVPortal application tool or equivalent, at no cost to the OPA. The Supplier shall also take all such actions and do all such things necessary to provide the OPA with equivalent access to the Host Facility's meter data if applicable. For greater certainty, the OPA shall maintain in confidence in accordance with this Agreement and shall not access or use for any purpose (other than for the purposes of administering this Agreement) any information related to the Electricity usage of the Host Facility (if applicable).

(b) Where the Facility has a Gross Nameplate Capacity equal to or greater than 1 MW but less than 20 MW, the Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as set out in Chapter 6, Section 4.5 of the IESO Market Rules.

(c) Where the Facility has a Gross Nameplate Capacity less than 1 MW, the Supplier shall provide, at its expense, separate revenue-quality meter(s) and ancillary metering and monitoring equipment of a standard normally required for connection of a generation facility to a Distribution System, and acceptable to the OPA, acting reasonably

1.3 Indexation

The "**Indexed Contract Price**" shall be determined as follows:

(a) Where the FIT Contract Cover Page indicates that the Percentage Escalated is zero percent (0%), the Indexed Contract Price shall be equal to the Contract Price for all years.

(b) For all other Facilities, the Indexed Contract Price in any year "y" shall be the greater of the Indexed Contract Price in the preceding year, "y-1", and the following calculation:

$$\mathbf{CP_y} = (1 - \mathrm{PE}) \times \left(\mathrm{TCP_{BD}} \times \frac{\mathrm{CPI_x}}{\mathrm{CPI_{BD}}} \right) + \mathrm{PE} \times \left(\mathrm{TCP_{BD}} \times \frac{\mathrm{CPI_y}}{\mathrm{CPI_{BD}}} \right)$$

where:

CP_y	is the Indexed Contract Price applicable in calendar year "y" during the Term;
CPI_x	is the CPI applicable in the month of December immediately preceding the calendar year "x", where "x" is the year that is the earlier of (i) year "y" and (ii) the calendar year corresponding to the Milestone Date for Commercial Operation, as such date was established on the Contract Date prior to any adjustment for Force Majeure or NTP Delay;
TCP_{BD}	is the Total Contract Price;
CPI_{BD}	is the CPI applicable to the month in which the Base Date occurs;
CPI_y	is the CPI for the month of December immediately preceding the commencement of calendar year "y"; and
PE	is the Percentage Escalated expressed as a decimal figure.

1.4 Calculation of Contract Payment

(a) For each hour in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to:

(i) the Hourly Delivered Electricity multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) where the FIT Contract Cover Page indicates that the Peak Performance Factor applies, the Peak Performance Factor applicable during the corresponding hour;

minus

(ii) the Hourly Delivered Electricity multiplied by the greater of (A) HOEP for such hour, and (B) zero;

provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one hour, then for the purposes of the calculation set out in this Section 1.4(a) of Exhibit B, the Contract Capacity times one hour shall be used instead of the Hourly Delivered Electricity.

(b) The Contract Payment in respect of a Settlement Period shall be:

(i) the sum of the Contract Payments in respect of each hour in such Settlement Period;

minus

(ii) in relation to the sale, supply or delivery of any Future Contract Related Products, an amount equal to eighty percent (80%) of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products for that Settlement Period, less the Approved Incremental Costs. For the purposes of this Section 1.4(b) of Exhibit B, "**Approved Incremental Costs**" means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the OPA.

(c) Where the Contract Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the OPA to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the OPA.

1.5 IESO Instructions

(a) Insofar as the IESO issues instructions to reduce all or part of the output of the Contract Facility on an economic basis in order to mitigate over generation on the entire IESO-Controlled Grid or substantially all of the IESO-Controlled Grid, then the calculation set out in Section 1.4 of this Exhibit B shall provide for an additional Contract Payment (the "**Additional Contract Payment**") for any hour, "h", in which:

(i) either (A) the Pre-Dispatch Price for such hour "h", as published in the immediately preceding hour "h-1" is less than $5.00/MWh or (B) the IESO has published an over generation advisory or equivalent notice in respect of such hour "h" for the entire IESO-Controlled Grid or substantially all of the IESO-Controlled Grid;

(ii) the IESO has issued an instruction on an economic basis to reduce the output of the Contract Facility to a level below that which it otherwise could have achieved for that hour "h", but for such instruction; and

(iii) the Supplier has complied with such instruction.

(b) The Additional Contract Payment for any such hour shall be the Hourly Delivered Electricity foregone as a result of compliance with the IESO's instruction multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) where the FIT Contract Cover Page indicates that the Peak Performance Factor applies, the Peak Performance Factor applicable during the corresponding hour, provided that such amount of foregone Hourly Delivered Electricity shall not in any case exceed the Contract Capacity times one hour. For greater certainty, waterpower Facilities shall not be considered to have foregone Hourly Delivered Electricity as a result of compliance with the IESO's instruction, where such Facility did not spill water in order to comply with such instruction.

(c) The OPA will, acting reasonably, develop a methodology for Contract Facilities using each type of Renewable Fuel to determine the Hourly Delivered Electricity foregone as a result of compliance with an instruction from the IESO pursuant to Section 1.5(a) of this Exhibit B.

(d) The implementation of this Section 1.5 of Exhibit B shall not trigger the amending provisions of Section 1.7 of the Agreement, except to the extent that any IESO Market

Rule change has the effect of materially affecting the Supplier's Economics notwithstanding the implementation of this Section 1.5 of Exhibit B.

EXHIBIT B – METERING AND SETTLEMENT
TYPE 3A: FACILITIES GREATER THAN 5 MW NOT REGISTERED IN THE IESO-ADMINISTERED MARKETS

1.1 Application of Exhibit

This version of Exhibit B shall apply to a Facility with a Gross Nameplate Capacity greater than 5 MW that:

(a) is connected to a Distribution System, is not a Behind-the-Meter Facility, and is not a Registered Facility; or

(b) is a Behind-the-Meter Facility, is not a Registered Facility, and is connected to a Host Facility subject to Gross Load Billing.

1.2 Metering Requirements

The Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the applicable LDC. The Supplier shall provide the OPA with access to the applicable LDC Portal or the IESO's MVPortal, or equivalent with respect to the Facility. In the event that the LDC Portal, the IESO's MVPortal or equivalent is not available, the Supplier must supply validated metering data in one of the following formats: .XML or .CSV at an interval of no more than every 30 days.

1.3 Indexation

The "**Indexed Contract Price**" shall be determined as follows:

(a) Where the FIT Contract Cover Page indicates that the Percentage Escalated is zero percent (0%), the Indexed Contract Price shall be equal to the Contract Price for all years.

(b) For all other Facilities, the Indexed Contract Price in any year "y" shall be the greater of the Indexed Contract Price in the preceding year, "y-1", and the following calculation:

$$\mathbf{CP_y} = (1 - \mathrm{PE}) \times \left(\mathrm{TCP_{BD}} \times \frac{\mathrm{CPI_x}}{\mathrm{CPI_{BD}}} \right) + \mathrm{PE} \times \left(\mathrm{TCP_{BD}} \times \frac{\mathrm{CPI_y}}{\mathrm{CPI_{BD}}} \right)$$

where:

CP_y	is the Indexed Contract Price applicable in calendar year "y" during the Term;
CPI_x	is the CPI applicable in the month of December immediately preceding the calendar year "x", where "x" is the year that is the earlier of (i) year "y" and (ii) the calendar year corresponding to the Milestone Date for Commercial Operation, as such date was established on the Contract Date prior to any adjustment for Force Majeure or NTP Delay;
TCP_{BD}	is the Total Contract Price;

CPI_{BD}	is the CPI applicable to the month in which the Base Date occurs;
CPI_y	is the CPI for the month of December immediately preceding the commencement of calendar year "y"; and
PE	is the Percentage Escalated expressed as a decimal figure.

1.4 Calculation of Contract Payment

(a) For each hour in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to:

(i) where HOEP in such hour is greater than or equal to $0.00/MWh, the Hourly Delivered Electricity multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) where the FIT Contract Cover Page indicates that the Peak Performance Factor applies, the Peak Performance Factor applicable during the corresponding hour; or

(ii) where HOEP in such hour is less than $0.00/MWh, the Hourly Delivered Electricity multiplied by either:

(A) where the FIT Contract Cover Page indicates that the Peak Performance Factor does not apply, the Indexed Contract Price applicable during the corresponding calendar year minus the absolute value of HOEP for that hour; or

(B) where the FIT Contract Cover Page indicates that the Peak Performance Factor applies, the price that results from multiplying (x) the Indexed Contract Price applicable during the corresponding calendar year by (y) the Peak Performance Factor applicable during the corresponding hour, and then subtracting the absolute value of HOEP for that hour,

provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one hour, then for the purposes of the calculations set out in Section 1.4(a)(i) and (ii) of Exhibit B, the Contract Capacity times one hour shall be used instead of the Hourly Delivered Electricity, and the Contract Payment for such hour shall include an additional amount equal to (A) the HOEP for such hour multiplied by (B) the Hourly Delivered Electricity minus the Contract Capacity times one hour.

(b) The Contract Payment in respect of a Settlement Period shall be:

(i) the sum of the Contract Payments in respect of each hour in such Settlement Period;

minus

(ii) in relation to the sale, supply or delivery of any Future Contract Related Products, an amount equal to eighty percent (80%) of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products for that Settlement Period, less the Approved

Incremental Costs. For the purposes of this Section 1.4(b) of Exhibit B, "**Approved Incremental Costs**" means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the OPA.

(c) Where the Contract Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the applicable LDC to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the applicable LDC.

1.5 IESO Instructions

(a) Insofar as the IESO issues instructions to reduce all or part of the output of the Contract Facility on an economic basis in order to mitigate over generation on the entire IESO-Controlled Grid or substantially all of the IESO-Controlled Grid, then the calculation set out in Section 1.4 of this Exhibit B shall provide for an additional Contract Payment (the "**Additional Contract Payment**") for any hour, "h", in which:

(i) either (A) the Pre-Dispatch Price for such hour "h", as published in the immediately preceding hour "h-1" is less than $5.00/MWh or (B) the IESO has published an over generation advisory or equivalent notice in respect of such hour "h" for the entire IESO-Controlled Grid or substantially all of the IESO-Controlled Grid;

(ii) the IESO has issued an instruction on an economic basis to reduce the output of the Contract Facility to a level below that which it otherwise could have achieved for that hour "h", but for such instruction; and

(iii) the Supplier has complied with such instruction.

(b) The Additional Contract Payment for any such hour shall be the Hourly Delivered Electricity foregone as a result of compliance with the IESO's instruction multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) where the FIT Contract Cover Page indicates that the Peak Performance Factor applies, the Peak Performance Factor applicable during the corresponding hour, provided that such amount of foregone Hourly Delivered Electricity shall not in any case exceed the Contract Capacity times one hour. For greater certainty, waterpower Facilities shall not be considered to have foregone Hourly Delivered Electricity as a result of compliance with the IESO's instruction, where such Facility did not spill water in order to comply with such instruction.

(c) The OPA will, acting reasonably, develop a methodology for Contract Facilities using each type of Renewable Fuel to determine the Hourly Delivered Electricity foregone as a result of compliance with an instruction from the IESO pursuant to Section 1.5(a) of this Exhibit B.

(d) The implementation of this Section 1.5 of Exhibit B shall not trigger the amending provisions of Section 1.7 of the Agreement, except to the extent that any IESO Market

Rule change has the effect of materially affecting the Supplier's Economics notwithstanding the implementation of this Section 1.5 of Exhibit B.

EXHIBIT B – METERING AND SETTLEMENT
TYPE 3B: FACILITIES LESS THAN OR EQUAL TO 5 MW NOT REGISTERED IN THE IESO-ADMINISTERED MARKETS

1.1 Application of Exhibit

This version of Exhibit B shall apply to a Facility with a Gross Nameplate Capacity less than or equal to 5 MW that:

(a) is connected to a Distribution System, is not a Behind-the-Meter Facility, and is not a Registered Facility; or

(b) is a Behind-the-Meter Facility, is not a Registered Facility, and is connected to a Host Facility subject to Gross Load Billing.

1.2 Metering Requirements

The Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the applicable LDC. The Supplier shall provide the OPA with access to the applicable LDC Portal or the IESO’s MVPortal, or equivalent with respect to the Facility. In the event that the LDC Portal, the IESO’s MVPortal or equivalent is not available, the Supplier must supply validated metering data in one of the following formats: .XML or .CSV at an interval of no more than every 30 days.

1.3 Indexation

The “**Indexed Contract Price**” shall be determined as follows:

(a) Where the FIT Contract Cover Page indicates that the Percentage Escalated is zero percent (0%), the Indexed Contract Price shall be equal to the Contract Price for all years.

(b) For all other Facilities, the Indexed Contract Price in any year “y” shall be the greater of the Indexed Contract Price in the preceding year, “y-1”, and the following calculation:

$$\mathbf{CP_y} = (1 - \mathrm{PE}) \times \left(\mathrm{TCP_{BD}} \times \frac{\mathrm{CPI_x}}{\mathrm{CPI_{BD}}} \right) + \mathrm{PE} \times \left(\mathrm{TCP_{BD}} \times \frac{\mathrm{CPI_y}}{\mathrm{CPI_{BD}}} \right)$$

where:

CP_y	is the Indexed Contract Price applicable in calendar year “y” during the Term;
CPI_x	is the CPI applicable in the month of December immediately preceding the calendar year “x”, where “x” is the year that is the earlier of (i) year “y” and (ii) the calendar year corresponding to the Milestone Date for Commercial Operation, as such date was established on the Contract Date prior to any adjustment for Force Majeure or NTP Delay;
TCP_{BD}	is the Total Contract Price;

CPI_{BD}	is the CPI applicable to the month in which the Base Date occurs;
CPI_{y}	is the CPI for the month of December immediately preceding the commencement of calendar year "y"; and
PE	is the Percentage Escalated expressed as a decimal figure.

1.4 Calculation of Contract Payment

(a) For each hour in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to the Hourly Delivered Electricity multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) where the FIT Contract Cover Page indicates that the Peak Performance Factor applies, the Peak Performance Factor applicable during the corresponding hour; provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one hour, then for the purposes of the foregoing calculation, the Contract Capacity times one hour shall be used instead of the Hourly Delivered Electricity, and the Contract Payment for such hour shall include an additional amount equal to (i) the HOEP for such hour multiplied by (ii) the Hourly Delivered Electricity minus the Contract Capacity times one hour.

(b) The Contract Payment in respect of a Settlement Period shall be:

(i) the sum of the Contract Payments in respect of each hour in such Settlement Period;

minus

(ii) in relation to the sale, supply or delivery of any Future Contract Related Products, an amount equal to eighty percent (80%) of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products for that Settlement Period, less the Approved Incremental Costs. For the purposes of this Section 1.4(b) of Exhibit B, "**Approved Incremental Costs**" means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the OPA.

(c) Where the Contract Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the applicable LDC to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the applicable LDC.

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE:	[●]
APPLICANT:	[●]
BENEFICIARY:	Ontario Power Authority and its permitted assigns (the "**Beneficiary**")
AMOUNT:	[●]
EXPIRY DATE:	[●]
EXPIRY PLACE:	Counters of the issuing financial institution in Toronto, Ontario
CREDIT RATING:	**[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the *Bank Act*]**
TYPE:	Irrevocable and Unconditional Standby Letter of Credit Number: [●] (the "**Credit**")

The Credit is issued in connection with the Feed-in Tariff Contract (the "**Contract**") dated **[Insert Date of Contract]** between the Beneficiary and the "Supplier", as such term is defined under the Contract.

We hereby authorize the Beneficiary to draw on **[Issuing Bank Name/Address]**, in respect of the Credit, for the account of the Applicant, up to an aggregate amount of $[●] ([●] Canadian Dollars) available by the Beneficiary's draft at sight accompanied by the Beneficiary's signed certificate stating that:

> "The Supplier is in breach of, or default under, the Contract, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."

Drafts drawn hereunder must bear the clause "Drawn under irrevocable and unconditional Standby Letter of Credit No. [●] issued by [**Issuing Bank Name**] dated [**Issue Date**]."

Partial drawings are permitted.

This Letter of Credit will automatically extend for additional, successive terms of one year each (each an "**Additional Term**"), unless the undersigned provides the Beneficiary with written notice, at least 60 days prior to the expiration date of the then current term, that it does not wish to extend this Letter of Credit for an Additional Term.

We engage with you that all drafts drawn under and in compliance with the terms of the Credit will be duly honoured, if presented at the counters of [**Issuing Bank Name/Address**] at or before [**Expiry Time**] (EST) on [**Expiry Date**], as extended.

The Credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce publication No. 590 and, as to matters not addressed by the ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

This Credit is transferable at the written request of the Beneficiary, without the consent of the Applicant, but subject to consent of the issuing financial institution, acting reasonably. All fees incurred by the issuing financial institution in relation to such transfer shall be at the Applicant's expense, but failure of the Applicant to pay such fees shall not restrict the ability of the Beneficiary to transfer the Credit.

In the event of a transfer of this Credit as provided for above, the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by [**Issuing Bank Name**] of the Beneficiary's dated and signed letter addressed to [**Issuing Bank Name**] and completed as follows:

"We, the undersigned Beneficiary to [**Issuing Bank Name**] Letter of Credit No. [●], hereby waive all our rights under the Letter of Credit and request that the current name and address of the Beneficiary thereunder be amended to read [**insert name and address of new Beneficiary**]. We have enclosed the original Letter of Credit and all amendments (if any) thereto. Please forward the original Letter of Credit and all amendments (if any), including the current amendment to the [**new Beneficiary**], care of the Applicant."

[**Issuing Bank Name**]

By: ____________________

By: ____________________

EXHIBIT D
DOMESTIC CONTENT

1.1 Calculation of Domestic Content Level

(a) For each of the "**Designated Activities**" set out in the first column of the Domestic Content Grid applicable to the Contract Facility's technology and Contract Capacity, where the Designated Activity has been performed in relation to the Contract Facility, the Contract Facility shall be allocated the corresponding "**Qualifying Percentage**" set out in the second column of such Domestic Content Grid.

(b) If the Contract Facility comprises more than one of the component(s) specified in the Designated Activity, the Designated Activity must have been performed in relation to all such components forming part of the Contract Facility in order for the Designated Activity to be considered to have been performed in relation to such Contract Facility.

(c) A Designated Activity shall not be considered to be performed in relation to a Contract Facility, where:

(i) some but not all aspects of the Designated Activity were performed in relation to the Contract Facility; or

(ii) the Supplier is unable to provide evidence satisfactory to the OPA, acting reasonably, that the Designated Activity was performed in relation to the Contract Facility.

(d) The "**Domestic Content Level**" in respect of a Contract Facility shall be calculated, following the Commercial Operation Date, as the sum of the Qualifying Percentages allocated to such Contract Facility in accordance with Section 1.1(a) of this Exhibit D.

1.2 Evidence of Performance of Designated Activities

(a) As part of the Domestic Content Report, for each Designated Activity set out as having been performed in relation to the Contract Facility, the Supplier shall provide:

(i) documentation confirming to the satisfaction of the OPA, acting reasonably, that such Designated Activity was performed in relation to the Contract Facility, provided that any confidential information (including pricing) not necessary to verify that the applicable Designated Activity was performed in relation to the Contract Facility, may be redacted; and

(ii) a "Consent to Verify" in the Prescribed Form, signed by the service provider corresponding to the Designated Activity, authorizing the OPA to verify that such service provider performed the Designated Activity.

Table 1: Domestic Content Grid – Wind Power Projects Greater than 10 kW

Designated Activity		Qualifying Percentage
1.	Wind turbine blades cast in a mould in Ontario, and instrumentation that is within the blades has been assembled in Ontario.	16%
2.	Pitch system, where the gear wheels for the pitch system have been cut, carburized and ground in Ontario, and where the pitch system has been assembled and tested in Ontario.	3%
3.	Yaw system where the gear wheels for the yaw system have been cut, carburized and ground in Ontario, and where the yaw system has been assembled and tested in Ontario.	7%
4.	Hub and hub casing, where the hub has been entirely machined in Ontario, i.e. without any pre-machining performed outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge.	2%
5.	Gearbox where gear wheels have been cut, carburized and ground in Ontario, and where the gearbox has been assembled and tested in Ontario. For greater certainty, the gearbox refers to the mechanism that increases the speed of rotation of the generator's shaft. Other gearboxes that are in or form part of another component, e.g. in the yaw system, are included as part of the Designated Activity relating to such other component, as applicable.	11%
6.	Generator and brake, where the generator has been assembled and tested in Ontario. The generator is made up of a rotor, stator, rotor bearings and structures that hold the bearings and stator. For a generator that does not form an integral part of the nacelle, the generator includes the encapsulation of the foregoing components. The manufacturing of the generator must have also included the cutting and assembly of the stator and rotor plates in addition to their winding in Ontario. If the generator uses permanent magnets, these must be installed in Ontario.	3%
7.	Heat exchanger has been assembled and tested in Ontario.	1%
8.	Drive shaft has been entirely machined in Ontario, i.e. without any other pre-machining performed outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge.	1%
9.	Power converter where the assembly, final wiring and testing has been done in Ontario.	5%
10.	Towers that have been physically formed and shaped from steel plates, in Ontario. The steel plates used to manufacture the towers must not have been machined outside Ontario, i.e. they must not have been rolled, bent or welded outside Ontario.	4%

11.	All steel that was formed and shaped into the towers was processed into steel plates in a steel mill in Ontario.	9%
12.	Control panel and electronics, where the assembly, final wiring and testing have been done in Ontario.	2%
13.	Nacelle frame that has been manufactured entirely in Ontario using steel plates and beams that had not previously been machined, i.e. steel plates and beams that have not been bent, folded, welded, pierced or bolted outside Ontario, and without any other pre-machining performed outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge.	2%
14.	Nacelle shell where successive assembly of the armature and shell materials has occurred in Ontario.	2%
15.	Pad mount or equivalent transformers that have been wound and tested in Ontario.	2%
16.	Grid connection, where the transformers used in the grid connection have been wound and tested in Ontario. For greater certainty, this does not include pad mount or equivalent transformers.	10%
17.	Construction costs, and on-site labour performed by individuals Resident in Ontario, provided that no more than 5% of the total person-hours of all such labour is performed by individuals that are not Resident in Ontario.	15%
18.	Consulting services, including legal, technical and accounting performed by individuals Resident in Ontario, provided that no more than 5% of the total person-hours of all such services are performed by individuals that are not Resident in Ontario.	5%
Total		**100%**

Table 2: Domestic Content Grid – Solar (PV) Power Projects Greater than 10 kW Utilizing Crystalline Silicon PV Technology

Designated Activity		**Qualifying Percentage**
1.	Silicon that has been used as input to solar photovoltaic cells manufactured in an Ontario refinery.	11%
2.	Silicon ingots and wafer, where silicon ingots have been cast in Ontario, and wafers have been cut from the casting by a saw in Ontario.	13%
3.	The crystalline silicon solar photovoltaic cells, where their active photovoltaic layer(s) have been formed in Ontario.	11%
4.	Solar photovoltaic modules (i.e. panels), where the electrical connections between the solar cells have been made in Ontario, and the solar photovoltaic module materials have been encapsulated in Ontario	15%
5.	Inverter, where the assembly, final wiring and testing has been done in Ontario.	8%
6.	Mounting systems, where the structural components of the fixed or moving mounting systems have been entirely machined or formed or cast in Ontario. The metal for the structural components may not have been pre-machined outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge. The machining and assembly of the mounting system must have entirely taken place in Ontario (i.e. bending, welding, piercing and bolting).	11%
7.	Wiring and electrical hardware that is not part of other Designated Activities, that has been sourced from an Ontario Supplier.	9%
8.	Construction costs, and on-site labour performed by individuals Resident in Ontario, provided that no more than 5% of the total person-hours of all such labour is performed by individuals that are not Resident in Ontario.	18%
9.	Consulting services, including legal, technical and accounting performed by individuals Resident in Ontario, provided that no more than 5% of the total person-hours of all such services are performed by individuals that are not Resident in Ontario.	4%
Total		**100%**

Table 3: Domestic Content Grid – Solar (PV) Power Projects Greater than 10 kW Utilizing Thin-Film PV Technology

Designated Activity		Qualifying Percentage
1.	Thin film photovoltaic cells where the active photovoltaic layer(s) have been fabricated (by methods including but not limited to vapour deposition, evaporation or sputtering) in Ontario. Where the manufacture of the module is inseparable from the manufacture of the cells, there shall be no separate requirement for the module.	35%
2.	Solar photovoltaic module (i.e. panel), where the electrical connections between the solar cells have been made in Ontario, and solar photovoltaic module materials have been encapsulated in Ontario.	10%
3.	Inverter, where the assembly, final wiring and testing have been done in Ontario.	8%
4.	Mounting systems where the structural components of the fixed or moving mounting systems have been entirely machined or formed or cast in Ontario. The metal for the structural components may not be pre-machined outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge. The machining and assembly of the mounting system must entirely take place in Ontario (i.e. bending, welding, piercing and bolting).	10%
5.	Wiring and electrical hardware that is not part of other Designated Activities, that has been sourced from an Ontario Supplier.	9%
6.	Construction costs, and on-site labour performed by individuals Resident in Ontario, provided that no more than 5% of the total person-hours of all such labour is performed by individuals that are not Resident in Ontario.	24%
7.	Consulting services, including legal, technical and accounting performed by individuals Resident in Ontario, provided that no more than 5% of the total person-hours of all such services are performed by individuals that are not Resident in Ontario.	4%
Total		**100%**

Table 4: Domestic Content Grid – Solar (PV) Power Projects Less than or Equal to 10 kW

Designated Activity		Qualifying Percentage
1.	Silicon that has been used as input to solar photovoltaic cells manufactured in an Ontario refinery.	10%
2.	Silicon ingots and wafer, where silicon ingots have been cast in Ontario, and wafers have been cut from the casting by a saw in Ontario.	12%
3.	The crystalline silicon solar photovoltaic cells, where their active photovoltaic layer(s) have been formed in Ontario.	10%
4.	Solar photovoltaic modules (i.e. panels), where the electrical connections between the solar cells have been made in Ontario, and the solar photovoltaic module materials have been encapsulated in Ontario.	13%
5.	Inverter, where the assembly, final wiring and testing has been done in Ontario.	9%
6.	Mounting systems, where the structural components of the fixed or moving mounting systems, have been entirely machined or formed or cast in Ontario. The metal for the structural components may not have been pre-machined outside Ontario other than peeling/roughing of the part for quality control purposes when it left the smelter or forge. The machining and assembly of the mounting system must entirely take place in Ontario (i.e. bending, welding, piercing, and bolting).	9%
7.	Wiring and electrical hardware that is not part of other Designated Activities (i.e., items 1-6 and 8 of this table), sourced from an Ontario Supplier.	10%
8.	All on- and off- site labour and services. For greater certainty, this Designated Activity shall apply in respect of all Contract Facilities.	27%
Total		**100%**

EXHIBIT E

ARBITRATION PROVISIONS APPLICABLE TO SECTIONS 1.7, 1.8, 2.10 AND 12.2

The following rules and procedures (the "**Rules**") shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.7, 1.8, 2.10 and 12.2 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the OPA's option, all Other Suppliers required by the OPA to participate, have been unable to reach agreement as contemplated in Sections 1.7, 1.8, 2.10 or 12.2, as applicable, then the OPA shall commence arbitration by delivering a written notice ("**Request**") to the Supplier and such Other Suppliers required by the OPA to participate (collectively the "**Suppliers**"). If the OPA has not already done so, the OPA shall then deliver to the Suppliers the names of all Suppliers. Within 20 Business Days of the delivery of the Request, the OPA shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within 20 Business Days of the receipt of the OPA's notice nominating its arbitrator, the Suppliers shall by written notice to the OPA nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two arbitrators nominated shall then select a chair person of the arbitration panel (the "**Arbitration Panel**") who shall be a former judge of a Superior Court or appellate court in Canada.

2. **Application to Court** – If the Suppliers are unable to agree on the nomination of an arbitrator within 20 Business Days of the receipt of the OPA's notice nominating its arbitrator, any Supplier or the OPA may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two arbitrators are unable to agree on a chair person within 30 days of the nomination or appointment of the Suppliers' arbitrator, any supplier or the OPA may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.

3. **General** – The Arbitration Panel, once appointed, shall proceed immediately to determine the required amendments or the Replacement Provision, as the case may be, in accordance with the Ontario *Arbitration Act, 1991* and, where applicable, the Ontario International Commercial Arbitration Act, it being the intention of the OPA and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the required amendments or the Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.

4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the required amendments or the Replacement Provision needs to be determined through more than one arbitration proceeding, then the Parties agree that the Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.

5. **Award** – The award of the Arbitration Panel, which shall include the required amendments or Replacement Provision, shall be made within six months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.

6. **Costs** – The Parties shall pay their own costs of participating in the arbitration proceedings.

7. **Fees** – Each of the arbitrators on the Arbitration Panel shall be paid their normal professional fees for their time and attendances, which fees together with any hearing room fees, shall be paid by the OPA.

8. **Computation of Time** – In the computation of time under these Rules or an order or direction given by the Arbitration Panel, except where a contrary intention appears, or the parties otherwise agree:

   (a) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words "**at least**" are used;

   (b) statutory holidays shall not be counted;

   (c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and

   (d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00 p.m. (Toronto time), or at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.

9. **Place of Arbitration** – The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.

EXHIBIT F

FORM OF SUPPLIER'S CERTIFICATE
RE COMMERCIAL OPERATION

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
FIT.Contract@powerauthority.on.ca

Capitalized terms not defined herein have the meanings ascribed thereto in the FIT Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Agreement Title	Feed-in Tariff Contract #**[Insert Contract #]** (the "Agreement")
Agreement Date	
Commercial Operation Date or Term commencement date	
Beginning of the Hour Ending	01:00 hours (EST)

WHEREAS Section 2.6(a)(v) of the FIT Contract (the "Agreement") between [Supplier Short Name] and the OPA dated as of [Contract Date] provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the OPA has received a certificate (this "Certificate") address [Contract Date] hing certain statements with respect to the Facility, in addition to a separate IE Certificate referenced in Exhibit G of the Agreement;

NOW THEREFORE, [SUPPLIER LEGAL NAME] CERTIFIES to the OPA that:

a) [Independent En [SUPPLIER LEGAL NAME]] is:

(i) duly qualified and licensed to practice engineering in the province of Ontario and which holds a certificate of authorization issued by Professional Engineers Ontario;

(ii) does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the facility; and

(iii) not an affiliate of [Supplier Short Name] nor directly or indirectly Controlled by [Supplier Short Name].

[Supplier Short Name]

[Supplier Short Name]

b) [Supplier Short Name] has provided, or in the case of Section (b)(i), has caused the Independent Engineer to provide, to the OPA the following documentation required to be so provided at or prior to Commercial Operation:

i) Certificate of an independent professional engineer using OPA's "Form of Independent Engineer Certificate" (OPACM-Form-016) in accordance with Section 2.6(a)(iv) of Agreement;

ii) As-built single line diagram in accordance with Section 2.6(a)(iii) of the Agreement;

iii) Workplace Safety and Insurance Act (Ontario) clearance certificate pursuant to Section 2.8(c);

iv) if required pursuant to Section 2.2(c), Metering Plan that has been approved by the OPA; pursuant to Section 2.2(c); and

v) Ontario Energy Board Generator License pursuant to Section 2.9(b).

Signed this [Day] day of [Month, Year] .

[Day] [Month, Year]

[Legal Name of Supplier]

[Legal Name of Supplier]

Per: ______________________________

Name: [Name]
Title: [Title]

[Name]

[Title]

EXHIBIT G

FORM OF INDEPENDENT ENGINEER'S CERTIFICATE RE COMMERCIAL OPERATION

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
FIT.Contract@powerauthority.on.ca

Capitalized terms not defined herein have the meanings ascribed thereto in the FIT Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Agreement Title	Feed-in Tariff Contract #**[Insert Contract #]** (the "Agreement")
Agreement Date	
Legal Name of Independent Engineer	

WHEREAS Section 2.6(a)(iv) of the Agreement between the Supplier and the OPA dated as of [Contract Date] provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the OPA has received a certificate (this "Certificate") addressed to it fro [Contract Date] Independent Engineer containing certain statements with respect to the Facility;

AND WHEREAS [Legal Name of Independent Engineer] (the "Undersigned") acts as the Independent Engineer for the purposes of delivery of this Certificate;

[Legal Name of Independent Eng

NOW THEREFORE, THE UNDERSIGNED CERTIFIES to the OPA, and acknowledges that the OPA is relying on this Certificate, that:

(i) the Undersigned is duly qualified and licensed to practice engineering in the province of Ontario;

(ii) the Undersigned is neither an employee nor a consultant of the Supplier such that the majority of either the time or billings of the Undersigned during the 18 month period prior to the date hereof were devoted to the Facility;

(iii) the Undersigned is not an affiliate of the Supplier nor directly or indirectly Controlled by the Supplier;

(iv) subject to Section (vi) below, the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with the Agreement;

(v) the Connection Point of the Facility is at the location specified on the FIT Contract Cover Page;

(vi) the Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, a Distribution System or an Host Facility such that at least 90% of the Contract

Capacity for the Facility is available to generate Electricity in compliance with Good Engineering and Operating Practices; and

(vii) if required pursuant to Section 2.2(c), the Independent Engineer reviewed the Metering Plan approved by the OPA and all calculations have been performed in accordance therewith.

Signed this	[Day]	day of	[Month, Year]	.

[Day] [Month, Year]

			[Legal Name of Independent Engineer]		
			Per:		
				Name: [Name, P.Eng.]	
				Title: [Title]	

[Legal Name of Supplier]

[Name]

[Title]

			Professional Engineer Stamp of Signing Engineer	

EXHIBIT H
FORM OF SECURED LENDER CONSENT AND ACKNOWLEDGEMENT

CONSENT AND ACKNOWLEDGMENT AGREEMENT

THIS AGREEMENT made as of this ● day of ●, 20●,

BETWEEN:

[●], [*insert legal form of the Supplier and jurisdiction of organization***]**

(the "**Supplier**"),

\- and -

[●], in its capacity as **[{**Secured Lender under the FIT Contract**}** 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 -

ONTARIO POWER AUTHORITY, a corporation governed by the laws of the Province of Ontario

(the "**OPA**"),

RECITALS:

A. The Supplier and the OPA have entered into a Feed-In Tariff Contract dated as of ●, 20●, contract identification # ● (as amended, supplemented, restated or replaced from time to time in accordance with its terms and this agreement, the "**FIT Contract**") in order to formalize the long-term contractual arrangements for the Supplier to develop and operate the Contract Facility and to supply, directly or indirectly, Electricity and Related Products from the Contract 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 security against, inter alia, all of its right, title, entitlement and interest in and to the FIT Contract in favour of the Security Agent pursuant to the security agreements identified in Schedule "A" (collectively, as amended, supplemented, restated or replaced from time to time, the "**Security Agreements**"), 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

D. The Supplier has agreed that it will incur Secured Debt only for the purposes of financing its acquisition, construction, re-development, ownership, operation and maintenance of the Contract Facility or the Contract Facility together with one or more other renewable generating facilities in Ontario and any refinancing of any such debt;

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 FIT Contract.

2. Acknowledgement and Confirmation of Rights of Security Agent

The OPA acknowledges and confirms that:

(a) the Supplier has delivered to the OPA copies of the Security Agreements **[Note to finalization:** *and any applicable trust indenture***]**;

(b) the Security Agreements **[Note to finalization:** *and any applicable trust indenture***]** constitute Secured Lender's Security Agreements for purposes of the FIT Contract and are binding on the OPA in the enforcement of the OPA's rights and remedies provided in the FIT Contract (as contemplated by Section 11.1(d) of the FIT Contract); and

(c) the Security Agent constitutes the Secured Lender for purposes of the FIT Contract and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 11 of the FIT Contract in favour of a Secured Lender and is entitled to enforce the same as if the Security Agent were a party to the FIT Contract.

3. Covenants of the Security Agent

The Security Agent covenants and agrees with the OPA (and in the case of paragraphs (a), (d), (f) and (h) below, covenants, agrees, represents and warrants to the OPA) as follows:

(a) Should the Security Agent commence enforcement of the Security Agreements with respect to the FIT Contract, it will comply with the terms, conditions and obligations applicable to a Secured Lender under Section 11.2 of the FIT Contract as they relate to the Security Agent's security interests in the FIT Contract during such enforcement.

(b) The Security Agent agrees that it will comply with Section 11.2(f) of the FIT Contract.

(c) The Security Agent **[*Note to finalization*: (***is and will be*) or (*is not*)**]** at Arm's Length from the Supplier.

(d) 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.

(e) Except the Security Agreements **[Note to finalization:** , *any applicable trust indenture***]**and any other security that is delivered by the Security Agent to the OPA in accordance with Section 11.1(d) of the FIT Contract, the Security Agent acknowledges that any other security granted in favour of the Security Agent will not be binding upon the OPA.

(f) 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”.

(g) If the Supplier is in default under or pursuant to any Security Agreement **[Note to finalization:** *or the trust indenture***]** and the Security Agent intends to exercise any rights afforded to it with respect to the FIT Contract, then the Security Agent will give notice of such default to the OPA at least 10 Business Days prior to exercising any such rights under the FIT Contract.

(h) The Security Agent has entered into this agreement and holds the security granted pursuant to the Security Agreements.

(i) Only the Security Agent will be entitled to exercise the rights and remedies under the Security Agreements as the Secured Lender except that in accordance with Section 11.2(g) of the FIT Contract, when the Security Agent has appointed an agent, a receiver or a receiver and manager, or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Security Agent’s security, that Person may exercise any of the Security Agent’s rights under Section 11.2 of the FIT Contract.

(j) The address of the Security Agent to which notices may be sent pursuant to Section 11.1(d) of the FIT Contract is set forth in Section 5 of this agreement.

(k) The Security Agent will provide the OPA with written notice of any change in the identity or address of the Security Agent.

4. Covenants of the Supplier

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

(a) The Security Agreements **[Note to finalization:** *and any applicable trust indenture***]** are subject to the terms and conditions applicable to a Secured Lender’s Security Agreement that are contained in Article 11 of the FIT Contract, and comply therewith.

(b) The Supplier has provided to the OPA true and complete copies of the Security Agreements **[Note to finalization:** *and any applicable trust indenture***]**, and the Security Agreements **[Note to finalization:** *and any applicable trust indenture***]** constitute Secured Lender’s Security Agreements and the Security Agent constitutes a Secured Lender for purposes of the FIT 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, redevelopment, ownership, operation and maintenance of the Contract Facility or the Contract Facility together with any together with one or more other renewable generating facilities in Ontario and any refinancing of any such debt.

(e) The Supplier will provide the OPA with true and complete copies of any new or amendments to any Secured Lender's Security Agreement.

(f) The Security Agreements **[Note to finalization:** *and any applicable trust indenture***]** do not and will not secure any indebtedness, liability or obligation of the Supplier that is not related to the Contract Facility, the Contract Facility together with any together with one or more other renewable generating facilities in Ontario, or the FIT Contract, or cover any real or personal property of the Supplier not related to the Contract Facility or the Contract Facility together with any together with one or more other renewable generating facilities in Ontario.

5. 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 facsimile or other means of electronic transmission or by hand or courier delivery. Any notice will be addressed to the parties as follows:

If to the Supplier:

●
●
●
●

Attention: ●
Facsimile: ●

If to the OPA:

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

Attention: **FIT Contract Manager**
Facsimile: (416) 967-6071

If to the Security Agent:

●
●
●
●

Attention: ●
Facsimile: ●

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.

6. Successors and Assigns

Subject to complying with Sections 15.5 and 15.6 of the FIT Contract, the benefits under this agreement accruing to each of the parties to this agreement will extend to all their respective successors and permitted assigns, only if they agree, according to their interests, to be bound by all the provisions of this agreement (it being the responsibility of each party to give notice to each other party of such assignment and to require its successors and permitted assigns to expressly acknowledge and agree in favour of each other party to be bound by this agreement). Subject to complying with Section 15.5 of the FIT Contract, upon the acquisition by any such successor or permitted assign of such an interest, such successor or permitted assign will 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 OPA, acting reasonably.

7. Execution and Delivery

This agreement may be executed by the parties hereto in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles will together constitute one and the same agreement.

8. 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.

●

By: ______________________________

Name: ●

Title: ●

By: ______________________________

Name: ●

Title: ●

●

By: ______________________________

Name: ●

Title: ●

By: ______________________________

Name: ●

Title: ●

ONTARIO POWER AUTHORITY

By: ______________________________

Name:

Title:

SCHEDULE “A” TO EXHIBIT H

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 ●, 20●):

(a) ●

(b) ●

(c) ●

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

●

SCHEDULE 2
SPECIAL TERMS AND CONDITIONS

[Note to Finalization: Insert Special Terms and Conditions, if applicable.]

This is **Exhibit "C"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....
A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

CITATION: *HMI v. Index Energy et al*, 2016 ONSC 7326
OSHAWA COURT FILES NOS.: 92193/15 and 91189/15
DATE: 2016/11/23

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: HMI v. Index Energy et al

COUNSEL: D. Leduc and M. Fougere, for HMI
R.S. Woods, for Index Energy and Index International
E. Pleet, for National Bank of Canada

HEARD: June 3 and August 18, 2016

BEFORE: Salmers J.

E N D O R S E M E N T – R U L I N G

Nature of the Motion

[1] The defendants, Index Energy and Index International (collectively referred to as Index), have brought a motion under s. 47 of the *Construction Lien Act* (the *CLA*) requesting an order to discharge the two contruction liens registered by HMI. Alternatively, pursuant to s. 44(2) and s. 44(8) of the *CLA*, Index has requested that HMI's liens may be vacated by posting security in amounts less than are claimed in the liens.

[2] HMI's liens total $32,807,468.11. Index argued that HMI has grossly exaggerated the amount of its liens and that HMI should have registered liens totalling no more than $16,000,000 and probably less than that amount. Index submitted that because of this gross exaggeration of amount of the liens, HMI had abused its right to lien to such a great extent that HMI's liens should be totally discharged.

[3] HMI argued that the liens were based on valid calculations and should not be reduced, let alone discharged.

The Request to Discharge the Liens

[4] For the following reasons, Index has satisfied me that the evidence before me demonstrates that in HMI's liens HMI significantly exaggerated the lienable amount owing with respect to work done on this project.

[5] The contract between Index Energy and HMI was a fixed price contract. The evidence of Tina Gaudet, HMI's administration manager, is the best evidence as to how HMI calculated the amount that it claims is owing with respect to to work done on this project. Ms. Gaudet filed affidavits on this motion and she was cross-examined. It is clear, from her cross-examination, that when HMI calculated the amount to claim as construction liens, HMI used a "costs plus" approach. HMI totalled its actual costs, including materials, equipment, and labour, and then added 10% as profit to that total amount. In this "costs plus" approach, HMI also included amounts claimed by HMI's subcontractors. After deducting amounts received from Index, the balance owing pursuant to this "costs plus" approach was the amount claimed by HMI in its liens.

[6] During argument of this motion, HMI's counsel submitted that not only the "costs plus" basis, but, also at least two other calculation methods, supported the amount claimed by HMI in its liens. However, those other submitted calculation methods are unsupported by evidence. Further, those unsupported calculation methods contradict the evidence of Ms. Gaudet. Additionally, the amounts calculated pursuant to those other methods are not the amounts liened by HMI while the "costs plus" method is much closer to the lien amounts. Also, I draw an adverse inference from Ms. Gaudet's refusal to answer all questions (at the advice of HMI's counsel) that effectively asked whether she had used a "costs plus" approach in calculating the lien amounts. The fact that she refused to answer those proper questions leads me to draw the adverse inference that the answers would have been contrary to the interests of HMI; namely, that the answers would have been to the effect that Ms. Gaudet would have confirmed that HMI had used a "costs plus" method when calculating its liens.

[7] For those reasons, I find that HMI used a "costs plus" basis when calculating its liens.

[8] With a fixed price contract, in the absence of approved change orders, a contractor cannot include in a claim for lien extra charges for the work included in the fixed price contract simply because costs were more than usual or anticipated when the fixed price contract was signed. When a party signs a fixed price contract, the party assumes risks of cost changes.[1]

[9] As stated above, the Index HMI contract was a fixed price contract. For the following reasons, Index has satisfied me that HMI's "costs plus" approach caused the HMI liens to be incorrectly calculated, in particular, the total amount claimed in the liens is exaggerated.

[10] Firstly, by using a "costs plus" approach that considered HMI's total costs, HMI ignored the whole point of a fixed price contract.

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[1] *Selectra Inc. v. The Corporation of the Town of Penetanguishene*, 2016 ONSC 2293, at para. 28.

[11] Secondly, by using a “costs plus” approach, HMI ignored the payment certification process that was part of the contract. HMI had used the payment certification process to obtain payments from Index prior to registration of HMI’s liens.

[12] Thirdly, HMI could have liened for disputed amounts owing pursuant to the original contract and for disputed work that was not included in the original contract (extras). Index and HMI had agreed to an approach for valuing and payment of extras that was different than for work that was included in the original scope of the fixed price contract. However, HMI’s “costs plus” approach did not differentiate between the original contract work and extras. All work was valued using the same “costs plus” basis, whether that work was part of the scope of the original fixed price contract or whether the work was an extra.

[13] Fourthly, HMI added a profit percentage of 10% to all work, ignoring the fact that profit was already included in the price of work set out in the fixed price contract.

[14] Fifthly, Ms. Gaudet’s refusals to answer proper questions whose obvious answers would have demonstrated HMI’s use of the “costs plus” approach, leads me to draw the adverse inference that the reason for those refusals was that the “costs plus” approach caused HMI’s lien to be for a greater amount than if the fixed price contract had been used when calculating the amount of the lien.

[15] Further, HMI included the amounts of some work by HMI subcontractors when calculating the amount of HMI’s liens. To do so resulted in double-counting as those amounts were already included in work claimed by HMI.

[16] Finally, the amount of HMI’s liens calculated using the “costs plus” approach was almost double the amount requested by HMI in a progress advance request that HMI made only days before registration of its first lien. That progress advance request was for the balance that HMI believed was owing pursuant to the contract. Without a separation for extras, it is difficult to find that HMI should have liened for any greater amount than that most recent progress advance request.

[17] Without doubt, when HMI used a “costs plus” approach to calculate the amount of its liens, HMI totally ignored the fact that they were bound by a fixed price contract. The work provided for in the fixed price contract was the majority of work that HMI contemplated in its lien. Considering all of the facts already discussed and all of the evidence, Index has satisfied me that by using the “costs plus” approach, HMI significantly exaggerated the amount of its liens.

[18] I am not satisfied that HMI’s conduct was in such bad faith, that their liens should be totally discharged. Index concedes that there is a genuine dispute with HMI over at least $13,000,000 and possibly over as much as $16,000,000. Also, I am satisfied that HMI has an arguable basis for submitting that its costs were as Ms. Gaudet testified, notwithstanding that many, probably the vast majority, of those costs were for work included in the scope of the fixed price contract.

[19] Further, albeit unquantified in the evidence, HMI is claiming for extra work that was not within the scope of the original contract.

[20] Finally, Index may be able to recover damages incurred as a result of the exaggerated liens.[2]

[21] In all of these circumstances, I am not disposed to exercise my discretion and totally discharge HMI's liens. However, I will go on to consider the alternate relief requested by Index, namely reduction of the amount of security required to vacate HMI's liens.

The Amount Required to be Posted as Security

[22] The amount of required security can be reduced if there is no reasonable prospect that at trial the claimant can prove the amount claimed in the lien.[3] With a fixed price contract, the lienable amount is determined by the agreed upon price.[4] Where the evidence clearly and unequivocally proves that the lien as registered is excessive or improper, the amount of security may be reduced.[5] Also, the amount of security may be reduced if allowing the lien as claimed to continue in place would constitute a significant abuse of the *CLA*.[6]

[23] The fixed price contract between Index Energy and HMI was for $72,178,590 (excluding HST). The contract provided for contract price increases based on contractual change orders, project change orders, and claims against project change directives. Taking these into account, Index submitted that the total contract price was $74,540,054 (excluding HST).

[24] Doherty Engineering Inc.was the payment certifier for the Index-HMI contract. Doherty's certificates of payment always showed the total contract value including contractual change orders, project orders, and claims against project change directives. Doherty's last certificate of payment in evidence is dated March 26, 2015. That certificate is with respect to all work done up to and including February 28, 2015. In that certificate, Doherty states that the total contract value is $75,631,760.04 (excluding HST).

[25] HMI continued working for six months after the March 26, 2015 certificate of payment. In HMI's last progress billing, dated August 21, 2015 for work completed as of August 5, 2015, HMI submitted that total adjusted contract price was $76,877,820.86 (excluding HST).

[26] The differences in total contract price or total contract value or total adjusted contract price are relatively minor. The differences appear to be primarily based on slightly different proposed values for change orders. On the evidence, I am not satisfied that the change order value proposed by HMI has no reasonable prospect of being proven at trial.

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[2] *CLA*, s. 35..
[3] *Structform International Ltd. v. Ashcroft Homes Construction*, 2013 ONSC 4544, 26 C.L.R. (4th) 13, at para. 12.
[4] *Marino v. Bay-Walsh Ltd.*, [2002] O.J. No. 2211 (S.C.J.) at paras 110 - 112
[5] *Kamali Design Home Inc. v. Bondarenko*, 2013 ONSC 5506, at para. 28. *Ledcor Construction Limited v. Canalfa Liberty Village Homes Inc. and 863880 Ontario Limited*, 2008 CanLII 87009 (ON SC), at para 35.
[6] *Brian T. Fletcher Construction Co. v. 1707583 Ontario Inc.*, [2009] O.J. No 2049 (Sup. Ct. J.) (Master), at paras, 43 – 45; *Franro Property Development Ltd., v. Heritage Glen North Ltd.*, 1993 CarswellOnt 2572 (Sup. Ct. J.) at paras. 26 – 31.

[27] HMI has claimed damages for delay. However, the evidence of that delay claim is vague. Also, because of the manner in which HMI has calculated its lien, it is impossible to separate amounts claimed for delay that may be lienable. Accordingly, on the evidence before me, I am satisfied that at trial, HMI has no reasonable prospect of proving, as a lienable claim, any claim for delay.

[28] For those reasons, for the purpose of considering reduction of the amount of security, I accept that the total contract price was $76,877,820.86 (excluding HST). This was the value that HMI proposed in its very last progress billing after it had completed work. For the reasons set out above, I am satisfied there is no reasonable prospect that HMI can prove a lien claim that would result in HMI receiving any greater total amount for its lienable work on this fixed price contract.

[29] HMI has been paid $63,005,666. With a fixed price contract, the lienable amount is determined by the agreed upon price.[7] Based on HMI's stated amount of work that it has completed, namely was $76,877,820.86, HMI has a maximum lienable claim for $13,872,154.86 plus HST owing for contract work, subject to Index set-offs and counterclaims.

[30] HMI continued working for five months and one week after the March 26, 2015 certificate of payment. HMI submitted five progress billings for that period. The total of those billings was $11,530,737.68. That amount is less than HMI's maximum lienable claim as determined above. Therefore, I am satisfied that all of HMI's work from March 1 – August 5, 2015 is part of HMI's overall work and included in the total contract price of $76,877,820.86. The amount included in HMI's last five progress billings does not increase HMI's maximum lienable claim.

[31] For those reasons, as determined above, HMI has no reasonable prospect of proving a lien claim in excess of its maximum lienable claim of $13,872,154.86 plus HST. Accordingly, it would be an abuse of the lien rights provided by the *CLA* to require Index to post security based on HMI's greatly exaggerated lien claims that total $32,807,468.11.

[32] As stated above, counsel for Index submitted that the total amount HMI's liens probably should have been less than $16,000,000 but that Index would not have been bothered to complain if the HMI liens totalled $16,000,000 even though Index regards even that amount as exaggerated. Also, $16,000,000 is not far off the maximum lienable claim of $13,872,154.86 plus HST. I agree that even a $16,000,000 lien total is exaggerated. However, based on Index's stated position and the amount that I have found is HMI's maximum lienable claim, I am satisfied that in order to vacate HMI's liens, Index should post security of $16,000,000 plus an amount for costs. If counsel cannot agree on the amount that ought to be posted as security for costs, then they are to schedule an appearance before me to make submissions.

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[7] *Marino, supra* note 4, at para. 110.

Conclusion and Order

[33] A construction lien is an extraordinary pre-judgment security, available only for improvements to property and provided for in the *CLA*. I have considered all of the evidence before me in determining the amount required to be posted as security for HMI's liens. That evidence included the fixed price contract, HMI's position in its last progress billing as to the total contract price including change orders, the lack of evidence of any lienable delay claim, and the amount received to date by HMI. After doing so, I found that, at trial, HMI has no reasonable prospect of proving any lienable claim greater than $13,872,154.86 plus HST. HMI's liens total $32,807,468.11. HMI has exaggerated its lien by approximately $19,000,000, far more than twice the maximum lienable amount. The exaggeration is solely due to HMI totally ignoring the fixed price contract when HMI calcuated the amount of its liens. However, due to the very significant amount of $13,872,154.86, that is genuinely in issue as a lienable amount, and the compensation options available to Index, I declined to exercise my discretion to discharge HMI's liens.

[34] Notwithstanding that HMI has no reasonable prospect of proving any lienable claim greater than $13,872,154.86, based on Index's submissions during argument, I have ordered that in order to vacate HMI's liens, Index should post security of $16,000,000 plus an amount as security for costs..

[35] I recently directed the parties to deliver written costs submissions in sealed envelopes. Those envelopes will remain unopened until the issue of the amount as security for costs is resolved. Thereafter, if the parties parties cannot agree on costs for this motion, they are to schedule an appearance before me to make costs submissions on this motion as a whole.

[36] In summary, for all of these reasons, it is ordered that:

a) both of HMI's liens shall be vacated upon Index posting security in the amount of $16,000,000 plus an amount for security for costs;

b) if the parties cannot agree on the amount to be posted as security for costs, then they are to contact the Oshawa trial coordinator to make submissions; and

c) if the parties parties cannot agree on costs for the whole of this motion, they are to schedule a further appearance before me to make costs submissions on this motion as a whole.

[37] If a hearing is required on the amount to be posted as security for costs, then at that same hearing, parties shall also make their costs submissions with respect to the costs of the whole of this motion.

Order to go accordingly.

Salmers J.

DATE: November 23, 2016

This is **Exhibit "D"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....

A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm,
Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM BJÖRN SANDIN

CITATION: HMI Construction Inc. v. Index Energy Mills Road Corp., 2017 ONSC 4075
COURT FILE NO.: DC-17-131
DATE: 20170705

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*, RSO 1990, c. C.30

D.L. CORBETT, SPIES and KURKE JJ.

B E T W E E N:	)	
HMI CONSTRUCTION INC.	)	*Dan J. Leduc and Meghan Fougere* For the Plaintiff/Appellant
Plaintiff/Appellant	)	
- and -	)	
INDEX ENERGY MILLS ROAD CORPORATION, INDEX INTERNATIONAL AM (PUBL) and NATIONAL BANK OF CANADA	)	*R.S.M. Woods and Iris Antonios*, for the Index Defendants/Respondents No one appearing for National Bank
Defendant/Respondent	)	
	)	**Heard at Toronto: June 22, 2017**

DECISION

D.L. Corbett J.:

[1] There are two issues in this construction lien appeal. First, is there jurisdiction in this court to hear the appeal at all, a question that turns on whether the underlying order is final or interlocutory? Second, did the motions judge, Salmers J., err by reducing the security required to bond liens off title from the amount of the appellant's claims for lien (more than $32 million) to $16 million?

[2] I agree with the appellant ("HMI") that the impugned order is final and subject to appeal to this court. However I agree with the respondent ("Index") that the motions judge correctly stated and applied the law and made no palpable and overriding error of fact. Therefore, for the reasons that follow, I would dismiss the appeal.

Jurisdiction

[3] There are no interlocutory appeals in construction lien cases.[1]

[4] Index's motion was brought for an order discharging HMI's liens pursuant to s.47 of the *Act*, or alternatively, for an order for reduced security pursuant to s.44(2) of the *Act*.[2] The defendant's motion to discharge the lien was dismissed. Had it been granted, that order would be final and an appeal would lie to this court.[3]

[5] Index argues that the order that was made does no more than reduce the security available for HMI's claim, and thus the order is interlocutory.

[6] Despite the fact that the *CLA* was enacted in 1983, and despite the fact that motions under s.44 and appeals from decisions on those motions have been common for 35 years, there does not seem to be binding authority directly on point. Glaholt and Keeshan, in the *2017 Annotated CLA* state as follows (but cite no authority):

> If the full amount of the lien is posted [under s.44], the result on a motion to vacate is interlocutory and unappealable. If the lien is vacated for less than its face value plus costs, the order is final and appealable (s.71(2)).[4]

[7] In the commercial law context, fixing or varying security is generally an interlocutory order, whether the amount in issue is counted in the thousands or the tens of millions of dollars.

[8] It is different under the *CLA*, not because the words "final" and "interlocutory" have a different meaning under the *Act* than in other commercial contexts, but because the lien is not just security.

[9] The *CLA* creates four inter-related remedies. One is the construction lien. Another is the construction trust. The third is the holdback. And the fourth is the right to have a trustee appointed under the *Act*.[5] The CLA creates "a scheme of rights" and not just security for

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[1] *Construction Lien Act*, RSO 1990, c. C.30 (the "*CLA*" or the Act"), s.71(3)(b); *Dircam Electric* v. *Am-Stat Corp.*, 2017 ONSC 3421 (Div. Ct.).
[2] *CLA*, ss. 44(2) and 47.
[3] Glaholt, *Conduct of a Lien Action 2017*, p.301 suggests that both a successful motion s.47 can be appealed. An order refusing to discharge a lien under s.47 is, on the other hand, interlocutory and no appeal will lie: *570 South Service Rd. Inc.* v. *Lawrence-Paine & Assoc. Ltd.* (2011), 3 CLR (4th) 1 (Div. Ct.). It has been held repeatedly that a motion under s.47 is analogous to a motion for summary judgment: for example, *Northridge Homes Ltd.* v. *Travellers Motel*, 2015 ONSC 3743, 2015 ONSC 4811 and the cases cited therein.
[4] Glaholt and Keeshan, *The 2017 Annotated Ontario Construction Lien Act*, p.330.
[5] See Kevin Patrick McGuinness, *Construction Lien remedies in Ontario* (2nd ed., 1997), para. 1.5.

contract or quasi-contract claims.[6] The construction lien provides security, as one of its elements, but it is a cause of action as well.

[10] In this case, the lien claims are asserted by the general contractor, HMI, against the owner with which it has a contract, Index. HMI is thus a "contractor" within the meaning of the *Act*.[7] HMI has a direct right of action against Index as "owner" both under the "contract" between HMI and Index and on a *quantum meruit* basis for supra-contractual common law claims. Those claims will be at least co-extensive with its contractor's lien claims against Index. That is, recovery on the lien claim will also be recovery on the contract and/or *quantum meruit* claims. Thus it is possible to mistakenly believe that the construction liens do no more than provide security for the contract and *quantum meruit* claims.

[11] The nature of the lien, as a substantive claim and not just security, is clearer when considering the position of a "subcontractor" under the *Act*. Where a "subcontractor" pursues a lien claim against an "owner", it pursues a claim that is not co-extensive with the subcontractor's claim against that owner for breach of "subcontract" or *quantum meruit*. The subcontractor usually has no legal claim against the owner other than the statutory claim to the construction lien.

[12] Motions under s.44(2) apply equally to lien claims of contractors and those of subcontractors. The meaning of the *Act* does not shift, depending on whether the claim is that of a contractor or a subcontractor. The construction lien is, itself, a substantive claim and not just security for a claim. An order under s.44(2) reducing the amount of security to be posted for a lien is a final order in that it determines, on a final basis, the maximum amount of the lien claim.

[13] I conclude that an order reducing the security required to discharge a lien from title pursuant to s.44(2) of the *Act* is final and may be appealed to this court.

The Merits of the Appeal

(a) Quantum of security in place of the construction lien

[14] On the substantive merits, I agree with the motions judge's legal analysis, substantially for the reasons he gave. There is no palpable and overriding error of fact, and no error in the application of the law to the facts.

[15] The motions judge found:

> The contract… was a fixed price contract. It is clear… that when HMI calculated the amount to claim as construction liens, HMI used a "costs plus" approach. HMI

[6] McGuinness, *ibid*., para. 1.8.
[7] Terms are defined in *CLA*, s. 1(1). As with any comprehensive statutory scheme, the definitions are important.

> totaled its actual costs, including materials, equipment, and labour, and then added 10% as profit to that total amount. In this "costs plus" approach, HMI also included amounts claimed by HMI's subcontractors. After deducting amounts received from Index, the balance owing pursuant to this "costs plus" approach was the amount claimed by HMI in its liens. (para. 5)

This finding reasonably characterizes the way in which HMI calculated its lien claims.

[16] The motions judge then found, correctly:

> With a fixed price contract, in the absence of approved change orders, a contractor cannot include in a claim for lien extra charges for the work included in the fixed price contract simply because costs were more than usual or anticipated…. When a party signs a fixed price contract, the party assumes risks of cost changes. (para. 8)

[17] There is a "stipulated price contract" between Index and HMI. The price of contract work is measured by the stipulated price contract, not by HMI's costs.[8] The proper calculation of claims for extras may be made in different ways, depending on the nature of those claims and the terms of the contract. HMI also claims that it is entitled to payment for claims such as delay costs. Entitlement and calculation of claims such as delay costs may also subject to the terms of the written contract, depending on the terms of that contract.

[18] When HMI was asked to account for its lien claim, it did not do so properly. HMI did not provide an itemized claim showing (i) contract accounting plus (ii) extras (with amounts claimed for each extra, including the basis on which those claims were calculated), less (iii) credits for contract work not done, and less (iv) acknowledged deficiencies (if any), plus (v) any other claims (such as delay costs). Instead, HMI provided an accounting of its total costs for the project. In the words of the motions judge, "HMI totally ignored the fact that they were bound by a fixed price contract" (para. 17). The motions judge found, correctly, that this is simply the wrong way to approach the issue where there is a written contract with a stipulated price that governs the lien claimant's claim.

[19] In oral argument HMI's counsel advised that the parties were directed by the motions judge to prepare Scott Schedules.[9] This was apparently done and the Schedules were apparently provided to the motions judge at the next return of the motion.

[20] Scott Schedules were not part of the record on the motion. They were not included in the appeal record before us. No motion was brought to introduce them as fresh evidence or as part

[8] See, for example, *Marino* v. *Bay-Walsh Ltd.*, [2002] OJ No. 2211 (SCJ), paras. 110-112; *Selectra Inc.* v. *Penetanguishene (Town)*, 2016 ONSC 2293, para. 28.

[9] See *Urbacon* v. *Guelph (City)*, 2009 CanLII 72065, paras. 14-19; *Delgant* v. *Bradscot (MCL) Ltd.*, 2007 CanLII 46151

of the record before the motions judge. Nor were they included in the materials before us as an aid to argument.

[21] I would have expected properly completed Scott Schedules to account for HMI's lien claim in the manner I have described above. But in the absence of seeing the Scott Schedules, I draw the reverse inference: if the Schedules had accounted for the lien claims properly, the motions judge would not have made the findings that he did, or, alternatively, HMI would have appealed on the basis of the accounting set out in the Scott Schedules. Neither is the case, and the obvious inference is that the Scott Schedules continued, perhaps in more detail, HMI's erroneous position that its claim should be calculated on the basis of its "costs plus" for the entire project.

[22] The appellant argued before us that this court's decision in *Biotechnik Inc.* v. *O'Shanter Development Co.*[10] stands for the proposition that a *quantum meruit* claim is available for contract work even where there is an agreed contract price. With respect, that is what *Biotechnik* says. In that case the contract called for fixed payments for milestones under the contract. The parties did not dispute that the contract would govern work done to the milestones. The issue was whether the lien claimant was entitled to be paid for work done after the last milestone that did not bring contract progress to the next milestone. The owner argued, in effect, that the contractor was not entitled to any further payment because the next milestone had not been reached. The court found that the contractor was entitled to be paid for the work done additional to the last milestone, and that this work would be paid on a *quantum meruit* basis. In addition, the lien claimant argued that the contract was "front-end loaded and that it should be entitled to recover additional start-up costs that were built into subsequent milestone payments. On this latter argument, the court held: "[i]t will be for the trial judge to determine the true construction of the contract."[11] In respect to the former argument, the court held:

> It was submitted by the defendant that this case was distinguishable because the *Construction Lien Act* gives the contractor a lien for the "price" wherever there is an agreed price and for the value of the work only where there is no agreed price. There was a price here; therefore there could be no *quantum meruit*. We do not agree that this minor change in language has had the drastic effect of eliminating *quantum meruit* claims. If the plaintiff is correct in its interpretation of the contract, resort to *quantum meruit* is necessary to recover the actual value of the work done.[12]

The phrase "actual value of the work done" as used here does not mean "actual cost of the work done". It means value, as measured by the contract. And this is clear from the passages cited in

[10] *Biotechnik Inc.* v. *O'Shanter Development Co. Ltd.* (2002), 30 CLR (3d) 45 (Div. Ct.).
[11] *Biotechnik*, para. 5.
[12] *Biotechnik*, para. 9.

Biotechnik from *Alkok* v. *Grymek*[13] and the textbook by Messrs. Macklem and Bristow.[14] The *quantum meruit* calculation in issue in all of these authorities was the incremental progress between progress billings or milestones. These cases do not stand for the proposition that where there is a construction lien, the lien claim shall be calculated on a "costs plus" basis, without regard to the contract.

[23] The motions judge identified the governing legal principles. He accepted HMI's claim for extras in its last progress billing. Beyond that he concluded that HMI had not provided evidence to establish any further claim. And so the motions judge fixed an amount that was reasonable in all the circumstances.[15]

[24] HMI argued that in reasoning in this fashion, the motions judge shifted the burden of the motion on to HMI. It argued that it is Index who must establish, on a balance of probabilities, that security for the lien should be reduced.

[25] This argument fails to take account of the overall scheme of the *Act*. A defendant is entitled to cross-examine a lien claimant[16] and a motions judge is entitled to reduce lien security if the evidence supporting the calculation of the claim for lien fails to establish a reasonable basis for the amount claimed. Index bore the onus on the motion before the motions judge, but was entitled to rely upon evidence it obtained from HMI as to how the lien was calculated in order to discharge its onus.

(b) Alleged error of fact concerning double-counting

[26] HMI argued that the motions judge erred in finding that roughly $8 million of its claim consisted of "double counting" of subcontractor claims. After this matter was probed a bit in oral argument, counsel agreed that the potential double-counting was about $3.5 million.

[27] The impugned factual finding was in the first section of the reasons of the motions judge in which he considered the issue of whether the lien ought to be discharged under s.47 because of its being overstated by HMI (para. 15 of the Reasons of the motions judge). The motions judge decided this issue in favour of HMI. Therefore, even if the motions judge made a palpable and overriding error of fact on this point, that finding did not adversely affect HMI in the result: it won the issue in respect to which this finding was relevant.

[28] I hasten to add that I would not make any finding of palpable and overriding error on this point. The impugned reasons do not indicate the precise amount of "double-counting" and the motions judge may have made the adjustment urged by HMI. But even if there is an error, it is

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[13] *Alkok* v. *Grymek*, [1968] S.C.R. 452 (SCC), quoted at *Biotechnik*, para. 8.
[14] Macklem and Bristow, *Mechanic's Liens in Canada*, p.47, quoted in *Alkok*, quoted in *Biotechnik*, para. 8.
[15] See for example *1109140 Ontario Ltd.* v. *Sunningdale Golf Club Ltd.* (2004), 34 CLR (3d) 248.
[16] *CLA*, s.40.

$3.5 million. In a calculation of damages this would be overriding, in the context of the decision of the motions judge it is not: it would not have affected the result of the motion. The double-counted subcontractor claims were not used by the motions judge to calculate the reasonable amount of security to discharge the lien. Rather, the motions judge used HMI's last progress billing for his calculations, an approach grounded in the evidence that was certainly reasonable.

(c) Order and costs

[29] In his conclusion, the motions judge found as follows:

> I have considered all of the evidence before me in determining the amount required to be posted as security for HMI's liens. That evidence included the fixed price contract, HMI's position in its last progress billing as to the total contract price including change orders, the lack of evidence of any lienable delay claim, and the amount received to date by HMI. After doing so, I found that, at trial, HMI has no reasonable prospect of proving any lienable claim greater than $13,872,154.86 plus HST. HMI's liens total $32,807,468.11. HMI has exaggerated its lien by approximately $19,000,000, far more than twice the maximum lienable amount.[17] The exaggeration is solely due to HMI totally ignoring the fixed price contract when HMI calculated the amount of its liens. However, due to the very significant amount of $13,872,154.86, that is genuinely in issue as a lienable amount, and the compensation options available to Index, I decline to exercise my discretion to discharge HMI's liens. (para. 33)

[30] These conclusions are supported by the record and reflect no error in principle. HMI is fortunate indeed that the motions judge exercised his discretion not to discharge the liens entirely, given all of the circumstances.

[31] The appeal is dismissed.

[32] This is a substantial matter and both sides said that their costs were in the range of $35,000 or more on a partial indemnity basis. Costs to the Index Defendants in the amount of $35,000, inclusive, payable within 30 days.

D.L. Corbett J.

[17] This sentence is intended to mean that HMI's total lien claims are "far more" than twice HMI's provable lien claim, and not that $19 million is "far more" than twice $13.8 million. Reasons must be read fairly, and the motions judge's intended meaning is clear.

I agree ______________________________

Spies J.

I agree ______________________________

Kurke J.

Released: July **, 2017

CITATION: HMI Construction Inc. v. Index Energy Mills Road Corp., 2017 ONSC 4075
COURT FILE NO.: DC-17-131
DATE: 20170705

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. CORBETT, SPIES and KURKE JJ.

BETWEEN:

HMI CONSTRUCTION INC.

Plaintiff/Appellant

- and -

INDEX ENERGY MILLS ROAD CORP.

Defendant/Respondent

DECISION

D.L. Corbett J.

Released: July 5, 2017

This is **Exhibit "E"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August,
2017

....
A Commissioner and/or Notary Public for
taking affidavits, etc. in Stockholm,
Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

Court File No. 93054/15

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	Friday, THE 24th
	)	
MR. JUSTICE SALMERS	)	DAY OF March, 2017

BETWEEN:

CONSTRUCTION DINAMO INC. / DINAMO CONSTRUCTION INC.

Plaintiff

and

HMI CONSTRUCTION INC.

Defendant

ORDER

THIS MOTION, made by the Plaintiff, Construction Dinamo Inc. / Dinamo Construction Inc. ("Dinamo"), was read this day at the court house, 150 Bond Street East, Oshawa, Ontario, L1G 0A2.

ON READING the Consent of the parties, filed,

1. **THIS COURT DECLARES** that the minimum statutory holdback obligation of the owner, Index Energy Mills Road Corporation ("**Index**"), is $7,053,890.00, plus 13% HST, for a total of $7,970,895.70 (the "**Index Minimum Holdback Funds**");

2. **THIS COURT ORDERS AND DIRECTS** Index to pay the Index Minimum Holdback Funds into Court. The Index Minimum Holdback Funds and the Reduced Dinamo Lien

DS

Bond, as defined in paragraph 10 herein. shall stand to the credit of the actions and for the benefit of the Lien Claimants described in **Schedule "A"** (the "**Stream B and Stream C Lien Claimants**"), in accordance with the priorities provided for in the *Construction Lien Act*, R.S.O. 1990, Chapter C.30 (the "**CLA**") and only to the extent that the Stream B and Stream C Lien Claimants have proven valid and subsisting claims for lien.

3. **THIS COURT ORDERS** that payment by Index of the Index Minimum Holdback Funds into Court as contemplated by paragraph 2, shall constitute full and final satisfaction of all claims of HMI Construction Inc. ("**HMI**") and the Stream B and C Lien Claimants, whether known or unknown, against National Bank of Canada or any of the financial institutions listed in **Schedule "C"** hereto (collectively, the "**Secured Creditors**"), including any liabilities or claims to priority over the National Bank of Canada mortgage registered against the property known as the Ajax Steam Cogeneration Plant Revitalization project at 170 and 176 Mills Road, Ajax, Ontario, as more particularly described in **Schedule "B"** hereto (the "**Subject Lands**") as Instrument No. DR1193360 (the "**Mortgage**") in respect of deficiencies in the holdback (the "**Holdback Deficiency**") required to have been retained by any statutory "owner", as that term is defined in section 1(1) of the CLA of the Subject Lands.

4. **THIS COURT ORDERS** that payment by Index of the Index Minimum Holdback Funds into Court as contemplated by paragraph 2, shall constitute full and final satisfaction of all claims of the Stream B and Stream C Lien Claimants, whether known or unknown, against Index International AB (Publ) ("**Index International**") including any liabilities or claims to priority over the Index International mortgage registered against the Subject Lands as Instrument No. DR1193361.

5. **THIS COURT ORDERS** that National Bank of Canada is authorized and directed to consent to the transfer by Index into Court of those funds presently held in the CLA Holdback Account, currently held by counsel for Index.

6. **THIS COURT ORDERS** that upon payment the payment into Court by Index of the Index Minimum Holdback Funds contemplated by paragraph 2, the actions commenced in the Ontario Superior Court of Justice in Oshawa, Ontario by (i) the Stream B and Stream C Lien Claimants bearing the court file numbers included hereto in Schedule "A" and (ii) HMI bearing court file nos. 92193-15 and 93243-15 (collectively, the "**Lien Actions**") are hereby dismissed as against National Bank of Canada, with prejudice and without costs, and the Stream B and C Lien Claimants and HMI shall not commence or continue the Lien Actions or any other action or proceeding against National Bank of Canada or any of the Secured Creditors with respect to (i) any Holdback Deficiency; (iii) any claim for payment or (ii) otherwise claiming priority over the Mortgage.

7. **THIS COURT ORDERS** that, upon payment of the Index Minimum Holdback Funds by Index into Court, in accordance with paragraph 2 of this Order, the claims for lien of HMI registered on April 28, 2015 as Instrument No. DR1357015 in the amount of \$31,347,389.78 (the "**First HMI Lien**") shall be reduced by the amount of the Index Minimum Holdback Funds so as to result in a reduction of the First HMI Lien from \$31,347,389.78 to \$23,376,494.08 (the "**Reduced First HMI Lien Amount**").

8. **THIS COURT ORDERS** that the Order of Master MacLeod dated February 23, 2015 in Court File No. 15-63430 wherein HMI posted lien bond no. 775-4746 in the amount of $1,221,510.23 (the "**Reftech Lien Bond**") to vacate the registration of the claim for lien of Reftech International Inc. be and the same is hereby amended so as to reduce the amount of security required to be posted with the Accountant of the Superior Court of Justice by HMI from $1,221,510.23, to $0.00 including costs.

9. **THIS COURT ORDERS AND DIRECTS** the Accountant of the Superior Court of Justice to return the Reftech Lien Bond to HMI c/o Dan Leduc at Norton Rose Fulbright Canada LLP, 45 O'Connor Street, Suite 1500, Ottawa ON K1P 1A4 for the purposes of cancellation.

10. **THIS COURT ORDERS** that HMI shall be at liberty to substitute lien bond no. 775-4813 in the amount of $4,558,102.29, which was posted with the Court pursuant to the Order of Master MacLeod in Ottawa dated March 10, 2015 in Court File No. 15-63557, which vacated the claims for lien of Dinamo and Topsite Contracting Limited (the "**Original Dinamo Lien Bond**") with a lien bond in the amount of $1,383,199.72 (the "**Reduced Dinamo Lien Bond**") to be posted with the Accountant of the Superior Court of Justice and that, upon the posting of the Reduced Dinamo Lien Bond with the Accountant of the Superior Court of Justice, the Accountant of the Superior Court of Justice is hereby directed to return the Original Dinamo Lien Bond to HMI c/o Dan Leduc at Norton Rose Fulbright Canada LLP, 45 O'Connor Street, Suite 1500, Ottawa ON K1P 1A4 for the purposes of cancellation.

W.S.

11. **THIS COURT ORDERS** that the Order of Master MacLeod in Ottawa dated March 10, 2015 in Court File No. 15-63557 and the Order of Master MacLeod dated February 23, 2015 in Court File No. 15-63430 are hereby amended so as to vacate registration of the liens of the Stream B and the Stream C Lien Claimants, as described in Schedule A hereto, and that the total security in the amount of $9,354,095.42, specifically the Index Minimum Holdback Funds and the Reduced Dinamo Lien Bond (collectively the "**Security**"), shall stand as security for all of the Stream B and the Stream C Lien Claimants, inclusive of security for costs, and the Stream B and Stream C Liens are a charge against the **Security** in accordance with s. 44(6) of the CLA. DS

12. **THIS COURT ORDERS** that a copy of this Order shall be filed in each of the Lien Actions.

13. **THIS COURT ORDERS** that, as this Order is on Consent of all parties, the provision of Rule 72.03 of the *Rules of Civil Procedure* are hereby dispensed with.

14. **THIS COURT ORDERS** that a copy of this Order be sent to counsel for National Bank, HMI, Index, the Stream B and Stream C Lien Claimants by facsimile, mail or email forthwith after entry.

15. **THIS COURT ORDERS** that this Order is without prejudice to the rights of Topsite Contracting Limited and McFaul Fencing Ltd. to move for costs associated with those portions of the motions for summary judgment, previously brought for payment in as against any other party to these proceedings, save and except as against National Bank of Canada and Index International AB (Publ), and without prejudice to Topsite Contracting

DS.

Limited and McFaul Fencing Ltd. moving on the balance of their motions for summary judgment as against the parties to those motions.

March 24/17

[signature] J.

(Signature of Judge)

ENTERED AT OSHAWA

on March 24, 2017

by [signature]

SCHEDULE "A"

Lien Claimant	HST Registration #	Lien	Date of Lien	Court File No.	Lien Amount	Vacated ?	Security for Costs	Total to be posted
Stream B:								
Reftech International Inc.	849821830	DR1337126	30-Jan-15	91057-15	$1,171,510.23	YES	$50,000.00	$1,221,510.23
and	849821830	DR1388707	06-Aug-15		$33,377.28	NO	$8,344.25	$41,721.25
Construction Dinamo Inc.	101107373	DR1342612	25-Feb-15	93054-15	$4,508,102.29	YES	$50,000.00	$4,558,102.29
and	101107373	DR1403134	17-Sep-15	93424-15	$125,339.60	NO	$31,334.90	$156,674.50
Viking Fire Protection Inc.	129553673	DR1355730	22-Apr-15	91862-15	$964,239.10	NO	$50,000.00	$1,014,239.10
Kaefer Industrial Services Ltd.	103029831	DR1389587	10-Aug-15	93188-15	$969,827.27	NO	$50,000.00	$1,019,827.00
Victory Energy Operations, LLC	88495 3720 RT0001	DR1393830	21-Aug-15	93304-15	$574,110.28	NO	$50,000.00	$624,110.28
Sub-total Stream B face value of liens:					**$8,346,506.05**		**$289,679.15**	**$8,636,184.65**
Stream C:								
Topsite Contracting Limited	105319149 RT0001	DR1342574	25-Feb-15	91189-15	$681,648.94	YES	$50,000.00	$50,000.00
JBG Flooring & Contracting Inc.	826238248 RT0001	DR1352411	09-Apr-15	91870-15	$57,265.11	NO	$14,316.28	$71,581.39
McFaul Fencing Ltd.	112911623	DR1353202	13-Apr-15	91535-15	$156,177.58	NO	$39,044.40	$195,221.98
Brent's Plumbing & Heating Inc.	834156440	DR1357686	30-Apr-15	Sheltering	$21,459.06	NO	$5,364.77	$26,823.83
Transit Glass & Aluminum Ltd.	891122129	DR1360275	08-May-15	92079-15	$122,360.93	NO	$30,590.23	$152,951.16
CRS Contractors Rental Supply	836895334	DR1355861	23-Apr-15	92241/15	$32,475.65	NO	$8,118.91	$40,594.56
Novascape Contractors Ltd.	884309618	DR1360454	08-May-15	91987/15	$124,300.00	NO	$31,075.00	$155,375.00
D.J. Rain & Co. Ltd.	101414589	DR1429264	02-Dec-15	94473-16	$20,290.28	NO	$5,072.57	$25,362.85
Sub-total Stream C face value of liens:					**$1,215,977.55**		**$183,582.16**	**$1,399,559.71**
TOTAL:					**$9,562,483.60**		**$473,261.31**	**$9,354,095.42**

SCHEDULE "B"

PIN	26459 – 0017LT
Description	PT LT 3 PL 512 AJAX PT 1, 40R8366; AJAX
Address	176 MILLS ROAD AJAX
PIN	26459 – 0125 LT
Description	PT LOT 3 PL M30 PTS 1 & 2, PLAN 40R4882 AND PT 1, PLAN 40R4883; T/W ALL APPURTENANCES AND ALL EQUIPMENT THERETO, INCLUDING THE DISTRIBUTION SYSTEM OF THE BUILDING ERECTED ON THE SAID LANDS, KNOWN AS THE STEAM GENERATING PLANT AS PRESENTLY IN OPERATION. THE BURDEN AND BENEFIT OF THE RIGHTS GRANTED IN TRANSFER OF EASEMENT LTC14083, OVER THE ABOVE PCL. THE BURDEN AND BENEFIT OF THE RIGHTS HEREBY GRANTED IN TRANSFER OF EASEMENT LTC24967, REGISTERED 22/12/69, SHALL RUN WITH THE LAND AND SHALL EXTEND TO AND BE BINDING UPON AND ENURE TO THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, S/T LT114518; TOWN OF AJAX

SCHEDULE "C" – List of Secured Creditors

National Bank of Canada
Canadian Western Bank
Laurentian Bank of Canada
Business Development Bank of Canada

CONSTRUCTION DINAMO INC. / DINAMO CONSTRUCTION INC. Plaintiff	-and-	HMI CONSTRUCTION INC. Defendant

Court File No. 93054/15

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OSHAWA

ORDER

PALLETT VALO LLP
Lawyers & Trade-Mark Agents
77 City Centre Drive
West Tower, Suite 300
Mississauga, Ontario L5B 1M5

MARIA RUBERTO (LSUC # 51148D)
Tel: (905) 273-3300
Fax: (905) 273-6920
Email: mruberto@pallettvalo.com

Lawyers for the Plaintiff

This is **Exhibit "F"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....

A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

Index Energy Mills Road Corporation 10:53 AM
Profit & Loss 08/08/2017
January through June 2017 Accrual Basis

	Jan 17	Feb 17	Mar 17	Apr 17	May 17	Jun 17	TOTAL
Ordinary Income/Expense							
Income							
15000 · Power Generation	744,232.94	837,922.37	729,765.05	1,059,018.50	877,824.93	749,398.72	4,998,162.51
4067 · Reimbursement of Cost	0.00	0.00	1,658.12	0.00	352.18	906.42	2,916.72
4110 · Interest Earned	4,864.70	2.80	3.10	3.00	3.10	3.01	4,879.71
Total Income	749,097.64	837,925.17	731,426.27	1,059,021.50	878,180.21	750,308.15	5,005,958.94
Cost of Goods Sold							
5005 · Water Treatment Supplies	11,794.95	768.58	3,173.48	10,589.47	7,319.84	8,447.00	42,093.32
5040 · Wood Fuel and Fly Ash costs	300,762.06	321,590.09	263,928.61	370,487.60	304,791.31	321,456.49	1,883,016.16
5042 · Testing & Samples	0.00	367.50	0.00	0.00	2,098.00	1,594.50	4,060.00
5045 · Equip.Mtnce.&Subcontract	91,080.31	25,524.56	97,401.91	6,542.51	136,862.27	(3,208.15)	354,203.41
5050 · Equipt./Tool Rental Exp.	301.76	0.00	0.00	406.00	0.00	0.00	707.76
5055 · Equipment Part Expense	15,375.61	1,688.64	8,537.79	9,730.49	32,354.96	52,047.85	119,735.34
6300 · Op Labour - Direct Labour	129,962.33	132,939.06	142,368.65	137,953.79	126,555.70	182,827.00	852,606.53
6350 · Op. Labour - Overtime	31,255.88	19,196.63	23,888.81	29,298.20	38,804.63	16,713.00	159,157.15
7020 · Hydro and Gas	209,697.55	209,309.26	186,107.96	169,518.23	163,956.18	128,478.84	1,067,068.02
7025 · Water and Sewer Cost	35,232.61	111,534.37	110,959.15	84,383.36	103,554.92	80,000.00	525,664.41
7060 · Chemicals, Fuel Supplies	4,259.62	4,697.77	2,229.51	4,463.66	68,061.58	3,873.66	87,585.80
Total COGS	829,722.68	827,616.46	838,595.87	823,373.31	984,359.39	792,230.19	5,095,897.90
Gross Profit	(80,625.04)	10,308.71	(107,169.60)	235,648.19	(106,179.18)	(41,922.04)	(89,938.96)
Expense							
7900 - Suspense expense	(161.28)	(138.24)	(174.43)	(149.43)	0.00	617.18	(6.20)
6400 · Salary & Wages	23,680.86	26,018.42	28,649.50	28,413.02	28,942.53	35,871.42	171,575.75
6450 · Overtime	0.00	67.50	50.63	0.00	33.75	0.00	151.88
6460 · Vacation Pay	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6560 · Payroll Expenses	44,742.53	40,430.62	46,790.99	46,657.25	45,506.84	46,446.74	270,574.97
7055 · Tools & Supplies Expense	14,791.77	10,298.78	18,395.09	16,437.79	14,781.61	19,347.06	94,052.10
7135 · Insurance	37,390.50	0.00	0.00	36,212.64	36,212.64	36,212.64	146,028.42
7205 · Rent Expense	3,571.00	3,571.00	3,571.00	3,571.00	3,410.00	3,410.00	21,104.00
7210 · Shipping - Freight	2,091.02	849.35	421.10	1,041.17	2,826.79	223.73	7,453.16
7270 · Legal Expense	112,437.40	84,214.42	111,007.11	356,254.35	72,007.37	276,345.42	1,012,266.07
7275 · Audit & Accounting Exp.	53,452.88	22,472.00	27,921.50	6,427.69	119,361.10	(52,030.12)	177,605.05
7276 · Banking & ProfessionalFees	27,253.06	63,455.84	6,980.04	54,325.46	(12,675.86)	104,571.14	243,909.68
7277 · Professional Fees Engineering	2,602.75	6,548.75	33,297.00	11,856.00	7,491.03	11,305.75	73,101.28
7278 · Consulting	18,463.39	14,851.70	14,464.60	107,181.95	19,534.00	24,248.75	198,744.39
7285 · Meals & Entertainment	831.75	677.74	615.57	590.75	987.71	386.59	4,090.11
7290 · Office Supplies/Services	5,987.39	5,067.37	5,630.50	5,604.79	3,745.77	10,435.64	36,471.46
7300 · Building & Yard Maint.	3,617.88	2,769.92	5,667.42	6,306.99	37,122.18	5,706.60	61,190.99
7305 · Depreciation	0.00	0.00	0.00	0.00	0.00	2,384,797.99	2,384,797.99
7400 · Travel	1,058.00	7,258.62	1,673.92	2,617.53	1,991.82	3,470.64	18,070.53
7510 · Realty Tax Expense	18,993.00	0.00	0.00	18,993.26	0.00	0.00	37,986.26
7520 · Training	1,518.04	2,222.95	326.90	2,728.94	3,744.65	2,410.42	12,951.90
7550 · Gain/(Loss) in FMV of derivativ	(1,035,887.43)	0.00	0.00	0.00	0.00	0.00	(1,035,887.43)
7560 · Telephone Expense	1,007.93	1,461.71	1,107.71	1,160.56	2,323.95	1,035.31	8,097.17
7696 · Lease Expense	3,866.49	3,866.49	3,866.49	3,866.49	3,866.49	3,866.49	23,198.94
8001 · Bank interest and charges	170,930.20	124,577.09	146,206.46	132,896.97	132,933.19	131,822.56	839,366.47
9000 · Mitigation Costs							
9005 · Mitigation -Combustion Analysis	17,674.50	0.00	0.00	0.00	0.00	0.00	17,674.50
9010 · Mitigation - Fuel Belt	1,350.00	0.00	0.00	0.00	0.00	0.00	1,350.00
9025 · Mitigation - Bottom Ash	17,275.99	0.00	0.00	0.00	0.00	0.00	17,275.99
9030 · Mitigation - Fly Ash	0.00	0.00	0.00	0.00	13,972.40	0.00	13,972.40
9065 · Mitigation - Auxilary Projects	0.00	0.00	0.00	3,590.00	0.00	0.00	3,590.00
9070 · Mitigation - Procedures & Maint	1,642.71	0.00	0.00	0.00	0.00	0.00	1,642.71
9075 · Mitigation - CMMS	6,114.06	0.00	0.00	0.00	14,740.97	1,620.00	22,475.03
Total 9000 · Mitigation Costs	44,057.26	0.00	0.00	3,590.00	28,713.37	1,620.00	77,980.63
9500 · Outside Phase 1	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9700 · R & M - Unusual	45,051.39	3,097.50	82,963.37	12,727.39	4,751.58	40,324.02	188,915.25
9980 · Contingencies	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Expense	(398,652.22)	423,639.53	539,432.47	859,312.56	557,612.51	3,092,445.97	5,073,790.82
Net Ordinary Income	318,027.18	(413,330.82)	(646,602.07)	(623,664.37)	(663,791.69)	(3,134,368.01)	(5,163,729.78)
Other Income/Expense							
Other Expense							
7267 · Interest on Debt	367,146.89	334,291.70	372,916.94	362,533.77	374,618.23	363,212.98	2,174,720.51
77000 · Exchange Gain or Loss	92.14	0.00	34.03	0.00	3,893.50	(3,430.51)	589.16
Total Other Expense	367,239.03	334,291.70	372,950.97	362,533.77	378,511.73	359,782.47	2,175,309.67
Net Other Income	(367,239.03)	(334,291.70)	(372,950.97)	(362,533.77)	(378,511.73)	(359,782.47)	(2,175,309.67)
Net Income	(49,211.85)	(747,622.52)	(1,019,553.04)	(986,198.14)	(1,042,303.42)	(3,494,150.48)	(7,339,039.45)

Index Energy Mills Road Corporation	10:53 AM
Balance Sheet	08/08/2017
As of June 30, 2017	Accrual Basis

	Jun 30, 17
ASSETS	
Current Assets	
Chequing/Savings	
Cash	
1030-Bank Torys Trust Funds	460.08
Total Cash	460.08
National Bank Accounts	
302-24-NBC-PROJECT OPERATING	201,318.49
353-23 MITIGATION PLAN HOLDBACK	2.99
70-001-26 NBC-INVESTMENT ACCT	4,879.71
Total National Bank Accounts	206,201.19
Total Chequing/Savings	206,661.27
Accounts Receivable	
1040 · Accounts Receivable	61,477.32
Total Accounts Receivable	61,477.32
Other Current Assets	
1030 - Other accts receivable	130,486.60
1041 -Other Accounts Receivable	749,405.00
1041 · Prepaid Expenses and Deposits	406,219.88
1042 · Prepaid Deposit	25,605.00
1045 · Allowance for bad debt	(56,160.60)
1047 · Prepaid - Fuel Supply	100,300.00
1211 · Prepaid Deposits Perf.Guaran	303,155.70
1212 · Other Long Term deposits	528,000.00
1213 · Veridian Deposit	200,000.00
Total Other Current Assets	2,387,011.58
Total Current Assets	2,655,150.17
Fixed Assets	
Property, Plant & Equipment	
1405 - Land	773,968.53
1480 - Capital Lease Equipment	112,205.00
1485 - Acc. Amtz.Cap.Lease Equi	(105,769.96)
1490 - Website	9,353.84
1495 - Accum. Amort - Website	(9,353.84)
1410 · Building	122,545,483.63
1412 · Accum Amortization - Building	(5,772,054.11)
1450 · Office Equip & Furniture	15,244.68
1451 · Accum Dept Office Equip & Furni	(9,943.63)
Total Property, Plant & Equipment	117,559,134.14
1425 · Plant Equipment	254,429.64
Total Fixed Assets	117,813,563.78
Other Assets	

Index Energy Mills Road Corporation
Balance Sheet
As of June 30, 2017

10:53 AM
08/08/2017
Accrual Basis

1900 - PLANT CONSTRUCTIONS	
1905 - HMI	
1907 - HMI HOLDBACK	53,260.44
Total 1905 - HMI	53,260.44
1920 - CLOSING COSTS	3,330,000.00
1925 - MANAGEMENT & START-UP	
1930 - PROF.FEES-ACCTG & LEGAL	
National Fee	210,000.00
1930 - PROF.FEES-ACCTG & LEGAL - Other	69,421.14
Total 1930 - PROF.FEES-ACCTG & LEGAL	279,421.14
1933 - BANK CHARGES	0.17
1955 - MANAGEMENT COSTS PAYABLE	56,983.62
Total 1925 - MANAGEMENT & START-UP	336,404.93
1960 - OWNER'S CONTINGENCY	
1961 - CLOSING COSTS	602,100.75
Total 1960 - OWNER'S CONTINGENCY	602,100.75
Total 1900 - PLANT CONSTRUCTIONS	4,321,766.12
1998 · Due From index Development	86,902.95
1999 · Accumulated Amort - Finance Cos	(2,134,254.00)
Total Other Assets	2,274,415.07
TOTAL ASSETS	**122,743,129.02**
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
2020 · Accounts Payable	3,072,523.97
2021 · Accounts Payable - USD	422,993.57
Total Accounts Payable	3,495,517.54
Credit Cards	
1023 · National Bank MC	3,942.56
Total Credit Cards	3,942.56
Other Current Liabilities	
1880 · Loan Pay Texxtile Real Estate	167,574.82
2027 · Accrued Liability	172,050.27
2048 · ST Loan Index Estate AB	**5,000,000.00** Loan 2
2049 · Int on ST Loan	248,418.97 Interest on loan 1-3
2100 · Payroll Liabilities	48,827.67
2105 · Employee RRSP Payable	(1,386.95)
2110 · Vacation accrual	74,704.18
2195 · EHT Payable	14,785.98
2210 · WSIB Payable	2,515.10
2400 · Shareholder Loan 2047330 Ont	588,893.15
2401 · Sharholder Loan - Interest Pay	70,860.78

Index Energy Mills Road Corporation

Balance Sheet

As of June 30, 2017

10:53 AM
08/08/2017
Accrual Basis

Total Other Current Liabilities	6,387,243.97	
Total Current Liabilities	9,886,704.07	
Long Term Liabilities		
2047 · Index Energy-Interest Pay	39,559,466.35	Interest on loan 1-3
2050 · Note Payable Index Residence AB	46,023,518.12	Loan 1
2051 · Int Pay - Index Residence AB	1,466,894.45	Interest on loan 1-3
2055 · Demand Promissory Note	**10,000,000.00**	Loan 3
2056 · Interest on Demand Promissory N	198,356.15	Interest on loan 1-3
2060 · Note Pay- Index Investments LLC	250,000.00	
2061 · Int Pay - Index Investment LLC	17,687.92	
2070 · Note Pay- Index Equity Sweden A	**4,820,000.00**	Equity
2071 · Int Pay Index Equity Sweden AB	**383,543.85**	
2150 · Derivative liability	(852,097.54)	
2360 · PROJECT LOAN		
2361 - NBC	22,736,382.23	
2362 - CWB	10,097,619.14	
2363 - LBC	6,637,148.82	
2364 - BDC	4,615,681.35	
Total 2360 · PROJECT LOAN	44,086,831.54	
Total Long Term Liabilities	145,954,200.84	
Total Liabilities	155,840,904.91	
Equity		
3000 · Opening Bal Equity	(946.39)	
3001 · Preferred Shares	33,800,000.00	
3003 · Capital Stock	1.00	
3004 · Capital Stk-Class B Comm.	99.00	
3005 · Retained Earnings	(59,557,890.05)	
Net Income	(7,339,039.45)	
Total Equity	(33,097,775.89)	
TOTAL LIABILITIES & EQUITY	122,743,129.02	

This is **Exhibit "G"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....

A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM BJÖRN SANDIN

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Index Energy Mills Road Corporation
Financial Statements
For the year ended December 31, 2016

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Financial Statements	
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Statement of Operations and Deficit	**5**
Statement of Cash Flows	**6**
Notes to Financial Statements	**7 - 17**

Independent Auditor's Report

To the Shareholders of
Index Energy Mills Road Corporation

We have audited the accompanying financial statements of Index Energy Mills Road Corporation, which comprise the balance sheet as at December 31, 2016, and the statements of operations, deficit and cash flows for the year then ended and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian accounting standards for private enterprises, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of Index Energy Mills Road Corporation as at December 31, 2016 and the results of its operations and its cash flows for the year then ended in accordance with Canadian accounting standards for private enterprises.

Independent Auditor's Report

Emphasis of Matter

Without qualifying our opinion, we draw attention to Note 1 in the financial statements which indicates that the Company has an ending deficit of $ (59,558,838) as at December 31, 2016 and, as of that date, the Company's current liabilities exceeded its current assets by $ 67,254,881 . These conditions, along with the other matters set forth in Note 1, indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern.

Chartered Professional Accountants, Licensed Public Accountants
Mississauga, Ontario
REPORT DATE

Index Energy Mills Road Corporation
Balance Sheet

As at December 31	2016	2015
Assets		
Current		
Cash	**$ 12,786,438**	$ 13,942,282
Restricted cash (Note 6)	**10,000,000**	10,000,000
Short-term deposits	**831,156**	831,156
Accounts receivable (Note 2)	**945,252**	513,799
Prepaid expenses	**243,602**	125,905
	24,806,448	25,413,142
Long-term deposits	**200,000**	200,000
Property, plant and equipment (Note 3)	**119,940,854**	1,012,628
Assets under construction (Note 4, 7)	**-**	122,330,458
Contracts	**1**	1
	$144,947,303	$148,956,229
Liabilities and Shareholders' Deficiency		
Current		
Accounts payable and accrued liabilities (Note 5)	**$ 10,300,927**	$ 9,351,256
Due to related parties (Note 7)	**756,794**	776,637
Retractable preference shares (Note 9) **33,800,000**		33,800,000
Current portion of long-term debt (Note 8)	**47,203,608**	9,656,154
	92,061,329	53,584,047
Demand loans payable to related parties (Note 6)	**63,443,432**	50,899,332
Interest payable (Note 6)	**39,559,466**	34,126,238
Long-term debt (Note 8)	**-**	39,336,036
Derivative liability (Note 8)	**9,441,814**	10,293,912
	204,506,041	188,239,565
Shareholders' deficiency		
Share capital (Note 9)	**100**	100
Deficit	**(59,558,838)**	(39,283,436)
	(59,558,738)	(39,283,336)
	$144,947,303	$148,956,229

On behalf of the Board:

______________________ Director

______________________ Director

The accompanying notes are an integral part of these financial statements.

Index Energy Mills Road Corporation
Statement of Operations and Deficit

For the year ended December 31	2016	2015
Revenue	**$ 7,029,665**	$ 81,334
Expenses		
Interest on demand loans payable (Note 6)	**5,493,292**	2,045,352
Interest on long-term debt (Note 8)	**5,411,287**	796,683
Amortization	**3,402,232**	5,754
Office and general	**3,105,153**	33,041
Direct labour and benefits	**2,780,762**	1,017
Fuel for equipment	**2,649,124**	-
Utilities	**2,496,728**	-
Professional fees	**1,465,761**	-
Finance fees	**711,418**	247,944
Insurance	**505,769**	15,806
Bad debts	**56,161**	-
Lease expense	**46,713**	-
Telephone	**18,527**	-
Advertising and promotion	**14,238**	9,321
Bank charges and interest	**-**	25,935
Standby fees	**-**	95,317
Automotive	**-**	35,372
Loss (gain) on change in fair market value of derivative (Note 8)	**(852,098)**	10,293,912
	27,305,067	13,605,454
Net loss for the year	**(20,275,402)**	(13,524,120)
Deficit, beginning of year	**(39,283,436)**	(25,759,316)
Deficit, end of year	**$ (59,558,838)**	$ (39,283,436)

The accompanying notes are an integral part of these financial statements.

Index Energy Mills Road Corporation
Statement of Cash Flows

For the year ended December 31	2016	2015
Cash provided by (used in)		
Operating activities		
Net loss for the year	**$ (20,275,402)**	$ (13,524,120)
Adjustments required to reconcile net income with net cash provided by operating activities		
Amortization of property, plant and equipment	**3,402,232**	5,754
(Gain) loss on change in fair market value of derivative (Note 8)	**(852,098)**	10,293,912
Changes in non-cash working capital balances		
Accounts receivable	**(431,453)**	(14,895)
Prepaid expenses	**(117,697)**	32,500
Short-term deposits	**-**	340,313
Long-term deposits	**-**	44,000
Accounts payable and accrued liabilities	**949,671**	(1,626,729)
	(17,324,747)	(4,449,265)
Investing activities		
Purchase of assets under construction	**-**	(9,329,396)
Interest capitalized on assets under construction	**-**	(9,171,777)
Amortization of finance fees	**711,418**	711,418
	711,418	(17,789,755)
Financing activities		
(Repayments to) advances from related parties	**(19,843)**	508,938
Advances from demand loans payable	**12,544,100**	7,782,984
(Repayments) advances of long-term debt	**(2,500,000)**	8,472,178
Interest accrued on demand loans payable	**5,433,228**	8,040,657
	15,457,485	24,804,757
(Decrease) increase in cash during the year	**(1,155,844)**	2,565,737
Cash, beginning of year	**13,942,282**	11,376,545
Cash, end of year	**$ 12,786,438**	$ 13,942,282

The accompanying notes are an integral part of these financial statements.

1. Significant Accounting Policies

Nature of Business and Going Concern

Index Energy Mills Road Corporation (the "Company") is incorporated under the laws of the Ontario Business Corporations Act and is a subsidiary of Index Energy Sweden AB (the "parent Company"). During the year, the parent Company purchased all of the issued and outstanding common shares and preferred shares from the previous parent, Index Residence AB.

The Company has now completed their redevelopment of its facilities located at 170 and 176 Mills Road, Ajax, Ontario. The multi-year redevelopment project involved upgrading the existing plant, the replacement of old equipment with new equipment which will enable it to generate seventeen megawatts of electricity. Construction of the facility commenced in July, 2013 and was substantially completed on December 31, 2015.

The recoverability of capitalized plant costs is dependent upon the ability of the Company to operate its new facilities which are has now surpassed substantial completion. As at December 31, 2016, the Company has an accumulated deficit of $ (59,558,838) and a negative current ratio. In addition, the Company's forbearance agreement on its long-term debt (Note 8) expired on December 31, 2016. Lastly, a construction lien has been placed on the building by the main contractor developing the facilities (Note 12). Without extending its forbearance agreement or refinancing its operations, the Company's commited cash obligation exceeds its expected level of cash flow from operations for the next 12 months. As a result, there is material uncertainty that may cast significant doubt as to whether the Company will have the ability to continue as a going concern. The Company's ability to continue as a going concern is therefore dependent upon its ability to obtain financing arrangements, whether from a third party or through its related parties.

Management Estimates

The preparation of financial statements in accordance with Canadian accounting standards for private enterprises requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the balance sheet date, and the reported amounts of revenues and expenses during the reporting period.

Key areas where management has made complex or subjective judgments (often as a result of matters that are inherently uncertain) include, among others, useful lives of property, plant and equipment, impairment of assets, and litigation. Actual results could differ from these and other estimates, the impact of which would be recorded in future periods.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash on hand, and term deposits with a maturity period of three months or less from the date of acquisition.

1. Significant Accounting Policies (continued)

Property, Plant and Equipment

Property, plant and equipment and intangible assets are stated at cost less accumulated amortization. Amortization based on the estimated useful life of the asset is calculated as follows:

Buildings	- 40 years straight-line basis
Plant equipment	- 5 - 25 years straight-line basis

Asset Impairment

In the event that facts and circumstances indicate that the Company's long lived assets may be impaired, a test of recoverability would be performed.

Such a test entails comparing the estimated future undiscounted cash flows associated with the asset to the asset's carrying amount to determine if a write down to market value or discounted cash flow value is required.

For purposes of recognition and measurement of an impairment loss, a long-lived asset is grouped with other assets and liabilities to form an asset group at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities.

Assets Under Construction

Assets under construction represent plant and machinery and are stated at cost. Costs comprises directly attributable costs of acquisition and construction, including interest on debt acquired to finance construction. Assets under construction are not depreciated. Items are transferred from assets under construction to assets within the proper categories of property, plant and equipment when they are ready for their intended use.

Intangible Assets

Contracts and permits acquired are amortized on a straight-line basis over the term of the contract.

Intangible assets with indefinite lives are recorded at cost less write-down for impairment.

Future Income Taxes

The Company follows the liability method of tax allocation in accounting for income taxes. Under this method, future tax assets and liabilities are determined based on differences between the financial reporting and tax bases of assets and liabilities as well as the benefit of losses available to be carried forward to future years for tax purposes that are likely to be realized, and measured using the substantively enacted tax rates and laws expected to be in effect when the differences are realized.

1. Significant Accounting Policies (continued)

Revenue Recognition

Steam revenue is recognized after delivery has taken place, based upon the amount of steam consumed during a monthly period. The amount charged is based upon a price established at the outset of the contract. Recognition criteria for this revenue source requires that collection is reasonably assured.

Tipping fees are charged by the Company for materials delivered to its location. Fees are based upon weight at a published rate recorded as revenue at the time of delivery.

Financial Instruments

Financial instruments are recorded at fair value when acquired or issued. At each reporting date, the Company will measure these financial instruments at cost or amortized cost less impairment, if applicable. Financial assets are tested for impairment when changes in circumstances indicate the asset could be impaired. Transaction costs and financing fees on the acquisition, sale or issue of financial instruments are expensed for those items remeasured at fair value at each balance sheet date and charged to the financial instrument for those measured at amortized cost, and subsequently amortized over the life of the financial instrument using the effective interest rate method.

Derivatives, which is the interest rate swap disclosed in Note 8, are reported at fair value, with any change in fair value reported in income.

Preference shares with retraction features at the discretion of the shareholder are classified as liabilities unless they are issued in a tax planning arrangement.

2. Accounts Receivable

Accounts receivable consist of the following:

	2016	2015
Trade receivables	**$ 898,462**	$ 434,713
HST receivable	**46,790**	79,086
	$ 945,252	$ 513,799

3. Property, Plant and Equipment

	2016		2015	
	Cost	**Accumulated Amortization**	Cost	Accumulated Amortization
Land	**$ 773,969**	**$ -**	$ 773,969	$ -
Buildings	**96,221,435**	**1,924,429**	225,000	-
Plant equipment	**26,448,420**	**1,578,541**	124,372	110,713
	123,443,824	**3,502,970**	1,123,341	110,713
Net book value		**$119,940,854**		$ 1,012,628

4. Assets Under Construction

Assets under construction comprise of assets acquired from 2047330 Ontario Limited on May 10, 2008 as well as costs incurred that were directly attributable to equipment and the redevelopment of the plant and facilities as detailed below. As of January 1, 2016, construction has been completed and the balance reallocated to building and plant equipment:

	2016	2015
Opening balance	**$122,330,458**	$103,829,285
Additions (transfers to property, plant and equipment) during the year	**122,330,458)**	9,329,395
Interest capitalized	**-**	8,708,303
Finance fee interest capitalized	**-**	463,474
Ending balance	**$ -**	$122,330,458

5. Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consist of the following:

	2016	2015
Trade accounts payable	**$ 9,365,769**	$ 8,483,913
Accrued liabilities	**769,292**	706,609
Accrued payroll	**71,145**	67,261
Government remittances	**94,721**	93,473
Accounts payable and accrued liabilities	**$ 10,300,927**	$ 9,351,256

6. Demand Loans Payable to Related Parties

	2016	2015
4% (2015 - 12%) compounding promissory note, repayable 365 days after demand, $10,000,000 in principal, restricted to be held as cash throughout construction, repayable to related party	**$ 10,000,000**	$ 10,000,000
4% (2015 - 12%) compounding non-revolving loan, repayable 365 days after demand, $44,311,087 collateral charge/mortgage over property situated at 170 and 176 Mills Road, Ajax, Ontario and a General Security Agreement over all of the assets of the Company, subordinated to bank debt (Note 8), repayable to related party	**44,311,087**	35,899,332
4% (2015 - 12%) compounding non-revolving working capital loan, repayable 365 days after demand, $5,000,000 collateral charge/mortgage over property situated at 170 and 176 Mills Road, Ajax, Ontario and a General Security Agreement over all of the assets of the Company, subordinated to bank debt (Note 8), repayable to related party	**5,000,000**	5,000,000
12% compounding promissory note, repayable 365 days after demand, $4,132,345 in principal, repayable to parent company	**4,132,345**	-
	$ 63,443,432	$ 50,899,332

6. Demand Loans Payable to Related Parties (continued)

On July 7, 2013, the terms and conditions set out in the May 10, 2008 credit facility agreement with respect to the demand loans were amended as set out below.

The repayment terms for all loans were amended so that the borrower will repay principal and accrued interest on the day that is 365 days after demand. As the related parties have not demanded repayment as at year-end, the loans have been classified as non-current.

The Company is prohibited from making any corporate distributions without the prior written consent of the lender.

The loans contain a conversion privilege whereby the lender has the right at any time to convert all or any part of the principal amount loaned outstanding into conversion shares. The promissory note does not contain a conversion feature. Upon exercising the conversion privilege which is at the sole discretion of the lender, 1 conversion share will be exchanged for each dollar of principal amount being converted. The option to convert is a compound financial instrument. The Company has elected to measure the equity component of the demand loans payable as $Nil (2015 - $Nil).

7. Related Party Transactions

The following parties are related to the Company:

Index Energy Sweden AB	Shareholder of the Company
Jacqueline Kerr	Shareholder of the Company
Russell Kerr	Director of the Company
Gordon Kerr	Officer of the Company
2047330 Ontario Limited	a Corporation controlled by a shareholder of the Company
Textile Real Estate Corporation	a Corporation controlled by a shareholder of the Company
Index Development Canada Corp	a Corporation controlled by a shareholder of the Company
Index Environmental Corporation	a Corporation controlled by a shareholder of the Company
Index Residence AB	a sister Corporation (formerly known as Index International AB) of Index Energy Sweden AB

7. Related Party Transactions (continued)

The Company, in the normal course of business, had the following transactions with its related parties

		2016		2015
Property, Plant and Equipment - Interest accrued to Index Residence AB	**$**	**(60,064)**	$	5,995,305
Interest expense accrued to Index Residence AB		**5,493,292**		2,045,352
Advancement of financing from Index Residence AB		**8,411,755**		7,782,984
Advancement of financing from Index Energy Sweden AB		**4,132,345**		-
Office and general - Consulting fees paid to 2047330 Ontario Limited		**60,928**		104,443
Office and general - Consulting fees paid to Gordon Kerr		**38,460**		40,000
Office and general - Automotive expenses paid to Jacqueline Kerr		**8,414**		17,933

All transactions are measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties.

Due to (from) related parties consists of the following:

		2016		2015
Index Development Corporation	**$**	**(86,904)**	$	-
Gordon Kerr		**16,369**		20,169
Textile Real Estate Corporation		**167,575**		167,575
2047330 Ontario Limited		**659,754**		588,893
	$	**756,794**	$	776,637

Amount due to 2047330 Ontario Limited bears interest at 12% per year and has no fixed terms of repayment. Included in this balance is $70,861 (2015 - $38,893) of accrued interest. All other amounts due to related parties are non-interest bearing and have no fixed terms of repayment.

8. Long-term Debt

During 2013, the Company entered into a credit facility on a non-revolving basis to the amount up to $60,000,000 to finance project costs during the construction of the power plant at 170 and 176 Mills Road, Ajax. Once the construction of the project is complete the credit facility converts from a non-revolving basis to a term loan payable over 5 years. Interest is incurred at the Canadian Dealer Offered Rate (CDOR) plus 3.00% and is payable monthly. Standby fees are charged at a rate of 1.05% on the unused portion of the credit facility.

The Company has an interest rate swap on its credit facility with a notional amount of $60,000,000, maturing on April 18, 2033. Interest is incurred at 3.83% minus the CDOR and is payable quarterly. The fair market value of this swap is a liability of $9,441,814 (2015 - $10,293,912).

The current portion is based on drawings on the credit facility until year-end.

The credit facility is secured with a general security agreement against substantially all assets of the Company.

The Company has entered into a forbearance agreement on its credit facility, and as such no further advances are available. On December 31, 2016, this agreement expired and as a result the entire loan has been classified as short-term in the current year.

Financing fees relating to the origination of the long-term debt have been netted against this debt and are amortized against the term loan using the effective interest rate method.

	2016	2015
Total debt	**$ 49,337,860**	$ 51,837,860
Less: financing fees, net of amortization	**(2,134,252)**	(2,845,670)
Net debt	**47,203,608**	48,992,190
Less: current portion	**47,203,608**	9,656,154
Long-term portion	**$ -**	$ 39,336,036

The current portion of long-term debt is net of $711,418 (2015 - $711,418) of financing fees that have been amortized during the year.

9. Share Capital

Authorized:

- Unlimited Class A common shares
- Unlimited Class B common shares
- Unlimited First Preference shares, non-voting, entitled to non-cumulative dividends, redeemable at stated value
- Unlimited Second Preference shares, non-voting, entitled to non-cumulative dividends, redeemable and retractable at stated value

During a prior year, the Company issued 33,800,000 Second Preference shares that were not part of a tax planning arrangement and, as such, are reflected as a liability on the balance sheet.

The issued share capital consists of:

a) Share capital

		2016	2015
1	Class A shares	**$ 1**	$ 1
99	Class B shares	**99**	99
		$ 100	$ 100

b) Second Preference Shares

		2016	2015
33,800,000	Second Preference shares	**$ 33,800,000**	$ 33,800,000

10. Income Taxes

For income tax purposes, the company has losses which can be applied to reduce future year's taxable income. The following schedule lists the Canadian unused tax losses and their related expiry dates:

2026	$ 1,420
2027	13,509
2028	6,334,033
2029	1,544,870
2030	968,408
2031	1,868,987
2032	1,451,023
2033	2,419,285
2034	4,634,957
2035	1,870,232
2036	-
	$ 21,106,724

The potential benefit of the tax losses above have not been recognized in these financial statements.

11. Financial Instruments

The Company is exposed to the following risks in respect of financial instruments:

Interest risk

Interest rate risk is the potential for financial loss caused by fluctuations in fair value or future cash flows of financial instruments because of change in market interest rates. The Company is exposed to interest rate risk in connection with the long-term debt referred to in Note 8.

Liquidity risk

The Company is exposed to liquidity risk in that the Company will not have sufficient cash resources to meet its financial obligations as they come due in the normal course of operations. The Company manages its liquidity risk by monitoring its operating requirements to ensure financial resources are available in that it is dependent on the continued financial support of its parent Company to continue operations. Management prepares budgets and cash forecasts to ensure that the Company has sufficient funds to fulfil its financial obligations.

December 31, 2016

12. Commitments and Contingencies

Litigation

The Company is a defendant in one (2015 - one) lawsuit that has arisen in the normal course of business, brought on by the main contractor developing the asset previously under construction. A construction lien was also placed on the building as a part of the lawsuit. Management is in the process of removing this lien and has also filed a counterclaim as a result. The financial impact of this lawsuit is not determinable, but management believes, based on legal counsels' representation, that the outcome will not materially affect the Company's financial position. Accordingly, a provision for loss has not been recorded.

13. Subsequent Events

On January 23, 2017, the Company used $10,000,000 of its restricted cash and $5,292,943 of its cash to pay down a portion of its long-term debt (Note 8).

This is **Exhibit "H"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....

A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

NATIONAL BANK

May 12, 2015

VIA REGISTERED MAIL, FAX AND EMAIL

Index Energy Mills Road Corporation
170 Mills Road
Ajax, Ontario L1S 2H1
Fax: 905-683-1335

Attention: Gordon Kerr

NOTICE OF DEFAULT

Re: credit agreement dated as of July 15, 2013 (as amended by a consent, waiver and first amending agreement dated as of January 28 2015 and as it may be further amended, restated, supplemented or otherwise modified from time to time) by and among Index Energy Mills Road Corporation as borrower (the "Borrower"), National Bank of Canada as agent (the "Agent"), the financial institutions signatory thereto as lenders (the "Credit Agreement").

The Borrower is in default of its obligations under the Credit Agreement and certain Defaults and Events of Default have occurred and are continuing, including those described in Schedule A attached hereto. Capitalized terms that are not defined in this letter have the meanings ascribed to them in the Credit Agreement

We hereby give formal notice to the Borrower of each Default and Event of Default described in Schedule A and, in respect of those defaults listed in paragraph II.2 of Schedule A, of commencement of the relevant cure period.

In reference to the Default resulting from the Borrower's failure to comply with the obligations under section 9.1.47 of the Credit Agreement, this letter shall serve as notice requiring the Borrower to provide the Agent and the Independent Engineer within ten (10) Business Days with the Proposed Mitigation Plan which shall include but not be limited to the Borrower's proposals for addressing impediments to obtaining OPA approval, the dispute with the EPC Contractor and the discharge of all claims for Liens registered against the Site Lands under the CLA.

Further, in reference to section 9.1.30 of the Credit Agreement, we require that the Borrower provide to the Agent within two (2) Business Days satisfactory evidence of its compliance with the *Construction Lien Act* (Ontario), including with respect to the sufficiency of the funds in the CLA Holdback Account to satisfy all holdback related obligations under the CLA.

As Agent on behalf of the Secured Creditors we reserve all rights and remedies of and available to the Secured Creditors. Without limiting the generality of the foregoing, the Secured Creditors expressly reserve all of their respective rights to take whatever measures they may consider necessary or appropriate to preserve and protect their respective interests and to pursue their remedies under the Credit Facility Documents and at law in respect of any and all breaches, Defaults and Events of Default under the Credit Facility Documents (whether or not referred to in this letter, including Schedule A attached hereto). For certainty, Schedule A is not an exhaustive list. Certain other breaches, Defaults and Events of Default might have occurred as a result of the circumstances giving rise to those Defaults and Events of Defaults listed in Schedule A, or as a result of other circumstances, and nothing in this letter shall constitute a waiver of any breaches, Defaults or Events of Default.

Except as expressly waived in writing duly executed by the Secured Creditors, no act or failure to act by any of the Secured Creditors, nor anything said or done in any discussions, correspondence (including this letter) or other dealings among any of the Agent, the other Secured Creditors, the Borrower, any other Obligor or any of their respective shareholders, affiliates, subsidiaries, related parties, officers, directors, employees, agents or representatives shall be construed as a waiver of any breach, Default or Event of Default, or of any of the rights and remedies of the Agent or any of the other Secured Creditors. The Secured Creditors may elect to immediately exercise or direct the exercise of the aforesaid rights and remedies at any time, including the enforcement of the security held on behalf of the Secured Creditors pursuant to the Security Documents.

Yours truly,

NATIONAL BANK OF CANADA,
AS AGENT FOR THE SECURED CREDITORS

By: ______________________________
Dominic Albanese
Director

____
By: Philippe Tomic
Director

cc: Index International AB
Jacqueline Kerr
R. Andrews Investment Company, LLC
Jonathan Weisz, Torys LLP

SCHEDULE A

I. KNOWN EVENTS OF DEFAULT

1. Section 11.1.11 (*Completion Date*) - As a result of Completion not being achieved by the Outside Date.

2. Section 11.1.3(a) (*Failure to Perform Covenants*) - Failure to perform the covenants as set out in Section 9.2.2 (*Liens*) - As a result of registration of claims for Lien under the CLA against the Site Lands, the Borrower not having advised the Agent that it is acting diligently and in good faith to discharge or vacate such Liens and that it is maintaining adequate holdbacks as required by the CLA and other applicable Law and that Borrower is contesting such Liens by appropriate proceedings.

II. KNOWN DEFAULTS

1. Section 11.1.13 (*Breach under Material Project Contract*) - Resulting from the breaches by EPC Contractor of the EPC Contract as detailed in letters from Borrower to EPC Contractor dated on or about May 1, 2015, and May 8, 2015, which breaches have had or are reasonably expected to have a Material Adverse Effect.

2. Section 11.1.3(b) (*Failure to Perform Covenants*) - Failure to perform covenants as set out in the following Sections:

   (a) Section 9.1.9 (*Financial and Other Reporting*) - Failure of the Borrower to provide Financial Statements as set out below:

      (i) Section: 9.1.9(a):

         (A) Audited annual Financial Statements as of December 31st 2014 for the Borrower

         (B) Audited annual Financial Statements as of December 31st 2014 for Sponsor

         (C) Audited annual Financial Statements as of December 31st 2014 for EPC Contractor

      (ii) Section: 9.1.9(b):

         (A) Quarterly unaudited Financial Statements for Q1-2014, Q2-2014, Q3-2014 for Sponsor

         (B) Quarterly unaudited Financial Statements for Q1-2014, Q2-2014, Q3-2014 for EPC Contractor

(iii) Section: 9.1.9(c):

(A) Latest Audited annual Financial Statements for OPTIMUM DISPOSAL SERVICES INC.

(B) Latest Unaudited annual Financial Statements for COUNTRYWIDE RECYCLING INC.

(C) Latest Audited annual Financial Statements for WASTE MANAGEMENT INC.

(D) Latest Unaudited annual Financial Statements for POWER GROW SYSTEMS INC.

(E) Latest Audited annual Financial Statements for INDEX ENVIRONMENTAL CORPORATION

(iv) Section 9.1.9(l) - Failure of the Borrower to provide material notification or reports under the Material Project Contracts in that the Borrower has failed to provide to the Agent a copy of responses from the OPA (now the Independent Electricity System Operator) to its application for Commercial Operation (as defined in the PPA).

(b) Section 9.1.23 (*Material Project Contracts*) - As a result of the failure to diligently enforce all obligations under Material Project Contracts (in particular the EPC Contract). See also breaches referred to in paragraph II.1 above.

(c) Section 9.1.31 (*Punctual Payment*) - As a result of the failure to pay all Project Costs and Operating Costs unless subject to bona fide dispute and adequate reserves established. See also breaches referred to in paragraph I.2.

Unless otherwise indicated all Section references are references to sections in the Credit Agreement.

This is **Exhibit "I"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....
A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

THIS ACCOMMODATION AGREEMENT is dated as of October 9, 2015.

AMONG:

INDEX ENERGY MILLS ROAD CORPORATION, a corporation incorporated under the laws of the Province of Ontario

(the "**Borrower**")

AND:

INDEX INTERNATIONAL AB (PUBL)
R. ANDREWS INVESTMENT COMPANY, LLC and
JACQUELINE KERR

(as "**Guarantors**")

AND:

NATIONAL BANK OF CANADA, a Canadian chartered bank

(as "**Agent**")

AND:

Those institutions whose names are set forth on the Execution Pages hereof under the Heading "Lenders"

(as "**Lenders**")

AND:

Those institutions whose names are set forth on the Execution Pages hereof under the Heading "Hedge Providers"

(as "**Hedge Providers**")

WHEREAS:

1. Pursuant to a credit agreement dated as of July 15, 2013 as amended by waiver and consent agreements dated September 12, 2013, October 11, 2013 and December 13, 2013 and by a consent, waiver and first amending agreement dated January 28, 2015 (as amended, the "**Credit Agreement**"), the following credit facilities (collectively, the "**Credit Facilities**") have been made available to the Borrower. Unless otherwise

specified, capitalized terms in this Agreement have the meanings ascribed thereto in the Credit Agreement:

(a) Construction Facility in the principal amount of up to but not exceeding $60,000,000, made available to the Borrower by the Lenders. As of August 10, 2015, the principal amount outstanding under the Construction Facility is $51,837,860, together with all accrued and unpaid interest, fees and expenses payable by the Borrower under the Credit Agreement to the date of payment;

(b) Term Facility, to be made available to the Borrower by the Lenders by way of the conversion without repayment of the amounts outstanding under the Construction Facility on the Term Conversion Date. The Term Conversion Date has not yet occurred and, accordingly, no amount is outstanding under the Term Facility; and

(c) Interest Hedge Facility made available to the Borrower by the Hedge Providers. As of October 1, 2015, the Hedge Liabilities owing to National Bank of Canada and Laurentian Bank of Canada in respect of Required Interest Rate Hedges amount to $9,187,416 and $1,711,274 respectively, together with all accrued and unpaid interest, fees and expenses payable by the Borrower under the Credit Agreement to the date of payment.

2. As security for all of its present and future indebtedness and obligations pursuant to the Credit Agreement, together with all other obligations of the Borrower to the Secured Creditors, the Borrower has granted the Security to the Agent. The Security grants to the Agent a security interest in and charge upon all of the Borrower's real and personal property, assets and undertaking. The Security includes, without limitation, a demand debenture in the principal amount of $210,000,000 granted by the Borrower to the Agent.

3. Each of R. Andrews Investment Company, LLC ("**Andrews Investment**") and Jacqueline Kerr has delivered to the Agent a limited recourse guarantee and pledge agreement dated July 15, 2013 (the "**Andrews Investment Guarantee**" and the "**Kerr Guarantee**" respectively), pursuant to which each of Andrews Investment and Jacqueline Kerr has guaranteed all of the indebtedness and obligations of the Borrower to the Secured Creditors under the Credit Agreement and pledged to the Agent the collateral specified in each of the Andrews Investment Guarantee and the Kerr Guarantee.

4. Index International AB (publ) ("**Index International**"), has delivered to the Agent a limited recourse guarantee and pledge agreement dated July 15, 2013 (the "**Index International Guarantee**"), pursuant to which Index International has guaranteed all of the indebtedness and obligations of the Borrower to the Secured Creditors under the Credit Agreement and pledged to the Agent the collateral specified in the Index International Guarantee. Subject to the terms of this Agreement, the Agent shall release and discharge Index International from its obligations under the Index International Guarantee upon satisfaction of certain conditions, including, without limitation, receipt by the Agent of a replacement guarantee from Aktiebolaget Grundstenen 152557, a company incorporated pursuant to the laws of Sweden with registration number 559027-

5680 (and whose name is to change subsequent to the date hereof) (including, for certainty, following such name change, “**Holdco**”).

5. Hereafter, the Andrews Investment Guarantee, the Kerr Guarantee and the Index International Guarantee are referred to collectively as the “**Guarantees**” and the collateral specified in each of the Guarantees is referred to collectively as the “**Guarantor Collateral**”.

6. By letter dated May 12, 2015 (the “**Default Notice**”), the Agent advised the Borrower that it is in default of its obligations under the Credit Agreement and that certain Defaults and Events of Default have occurred and are continuing as more particularly specified in the Default Notice. The known Events of Default and the known Defaults specified in the Default Notice and in Schedule “A” hereto are collectively referred to herein as the “**Existing Defaults**”. The Existing Defaults include, without limitation, registration of construction liens against the Site Lands (collectively, the “**Liens**”).

7. By letter dated May 21, 2015, Thornton Grout Finnigan LLP (“**TGF**”) in its capacity as counsel to the Secured Creditors appointed Alvarez & Marsal Canada ULC (the “**Consultant**”) as Consultant to TGF with the consent of the Borrower and the Guarantors for the purpose of, among other things, reviewing the financial position of the Borrower and the security position of the Secured Creditors.

8. Although the Commercial Operation Date was achieved on June 12, 2015, Completion of the Project has not yet occurred. By letter dated July 28, 2015, the Borrower terminated the EPC Contract and has retained parties other than the EPC Contractor to rectify certain deficiencies at the Project.

9. The Borrower delivered to the Agent its Proposed Mitigation Plan to remedy the Existing Defaults on July 13, 2015. On September 25, 2015, the Borrower delivered to the Agent a revised cash flow forecast for the period ending November 30, 2015 (the “**Forecast**”) which has been approved by the Agent and has been incorporated in the Proposed Mitigation Plan.

10. The Borrower and the Guarantors have requested that the Secured Creditors forbear from enforcing their rights and remedies at this time and provide certain accommodations to the Borrower to permit the Borrower to remedy the Existing Defaults and proceed to Term Conversion. The Agent has not withdrawn the Default Notice nor waived the Existing Defaults, but, subject to the terms of this Agreement, the Secured Creditors will agree to forbear from enforcing their rights and remedies with respect to the Existing Defaults.

11. In consideration of the forbearance by the Agent and the other Secured Creditors as described herein, for the other accommodations described herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by the Borrower and the Guarantors, the Borrower and the Guarantors hereby agree with the Agent and the other Secured Creditors as follows.

ARTICLE I - ACKNOWLEDGMENT

1.01 The Borrower and the Guarantors acknowledge that each of the foregoing recitals is true and correct.

1.02 The Borrower and the Guarantors acknowledge that, unless otherwise specified, all capitalized terms contained herein have the same meaning as in the Credit Agreement and all monetary amounts are expressed in Canadian dollars.

1.03 The Borrower and Guarantors acknowledge that:

(a) The Borrower is indebted to the Secured Creditors under the Credit Facilities in the amounts specified in paragraph 1 of this Agreement as at the date specified therein, together with interest and costs (including, without limitation, legal and Consultant fees and disbursements) to the date of payment and that the Borrower has no defences, counterclaims or rights of set-off or reduction in respect of the Borrower's indebtedness to the Secured Creditors as specified in paragraph 1 of this Agreement;

(b) The Borrower is in default of its obligations to the Secured Creditors under the terms of the Credit Agreement;

(c) Given the occurrence of the Existing Defaults, no further credit is available to the Borrower under the Credit Facilities and the Agent, on behalf of the Secured Creditors, may terminate the Credit Facilities, demand payment of the Construction Facility and the Interest Hedge Facility and take steps to enforce the Security at any time. Notwithstanding the foregoing, the Agent confirms that, provided a Forbearance Terminating Event (as defined herein) has not occurred, upon satisfaction of the Conditions Precedent to Term Conversion, the Construction Facility shall be converted to a Term Loan in accordance with the terms of the Credit Agreement; and

(d) Given the occurrence of the Existing Defaults, none of the funds in the Segregated Accounts shall be made available to the Borrower (including, without limitation, any accrued interest in the Liquid Security Account or any funds in the CLA Holdback Account), other than funds in the Project Operating Account from time to time which, subject to the terms of the Credit Agreement, shall be utilized by the Borrower solely to fund Project Costs.

1.04 The Borrower and the Guarantors acknowledge and agree that all Security now held by the Agent for the indebtedness and obligations of the Borrower to the Secured Creditors is valid, binding and enforceable in accordance with its terms, and that the Borrower has no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Agent thereunder.

1.05 The Guarantors acknowledge that the Guarantees are valid, binding and enforceable in accordance with their terms, and that the Guarantors have no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Agent thereunder.

1.06 The Borrower and the Guarantors hereby agree that upon the execution of this Agreement, they shall each absolutely and irrevocably release each of National Bank of Canada, Laurentian Bank of Canada, Canadian Western Bank and Business Development Bank of Canada and each of their respective officers, directors, employees, solicitors and agents (collectively, the "**Releasees**") of and from any and all claims which they each may have in respect of the Releasees up to and including the date hereof including, without limitation, any actions taken by the Agent, the Lenders or the Hedge Providers in dealing with the Borrower, the Guarantors, the Project, the Power Purchase Agreement, the Security, the Credit Facilities or with the administration of the Borrower's or the Guarantors' accounts with the Agent.

1.07 In consideration of the Secured Creditors' forbearance and the other accommodations described herein, the Borrower agrees to pay to the Agent a forbearance fee (the "**Forbearance Fee**") in the amount of $210,000 which shall be earned and payable upon execution of this Agreement. The Borrower authorizes the Agent to transfer the amount of the Forbearance Fee from the Project Revenue Account to the Agent's Payment Account immediately upon execution of this Agreement.

ARTICLE II - CONDITIONS PRECEDENT

2.01 The forbearance and other accommodations granted by the Secured Creditors hereunder are subject to approval of the credit committee of each of the Secured Creditors. Approval of the terms of this Agreement shall only be sought if the following conditions have been complied with in a manner satisfactory to the Agent in its discretion on or before 5:00 p.m. on October 9, 2015 or such later date as provided for below (collectively, the "**Conditions Precedent**"):

(a) receipt by the Agent of a duly authorized and executed original of this Agreement executed by the Borrower and the Guarantors;

(b) by October 13, 2015, the Borrower shall pay to the Agent all outstanding legal and agent fees and expenses payable by the Borrower pursuant to the terms of the Credit Agreement including, without limitation, all fees and expenses payable to Fasken Martineau DuMoulin LLP;

(c) by October 13, 2015, Index International shall contribute additional equity to the Borrower of at least $2,600,000, which shall be deposited to the Project Revenue Account and thereafter disbursed in accordance with the terms of the Credit Agreement and this Agreement; and

(d) receipt by the Agent of the Forecast which shall be incorporated in the Mitigation Plan (as defined below).

2.02 The Conditions Precedent are for the sole benefit of the Secured Creditors and may be waived only by the Agent in writing. If the Conditions Precedent are not complied with to the satisfaction of the Agent by 5:00 p.m. on October 9, 2015 or such later date as provided for above, and the Agent will not waive satisfaction thereof, then the offer of forbearance and the other accommodations offered by the Secured Creditors hereunder shall be terminated.

2.03 Upon satisfaction of the Conditions Precedent, unless a Forbearance Terminating Event occurs under this Agreement, the Secured Creditors shall take no further steps prior to November 30, 2015 (the "**Forbearance Deadline**") to terminate the Credit Facilities, demand payment of the Credit Facilities or enforce the Security.

ARTICLE III – CHANGE IN SPONSOR

3.01 The Borrower and the Guarantors have requested that the Secured Creditors consent to the transfer to Holdco of all of the shares in the capital of the Borrower currently held by Index International (the "**Transferred Index Shares**") and the change in the identity of the Sponsor from Index International to Holdco.

3.02 Effective upon the Holdco Sponsor Date (as defined below): (i) Holdco shall become the Sponsor in accordance with the terms of the second amending agreement to credit agreement to be made as of the Holdco Sponsor Date among the Borrower and Secured Creditors; (ii) the Secured Creditors shall release and discharge Index International from any and all liabilities or obligations under the Index International Guarantee, save and except for any obligations under the Index International Guarantee which specifically survive termination thereof; and (iii) Index International shall no longer be included as one of the Guarantors for the purpose of this Agreement. The "**Holdco Sponsor Date**" shall occur upon compliance with the following conditions in a manner satisfactory to the Agent in its discretion:

(a) receipt by the Agent of a certified copy of the participation agreement from Holdco and consent and waiver from each party to the USA (defined below) in respect of the unanimous shareholders' agreement in respect of the Borrower (the "**USA**") reflecting the transfer of the Transferred Index Shares to Holdco, confirming that such transfer is not a breach of the USA or that any and all breaches of the USA arising from such transfer have been expressly waived by all of the parties to the USA and confirming Holdco's agreement to be bound by the terms of the USA, together with a certified true copy of the current organizational chart of the Borrower;

(b) receipt by the Agent of a properly authorized and executed limited recourse guarantee and pledge agreement from Holdco ("**Holdco Guarantee**") pursuant to which Holdco has guaranteed all of the indebtedness and obligations of the Borrower to the Secured Creditors under the Credit Agreement and pledged to the Agent the Transferred Index Shares;

(c) receipt by the Agent of any and all documentation required to reflect Holdco as Sponsor and a guarantor pursuant to the Holdco Guarantee, including, without limitation: (i) any amendments to the existing Credit Facility Documents or the Material Project Contracts; (ii) any further Credit Facility Documents; (iii) confirmation of any registrations in public registries required to reflect the foregoing including, without limitation, any registrations required pursuant to the *Personal Property Security Act* (Ontario); and (iv) legal opinion(s) confirming the due authorization, validity and enforceability of the Holdco Guarantee and share purchase agreement pursuant to which Holdco is to acquire the Transferred Index Shares.

ARTICLE IV- RESPONSE TO DEFAULT NOTICE

4.01 The Proposed Mitigation Plan, as amended to incorporate the Forecast, shall constitute the "**Mitigation Plan**" for the purpose of the Credit Agreement. Notwithstanding the foregoing, nothing in the Mitigation Plan shall operate to amend any of the terms of this Agreement. To the extent of any conflict between the Mitigation Plan and this Agreement, this Agreement shall prevail. Without limiting the Borrower's covenant to carry out the terms of the Mitigation Plan, the Borrower shall successfully complete the 90% Performance Test by November 15, 2015. The Borrower shall update the Consultant and the Agent at least weekly or more frequently if required by the Consultant or the Agent regarding the status of the Mitigation Plan and, in particular, the date by which the Borrower anticipates successfully completing the 90% Performance Test.

4.02 Subject to the Borrower's ongoing obligation to provide to the Agent and the Consultant any reporting or other information required pursuant to this Agreement, the Borrower shall not be required to deliver to the Agent any of the outstanding reporting required under section 9.1.9 of the Credit Agreement during the period ending on the Forbearance Deadline.

4.03 Within 5 days of execution of this Agreement (the "**CLA Date**"), the Borrower shall provide to the Agent satisfactory evidence of its compliance with the *Construction Lien Act* (Ontario) (the "**CLA**"), including with respect to the sufficiency of the funds in the CLA Holdback Account to satisfy all holdback related obligations under the CLA for improvements to the Project to and including the CLA Date. Thereafter, the Borrower shall continue to provide on request by the Agent evidence of its compliance with the CLA with respect to improvements to the Project carried out after the CLA Date.

4.04 All Liens registered against the Site Lands pursuant to the CLA shall be discharged on or before the Forbearance Deadline. The Borrower shall act diligently and in good faith to discharge or vacate all Liens registered against the Site Lands pursuant to the CLA and will provide, upon request by the Agent, an update as to all steps taken or intended to be taken by the Borrower to discharge or vacate such Liens from the Site Lands.

ARTICLE V - CONSULTANT

5.01 The engagement of the Consultant shall continue until terminated by TGF. The Borrower shall continue to provide to the Consultant full cooperation and unrestricted access to its business premises and financial records and shall provide to the Consultant such information regarding the financial position of the Borrower, the security position of the Secured Creditors or any other matter or thing relevant to the Credit Facilities or this Agreement as the Consultant may require from time to time. The Borrower acknowledges and agrees that all of the fees and disbursements of the Consultant shall be paid by the Borrower.

ARTICLE VI - PAYMENTS TO AFFILIATES

6.01 The Borrower covenants that, until the Forbearance Deadline, it shall not incur any new or additional indebtedness, obligations or liabilities to its affiliates outside of the ordinary and normal course of business without the prior consent of the Agent, other than the amounts specified in Article 2.01(c).

6.02 The Borrower covenants that it will not make any Distributions during the period ending on the Forbearance Deadline and thereafter, only if the Distribution Conditions are satisfied.

ARTICLE VII - REPORTING REQUIREMENTS

7.01 The Borrower shall strictly adhere to all reporting requirements as set out in the Credit Agreement, except as amended herein. Bi-weekly on or before 2:00pm on Tuesday for the two week period ending the immediately preceding Friday, the Borrower shall deliver to the Agent and the Consultant:

(a) an update of the Forecast for the following 13 weeks or such other period of time as the Agent may require. The updated Forecast must be satisfactory to the Agent in its sole discretion. As part of the update to be delivered to the Agent, the Borrower shall provide to the Agent a report on the status of the steps being taken by the Borrower pursuant to the Mitigation Plan as well as a report comparing actual cash-flows, total direct operating costs, total construction costs, operating revenue, total cash inflows and closing cash of the Borrower for the preceding two week period or such other period as the Agent may require to amounts budgeted in the Forecast and providing an explanation of any "Material Variance". A "**Material Variance**" shall be:

(i) a 10% or greater negative variance from the Forecast in the Company's closing cash for any given week; and

(ii) a 10% or greater negative variance from the Forecast in the Borrower's total direct operating costs, construction costs, operating revenue or total cash inflows for any given week;

(b) with each report, the Borrower shall advise the Agent if it anticipates its receipts will not be sufficient to fund the disbursements as described in the Forecast at any time. In such case, the Borrower shall identify and confirm to the Agent the source of funds which shall be utilized to satisfy the Borrower's disbursements which will not be satisfied by the Borrower's receipts.

7.02 In addition, the Borrower shall provide such information as required by the Agent from time to time regarding the status of the Mitigation Plan, the status of the dispute with the EPC Contractor, the steps taken or intended to be taken by the Borrower to ensure that the 90% Performance Test is successfully completed by November 15, 2015 and the steps being taken by the Borrower to ensure that all Liens under the CLA have been discharged or vacated from title to the Site Lands.

ARTICLE VIII – INTEREST RATE HEDGES

8.01 At the request of the Borrower, the Hedge Providers agreed to defer until October 15, 2015 the scheduled payment due and owing by the Borrower to the Hedge Providers under the Interest Rate Hedges on July 15, 2015 in the amount of $423,935 (the "**July Swap Payment**"). The Borrower covenants and agrees that on or before October 15, 2015, the Borrower will pay to the Hedge Providers both the July Swap Payment and the October 15, 2015 payment due and owing by the Borrower to the Hedge Providers pursuant to the Interest Rate Hedges.

ARTICLE IX - ADDITIONAL COVENANTS

9.01 The Borrower shall pay when due, or otherwise provide confirmation satisfactory to the Agent that payment arrangements satisfactory to the Agent have been entered into by the Borrower, to pay all claims which rank prior to the indebtedness and Security held by the Agent from the Borrower and the Guarantors (the "**Prior Claims**") which shall include, without limitation, all amounts owing or required to be paid, where a failure to pay any such amount could give rise to a claim pursuant to any law, statute, regulation or otherwise, which ranks or is capable of ranking in priority to the Security or otherwise in priority to any claim for the repayment of any amounts owing to the Secured Creditors, including without limitation all amounts owing to any federal, provincial, municipal or other government entity or Crown corporation, all statutory, actual or deemed trusts, all withholdings and source deductions, all accrued and unpaid payroll, including vacation pay, rent for the Borrower's leased premises, and all amounts owing to any person having a lien (including a construction lien), encumbrance, trust or charge ranking in priority to the Security.

9.02 The Borrower agrees that it shall not repurchase any of the shares of the Borrower currently held by its shareholders, issue dividends on account of such shares or repay any shareholder loans prior to Term Conversion without the prior written consent of the Agent.

9.03 The Borrower acknowledges and agrees that all business in the nature of or related to the business transacted by the Borrower prior to the date hereof shall continue to be transacted in the name of and for the account of the Borrower. In particular, no such business or transaction shall be performed in the name of or recorded or applied for the benefit of any person, firm or corporation other than the Borrower. The Borrower acknowledges and agrees that the Borrower shall deposit all revenues, collections of accounts receivable and any other income generated by the Borrower only to the Project Revenue Account.

9.04 The Borrower confirms to and in favour of the Agent that all assets secured by the Security are in existence, in the possession and control of the Borrower and have not been transferred, sold, encumbered or impaired in any manner which would deteriorate from or adversely affect the value of same.

9.05 The Borrower certifies that no environmental laws or regulations have been violated with respect to any of the Borrower's property and, to the best of its knowledge, no proceedings have or have been threatened to be instituted with respect to a breach of any environmental laws or regulations.

9.06 The Borrower acknowledges and agrees that on each banking day the Agent will not honour any cheques or other instruments drawn on any accounts maintained by the Borrower with the Agent including, without limitation, the Project Operating Account, if there are insufficient funds on deposit in each such account to honour all such cheques or other instruments presented to the Agent for payment on that banking day. If, however, an overdraft arises under any of the Borrower's accounts with the Agent (hereafter an "**Overdraft**"), then the amount of such Overdraft shall bear interest at the Bank's standard Overdraft interest rate, being 21% per annum and services charges, being $5.00 per transaction, issued by or on behalf of the Borrower which causes or increases the Overdraft.

9.07 The Borrower acknowledges and agrees that the Agent may debit any of the Segregated Accounts to pay any legal, consultant or other agent fees and disbursements. The Agent will provide reasonable notice to the Borrower prior to debiting such amounts from the Segregated Accounts.

ARTICLE X – TERMINATING EVENTS

10.01 None of the Agent's or the other Secured Creditors' existing rights and remedies, and none of the Existing Defaults, are waived by this Agreement but are specifically reserved and preserved. However, subject to the provisions of this Agreement, the Agent agrees not to terminate the Credit Facilities, demand payment of the Construction Facility or the Interest Hedge Facility or take steps to enforce any of the Security prior to the Forbearance Deadline unless and until one of the following events has occurred (a **"Forbearance Terminating Event**"):

(a) any default or breach by the Borrower or the Guarantors occurs under this Agreement or any further Default or Event of Default occurs under the Credit Agreement or any of the Security, including any subsequent or further breach of any of the obligations or covenants which have resulted in any of the Existing Defaults. For greater certainty, the continuation of any of the Existing Defaults shall not constitute a Forbearance Terminating Event hereunder unless the Borrower is required to remedy or otherwise take a specific step or action with respect to any Existing Default pursuant to the terms of this Agreement and the Borrower fails to do so;

(b) if the Borrower fails to make any payment to the Agent, the Lenders or the Hedge Providers when due or if the Borrower fails to pay any Project Costs when due in accordance with the payment terms in effect with respect to each such Project Cost;

(c) if a Voluntary Event of Bankruptcy occurs in accordance with Article 11.1.5 of the Credit Agreement;

(d) if any other creditor of the Borrower or the Guarantors exercises any rights against any of the property, assets or undertaking of the Borrower or the Guarantor Collateral, if any creditor brings any proceeding or takes any other action under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Business Corporations Act* of Canada or of any province, the *Winding-Up Act* (Canada) or any similar legislation including any similar legislation in force in Sweden;

(e) any representation or warranty made by the Borrower or the Guarantors in connection with the execution and delivery of this Agreement shall prove to have been incorrect in any material respect;

(f) any default or failure by the Borrower to make any payment of wages or other monetary remuneration payable by the Borrower to its employees under the terms of any contract of employment, oral or written, express or implied (the "**Payroll**") or the failure by the Borrower to pay to the relevant governmental authority when due any of the Prior Claims exigible in respect of a Payroll in any material respect;

(g) the sale, lease, transfer, relocation, abandonment or any other disposition of the assets of the Borrower out of the ordinary course of business which are subject to the Security without the express prior written consent of the Agent;

(h) if the Borrower does not successfully complete the 90% Performance Test by November 15, 2015;

(i) if a "Supplier Event of Default" occurs under the Power Purchase Agreement;

(j) if the Power Purchase Agreement is terminated;

(k) if the Borrower fails to report to the Agent the occurrence of a Material Variance in any of the matters referenced herein;

(l) if the Borrower's receipts will not be sufficient to fund its disbursements by the time any such disbursements are due and payable in accordance with their terms;

(m) any default or failure by the Borrower or the Guarantors to pay any of the Prior Claims when due;

(n) if any of the representations or financial reporting information provided by the Borrower to the Agent proves to be false, misleading, inaccurate or incorrect in any material respect at the time such representation or financial reporting information was made or delivered;

(o) if any action which the Borrower or the Guarantors may take under this Agreement only with the prior consent of the Agent is taken by the Borrower or the Guarantors without such consent being previously obtained from the Agent; and

(p) a liability arises or an event occurs, including without limitation, any change in the business, assets, or condition, financial or otherwise, of any of the Borrower or the Guarantors, that will in the Agent's judgment, acting reasonably, materially impair the security position of the Agent or the Borrower's financial condition, operations or ability to comply with its obligations under this Agreement or the Credit Agreement.

10.02 Upon the occurrence of a Forbearance Terminating Event, the Agent may immediately terminate the Credit Facilities and enforce, without further notice or delay, all of its rights and remedies against the Borrower and the Guarantors including, without limitation, exercising any rights of set-off in order to reduce or satisfy the Borrower's or the Guarantors' obligations to the Secured Creditors, demanding payment of the Construction Facility and the Interest Hedge Facility and taking steps to enforce the Security. Also, upon the occurrence of a Forbearance Terminating Event, the Borrower and the Guarantors consent and specifically authorize the Agent or its authorized representative in connection with any Enforcement Step (as defined below) to contact any customer, creditor, employee, licensing authority or any other person or entity in respect of the Borrower and the Guarantors, the Borrower's or the Guarantors' indebtedness to the Secured Creditors, or any other matter or thing related to the business operations of the Borrower or the Guarantors or any other matter deemed relevant by the Agent. An "**Enforcement Step**" means any step taken or proposed to be taken by the Agent to enforce the security or to otherwise seek any relief before a court of competent jurisdiction against the Borrower or a Guarantor or in respect of the Project for the purpose of recovering the Borrower's or the Guarantors' indebtedness to the Secured Creditors. For the purpose of the foregoing provision, the Borrower and the Guarantors specifically waive any and all duty of confidentiality, which the Agent or the other Secured Creditors now have or may in the future have with respect to the Credit

Facilities, the Borrower's indebtedness to the Secured Creditors, the business operations of the Borrower or any other information, whether confidential or otherwise, in the possession of the Secured Creditors relating to the business or operations of the Borrower or the Guarantors or the Borrower's indebtedness to the Secured Creditors.

ARTICLE XI – GENERAL PROVISIONS

11.01 The Borrower and the Guarantors hereby irrevocably agree upon request by the Agent, to duly execute or deliver or cause to be executed or delivered to the Agent such further instruments, agreements or similar documents or do or cause to be done such further acts as may be necessary or desirable in the opinion of the Agent, acting reasonably, to carry out the provisions and purposes of this Agreement.

11.02 The Agent's forbearance from enforcing its rights and remedies against the Borrower and the Guarantors and the other accommodations described herein are provided on a day to day basis and may be terminated upon the occurrence of a Forbearance Terminating Event without requiring any further forbearance or delay on the part of the Agent.

11.03 All terms and conditions of the Credit Facilities and the Credit Facility Documents shall continue in full force and effect save and except as amended by this Agreement. To the extent that any provision thereof is inconsistent with this Agreement, this Agreement shall prevail.

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

[***Signature Page Follows***]

IN WITNESS WHEREOF the parties have executed this Agreement.

AGENT:

NATIONAL BANK OF CANADA

Per:
Name: Jean Gosselin
Title: Directeur principal

Per:
Name: Claude Lussier
Title: Directeur principal / Senior Manager

LENDERS:

NATIONAL BANK OF CANADA

Per:
Name: Jean Gosselin
Title: Directeur principal

Per:
Name: Claude Lussier
Title: Directeur principal / Senior Manager

CANADIAN WESTERN BANK

Per: ____________________
Name:
Title:

Per: ____________________
Name:
Title:

IN WITNESS WHEREOF the parties have executed this Agreement.

AGENT:

NATIONAL BANK OF CANADA

Per: ____________________________
Name:
Title:

Per: ____________________________
Name:
Title:

LENDERS:

NATIONAL BANK OF CANADA

Per: ____________________________
Name:
Title:

Per: ____________________________
Name:
Title:

CANADIAN WESTERN BANK

Per: ____________________________
Name: Stephen Jacobson
Title: Manager, Corporate Lending

Per: ____________________________
Name:
Title:

LAURENTIAN BANK OF CANADA

Per: ______________________________
Name: A LEBLANC
Title: AVP- SPECIAL LOANS

Per: ______________________________
Name: A. DESROCHERS
Title: VP - SPECIAL LOANS

BUSINESS DEVELOPMENT BANK OF CANADA

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

HEDGE PROVIDERS:

NATIONAL BANK OF CANADA

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

LAURENTIAN BANK OF CANADA

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

BUSINESS DEVELOPMENT BANK OF CANADA

Per: ______________________________
Name: Russell French
Title: AVP, BRU

Per: ______________________________
Name: ADAM LAIKEN
Title: DIRECTOR, BUSINESS RESTRUCTURING

HEDGE PROVIDERS:

NATIONAL BANK OF CANADA

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

LAURENTIAN BANK OF CANADA

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

BUSINESS DEVELOPMENT BANK OF CANADA

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

HEDGE PROVIDERS:

NATIONAL BANK OF CANADA

Per: ______________________________
Name: Jean Gosselin
Title: Directeur principal

Per: ______________________________
Name: Claude Lussier
Title: Directeur principal / Senior Manager

LAURENTIAN BANK OF CANADA

Per:
Name: A. LEBLANC
Title: AVP - SPECIAL LOANS

Per:
Name: A. DESROCHERS
Title: VP - SPECIAL LOANS

BORROWER: **INDEX ENERGY MILLS ROAD CORPORATION**

Per:
Name: Gordon Kerr
Title:
(I have authority to bind the Corporation.)

GUARANTORS: **INDEX INTERNATIONAL AB (PUBL)**

Per:
Name:
Title:
(I have authority to bind the Corporation.)

LAURENTIAN BANK OF CANADA

Per: ________________________________
Name:
Title:

Per: ________________________________
Name:
Title:

BORROWER: **INDEX ENERGY MILLS ROAD CORPORATION**

Per: ________________________________
Name: Gordon Kerr
Title:
(I have authority to bind the Corporation.)

GUARANTORS: **INDEX INTERNATIONAL AB (PUBL)**

Per: ________________________________
Name:
Title:
(I have authority to bind the Corporation.)

LAURENTIAN BANK OF CANADA

Per: ________________________
Name:
Title:

Per: ________________________
Name:
Title:

BORROWER: **INDEX ENERGY MILLS ROAD CORPORATION**

Per: ________________________
Name: Gordon Kerr
Title:
(I have authority to bind the Corporation.)

GUARANTORS: **INDEX INTERNATIONAL AB (PUBL)**

Per: [signature]
Name: Richard Haraldsson
Title: CEO
(I have authority to bind the Corporation.)

R. ANDREWS INVESTMENT COMPANY, LLC

Per: Russell Kerr
Name: Russell Kerr
Title: Manager

(I have authority to bind the Company.)

Witness as to the signature of
Jacqueline Kerr

Jacqueline Kerr

R. ANDREWS INVESTMENT COMPANY, LLC

Per: ______________________________
Name:
Title:

(I have authority to bind the Company.)

Witness as to the signature of
Jacqueline Kerr

Jacqueline Kerr

Jacqueline Kerr

SCHEDULE "A"

I. KNOWN EVENTS OF DEFAULT

1. Section 11.1.11 (*Completion Date*) - As a result of Completion not being achieved by the Outside Date of May 5, 2015.

2. Section 11.1.3(a) (*Failure to Perform Covenants*) - Failure to perform the covenants as set out in Section 9.2.2 (*Liens*) *and Section 1.1 (Definition of "Permitted Encumbrances")* - As a result of registration of Liens under the CLA against the Site Lands and the failure of the Borrower to have such Liens discharged or vacated within 30 days of the date of initial registration.

3. Section 11.1.13 (*Breach under Material Project Contract*) - Resulting from the breaches by EPC Contractor of the EPC Contract as detailed in letters from Borrower to EPC Contractor dated on or about May 1, 2015, and May 8, 2015, which breaches have had or are reasonably expected to have a Material Adverse Effect and the failure by the EPC Contractor to remedy such breaches within the Counterparty Cure Period.

4. Section 11.1.14 (*Repudiation or Termination of Material Project Contract*) – The termination of the EPC Contract on July 28, 2015 which is reasonably expected to have a Material Adverse Effect and the failure by the Borrower to enter into a new Material Project Contract to replace the EPC Contract within thirty-five (35) days of termination of the EPC Contract.

5. Section 9.1.47(b)(i) and (ii) (*Mitigation Plans*) – The Borrower failed to deliver a Proposed Mitigation Plan within the ten (10) Business Day period referred to in Section 9.1.47(a) (*Mitigation Plans*) and the Proposed Mitigation Plan and the Mitigation Plan ultimately delivered to the Agent indicates Completion will not occur by the Outside Date.

6. Section 11.1.3(b) (*Failure to Perform Covenants*) - Failure to perform covenants as set out in the following Sections and such failure having remained unremedied for 30 days:

   (a) Section 9.1.9 (*Financial and Other Reporting*) - Failure of the Borrower to provide Financial Statements as set out below:

      (i) Section: 9.1.9(a):

         (1) Audited annual Financial Statements as of December 31st 2014 for the Borrower

         (2) Audited annual Financial Statements as of December 31st 2014 for Sponsor

         (3) Audited annual Financial Statements as of December 31st 2014 for EPC Contractor

(ii) Section: 9.1.9(b):

(1) Quarterly unaudited Financial Statements for Q1-2014, Q2- 2014, Q3-2014 for Sponsor

(2) Quarterly unaudited Financial Statements for Q1-2014, Q2- 2014, Q3-2014 for EPC Contractor

(iii) Section: 9.1.9(c):

(1) Latest Audited annual Financial Statements for OPTIMUM DISPOSAL SERVICES INC.

(2) Latest Unaudited annual Financial Statements for COUNTRYWIDE RECYCLING INC.

(3) Latest Audited annual Financial Statements for WASTE MANAGEMENT INC.

(4) Latest Unaudited annual Financial Statements for POWER GROW SYSTEMS INC.

(5) Latest Audited annual Financial Statements for INDEX ENVIRONMENTAL CORPORATION.

(iv) Section 9.1.9(l) - Failure of the Borrower to provide material notification or reports under the Material Project Contracts in that the Borrower failed to provide to the Agent a copy of responses from the OPA (now the Independent Electricity System Operator) to its application for Commercial Operation (as defined in the PPA).

(b) Section 9.1.23 (*Material Project Contracts*) - As a result of the failure to diligently enforce all obligations under Material Project Contracts (in particular the EPC Contract), and the failure by the Borrower to remedy such breach within the Borrower Cure Period.

(c) Section 9.1.31 (*Punctual Payment*) - As a result of the failure to pay all Project Costs and Operating Costs unless subject to bona fide dispute and adequate reserves established, and such failure having remained unremedied for 30 days.

(d) Section 9.1.39 (*Permits*) – As a result of the failure to obtain the occupancy permit for the Project prior to the Scheduled Commercial Operation Date.

This is **Exhibit "J"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....

A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

NATIONAL BANK OF CANADA

February 11, 2016

PERSONAL AND CONFIDENTIAL

Via Email

Index Energy Mills Road Corporation
170 Mills Road
Ajax, ON L1S 2H1

Attention: Gordon Kerr

Dear Sirs:

Re: Index Energy Mills Road Corporation (the "Borrower")

We refer to the credit agreement dated as of July 15, 2013, as amended by waiver and consent agreements dated September 12, 2013, October 11, 2013 and December 13, 2013, a consent, waiver and first amending agreement dated January 28, 2015 and an accommodation agreement (the "**Accommodation Agreement**") dated as of October 9, 2015 (as amended, the "**Credit Agreement**") between the Borrower, National Bank of Canada, as agent (the "**Agent**"), the Lenders and the Hedge Providers (as each such term is defined in the Credit Agreement). Unless otherwise specified, capitalized terms used herein have the meanings ascribed thereto in the Accommodation Agreement.

As you are aware, the Forbearance Deadline under the Accommodation Agreement was November 30, 2015. The Agent has not extended the Forbearance Deadline. In addition to the Borrower's failure to satisfy the terms of the Accommodation Agreement, certain of the Existing Defaults are continuing, including, without limitation, the Borrower's failure to (i) achieve Completion by the Outside Date of May 5, 2015; (ii) discharge all Liens registered against the Site Lands pursuant to the CLA; and (iii) obtain the occupancy permit for the Project.

Under the terms of the Accommodation Agreement, the Existing Defaults were not waived by the Agent but were specifically reserved and preserved.

As a result of the continuation of certain of the Existing Defaults and the occurrence of the Forbearance Deadline, the Agent is entitled to immediately terminate the Credit Facilities and enforce, without further notice or delay, all of its rights and remedies against the Borrower and the Guarantors including, without limitation, taking steps to enforce the Security.

Since the expiry of the Forbearance Deadline, the Agent has continued to forbear from enforcing its rights and remedies against the Borrower and the Guarantors on a day-to-day basis in the sole discretion of the Agent to provide the Borrower the opportunity to determine what steps must be taken to increase output at the Project and achieve Completion, as well as to remedy certain of the other Existing Defaults. At the request of the Agent, the Borrower agreed to expand the scope of the existing engagement of Black & Veatch Canada Company ("**B&V**) as Independent Engineer to provide an assessment of Project design, processes and procedures and to make recommendations to improve performance at the Project. B&V completed its site visit at the Project and delivered to the Agent and the Borrower its preliminary verbal report on January 29, 2016. We understand that on February 8, 2016 a meeting was held between the Borrower and B&V to address B&V's findings and to provide the Borrower with an opportunity to identify any points of disagreement. We anticipate receiving the final written report from B&V on or about February 16, 2016.

We have discussed with you on a number of occasions the Agent's concerns regarding the Borrower's inability to achieve Completion and remedy the other continuing Existing Defaults. Given that the B&V report is nearing completion, the Agent requires the Borrower to provide an updated Proposed Mitigation Plan (as defined in the Credit Agreement) to address the manner in which the Borrower will remedy those Existing Defaults which are continuing, in particular the Borrower's failure to achieve Completion. As part of the Proposed Mitigation Plan, the Agent requires an updated cash flow forecast and financial model for the Project.

During our eall on February 10, 2016, you advised that the Borrower was in the process of retaining a consultant (the "**Biomass Consultant**") with specific biomass expertise to assist the Borrower in resolving performance issues at the Project, with a particular focus on fuel. You indicated that the Biomass Consultant is not available to commence his engagement until February 22, 2016. You requested that the Borrower have an opportunity to review the final written B&V report and to consult with the Biomass Consultant before finalizing the Proposed Mitigation Plan. In the Agent's view, it is imperative that the Borrower not only finalize but carry out its Mitigation Plan as quickly as possible. However, the Agent recognizes that the Proposed Mitigation Plan should address the B&V findings as set out in its written report.

Accordingly, in order to minimize the time required for the Agent and the other Lenders to consider the Borrower's Proposed Mitigation Plan, we require the Borrower to deliver to the Agent its draft Proposed Mitigation Plan by February 19, 2016, with the final version to be received by the Agent by February 26, 2016. This will allow the Borrower time to review the draft Proposed Mitigation Plan with the Biomass Consultant, address those aspects of the B&V review discussed verbally with B&V and incorporate into the final version any additional issues raised by the Biomass Consultant or in the final B&V written report.

Finally, we note that there is approximately $209,000 on deposit in the Project Operating Account. As we have previously advised, the Agent will not permit any overdraft to arise under the Project Operating Account. On each banking day, the Agent will only honour cheques or other instruments drawn upon the Project Operating Account if there are sufficient funds in the Project Operating Account to honour all such cheques or instruments presented to the Agent for payment. We understand that the Borrower has requested additional funding from Index International to meet the Borrower's ongoing cash requirements. Please confirm the amount and anticipated timing of this funding.

We confirm that there is no agreement on the part of the Agent to forbear from enforcing any of its rights and remedies against the Borrower or the Guarantors. The Agent expressly reserves its right to take any steps it deems necessary at any time as a result of the expiry of the Forbearance Deadline, the continuation of certain of the Existing Defaults and the occurrence of any other Events of Default under the Credit Agreement. We confirm that the Existing Defaults are not an exhaustive list of all Defaults and Events of Default under the Credit Agreement and that certain other breaches, Defaults and Events of Default may have occurred and may be continuing. Nothing in this letter shall constitute a waiver of any breaches, Defaults or Events of Default under the Credit Agreement, including the Existing Defaults.

Except as expressly waived in writing by the Secured Creditors, no act or failure to act by any of the Secured Creditors nor anything said or done in any discussions, correspondence or other dealings among any of the Agent, the other Secured Creditors, the Borrower, any other obligor or any of their respective shareholders, affiliates, subsidiaries, related parties, officers, directors, employees, agents or representatives shall be construed as a waiver of any breach, Default or Event of Default under the Credit

Agreement, or any of the rights or remedies of the Agent or any of the other Secured Creditors. The Agent and the other Secured Creditors reserve the right to immediately exercise or direct the exercise of such rights and remedies at any time, including, without limitation, enforcement of the Security.

Yours truly,

NATIONAL BANK OF CANADA, AS AGENT

Per:
Name: Jean Gosselin
Title: Senior Manager

cc: *Jacqueline Kerr*
R. Andrews Investment Company, LLC
Index International AB (publ)
Jonathan Weisz, Torys LLP
Jane Dietrich, Cassels Brock & Blackwell LLP

This is **Exhibit "K"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August,
2017

....
A Commissioner and/or Notary Public for
taking affidavits, etc. in Stockholm,
Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

THIS ACCOMMODATION AGREEMENT is dated as of August 12, 2016.

AMONG:

INDEX ENERGY MILLS ROAD CORPORATION, a corporation incorporated under the laws of the Province of Ontario

(the "**Borrower**")

AND:

INDEX ENERGY SWEDEN AB,
R. ANDREWS INVESTMENT COMPANY, LLC and
JACQUELINE KERR

(as "**Guarantors**")

AND:

NATIONAL BANK OF CANADA, a Canadian chartered bank

(as "**Agent**")

AND:

Those institutions whose names are set forth on the Execution Pages hereof under the Heading "Lenders"

(as "**Lenders**")

AND:

Those institutions whose names are set forth on the Execution Pages hereof under the Heading "Hedge Providers"

(as "**Hedge Providers**")

WHEREAS:

1. Pursuant to a credit agreement dated as of July 15, 2013 as amended by waiver and consent agreements dated September 12, 2013, October 11, 2013 and December 13, 2013, by a consent, waiver and first amending agreement dated January 28, 2015, an accommodation agreement dated October 9, 2015 (the "**First Accommodation Agreement**") and a second amending agreement (the "**Second Amending Agreement**") dated March 31, 2016 (as amended, the "**Credit Agreement**"), the following credit

facilities (collectively, the "**Credit Facilities**") have been made available to the Borrower. Unless otherwise specified, capitalized terms in this Agreement have the meanings ascribed thereto in the Credit Agreement:

(a) Construction Facility in the principal amount of up to but not exceeding $60,000,000, made available to the Borrower by the Lenders. As of August 11, 2016, the principal amount outstanding under the Construction Facility is $51,837,860, together with all accrued and unpaid interest, fees and expenses payable by the Borrower under the Credit Agreement to the date of payment;

(b) Term Facility, to be made available to the Borrower by the Lenders by way of the conversion without repayment of the amounts outstanding under the Construction Facility on the Term Conversion Date. The Term Conversion Date has not yet occurred and, accordingly, no amount is outstanding under the Term Facility; and

(c) Interest Hedge Facility made available to the Borrower by the Hedge Providers. As of August 11, 2016, the Hedge Liabilities owing to National Bank of Canada and Laurentian Bank of Canada in respect of Required Interest Rate Hedges amount to $11,193,420 and $2,311,375 respectively, together with all accrued and unpaid interest, fees and expenses payable by the Borrower under the Credit Agreement to the date of payment.

2. As security for all of its present and future indebtedness and obligations pursuant to the Credit Agreement, together with all other obligations of the Borrower to the Secured Creditors, the Borrower has granted the Security to the Agent. The Security grants to the Agent a security interest in and charge upon all of the Borrower's real and personal property, assets and undertaking. The Security includes, without limitation, a demand debenture in the principal amount of $210,000,000 granted by the Borrower to the Agent and registered against the Site Lands.

3. Each of R. Andrews Investment Company, LLC ("**Andrews Investment**") and Jacqueline Kerr has delivered to the Agent a limited recourse guarantee and pledge agreement dated July 15, 2013 (the "**Andrews Investment Guarantee**" and the "**Kerr Guarantee**" respectively), pursuant to which each of Andrews Investment and Jacqueline Kerr has guaranteed all of the indebtedness and obligations of the Borrower to the Secured Creditors under the Credit Agreement and pledged to the Agent the collateral specified in each of the Andrews Investment Guarantee and the Kerr Guarantee.

4. Index International AB (publ) ("**Index International**") delivered to the Agent a limited recourse guarantee and pledge agreement dated July 15, 2013 (the "**Index International Guarantee**"), pursuant to which Index International guaranteed all of the indebtedness and obligations of the Borrower to the Secured Creditors under the Credit Agreement and pledged to the Agent the collateral specified in the Index International Guarantee. Pursuant to a share purchase agreement dated March 31, 2016 between Index International and Index Energy Sweden AB ("**Index Sweden**"), Index International sold all of its equity interest in the Borrower to Index Sweden (the "**Change in Control**

Transaction"). The Secured Creditors consented to the Change in Control Transaction and released and discharged Index International from its obligations under the Index International Guarantee on closing of the Change in Control Transaction.

5. In accordance with the terms of the Second Amending Agreement, Index Sweden has delivered to the Agent a limited recourse guarantee and pledge agreement dated March 31, 2016 (the "**Index Sweden Guarantee**"), pursuant to which Index Sweden has guaranteed all of the indebtedness and obligations of the Borrower to the Secured Creditors under the Credit Agreement and pledged to the Agent the collateral specified in the Index Sweden Guarantee.

6. Hereafter, the Andrews Investment Guarantee, the Kerr Guarantee and the Index Sweden Guarantee are referred to collectively as the "**Guarantees**" and the collateral specified in each of the Guarantees is referred to collectively as the "**Guarantor Collateral**".

7. By letter dated May 12, 2015 (the "**Default Notice**"), the Agent advised the Borrower that it was in default of its obligations under the Credit Agreement and that certain Defaults and Events of Default had occurred and were continuing as more particularly specified in the Default Notice. The known Events of Default and the known Defaults specified in the Default Notice and in Schedule "A" hereto are collectively referred to herein as the "**Existing Defaults**". The Existing Defaults include, without limitation, registration of construction liens against the Site Lands (collectively, the "**Liens**").

8. By letter dated May 21, 2015, Thornton Grout Finnigan LLP ("**TGF**") in its capacity as counsel to the Secured Creditors appointed Alvarez & Marsal Canada ULC (the "**Consultant**") as Consultant to TGF with the consent of the Borrower and the Guarantors for the purpose of, among other things, reviewing the financial position of the Borrower and the security position of the Secured Creditors.

9. Although the Commercial Operation Date was achieved on June 12, 2015, Completion of the Project has not yet occurred. By letter dated July 28, 2015, the Borrower terminated the EPC Contract and has retained parties other than the EPC Contractor to rectify certain deficiencies at the Project.

10. By letter agreement dated January 15, 2016 (the "**B&V Expanded Engagement**"), the Agent and the Borrower agreed to expand the existing engagement of Black & Veatch Canada Company ("**B&V**") as Independent Engineer to conduct an operational assessment of the Project and to make recommendations to improve performance at the Project.

11. By letter dated February 11, 2016 (the "**Second Default Notice**"), the Agent advised the Borrower, among other things, that it had failed to satisfy the terms of the First Accommodation Agreement and that certain of the Existing Defaults were continuing. The Agent further advised that it had not extended the forbearance deadline under the Accommodation Agreement but was continuing to forbear from enforcing its rights and remedies against the Borrower and Guarantors on a day-to-day basis, in the Agent's sole discretion, to provide the Borrower the opportunity to determine what steps must be taken

to increase output at the Project and achieve Completion, as well as remedy certain of the other Existing Defaults.

12. On March 30, 2016, the Borrower provided the Agent with its draft mitigation plan which, among other things, outlined the Borrower's plan to improve electricity generation output from the Project. Following review and feedback by B&V and the Agent, on April 29, 2016, the Borrower delivered to the Agent a revised mitigation plan (the "**Proposed Mitigation Plan**") which describes, among other things, required design changes to certain aspects of the Project. On April 25, 2016, the Borrower delivered to the Agent a monthly cash flow forecast for the period ending December 31, 2016 (the "**Initial Forecast**"). Following review and comment by the Agent, the Borrower delivered a revised cash flow forecast to the Agent on May 18, 2016, which has been further updated by the Borrower as of July 29**,** 2016 (as revised and updated, the "**Forecast**").

13. Since March 30, 2016, Index International and Index Sweden have provided additional equity advances to the Borrower in the amount of approximately $6.9 million to fund the costs of the Proposed Mitigation Plan and partially fund the Borrower's other cash needs while it carries out the Proposed Mitigation Plan.

14. The Secured Creditors have requested that the Borrower obtain alternate financing sufficient to permanently repay and cancel the Credit Facilities.

15. The Borrower and Guarantors have requested that the Secured Creditors forbear from enforcing their rights and remedies at this time and provide accommodation to the Borrower to permit the Borrower to implement the Proposed Mitigation Plan and obtain financing sufficient to permanently repay and cancel the Credit Facilities. The Agent has not withdrawn the Default Notice or the Second Default Notice, nor waived the Existing Defaults or the Borrower's and Guarantors' failure to satisfy the terms of the First Accommodation Agreement, but, subject to the terms of this Agreement, the Secured Creditors will agree to forbear from enforcing their rights and remedies with respect to such failure and the Existing Defaults.

16. In consideration of the forbearance by the Agent and the other Secured Creditors as described herein, for the other accommodations described herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by the Borrower and the Guarantors, the Borrower and the Guarantors hereby agree with the Agent and the other Secured Creditors as follows.

ARTICLE I - ACKNOWLEDGMENT

1.01 The Borrower and the Guarantors acknowledge that each of the foregoing recitals is true and correct.

1.02 The Borrower and the Guarantors acknowledge that, unless otherwise specified, all capitalized terms contained herein have the same meaning as in the Credit Agreement and all monetary amounts are expressed in Canadian dollars.

1.03 The Borrower and Guarantors acknowledge that:

(a) The Borrower is indebted to the Secured Creditors under the Credit Facilities in the amounts specified in paragraph 1 of this Agreement as at the date specified therein, together with interest and costs (including, without limitation, legal and Consultant fees and disbursements) to the date of payment and that the Borrower has no defences, counterclaims or rights of set-off or reduction in respect of the Borrower's indebtedness to the Secured Creditors as specified in paragraph 1 of this Agreement;

(b) The Borrower is in default of its obligations to the Secured Creditors under the terms of the Credit Agreement and the Secured Creditors have requested the Borrower obtain financing sufficient to permanently repay and cancel the Credit Facilities;

(c) Although the Construction Period has expired, the Conditions Precedent to Term Conversion have not been satisfied, such that the Construction Facility has not been converted to the Term Facility. Accordingly, the Borrower is in default of its obligation to repay the entire amount of the Construction Facility to the Agent in accordance with section 2.2.1(d) of the Credit Agreement;

(d) No further credit is available to the Borrower under the Credit Facilities and the Agent, on behalf of the Secured Creditors, may terminate the Credit Facilities, demand payment of the Construction Facility and the Interest Hedge Facility and take steps to enforce the Security at any time; and

(e) None of the funds in the Segregated Accounts shall be made available to the Borrower (including, without limitation, any accrued interest in the Liquid Security Account), other than: (i) funds in the Project Revenue Account in excess of the Debt Service Reserve Requirement (currently $4,409,204), Operating Reserve Requirement (currently $250,000) and Maintenance Reserve Requirement (currently $250,000) (the amount of such excess funds, the "**Excess Funds**"), which Excess Funds may, subject to prior approval by the Agent, be transferred to the Project Operating Account to fund Project Costs; and (ii) funds in the Project Operating Account from time to time which, subject to the terms of the Credit Agreement, the Borrower shall utilize solely to fund Project Costs. Notwithstanding the foregoing, the Borrower has advised the Agent that it may request the release of some or all of the funds in the CLA Holdback Account in connection with a settlement with the holders of the Liens ("**Lien Claimants**") which would result in the Liens being vacated from title to the Property and the proceedings commenced against the Agent by the Lien Claimants being dismissed on a with prejudice basis. The Agent will consider any such request by the

Borrower, although the Borrower acknowledges and agrees that it is within the sole discretion of the Agent to permit the release of any funds in the CLA Holdback Account.

1.04 Commencing on the next business day following satisfaction of the Conditions Precedent (as defined below) and continuing until the earlier to occur of the Forbearance Deadline and the termination by the Agent of its forbearance in accordance with the terms of this Agreement (the "**Tolling Termination Date**")**,** the Secured Parties, the Borrower and the Guarantors agree to toll and suspend the running of the applicable statutes of limitation, laches or other doctrines related to the passage of time in relation to the Credit Agreement, the Credit Facilities and the Security and any entitlements arising therefrom or any other related matters and any contractual time limitation on the commencement of proceedings, any claims or defenses based on the application of any statute of limitations, contractual limitations, or any time-related doctrine including waiver, estoppel or laches is hereby suspended (the "**Tolling Agreement**"). Each of the parties confirms that the Tolling Agreement is intended to be an agreement to suspend or extend the basic limitation period provided by section 4 of the *Limitations Act, 2002* (Ontario) (the "**Limitations Act**") as well as the ultimate limitations period provided by section 15 of the Limitations Act in accordance with the provisions of section 22 of the Limitations Act and is intended to be a "business agreement" in accordance with section 22 of the Limitations Act.

1.05 The time provided for under any statutes of limitations, laches, or any other doctrines related to the passage of time in relation to the Credit Agreement, the Credit Facilities and the Security and any entitlements arising therefrom or any other related matters, will recommence running as of the Tolling Termination Date, and for greater certainty the time during which the limitation period is suspended pursuant to the Tolling Agreement shall not be included in the computation of any limitation period.

1.06 The Borrower and the Guarantors acknowledge and agree that all Security now held by the Agent for the indebtedness and obligations of the Borrower to the Secured Creditors is valid, binding and enforceable in accordance with its terms, and that the Borrower has no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Agent thereunder.

1.07 The Guarantors acknowledge that the Guarantees are valid, binding and enforceable in accordance with their terms, and that the Guarantors have no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Agent thereunder.

1.08 The Borrower and the Guarantors hereby agree that upon the execution of this Agreement, they shall each absolutely and irrevocably release each of National Bank of Canada, Laurentian Bank of Canada, Canadian Western Bank, Business Development Bank of Canada, the Consultant, B&V and each of their respective officers, directors, employees, solicitors and agents (collectively, the "**Releasees**") of and from any and all claims which they each may have in respect of the Releasees up to and including the date hereof including, without limitation, any actions taken by the Agent, the Lenders or the Hedge Providers in dealing with the Borrower, the Guarantors, the Project, the Power Purchase Agreement, the Security, the Credit Facilities or with the administration of the Borrower's or the Guarantors' accounts with the Agent.

1.09 In consideration of the Secured Creditors' forbearance and the other accommodations described herein, the Borrower agrees to pay to the Secured Creditors a forbearance fee (the "**Forbearance Fee**") in the amount of $**250,000** which shall be earned by the Secured Creditors and payable by the Borrower upon execution of this Agreement. The Borrower authorizes the Agent to transfer the amount of the Forbearance Fee from the Project Revenue Account to the Agent's Payment Account immediately upon execution of this Agreement.

ARTICLE II - CONDITIONS PRECEDENT

2.01 The forbearance and other accommodations granted by the Secured Creditors hereunder are subject to approval of the credit committee of each of the Secured Creditors. Approval of the terms of this Agreement shall only be sought if the following conditions have been complied with in a manner satisfactory to the Agent in its discretion on or before 5:00 p.m. on August 12, 2016 or such later date as provided for below (collectively, the "**Conditions Precedent**"):

(a) receipt by the Agent of a duly authorized and executed original of this Agreement executed by the Borrower and the Guarantors;

(b) the Agent shall have received a written opinion from counsel to the Borrower confirming that that the changes to the Project made or to be made pursuant to the Mitigation Plan do not constitute a Contract Facility Amendment (as defined in section 2.1(b) of the General Terms and Conditions of the Power Purchase Agreement) and accordingly do not require the consent of the IESO under said section 2.1(b) ;

(c) by August 12, 2016 the Borrower shall pay to the Agent all outstanding legal and agent fees and expenses payable by the Borrower pursuant to the terms of the Credit Agreement including, without limitation, all fees and expenses payable to B&V;

(d) by August 12, 2015, Index Sweden shall contribute additional equity to the Borrower of at least $250,000, which shall be deposited to the Project Revenue Account and thereafter disbursed in accordance with the terms of the Credit Agreement and this Agreement.

2.02 The Conditions Precedent are for the sole benefit of the Secured Creditors and may be waived only by the Agent in writing. If the Conditions Precedent are not complied with to the satisfaction of the Agent by 5:00 p.m. on August 12, 2016 or such later date as provided for above, and the Agent will not waive satisfaction thereof, then the offer of forbearance and the other accommodations offered by the Secured Creditors hereunder shall be terminated.

2.03 Upon satisfaction of the Conditions Precedent, unless a Forbearance Terminating Event occurs under this Agreement, the Secured Creditors shall take no further steps prior to December 31, 2016 (the "**Forbearance Deadline**") to terminate the Credit Facilities, demand payment of the Credit Facilities or enforce the Security.

ARTICLE III – MITIGATION PLAN

3.01 The Borrower and the Guarantors acknowledge and agree that the Construction Facility and the Commitments have been terminated and cancelled and no further credit is available to the Borrower under the Construction Facility. The Agent confirms that, given the termination of the Construction Facility and the Commitments, the Standby Fee shall not be payable by the Borrower for the period after the date of satisfaction of the Conditions Precedent.

3.02 The Proposed Mitigation Plan, as amended to incorporate the Forecast, shall constitute the "**Mitigation Plan**" for the purpose of the Credit Agreement. Notwithstanding the foregoing, nothing in the Mitigation Plan shall operate to amend any of the terms of this Agreement. To the extent of any conflict between the Mitigation Plan and this Agreement, this Agreement shall prevail. The Borrower shall update the Consultant, B&V and the Agent at least weekly or more frequently if required by the Consultant or the Agent regarding the status of the Mitigation Plan.

3.03 During the period commencing August 1, 2016 and ending on the Forbearance Deadline, an "**Output Default**" shall occur if at any time the actual cumulative average electricity output for the Project ("**Actual Output**") is less than the cumulative average electricity output for the Project projected under the Forecast ("**Projected Output**") other than as a result of Force Majeure (as defined below). The first comparison of Actual Output to Projected Output shall occur on August 31, 2016 and every 15 days thereafter. The Projected Output as of each such date is set out in the table below (the "**Output Table**"):

Comparison Date	**Projected Output (MWH) (Cumulative)**
August 31, 2016	4.8
September 15, 2016	5.7
September 30, 2016	6.6
October 15, 2016	7.4
October 31, 2016	7.6
November 15, 2016	8.4

November 30, 2016	9.0
December 15, 2016	9.5
December 31, 2016	9.5

The Forecast and the Output Table assume that the Project will be shut down three times during the term of this Agreement: from August 18-25, 2016 as part of the Mitigation Plan and from October 20-23, 2016 and December 16-19, 2016 to carry out ordinary course cleaning (collectively, the "**Planned Shutdowns**"). If the dates for any of the Planned Shutdowns change, the Borrower shall deliver to the Agent prior to the start of the next Planned Shutdown a revised Forecast ("**Revised Forecast**") and revised Output Table ("**Revised Output Table**") reflecting the revised Projected Output for the period remaining until the Forbearance Deadline and the revised dates of the remaining Planned Shutdowns. Provided that the Revised Forecast and the Revised Output Table confirm the following (collectively, the "**Revised Forecast and Output Table Approval Conditions**"): (i) the duration of each of the remaining Planned Shutdowns has not increased by more than 3 days in total; (ii) the start and end dates of each of the remaining Planned Shutdowns are not delayed by more than 30 days; (iii) the aggregate electricity output for the Project during the period commencing on August 1, 2016 to the Forbearance Deadline has not decreased; and (iv) average electricity output from the Project during any 24 hour period is not projected to exceed the greater of 13.5 MWH and the highest average electricity output achieved during any 5 day period after August 1, 2016, the Revised Forecast and the Revised Output Table shall constitute the "Forecast" and the "Output Table" for the purpose of this Agreement.

If an Output Default occurs, the Agent shall be entitled to declare a Forbearance Terminating Event or, in the sole and absolute discretion of the Agent, the Agent may by notice to the Borrower require, and the Borrower irrevocably agrees, to appoint within 2 business days of receipt of such notice, B&V or, if B&V is unable or unwilling to accept such appointment, another party acceptable to the Agent in its sole and absolute discretion (in such capacity, the "**Mitigation Plan Director**" or "**MPD**") to determine the cause of the Output Default, develop in consultation with the Borrower a strategy to remedy the Output Default and ensure the Project is capable of generating sufficient income to satisfy the Borrower's operational, capital and debt repayment obligations (the "**Performance Target**") and take such steps as the MPD determines are necessary to ensure the Project meets the Performance Target, all in accordance with the terms of the engagement letter attached as Schedule "B" hereto (the "**MPD Engagement Letter**").

"**Force Majeure**" means any of the following events or causes which prevents or materially impairs the implementation by the Borrower of the Mitigation Plan or the normal operation of the Project in accordance with the Forecast, which is not caused by the Borrower or any party related thereto and which is beyond the reasonable control of the Borrower: strikes, walkouts, a shutdown of the Project imposed by IESO or Veridian, restrictive orders or directions of any Canadian governmental authority, riots, insurrections, war, sabotage, rebellion, fire, explosion or acts of God. Notwithstanding the foregoing, Force Majeure shall not include: (i) inability to obtain the necessary supply of fuel for the Project; (ii) any equipment breakdown at the Project; and (iii) any hindrance or delay in implementation of the Mitigation Plan or any impairment in operation of the Project caused directly or indirectly by a lack of funds or other financial circumstances of the Borrower or any of the Guarantors, the state of the market or any wilful or negligent act or omission on the part of the Borrower or any party related thereto shall not constitute an event or cause of Force Majeure.

3.04 The MPD shall act as agent of the Borrower and shall be authorized by the Borrower to take and any all steps necessary or desirable on behalf of the Borrower to achieve the Performance Target. The Borrower and Guarantors acknowledge and agree that the appointment of the MPD is not an act of enforcement of the Security by the Agent and the other Secured Parties and that the Agent and the other Secured Parties shall have no liability in connection with the appointment or conduct of the MPD in carrying out its duties. The Borrower shall provide to the MPD full cooperation and unrestricted access to its business premises, including without limitation access to any books, records, plans, drawings, designs, reports or other information required or requested by the MPD to carry out its duties hereunder. The Borrower acknowledges and agrees that all of the reasonable fees and disbursements of the MPD shall be paid by the Borrower.

3.05 In addition to the Condition Precedent that Index Sweden advance $250,000 to the Borrower, Index Sweden shall contribute additional equity to the Borrower of at least $3,550,000 in accordance with the following schedule, which shall be deposited to the Project Revenue Account and thereafter disbursed in accordance with the terms of the Credit Agreement and this Agreement:

Date of Equity Advance	**Amount of Advance**
September 5, 2016	$2,500,000
October 5, 2016	$1,050,000

3.06 On or before September 5, 2016, the Borrower shall permanently reduce the Outstanding Principal under the Construction Facility by $2,500,000 (the "**Amortization Payment**"). The Amortization Payment shall permanently reduce the Commitments of the Lenders in accordance with section 2.4.3 of the Credit Agreement. The Borrower may prepay some or all of the Amortization Payment prior to September 5, 2016.

3.07 On or before August 22, 2016, the Borrower shall open a new segregated account with the Agent (the "**Mitigation Plan Holdback Account**"). The Borrower acknowledges and agrees that it will timely fund the Mitigation Plan Holdback Account with all amounts required to be retained as a holdback pursuant to the provisions of the *Construction Lien Act* (Ontario) (the "**CLA**") in respect of the materials and services supplied to the Project to implement the Mitigation Plan, which funds shall only be released from the Mitigation Plan Holdback Account in accordance with the terms of this Agreement or the Credit Agreement.

3.08 The Borrower covenants and agrees to permanently and indefeasibly repay the Credit Facilities on or before the Forbearance Deadline. Upon permanent and indefeasible payment by the Borrower on or before the Forbearance Deadline of all amounts outstanding under the Credit Facilities and otherwise secured by the Security and the Guarantees, the Agent will discharge the Security and the Guarantees or assign the Security and the Guarantees as directed by the Borrower, provided that the terms of any such assignment must be satisfactory to the Agent in its sole discretion.

ARTICLE IV- RESPONSE TO DEFAULT NOTICE

4.01 Subject to the Borrower's ongoing obligation to provide to the Agent and the Consultant any reporting or other information required pursuant to this Agreement, the Borrower shall not be required to deliver to the Agent any of the outstanding reporting required under section 9.1.9 of the Credit Agreement during the period ending on the Forbearance Deadline.

4.02 Within 30 days of execution of this Agreement (the "**CLA Date**"), the Borrower shall provide to the Agent satisfactory evidence of its compliance with the CLA including with respect to the sufficiency of the funds in the CLA Holdback Account and the Mitigation Plan Holdback Account to satisfy all holdback related obligations under the CLA for improvements to the Project to and including the CLA Date. Thereafter, the Borrower shall continue to provide on request by the Agent evidence of its compliance with the CLA with respect to improvements to the Project carried out after the CLA Date.

4.03 All Liens registered against the Site Lands pursuant to the CLA shall be discharged or vacated on or before the Forbearance Deadline. The Borrower shall act diligently and in good faith to discharge or vacate all Liens registered against the Site Lands pursuant to the CLA and will provide, upon request by the Agent, an update as to all steps taken or intended to be taken by the Borrower to discharge or vacate such Liens from the Site Lands.

ARTICLE V – CONSULTANT AND B&V

5.01 The engagement of the Consultant shall continue until terminated by TGF or the Credit Facilities are permanently and indefeasibly repaid by the Borrower. The Borrower shall continue to provide to the Consultant full cooperation and unrestricted access to its business premises and financial records and shall provide to the Consultant such information regarding the financial position of the Borrower, the security position of the Secured Creditors or any other matter or thing relevant to the Credit Facilities or this Agreement as the Consultant may require from time to time. The Borrower acknowledges and agrees that all of the fees and disbursements of the Consultant shall be paid by the Borrower.

5.02 The engagement of B&V shall continue until terminated by the Agent or the Credit Facilities are permanently and indefeasibly repaid by the Borrower, for the purpose of monitoring and reporting to the Agent, as it may require in its sole discretion, on the status of the implementation of the Mitigation Plan. The Borrower shall continue to provide to B&V full cooperation and unrestricted access to its business premises, books and records and outside consultants in accordance with the terms of the B&V Expanded Engagement. The Borrower acknowledges and agrees that all of the fees and disbursements of B&V shall be paid by the Borrower.

ARTICLE VI - PAYMENTS TO AFFILIATES

6.01 The Borrower covenants that, until the Forbearance Deadline, it shall not incur any new or additional indebtedness, obligations or liabilities to its affiliates outside of the ordinary and normal course of business without the prior consent of the Agent.

6.02 The Borrower covenants that it will not make any Distributions during the period ending on the Forbearance Deadline and thereafter, only if the Distribution Conditions are satisfied.

ARTICLE VII - REPORTING REQUIREMENTS

7.01 The Borrower shall hold a weekly operational update telephone call with the Consultant and B&V (or, if acceptable to the Agent, deliver an email update to the Consultant and B&V) to address the status of the Mitigation Plan and to provide an operational update on the Project. B&V shall attend at the Project to review the status of the Mitigation Plan in August and September, 2016 or more frequently if reasonably required by the Agent, provided that if an Output Default has not occurred, B&V shall attend at the Project no more frequently than two (2) days each month.

7.02 The Borrower shall strictly adhere to all reporting requirements as set out in the Credit Agreement, except as amended herein. The Borrower shall deliver to the Agent and the Consultant:

(a) on the later of the tenth business day and sixteenth calendar day of each month: (i) an update of the Forecast for the following 3 months or such other period of time as the Agent may require. The updated Forecast must be satisfactory to the Agent in its sole discretion; and (ii) a report comparing actual cash-flows, total direct operating costs, total construction costs, operating revenue, total cash inflows and closing cash of the Borrower for the preceding one month period or such other period as the Agent may require to amounts budgeted in the Forecast and providing an explanation of any “Material Variance”. A “**Material Variance**” shall be:

(i) a 10% or greater negative variance from the Forecast in the Company’s closing cash for any given month; or

(ii) a 10% or greater negative variance from the Forecast in the Borrower's total direct operating costs, construction costs, operating revenue or total cash inflows for any given month;

(b) on or before 2:00 p.m. on Tuesday for the week ending the immediately preceding Friday, if necessary an updated schedule for completion of the Mitigation Plan and a summary of budgeted, committed and paid costs related to the Mitigation Plan;

(c) bi-weekly on or before 2:00 p.m. on Tuesday for the two week period ending the immediately preceding Friday, a report disclosing actual cash-flows, including total direct operating costs (on a cash basis), total construction costs (on a cash basis), operating revenue, total cash inflows, the amount of all Prior Claims (as defined below) and closing cash of the Borrower for the preceding two week period or such other period as the Agent may require;

With each bi-weekly report, the Borrower shall advise the Agent if it anticipates its receipts will not be sufficient to fund the disbursements as described in the Forecast at any time. In such case, the Borrower shall identify and confirm to the Agent the source of funds which shall be utilized to satisfy the Borrower's disbursements which will not be satisfied by the Borrower's receipts.

7.03 In addition, the Borrower shall provide such information as required by the Agent from time to time regarding the status of the dispute with the EPC Contractor and the steps being taken by the Borrower to ensure that all Liens under the CLA have been discharged or vacated from title to the Site Lands.

ARTICLE VIII - ADDITIONAL COVENANTS

8.01 The Borrower shall pay when due, or otherwise provide confirmation satisfactory to the Agent that payment arrangements satisfactory to the Agent have been entered into by the Borrower, to pay all claims which rank prior to the indebtedness and Security held by the Agent from the Borrower and the Guarantors (the "**Prior Claims**") which shall include, without limitation, all amounts owing or required to be paid, where a failure to pay any such amount could give rise to a claim pursuant to any law, statute, regulation or otherwise, which ranks or is capable of ranking in priority to the Security or otherwise in priority to any claim for the repayment of any amounts owing to the Secured Creditors, including without limitation all amounts owing to any federal, provincial, municipal or other government entity or Crown corporation, all statutory, actual or deemed trusts, all withholdings and source deductions, all accrued and unpaid payroll, including vacation pay, rent for the Borrower's leased premises, and all amounts owing to any person having a lien (including a construction lien), encumbrance, trust or charge ranking in priority to the Security. The Borrower shall provide to the Agent copies of all payment arrangements between the Borrower and any party with Prior Claims in aggregate greater than $100,000. Subject to the terms of this Agreement, this section 8.01 shall not require the Borrower to pay the claims of any party which has registered a construction lien against the Site Lands as of the date of this Agreement provided the Agent is satisfied with the steps taken by the Borrower to dispute the validity, amount or priority of such claims and a Forbearance Terminating event would not otherwise occur as a result of the failure by the Borrower to pay any such claims.

8.02 The Borrower agrees that it shall not repurchase any of the shares of the Borrower currently held by its shareholders, issue dividends on account of such shares or repay any shareholder loans prior to Term Conversion without the prior written consent of the Agent.

8.03 The Borrower acknowledges and agrees that all business in the nature of or related to the business transacted by the Borrower prior to the date hereof shall continue to be transacted in the name of and for the account of the Borrower. In particular, no such business or transaction shall be performed in the name of or recorded or applied for the benefit of any person, firm or corporation other than the Borrower. The Borrower acknowledges and agrees that the Borrower shall deposit all revenues, collections of accounts receivable and any other income generated by the Borrower only to the Project Revenue Account.

8.04 The Borrower confirms to and in favour of the Agent that all assets secured by the Security are in existence, in the possession and control of the Borrower and have not been transferred, sold, encumbered or impaired in any manner which would deteriorate from or adversely affect the value of same.

8.05 To the best of the Borrower's knowledge and belief, the Borrower certifies that no environmental laws or regulations have been violated with respect to any of the Borrower's property and, to the best of its knowledge, no proceedings have or have been threatened to be instituted with respect to a breach of any environmental laws or regulations.

8.06 The Borrower acknowledges and agrees that on each banking day the Agent will not honour any cheques or other instruments drawn on any accounts maintained by the Borrower with the Agent including, without limitation, the Project Operating Account, if there are insufficient funds on deposit in each such account to honour all such cheques or other instruments presented to the Agent for payment on that banking day. If, however, an overdraft arises under any of the Borrower's accounts with the Agent (hereafter an "**Overdraft**"), then the amount of such Overdraft shall bear interest at the Agent's standard Overdraft interest rate, being 21% per annum and services charges, being $5.00 per transaction, issued by or on behalf of the Borrower which causes or increases the Overdraft.

8.07 The Borrower acknowledges and agrees that the Agent may debit any of the Segregated Accounts to pay any legal, consultant or other agent fees and disbursements. The Agent will provide reasonable notice to the Borrower prior to debiting such amounts from the Segregated Accounts.

ARTICLE IX- CLOSING OF THE BORROWER'S CURRENT ACCOUNTS

9.01 The Borrower's current accounts with the Agent (the "**Accounts**") shall be closed and any other banking arrangements or services provided by the Agent to the Borrower shall be terminated on the date the Borrower permanently and indefeasibly repays the Credit Facilities (the "**Account Closing Date**"). From and after the Account Closing Date, all cheques or other instruments drawn on the Accounts which are presented for payment to the Agent shall be returned marked "Account Closed".

9.02 The Borrower acknowledges that the Borrower's indebtedness and obligations to the Agent and the other Secured Creditors include the Borrower's contingent liability to the Bank in respect of any chargebacks which may arise as a result of cheques or other instruments deposited to the Accounts prior to the Account Closing Date being dishonoured, discredited, reversed or returned (collectively, the "**Chargeback Liability**"). The amount of the Chargeback Liability as reasonably determined by the Agent shall be added to and form part of the Borrower's indebtedness and obligations secured by the Security and shall be paid to the Agent concurrently with the permanent repayment and cancellation of the Credit Facilities as a condition of the Bank discharging or assigning the Security, subject to reimbursement to the Borrower by the Agent in the event that some or all of such Chargeback Liability is extinguished or otherwise satisfied. Alternatively, the Agent may, in its sole discretion, agree to accept a chargeback indemnity in form satisfactory to the Agent in its sole discretion secured by a letter of credit or cash collateral from a party satisfactory to the Agent in its sole discretion.

ARTICLE X – TERMINATING EVENTS

10.01 None of the Agent's or the other Secured Creditors' existing rights and remedies, and none of the Existing Defaults, are waived by this Agreement but are specifically reserved and preserved. However, subject to the provisions of this Agreement, the Agent agrees not to terminate the Credit Facilities, demand payment of the Construction Facility or the Interest Hedge Facility or take steps to enforce any of the Security prior to the Forbearance Deadline unless and until one of the following events has occurred (a **"Forbearance Terminating Event**"):

(a) if applicable, the Borrower fails to deliver a Revised Forecast or Revised Output Table to the Agent within the time specified in section 3.03 or if the Revised Forecast and Output Table Approval Conditions are not satisfied;

(b) if an Output Default occurs;

(c) if the Borrower refuses to appoint the MPD as required by the Agent in accordance with the terms of this Agreement;

(d) if the MPD has been appointed by the Borrower in accordance with the terms of this Agreement, a Forbearance Terminating Event shall occur if the Borrower neglects or refuses to take such steps as the MPD determines are necessary to ensure the Project meets the Performance Target or if the Agent determines that the Borrower with the assistance of the MPD will be unable to achieve the Performance Target prior to the Forbearance Deadline;

(e) any default or breach by the Borrower or the Guarantors occurs under this Agreement or any further Default or Event of Default occurs under the Credit Agreement or any of the Security, including any subsequent or further breach of any of the obligations or covenants which have resulted in any of the Existing Defaults. For greater certainty, the continuation of any of the Existing Defaults shall not constitute a Forbearance Terminating Event hereunder unless the Borrower is required to remedy or otherwise take a specific step or action with respect to any Existing Default pursuant to the terms of this Agreement and the Borrower fails to do so;

(f) if the Borrower fails to make any payment to the Agent, the Lenders or the Hedge Providers when due or if the Borrower fails to pay any Project Costs when due in accordance with the payment terms in effect with respect to each such Project Cost;

(g) if a Voluntary Event of Bankruptcy occurs in accordance with Article 11.1.5 of the Credit Agreement;

(h) if any other creditor of the Borrower or the Guarantors exercises any rights against any of the property, assets or undertaking of the Borrower or the Guarantor Collateral, if any creditor brings any proceeding or takes any other action under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Business Corporations Act* of Canada or of any province, the *Winding-Up Act* (Canada) or any similar legislation including any similar legislation in force in Sweden;

(i) any representation or warranty made by the Borrower or the Guarantors in connection with the execution and delivery of this Agreement shall prove to have been incorrect in any material respect;

(j) any default or failure by the Borrower to make any payment of wages or other monetary remuneration payable by the Borrower to its employees under the terms of any contract of employment, oral or written, express or implied (the "**Payroll**") or the failure by the

Borrower to pay to the relevant governmental authority when due any of the Prior Claims exigible in respect of a Payroll in any material respect;

(k) the sale, lease, transfer, relocation, abandonment or any other disposition of the assets of the Borrower out of the ordinary course of business which are subject to the Security without the express prior written consent of the Agent;

(l) if a “Supplier Event of Default” occurs under the Power Purchase Agreement;

(m) if the Power Purchase Agreement is terminated;

(n) if the Borrower fails to report to the Agent the occurrence of a Material Variance in any of the matters referenced herein;

(o) if the Borrower’s receipts will not be sufficient to fund its disbursements by the time any such disbursements are due and payable in accordance with their terms;

(p) any default or failure by the Borrower or the Guarantors to pay any of the Prior Claims when due;

(q) if any of the representations or financial reporting information provided by the Borrower to the Agent proves to be false, misleading, inaccurate or incorrect in any material respect at the time such representation or financial reporting information was made or delivered;

(r) if any action which the Borrower or the Guarantors may take under this Agreement only with the prior consent of the Agent is taken by the Borrower or the Guarantors without such consent being previously obtained from the Agent; and

(s) a liability arises or an event occurs, including without limitation, any change in the business, assets, or condition, financial or otherwise, of any of the Borrower or the Guarantors, that will in the Agent’s judgment, acting reasonably, materially impair the security position of the Agent or the Borrower’s financial condition, operations or ability to comply with its obligations under this Agreement or the Credit Agreement.

10.02 Upon the occurrence of a Forbearance Terminating Event, the Agent may immediately terminate the Credit Facilities and enforce, without further notice or delay, all of its rights and remedies against the Borrower and the Guarantors including, without limitation, exercising any rights of set-off in order to reduce or satisfy the Borrower’s or the

Guarantors' obligations to the Secured Creditors, demanding payment of the Construction Facility and the Interest Hedge Facility and taking steps to enforce the Security. Also, upon the occurrence of a Forbearance Terminating Event, the Borrower and the Guarantors consent and specifically authorize the Agent or its authorized representative in connection with any Enforcement Step (as defined below) to contact any customer, creditor, employee, licensing authority or any other person or entity in respect of the Borrower and the Guarantors, the Borrower's or the Guarantors' indebtedness to the Secured Creditors, or any other matter or thing related to the business operations of the Borrower or the Guarantors or any other matter deemed relevant by the Agent. An "**Enforcement Step**" means any step taken or proposed to be taken by the Agent to enforce the security or to otherwise seek any relief before a court of competent jurisdiction against the Borrower or a Guarantor or in respect of the Project for the purpose of recovering the Borrower's or the Guarantors' indebtedness to the Secured Creditors. For the purpose of the foregoing provision, the Borrower and the Guarantors specifically waive any and all duty of confidentiality, which the Agent or the other Secured Creditors now have or may in the future have with respect to the Credit Facilities, the Borrower's indebtedness to the Secured Creditors, the business operations of the Borrower or any other information, whether confidential or otherwise, in the possession of the Secured Creditors relating to the business or operations of the Borrower or the Guarantors or the Borrower's indebtedness to the Secured Creditors.

ARTICLE XI – GENERAL PROVISIONS

11.01 The Borrower and the Guarantors hereby irrevocably agree upon request by the Agent, to duly execute or deliver or cause to be executed or delivered to the Agent such further instruments, agreements or similar documents or do or cause to be done such further acts as may be necessary or desirable in the opinion of the Agent, acting reasonably, to carry out the provisions and purposes of this Agreement.

11.02 The Agent's forbearance from enforcing its rights and remedies against the Borrower and the Guarantors and the other accommodations described herein are provided on a day to day basis and may be terminated upon the occurrence of a Forbearance Terminating Event without requiring any further forbearance or delay on the part of the Agent.

11.03 All terms and conditions of the Credit Facilities and the Credit Facility Documents shall continue in full force and effect save and except as amended by this Agreement. To the extent that any provision thereof is inconsistent with this Agreement, this Agreement shall prevail.

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

[***Signature Page Follows***]

IN WITNESS WHEREOF the parties have executed this Agreement.

AGENT:

NATIONAL BANK OF CANADA

Per:
Name: Jean Gosselin
Title: Directeur principal

Per:
Name: Claude Lussier
Title: Directeur principal / Senior Manager

LENDERS:

NATIONAL BANK OF CANADA

Per:
Name: Jean Gosselin
Title: Directeur principal

Per:
Name: Claude Lussier
Title: Directeur principal / Senior Manager

CANADIAN WESTERN BANK

Per:
Name:
Title:

Per:
Name:
Title:

IN WITNESS WHEREOF the parties have executed this Agreement.

AGENT: **NATIONAL BANK OF CANADA**

Per: ______________________
Name:
Title:

Per: ______________________
Name:
Title:

LENDERS: **NATIONAL BANK OF CANADA**

Per: ______________________
Name:
Title:

Per: ______________________
Name:
Title:

CANADIAN WESTERN BANK

Per: ______________________
Name: Stephen Jacobson
Title: Manager, Corporate Lending

Per: ______________________
Name: Richard Hallson
Title: Vice President
Corporate Lending

LAURENTIAN BANK OF CANADA

Per:
Name: ALEXANDRE LEBLANC
Title: Vice-président adjoint, Comptes Spéciaux
Assistant Vice President, Special Loans

Per:
Name: Connie Biello
Title: VP Special Loans

BUSINESS DEVELOPMENT BANK OF CANADA

Per:
Name:
Title:

Per:
Name:
Title:

HEDGE PROVIDERS:

NATIONAL BANK OF CANADA

Per:
Name:
Title:

Per:
Name:
Title:

LAURENTIAN BANK OF CANADA

Per: ________________________
Name:
Title:

Per: ________________________
Name:
Title:

BUSINESS DEVELOPMENT BANK OF CANADA

Per: ________________________
Name: René C. Leduc
Title: Vice-président, Restructuration d'entreprise
Vice-President, Business Restructuring

Per: ________________________
Name: ADAM LAIKEN
Title: DIRECTOR, BUSINESS RESTRUCTURING

HEDGE PROVIDERS:

NATIONAL BANK OF CANADA

Per: ________________________
Name:
Title:

Per: ________________________
Name:
Title:

LAURENTIAN BANK OF CANADA

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

BUSINESS DEVELOPMENT BANK OF CANADA

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

HEDGE PROVIDERS:

NATIONAL BANK OF CANADA

Per: ______________________________
Name: Jean Gosselin
Title: Directeur principal

Per: ______________________________
Name: Claude Lussier
Title: Directeur principal / Senior Manager

LAURENTIAN BANK OF CANADA

Per: ______________________

Name: ALEXANDRE LEBLANC

Title: Vice-président adjoint, Comptes Spéciaux
Assistant Vice President, Special Loans

Per: ______________________

Name: Connie Biello

Title: VP Special Loans.

BORROWER: **INDEX ENERGY MILLS ROAD CORPORATION**

Per: ______________________

Name: Gordon Kerr

Title:

(I have authority to bind the Corporation.)

GUARANTORS: **INDEX ENERGY SWEDEN AB**

Per: ______________________

Name:

Title:

(I have authority to bind the Corporation.)

LAURENTIAN BANK OF CANADA

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

BORROWER: **INDEX ENERGY MILLS ROAD CORPORATION**

Per: ______________________________
Name: Gordon Kerr
Title:
(I have authority to bind the Corporation.)

GUARANTORS: **INDEX ENERGY SWEDEN AB**

Per: ______________________________
Name:
Title:
(I have authority to bind the Corporation.)

LAURENTIAN BANK OF CANADA

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

BORROWER: **INDEX ENERGY MILLS ROAD CORPORATION**

Per: ______________________________
Name: Gordon Kerr
Title:
(I have authority to bind the Corporation.)

GUARANTORS: **INDEX ENERGY SWEDEN AB**

Per: Rickard Haraldsson
Name: Rickard Haraldsson
Title: CEO
(I have authority to bind the Corporation.)

R. ANDREWS INVESTMENT COMPANY, LLC

Per:

Name:

Title:

(I have authority to bind the Company.)

Witness as to the signature of
Jacqueline Kerr

Jacqueline Kerr

SCHEDULE "A"

EXISTING DEFAULTS UNDER CREDIT AGREEMENT

SCHEDULE "A"

I. KNOWN EVENTS OF DEFAULT

1. Section 11.1.11 (*Completion Date*) - As a result of Completion not being achieved by the Outside Date of May 5, 2015.

2. Section 11.1.3(a) (*Failure to Perform Covenants*) - Failure to perform the covenants as set out in Section 9.2.2 (*Liens*) *and Section 1.1 (Definition of "Permitted Encumbrances")* - As a result of registration of Liens under the CLA against the Site Lands and the failure of the Borrower to have such Liens discharged or vacated within 30 days of the date of initial registration.

3. Section 11.1.13 (*Breach under Material Project Contract*) - Resulting from the breaches by EPC Contractor of the EPC Contract as detailed in letters from Borrower to EPC Contractor dated on or about May 1, 2015, and May 8, 2015, which breaches have had or are reasonably expected to have a Material Adverse Effect and the failure by the EPC Contractor to remedy such breaches within the Counterparty Cure Period.

4. Section 11.1.14 (*Repudiation or Termination of Material Project Contract*) – The termination of the EPC Contract on July 28, 2015 which is reasonably expected to have a Material Adverse Effect and the failure by the Borrower to enter into a new Material Project Contract to replace the EPC Contract within thirty-five (35) days of termination of the EPC Contract.

5. Section 9.1.47(b)(i) and (ii) (*Mitigation Plans*) – The Borrower failed to deliver a Proposed Mitigation Plan within the ten (10) Business Day period referred to in Section 9.1.47(a) (*Mitigation Plans*) and the Proposed Mitigation Plan and the Mitigation Plan ultimately delivered to the Agent indicates Completion will not occur by the Outside Date.

6. Section 11.1.3(b) (*Failure to Perform Covenants*) - Failure to perform covenants as set out in the following Sections and such failure having remained unremedied for 30 days:

    (a) Section 9.1.9 (*Financial and Other Reporting*) - Failure of the Borrower to provide Financial Statements as set out below:

        (i) Section: 9.1.9(a):

            (1) Audited annual Financial Statements as of December 31st 2014 for the Borrower

            (2) Audited annual Financial Statements as of December 31st 2014 for Sponsor

            (3) Audited annual Financial Statements as of December 31st 2014 for EPC Contractor

(ii) Section: 9.1.9(b):

(1) Quarterly unaudited Financial Statements for Q1-2014, Q2- 2014, Q3-2014 for Sponsor

(2) Quarterly unaudited Financial Statements for Q1-2014, Q2- 2014, Q3-2014 for EPC Contractor

(iii) Section: 9.1.9(c):

(1) Latest Audited annual Financial Statements for OPTIMUM DISPOSAL SERVICES INC.

(2) Latest Unaudited annual Financial Statements for COUNTRYWIDE RECYCLING INC.

(3) Latest Audited annual Financial Statements for WASTE MANAGEMENT INC.

(4) Latest Unaudited annual Financial Statements for POWER GROW SYSTEMS INC.

(5) Latest Audited annual Financial Statements for INDEX ENVIRONMENTAL CORPORATION.

(iv) Section 9.1.9(l) - Failure of the Borrower to provide material notification or reports under the Material Project Contracts in that the Borrower failed to provide to the Agent a copy of responses from the OPA (now the Independent Electricity System Operator) to its application for Commercial Operation (as defined in the PPA).

(b) Section 9.1.23 (*Material Project Contracts*) - As a result of the failure to diligently enforce all obligations under Material Project Contracts (in particular the EPC Contract), and the failure by the Borrower to remedy such breach within the Borrower Cure Period.

(c) Section 9.1.31 (*Punctual Payment*) - As a result of the failure to pay all Project Costs and Operating Costs unless subject to bona fide dispute and adequate reserves established, and such failure having remained unremedied for 30 days.

(d) Section 9.1.39 (*Permits*) – As a result of the failure to obtain the occupancy permit for the Project prior to the Scheduled Commercial Operation Date.

SCHEDULE "B'

MPD ENGAGEMENT LETTER

EXHIBIT A-2

to the

INDEPENDENT ENGINEERING SERVICES AGREEMENT

between

Index Energy Mills Road Corporation

and

Black & Veatch Canada Company

Pursuant to the terms and conditions of the Independent Engineering Services Agreement executed and made effective as of the 24th day of September, 2012 as amended by the Amendment and Reliance Agreement dated the 15th day of July, 2013 between Index Energy Mills Road Corporation ("**Client**"), National Bank of Canada as agent for certain lenders under the credit agreement with the Client dated as of July 15, 2013, as amended ("**Agent**") and Black & Veatch Canada Company ("**Indepdendent Engineer**" or "**IE**"), Client hereby requests IE to perform the following services ("**Services**"):

Effective Date: This Exhibit A-2 will be effective upon the date (the "**Effective Date**") the Agent delivers to the IE written notice (an "**Appointment Notice**") to proceed.

Defined Terms: Unless otherwise specified, capitalized terms used herein have the meanings ascribed thereto in the accommodation agreement between the Agent, the Borrower and others dated August 12, 2016 (the "**Accommodation Agreement**").

A. **Scope of Services**: The Client is requesting that the IE provide the Services described below:

Task 1 – Determine Cause of Output Default

Commencing on the Effective Date, the IE will take all steps reasonably necessary to determine the cause of the Output Default (as defined in the Second Forbearance Agreement), including reviewing appropriate and available Project design documents and interviewing the Project's Owner Engineer, third party consultants ("**Consultants**") retained by the Client to implement the Mitigation Plan, if any, and plant staff as appropriate.

Any written reports delivered to the Client by the Consultants will be provided to the IE for its review.

Task 2: Develop Strategy to Remedy Output Default

Based on its assessment of the cause of the Output Default, IE will develop in consultation with Client and report to Agent a strategy (the "**Project Plan**") to remedy the Output Default, including advising of changes required to be made to the Mitigation Plan (if any) or such other design or operational changes to the Project as may be required to remedy the Output Default and ensure the Project is capable of meeting the Performance Target.

Task 3: Execution of Project Plan

Client's obligation to implement the Project Plan shall be governed by the Accommodation Agreement.

Task 4: Additional Steps and Reporting

IE will provide Client and Agent with regular updates on the IE's duties hereunder, including the status of the implementation of the Project Plan and such other matters as may be requested by the Agent in its sole discretion. IE shall provide such updates on a weekly basis, at a minimum, or at any other time upon request by Agent. IE shall provide Client with copies of all reports provided to Agent and, where practical, IE shall provide Client with a draft of each such report prior to delivery thereof to Agent with sufficient time to permit Client to comment on same, provided that IE shall not require approval by Client of any draft report prior to finalizing same.

B. **Schedule**: IE will begin providing the Services immediately upon receipt of an Appointment Notice.

C. **Additional Client Responsibilities**: Client will provide full cooperation and unrestricted access to the site and requested documentation, and, if needed, will facilitate communications with other engaged consultants.

D. **Compensation**: IE will complete the Services on a time and material basis plus reimbursement of travel, potential work permit/visa, and taxes expenses at cost. The IE will provide weekly communication with hours expended and Project cost to date.

The following schedule of hourly billing rates is applicable for this engagement.

2016 Billing Rates

TITLE	HOURLY RATE
Administrative	US$98
Analyst	US$176
Senior Analyst	US$222
Consultant	US$258
Manager	US$305
Principal	US$336
Director/Managing Director	US$351
Vice President	US$377

Rates shown above exclude taxes and are subject to change on January 1, 2017 and annually thereafter. All invoices are due within 20 days except as noted below. Payment will be made in US dollars. All invoices rendered by IE shall be paid by Client, provided, however, that the Agent guarantees payment of same. Any invoices paid by the Agent shall be added to the Client's obligations to the Agent.

E. **Monthly Billing**: IE shall invoice Client for an advance payment of [**US$►**] upon receipt by IE of an Appointment Notice, which will be due upon receipt by Client of such invoice. The remaining time and materials fee will be invoiced upon the earlier of issuance of the draft Project Plan or within 30 days of commencement. Travel related expenses and any additional fees will be invoiced monthly as incurred. IE is under no obligation to submit any deliverable until such advance payment is made.

IE shall submit to Client a monthly invoice itemizing the Services performed during the previous month and any interest due for any previously unpaid balances. Invoices may be submitted electronically by email to accounting@indexenergy.ca. In such event, the electronic copy of the invoice will be considered the official invoice and will not be followed by a hard copy invoice. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of 18% per annum, or the maximum amount allowed by law if less, from the date due until paid according to the provisions of this

Agreement. Interest shall not be charged on any disputed invoice item that is resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

F. <u>**Method of Payment**</u>: Electronic Transfer: Payments to IE under this Agreement shall be electronically transferred by wire transfer to the bank account and in accordance with the bank instructions identified in IE's most recent invoice in immediately available funds no later than the payment due date. Invoice number and Project name shall be referenced in the bank wire reference fields.

G. <u>**Disputes**</u>: In the event Client disputes any invoice item, Client shall provide IE written notice of such disputed item within 10 days after receipt of such invoice. Client shall nevertheless pay to IE any undisputed portion of the invoice according to the provisions hereof.

H. <u>**Disclosure of Information and Project Plan**</u>: Notwithstanding any provision in the Independent Engineering Services Agreement dated September 24, 2012 or the Amendment and Reliance Agreement dated July 15, 2013, (i) each of the Client and the Agent may disclose the Project Plan, any information or documentation received or reviewed by the Client or the Agent from the IE or pursuant to the provision of the Services (collectively, "**Information**") and any facts, analyses, conclusions or recommendations which the IE provides in connection with the Services (collectively, "**IE Analysis**") (x) in connection with any step taken by the Agent to enforce any of the security granted to the Agent by the Client or held by the Agent in connection with the Client's indebtedness to the Agent; and (y) in any materials served on or delivered to third parties or filed with a court in connection with any step, action or proceeding taken by the Agent in connection with the Client including, without limitation, any relief sought by the Agent pursuant to the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or similar legislation. For greater certainty, the Agent may disclose the Project Plan and any Information and IE Analysis to its external legal counsel and to Alvarez & Marsal Canada ULC as the Agent's restructuring advisor; and (ii) the IE may but shall have no positive obligation to disclose the Project Plan, any Information and any IE Analysis to the shareholders of the Client, including Index Energy Sweden AB ("**Index Sweden**") and any successor or transferee of the shares in the Client held by Index Sweden.

This Agreeement and the above-referenced Agreements constitute the complete understanding of the parties with respect to the Services specified herein. Terms and conditions contained in purchase orders, work orders, or other documents issued by Client with respect to the Services shall be of no force and effect.

IN WITNESS WHEREOF, the parties have signed this Agreement.

INDEX ENERGY MILLS ROAD CORPORATION	**BLACK & VEATCH CANADA COMPANY**
By: ______________________________	By: ______________________________
By: ______________________________ (Printed)	By:______________________________ (Printed)
Title: ____________________________	Title: ____________________________

National Bank of Canada, as Agent

By: ______________________________

By: ______________________________
(Printed)

Title: ____________________________

Legal	**PM**
Approved ___________	Approved __________
Reviewed ___________	Date _____________
Date _______________	

This is **Exhibit "L"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....
A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

NATIONAL
BANK
OF CANADA

PERSONAL AND CONFIDENTIAL

January 18, 2017

VIA COURIER AND EMAIL

Index Energy Mills Road Corporation
170 Mills Road
Ajax, ON L1S 2H1

Attention: Gordon Kerr, President

Dear Sir:

Re: Index Energy Mills Road Corporation (the "Borrower")

We refer to the credit agreement dated as of July 15, 2013, as amended by waiver and consent agreements dated September 12, 2013, October 11, 2013 and December 13, 2013, a consent, waiver and first amending agreement dated January 28, 2015, an accommodation agreement dated as of October 9, 2015 and an accommodation agreement dated as of August 12, 2016 (the "**Accommodation Agreement**") (as amended, the "**Credit Agreement**") between the Borrower, National Bank of Canada, as agent (the "**Agent**"), the Lenders and the Hedge Providers (as each such term is defined in the Credit Agreement). Unless otherwise specified, capitalized terms used herein have the meanings ascribed thereto in the Credit Agreement.

We also refer to the Construction Facility made available to the Borrower by the Agent pursuant to the Credit Agreement and to the Borrower's indebtedness under the Construction Facility as at January 16, 2017 in the amount of $49,427,871.94, plus interest and all costs incurred by the Agent to the date of payment (the "**Indebtedness**"), as more particularly described in Schedule "A" hereto.

As you are aware, the Forbearance Deadline under the Accommodation Agreement was December 31, 2016. Pursuant to section 3.08 of the Accommodation Agreement, the Borrower covenanted and agreed to permanently and indefeasibly repay the Construction Facility and the Interest Hedge Facility on or before December 31, 2016. The Borrower has failed to do so, with the result that a Forbearance Terminating Event occurred under the Accommodation Agreement. The Borrower's failure to permanently repay the Construction Facility and the Interest Hedge Facility on or before December 31, 2016 also constitutes an Event of Default under section 11.1.1 of the Credit Agreement, which is continuing. In accordance with section 11.2.1(b) of the Credit Agreement, the Agent hereby declares the Indebtedness to be forthwith due and payable.

In accordance with the terms of the Accommodation Agreement, the Credit Agreement (including, without limitation, section 11.3 thereof) and the other Credit Facility Documents, each of the Secured Creditors and the Agent reserves its right to immediately exercise any right of set-off held by such party, including, without limitation, by applying all funds held in the Segregated Accounts in permanent reduction of the Outstanding Obligations now or hereafter existing. We also confirm that, in accordance with the terms of the Credit Agreement and the Accommodation Agreement, the Commitments and the Construction Facility have been terminated by the Agent and no further credit is available to the Borrower thereunder.

The Agent hereby demands payment from the Borrower of the said sum of $49,427,871.94 in respect of the Indebtedness, together with interest thereon and all costs, including all legal, consultant and other agent fees and disbursements, incurred by the Agent to the date of payment. Interest accrues on the Indebtedness at a rate that varies with the CDOR Rate. As at today's date, interest is accruing in the amount of CAD$5,294.82 per day.

We also enclose at this time a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* (Canada) together with a Consent thereto. If the Borrower consents to the Agent enforcing its rights and remedies without further delay, please date and execute one copy of the Consent attached to the Notice of Intention to Enforce Security and return same to the undersigned by email forthwith.

In the event that you fail to pay the sum indicated, the Agent shall pursue its remedies against you.

Yours truly,

NATIONAL BANK OF CANADA, AS AGENT

Per:
Name: Jean Gosselin
Title: Senior Manager

Encl.

CC: JACQUELINE KERR
R. ANDREWS INVESTMENT COMPANY, LLC
INDEX ENERGY SWEDEN AB
JONATHON WEISZ, TORYS LLP
JANE DIETRICH AND SHAYNE KUKULOWICZ, CASSELS BROCK & BLACKWELL LLP

SCHEDULE "A"

Indebtedness of Index Energy Mills Road Corporation to National Bank of Canada as at January 16, 2017

Facility	Principal Balance	Accrued Interest	Total	Per Diem
Construction Facility	$49,337,860.00	$90,011.94	$49,427,871.94	$5,294.82

Interest accrues on the Construction Facility at a rate that varies with the CDOR Rate.

E. & O. E.

NOTICE OF INTENTION TO ENFORCE SECURITY PURSUANT TO SECTION 244 OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CANADA)

TO: INDEX ENERGY MILLS ROAD CORPORATION (the "Borrower")

Take notice that:

1. National Bank of Canada, in its capacity as agent (the "**Agent**") under the credit agreement between the Agent, the Borrower and others dated July 15, 2013, as amended from time to time (the "**Credit Agreement**"), intends to enforce its security on the property of the Borrower described below:

   (a) all property, assets and undertaking of the Borrower, now owned or hereafter acquired, wheresoever located, including but not limited to the real properties municipally known as 170 Mills Road and 176 Mills Road, Ajax, Ontario (the "**Real Property**") and the buildings and improvements thereon; and

   (b) all proceeds of the foregoing collateral.

2. The security that is to be enforced is in the form of:

   (a) a demand Debenture in the principal amount of $210,000,000 dated July 15, 2013 and registered on title to the Property on July 15, 2013;

   (b) a Debenture Delivery Agreement dated July 15, 2013;

   (c) an Assignment of Material Project Contracts dated July 15, 2013; and

   (d) an Assignment of Insurance Agreement dated July 15, 2013,

   (collectively, the "**Security**").

3. The total amount of the indebtedness secured by the Security, as of January 16, 2017, is $49,427,871.94 (the "**Indebtedness**"), plus interest accruing thereafter, costs incurred by or charged to the Agent and all other amounts outstanding from time to time under the Credit Agreement including, without limitation, all amounts outstanding under the Interest Hedge Facility (as defined in the Credit Agreement). Interest accrues on the Indebtedness at a rate that varies with the CDOR Rate (as defined in the Credit Agreement). As at today's date, interest is accruing in the amount of CAD$5,294.82 per day.

4. The Agent will not have the right to enforce the Security until the expiry of the 10-day period after this notice is sent, unless the Borrower consents to an earlier enforcement.

Dated at Montreal this 18th day of January, 2017.

NATIONAL BANK OF CANADA

Jean Gosselin
Senior Manager

CONSENT

TO: **NATIONAL BANK OF CANADA, AS AGENT** (the "**Agent**")

FROM: **INDEX ENERGY MILLS ROAD CORPORATION** (the "**Borrower**")

The Borrower acknowledges receipt of a Notice of Intention to Enforce Security delivered by the Agent.

For consideration received, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Borrower hereby consents to the immediate enforcement by the Agent of the security held by it from the Borrower, and for the same consideration waives completely all rights to any delay by or any further notice from the Agent with respect to the enforcement of the Agent's security and the exercise of the other remedies of the Agent against the Borrower.

DATED at ____________________ this ______ day of _____________, 2017.

INDEX ENERGY MILLS ROAD CORPORATION

Per: ________________________________
Name:
Title:

I have the authority to bind the Corporation.

This is **Exhibit "M"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....
A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm,
Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

TGF
Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Grant B. Moffat
T: 416-304-0599
E: gmoffat@tgf.ca
File No. 200-500

January 30, 2017

VIA EMAIL

Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Attention: Shayne Kukulowicz

Dear Sir:

Re: Index Energy Mills Road Corporation (the "Borrower")

We refer to the credit agreement dated as of July 15, 2013, as amended by waiver and consent agreements dated September 12, 2013, October 11, 2013 and December 13, 2013, a consent, waiver and first amending agreement dated January 28, 2015, an accommodation agreement dated as of October 9, 2015 and an accommodation agreement dated as of August 12, 2016 (the "**Accommodation Agreement**") (as amended, the "**Credit Agreement**") between the Borrower, National Bank of Canada, as agent (the "**Agent**"), the Lenders and the Hedge Providers (as each such term is defined in the Credit Agreement). Unless otherwise specified, capitalized terms used herein have the meanings ascribed thereto in the Credit Agreement.

By letter dated January 18, 2017 (the "**Demand**"), the Agent demanded payment from the Borrower of the sum of $49,427,871.94, being the principal amount then outstanding under the Construction Facility, together with interest thereon and all costs, including all legal, consultant and other agent fees and disbursements to the date of payment. Together with the Demand, the Agent delivered to the Borrower a Notice of Intention to Enforce Security dated January 18, 2017 (the "**BIA Notice**") wherein the Agent provided the Borrower with notice of its intention to enforce the security referenced in the BIA Notice upon the expiry of the 10-day period referenced therein (the "**Notice Period**").

As you are aware, the Notice Period expires today. Further to our discussion, we confirm our agreement to extend the expiry of the Notice Period on a day to day basis, subject to the following terms:

1. The Borrower acknowledges and agrees that the Agent may, in its sole and absolute discretion, terminate the extension of the Notice Period by providing the Borrower with 1 Business Day's prior written notice of such termination, and that such notice may be

provided to the Borrower's counsel, Cassels Brock & Blackwell LLP. By way of example only and assuming that each of the following days is a Business Day, if such notice was provided on a Monday, the Notice Period would expire on Tuesday, such that the Agent would not be in a position to enforce the security referenced in the BIA Notice until Wednesday.

2. Notwithstanding the extension of the Notice Period the Demand and the BIA Notice shall not be withdrawn by the Agent and shall remain in force and effect, subject to the extension of the Notice Period referenced above.

3. There is no agreement by the Agent to extend the Notice Period for any particular period of time, nor is there any agreement on the part of the Agent to forbear from enforcing any of its rights and remedies against the Borrower or the Guarantors. Nothing herein shall constitute a waiver of any breaches, Defaults or Events of Default under the Credit Agreement or the Accommodation Agreement. The Agent reserves all of its rights and remedies under the Credit Agreement and otherwise.

Please that the foregoing is acceptable to the Borrower.

Yours truly,

THORNTON GROUT FINNIGAN

Grant B. Moffat

This is **Exhibit "N"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....
A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

Loan Statement 30/6

Index Residence Recivables in CAD	Loans	Acc interest	Total
IEMRC1	**46,023,518**	**30,024,492**	**76,048,010**
IEMRC2	**5,000,000**	**7,682,514**	**12,682,514**
IEMRC3	**10,000,000**	**3,764,384**	**13,764,384**
Summa	**61,023,518**	**41,471,390**	**102,494,908**

Index Equity Sweden AB Recivables in CAD	Loans	Acc interest	Total
IEMRC1	**4,820,000**	**385,290**	**5,205,290**
Summa	**4,820,000**	**385,290**	**5,205,290**

Index Investment USD LCC Recivables in CAD	Loans	Acc interest	Total
IEMRC	**250,000**	17,688	267,688
Summa	**250,000**	**17,688**	**267,688**

Total	**66,093,518**	**41,874,368**	**107,967,886**

IEMRC Balance Sheet

Loans	Acc interest	Total
46,023,518		46,023,518
5,000,000		5,000,000
10,000,000		10,000,000
61,023,518	**41,473,136**	**102,496,654**

Loans	Acc interest	Total
4,820,000	383,544	5,203,544
4,820,000	**383,544**	**5,203,544**

Loans	Acc interest	Total
250,000	17,688	267,688
250,000	**17,688**	**267,688**

66,093,518	**41,874,368**	**107,967,886**

This is **Exhibit "O"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....

A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
SEARCH RESULTS

Date Search Conducted: 3/15/2017
File Currency Date: 03/14/2017
Family(ies): 4
Page(s): 15

SEARCH : Business Debtor : INDEX ENERGY MILLS ROAD CORPORATION

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
SEARCH RESULTS

Date Search Conducted: 3/15/2017
File Currency Date: 03/14/2017
Family(ies): 4
Page(s): 15

SEARCH : Business Debtor : INDEX ENERGY MILLS ROAD CORPORATION

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 FAMILY :   1 OF   4                               ENQUIRY PAGE :   1 OF  15
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 00 FILE NUMBER : 644701815   EXPIRY DATE : 30APR 2024 STATUS :
 01 CAUTION FILING :          PAGE : 001 OF 003        MV SCHEDULE ATTACHED :
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 02 IND DOB :            IND NAME:
 03 BUS NAME: INDEX ENERGY MILLS ROAD CORPORATION
                                                               OCN :
 04 ADDRESS : 170 MILLS ROAD
    CITY    : AJAX                     PROV: ON    POSTAL CODE: L1S 2H1
 05 IND DOB :            IND NAME:
 06 BUS NAME:
                                                               OCN :
 07 ADDRESS :
    CITY    :                          PROV:       POSTAL CODE:



 08 SECURED PARTY/LIEN CLAIMANT :
         INDEX ESTATE AB
 09 ADDRESS : C/O INDEX REAL ESTATE, LLC, P.O. BOX 227
    CITY    : JUPITER                  PROV: FL    POSTAL CODE: 33468
   CONS.                                MV                    DATE OF  OR NO FIXED
   GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL     AMOUNT       MATURITY    MAT DATE
 10        X      X      X      X      X
    YEAR MAKE                        MODEL               V.I.N.
 11
 12
 GENERAL COLLATERAL DESCRIPTION
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 14
 15
 16 AGENT: GOWLING LAFLEUR HENDERSON LLP (KES) CORPORATE SERVICES
 17 ADDRESS : 2600-160 ELGIN STREET
    CITY    : OTTAWA                   PROV: ON     POSTAL CODE: K1P 1C3
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SEARCH  : BD  : INDEX ENERGY MILLS ROAD CORPORATION

00 FILE NUMBER : 644701815   EXPIRY DATE : 30APR 2024 STATUS :
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02 IND DOB :            IND NAME:
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                                                               OCN :
04 ADDRESS :
   CITY    :                         PROV:        POSTAL CODE:
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06 BUS NAME:
                                                               OCN :
07 ADDRESS :
   CITY    :                         PROV:        POSTAL CODE:



08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS : 9, JUPITER, FLORIDA, UNITED STATES OF AM
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  CONS.                               MV                    DATE OF  OR NO FIXED
  GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL     AMOUNT       MATURITY    MAT DATE
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   YEAR MAKE                      MODEL               V.I.N.
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GENERAL COLLATERAL DESCRIPTION
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16 AGENT:
17 ADDRESS :
   CITY    :                         PROV:         POSTAL CODE:
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SEARCH : BD : INDEX ENERGY MILLS ROAD CORPORATION

00 FILE NUMBER : 644701815 EXPIRY DATE : 30APR 2024 STATUS :
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CITY : PROV: POSTAL CODE:
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06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS : ERICA
CITY : PROV: POSTAL CODE:

CONS. GOODS	INVTRY.	EQUIP	ACCTS	OTHER	MV INCL	AMOUNT	DATE OF MATURITY	OR NO FIXED MAT DATE

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YEAR	MAKE	MODEL	V.I.N.

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GENERAL COLLATERAL DESCRIPTION
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16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

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23 REFERENCE DEBTOR/    IND NAME:
24       TRANSFEROR:    BUS NAME: INDEX ENERGY MILLS ROAD CORPORATION

25 OTHER CHANGE:
26 REASON: AMEMDMENT TO CHANGE SECURED PARTY.
27 /DESCR:
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03/06 BUS NAME/TRFEE:
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04/07 ADDRESS:
         CITY:                        PROV:        POSTAL CODE:
29 ASSIGNOR:
        INDEX ESTATE AB
08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :
        INDEX INTENATIONAL AB
09 ADDRESS : P.O. BOX 7744 KUNGSTRADGARDSGATAN 18, SE
   CITY    : STOCKHOLM              PROV : SE    POSTAL CODE :
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16 NAME : GOWLING LAFLEUR HENDERSON LLP (LS) CORPORATE SERVICES
17 ADDRESS : 2600-160 ELGIN STREET
   CITY    : OTTAWA                 PROV : ON    POSTAL CODE : K1P 1C3
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SEARCH : BD : INDEX ENERGY MILLS ROAD CORPORATION
FILE NUMBER 644701815

PAGE TOT REGISTRATION NUM REG TYPE
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24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:
26 REASON:
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02/05 IND/TRANSFEREE:
03/06 BUS NAME/TRFEE:
OCN:
04/07 ADDRESS:
CITY: PROV: POSTAL CODE:
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS : -103 95, STOCKHOLM, SWEDEN
CITY : PROV : POSTAL CODE :

CONS. GOODS	INVTRY	EQUIP	ACCTS	OTHER	MV INCL	AMOUNT	DATE OF MATURITY OR	NO FIXED MAT DATE

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16 NAME :
17 ADDRESS :
CITY : PROV : POSTAL CODE :

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23 REFERENCE DEBTOR/    IND NAME:
24       TRANSFEROR:    BUS NAME: INDEX ENERGY MILLS ROAD CORPORATION

25 OTHER CHANGE:
26 REASON:
27 /DESCR:
28       :
02/05 IND/TRANSFEREE:
03/06 BUS NAME/TRFEE:
                                                                 OCN:
04/07 ADDRESS:
         CITY:                        PROV:       POSTAL CODE:
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :
   CITY    :                         PROV :       POSTAL CODE :
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  GOODS INVTRY EQUIP ACCTS OTHER   INCL      AMOUNT       MATURITY OR  MAT DATE
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16 NAME : GOWLING LAFLEUR HENDERSON LLP (WAK) CORPORATE SERVICES
17 ADDRESS : 2600-160 ELGIN STREET
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SEARCH  : BD  : INDEX ENERGY MILLS ROAD CORPORATION
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23 REFERENCE DEBTOR/    IND NAME:
24       TRANSFEROR:    BUS NAME: INDEX ENERGY MILLS ROAD CORPORATION

25 OTHER CHANGE:
26 REASON: AMENDMENT TO CHANGE THE NAME OF THE SECURED PARTY TO INDEX
27 /DESCR: INTERNATIONAL AB (PUBL).
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02/05 IND/TRANSFEREE:
03/06 BUS NAME/TRFEE:
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04/07 ADDRESS:
         CITY:                        PROV:       POSTAL CODE:
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :
        INDEX INTERNATIONAL AB (PUBL)
09 ADDRESS : C/O INDEX INVESTMENT LLC P.O. BOX 2279
   CITY    : JUPITER                PROV : FL    POSTAL CODE : 33468
  CONS.                            MV                     DATE OF      NO FIXED
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16 NAME : GOWLING LAFLEUR HENDERSON LLP (KH) CORPORATE SERVICES
17 ADDRESS : 2600-160 ELGIN STREET
   CITY    : OTTAWA                 PROV : ON    POSTAL CODE : K1P 1C3
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SEARCH  : BD  : INDEX ENERGY MILLS ROAD CORPORATION
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21 REFERENCE FILE NUMBER : 644701815
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24       TRANSFEROR:    BUS NAME: INDEX ENERGY MILLS ROAD CORPORATION

25 OTHER CHANGE:
26 REASON:
27 /DESCR:
28       :
02/05 IND/TRANSFEREE:
03/06 BUS NAME/TRFEE:
                                                                OCN:
04/07 ADDRESS:
         CITY:                       PROV:       POSTAL CODE:
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :
   CITY    :                       PROV :       POSTAL CODE :
  CONS.                           MV                    DATE OF      NO FIXED
  GOODS INVTRY EQUIP ACCTS OTHER   INCL      AMOUNT      MATURITY OR  MAT DATE
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16 NAME : GOWLING LAFLEUR HENDERSON LLP (KH) CORPORATE SERVICES
17 ADDRESS : 2600-160 ELGIN STREET
   CITY    : OTTAWA                PROV : ON    POSTAL CODE : K1P 1C3
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REG NUM : 20130705 1611 1862 9255 REG TYP: P PPSA REG PERIOD: 8
02 IND DOB : IND NAME:
03 BUS NAME: INDEX ENERGY MILLS ROAD CORPORATION
OCN :
04 ADDRESS : ATTN. GORDON KERR, 170 MILLS ROAD
CITY : TORONTO PROV: ON POSTAL CODE: L1S 2H1
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
NATIONAL BANK OF CANADA, AS AGENT
09 ADDRESS : THE EXCHANGE TOWER, 130 KING S W, # 3200
CITY : TORONTO PROV: ON POSTAL CODE: M5X 1J9

	CONS. GOODS	INVTRY.	EQUIP	ACCTS	OTHER	MV INCL	AMOUNT	DATE OF MATURITY	OR NO FIXED MAT DATE
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YEAR MAKE MODEL V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
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14
15
16 AGENT: TORYS LLP - K. MILNE
17 ADDRESS : 79 WELLINGTON STREET WEST, SUITE 3000
CITY : TORONTO PROV: ON POSTAL CODE: M5K 1N2

SEARCH : BD : INDEX ENERGY MILLS ROAD CORPORATION
FILE NUMBER 688386969

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01 CAUTION  :     001 OF 001  MV SCHED:     20130709 1619 1862 9442
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23 REFERENCE DEBTOR/    IND NAME:
24       TRANSFEROR:    BUS NAME: INDEX ENERGY MILLS ROAD CORPORATION

25 OTHER CHANGE:
26 REASON: TO PROVIDE FOR AN ADDITIONAL SECURED PARTY ON FINANCING STATEMENT
27 /DESCR: 20130705 1611 1862 9255, REFERENCE FILE NUMBER 688386969
28       :
02/05 IND/TRANSFEREE:
03/06 BUS NAME/TRFEE:
                                                                 OCN:
04/07 ADDRESS:
         CITY:                        PROV:       POSTAL CODE:
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :
        NATIONAL BANK OF CANADA
09 ADDRESS : THE EXCHANGE TOWER, 130 KING S W, # 3200
   CITY    : TORONTO                PROV : ON    POSTAL CODE : M5X 1J9
  CONS.                            MV                      DATE OF      NO FIXED
  GOODS INVTRY EQUIP ACCTS OTHER   INCL      AMOUNT       MATURITY OR  MAT DATE
10
11
12
13
14
15
16 NAME : TORYS LLP - K. MILNE
17 ADDRESS : 79 WELLINGTON STREET WEST, SUITE 3000
   CITY    : TORONTO                PROV : ON    POSTAL CODE : M5K 1N2
```

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SEARCH  : BD  : INDEX ENERGY MILLS ROAD CORPORATION

00 FILE NUMBER : 690726195   EXPIRY DATE : 01OCT 2021 STATUS :
01 CAUTION FILING :          PAGE : 001 OF 1         MV SCHEDULE ATTACHED :
   REG NUM : 20131001 1435 1590 8488 REG TYP: P  PPSA    REG PERIOD: 8
02 IND DOB :            IND NAME:
03 BUS NAME: INDEX ENERGY MILLS ROAD CORPORATION
                                                               OCN :
04 ADDRESS : 170 MILLS ROAD
   CITY    : AJAX                    PROV: ON    POSTAL CODE: L1S 2H1
05 IND DOB :            IND NAME:
06 BUS NAME:
                                                               OCN :
07 ADDRESS :
   CITY    :                         PROV:       POSTAL CODE:



08 SECURED PARTY/LIEN CLAIMANT :
        NATIONAL BANK OF CANADA
09 ADDRESS : 130 KING STREET WEST, 8TH FLOOR
   CITY    : TORONTO                 PROV: ON    POSTAL CODE: M5X 1J9
  CONS.                               MV                    DATE OF  OR NO FIXED
  GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL     AMOUNT       MATURITY    MAT DATE
10                      X      X
   YEAR MAKE                       MODEL               V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13
14
15
16 AGENT: FASKEN MARTINEAU DUMOULIN LLP(LC)(KB)(JE)
17 ADDRESS : BAY ADELAIDE CENTRE, BOX 20
   CITY    : TORONTO                 PROV: ON     POSTAL CODE: M5H 2T6
```

SEARCH : BD : INDEX ENERGY MILLS ROAD CORPORATION

```
00 FILE NUMBER : 701696421   EXPIRY DATE : 19NOV 2020 STATUS :
01 CAUTION FILING :          PAGE : 001 OF 3         MV SCHEDULE ATTACHED :
   REG NUM : 20141119 1924 1902 2993 REG TYP: P  PPSA    REG PERIOD: 06
02 IND DOB :            IND NAME:
03 BUS NAME: SIMTOR ENVIRONMENTAL LTD.
                                                              OCN :
04 ADDRESS : 113 WARREN ROAD
   CITY    : OSHAWA                 PROV: ON    POSTAL CODE: L1N 2C4
05 IND DOB :            IND NAME:
06 BUS NAME:
                                                              OCN :
07 ADDRESS :
   CITY    :                        PROV:       POSTAL CODE:



08 SECURED PARTY/LIEN CLAIMANT :
        CATERPILLAR FINANCIAL SERVICES LIMITED
09 ADDRESS : 3457 SUPERIOR COURT UNIT 2
   CITY    : OAKVILLE               PROV: ON    POSTAL CODE: L6L 0C4
  CONS.                              MV                    DATE OF  OR NO FIXED
  GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL     AMOUNT       MATURITY    MAT DATE
10               X                   X
   YEAR MAKE                     MODEL                V.I.N.
11 2014 CATERPILLAR              950K                 CAT0950KLR4A02402
12
GENERAL COLLATERAL DESCRIPTION
13 ONE (1) CATERPILLAR 950K WHEEL LOADER TOGETHER WITH ALL ATTACHMENTS,
14 ACCESSORIES, ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND
15 IMPROVEMENTS TO THE ABOVEMENTIONED COLLATERAL AND ALL PROCEEDS IN ANY
16 AGENT: AVS SYSTEMS INC.
17 ADDRESS : 201 - 1325 POLSON DR.
   CITY    : VERNON                 PROV: BC     POSTAL CODE: V1T 8H2
```

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FAMILY :   4 OF   4                                    ENQUIRY PAGE :  13 OF  15
SEARCH  : BD  : INDEX ENERGY MILLS ROAD CORPORATION

00 FILE NUMBER : 701696421   EXPIRY DATE : 19NOV 2020 STATUS :
01 CAUTION FILING :          PAGE : 002 OF 3          MV SCHEDULE ATTACHED :
   REG NUM : 20141119 1924 1902 2993 REG TYP:            REG PERIOD:
02 IND DOB :             IND NAME:
03 BUS NAME:
                                                               OCN :
04 ADDRESS :
   CITY    :                          PROV:       POSTAL CODE:
05 IND DOB :             IND NAME:
06 BUS NAME:
                                                               OCN :
07 ADDRESS :
   CITY    :                          PROV:       POSTAL CODE:



08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
   CITY    :                          PROV:       POSTAL CODE:
  CONS.                                MV                   DATE OF  OR NO FIXED
  GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL     AMOUNT       MATURITY    MAT DATE
10
   YEAR MAKE                       MODEL                V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13 FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALING WITH SUCH
14 COLLATERAL AND A RIGHT TO AN INSURANCE PAYMENT OR ANY PAYMENT THAT
15 INDEMNIFIES OR COMPENSATES FOR LOSS OR DAMAGE TO SUCH COLLATERAL OR
16 AGENT:
17 ADDRESS :
   CITY    :                          PROV:        POSTAL CODE:
```

SEARCH : BD : INDEX ENERGY MILLS ROAD CORPORATION

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00 FILE NUMBER : 701696421   EXPIRY DATE : 19NOV 2020 STATUS :
01 CAUTION FILING :          PAGE : 003 OF 3          MV SCHEDULE ATTACHED :
   REG NUM : 20141119 1924 1902 2993 REG TYP:            REG PERIOD:
02 IND DOB :             IND NAME:
03 BUS NAME:
                                                               OCN :
04 ADDRESS :
   CITY    :                         PROV:       POSTAL CODE:
05 IND DOB :             IND NAME:
06 BUS NAME:
                                                               OCN :
07 ADDRESS :
   CITY    :                         PROV:       POSTAL CODE:



08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
   CITY    :                         PROV:       POSTAL CODE:
  CONS.                               MV                   DATE OF  OR NO FIXED
  GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL     AMOUNT       MATURITY    MAT DATE
10
   YEAR MAKE                      MODEL               V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13 PROCEEDS OF SUCH COLLATERAL. PROCEEDS GOODS, SECURITIES, DOCUMENTS OF
14 TITLE, CHATTEL PAPER, INSTRUMENTS, MONEY AND INTANGIBLES.
15
16 AGENT:
17 ADDRESS :
   CITY    :                         PROV:        POSTAL CODE:
```

```
SEARCH  : BD  : INDEX ENERGY MILLS ROAD CORPORATION
                                                                FILE NUMBER 701696421
                  PAGE   TOT                     REGISTRATION NUM      REG TYPE
01 CAUTION  :     001 OF 1    MV SCHED:     20150108 1755 1901 1752
21 REFERENCE FILE NUMBER : 701696421
22 AMEND PAGE:     NO PAGE:    CHANGE: A  AMNDMNT REN YEARS:      CORR PER:
23 REFERENCE DEBTOR/    IND NAME:
24       TRANSFEROR:    BUS NAME: SIMTOR ENVIRONMENTAL LTD.

25 OTHER CHANGE:
26 REASON: ADDED DEBTOR INDEX ENERGY MILLS ROAD CORPORATION (170 MILLS ROAD)
27 /DESCR:
28       :
02/05 IND/TRANSFEREE:
03/06 BUS NAME/TRFEE: INDEX ENERGY MILLS ROAD CORPORATION
                                                                 OCN:
04/07 ADDRESS: 170 MILLS ROAD
         CITY: AJAX                   PROV: ON    POSTAL CODE: L1S 2H1
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :
   CITY    :                        PROV :       POSTAL CODE :
  CONS.                            MV                    DATE OF      NO FIXED
  GOODS INVTRY EQUIP ACCTS OTHER   INCL      AMOUNT      MATURITY OR  MAT DATE
10
11
12
13
14
15
16 NAME : AVS SYSTEMS INC.
17 ADDRESS : 201 - 1325 POLSON DR.
   CITY    : VERNON                 PROV : BC    POSTAL CODE : V1T 8H2
```

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
SEARCH RESULTS

Date Search Conducted: 8/4/2017
File Currency Date: 08/03/2017
Family(ies): 0
Page(s): 1
Records Retrieved from (Updated): 3/15/2017

UPDATE SEARCH : Business Debtor : INDEX ENERGY MILLS ROAD CORPORATION

NO MATCH FOUND.

This is **Exhibit "P"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

Index Energy Mills Road Corporation
Cash Flow Projection
August 11, 2017 to December 31, 2017

		Filing																				Partial	
	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Week 18	Week 19	Week 20	Week 21	Week 22	
For the week ending, In $	**11-Aug-17**	**18-Aug-17**	**25-Aug-17**	**1-Sep-17**	**8-Sep-17**	**15-Sep-17**	**22-Sep-17**	**29-Sep-17**	**6-Oct-17**	**13-Oct-17**	**20-Oct-17**	**27-Oct-17**	**3-Nov-17**	**10-Nov-17**	**17-Nov-17**	**24-Nov-17**	**1-Dec-17**	**8-Dec-17**	**15-Dec-17**	**22-Dec-17**	**29-Dec-17**	**31-Dec-17**	**August 11, 2017 to December 31, 2017**
Opening Cash	32,055	10,730	(633,018)	(456,957)	(912,960)	(1,484,360)	(1,527,773)	(2,477,595)	(1,827,232)	(2,573,864)	(2,967,083)	(3,443,383)	(2,867,567)	(3,464,230)	(3,507,643)	(4,091,853)	(3,156,580)	(4,033,481)	(4,077,022)	(4,817,764)	(4,861,176)	(4,221,420)	32,055
Receipts																							
Sales Receipts	-	-	702,361	-	-	-	-	998,775	-	-	-	966,557	-	-	-	998,775	-	-	-	-	966,557	-	4,633,025
HST Refund	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts	-	-	702,361	-	-	-	-	998,775	-	-	-	966,557	-	-	-	998,775	-	-	-	-	966,557	-	4,633,025
Disbursements																							
Opening A/P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Critical Supplier - Arrears	-	-	-	-	-	-	440,107	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	440,107
Deposits	-	-	275,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	275,000
Supplies & Testing	-	4,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	571	42,571
Wood Fuel & Fly Ash	-	254,871	-	339,828	-	-	-	-	-	-	-	339,828	-	-	-	-	339,828	-	-	-	-	424,786	1,699,142
Equipment Parts & Maintenance	-	61,070	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	461,070
Equipment Rentals	-	-	-	150	-	-	-	-	120	-	-	-	150	-	-	-	-	129	-	-	-	-	549
Labour	-	-	85,000	-	85,000	-	85,000	-	85,000	-	85,000	-	85,000	-	85,000	-	85,000	-	85,000	-	85,000	-	850,000
Hydro & Gas	-	-	-	-	160,000	-	-	-	-	160,000	-	-	-	-	167,500	-	-	-	195,500	-	-	-	683,000
Water & Sewage Costs	-	-	-	-	-	-	-	-	-	189,806	-	-	-	-	-	-	-	-	213,532	-	-	-	403,338
Chemical & Fuel Supplies	-	7,500	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	1,071	79,821
Salary & Wages	-	-	13,162	-	13,162	-	13,162	-	13,162	-	13,162	-	13,162	-	13,162	-	13,162	-	13,162	-	13,162	-	131,620
Payroll Expenses	21,325	-	20,756	-	20,756	-	20,756	-	20,756	-	20,756	-	20,756	-	20,756	-	20,756	-	20,756	-	20,756	-	228,889
Tools & Supplies Expense	-	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	3,607	1,031	73,180
Insurance	-	-	-	36,213	-	-	-	-	36,213	-	-	-	36,213	-	-	-	36,213	-	-	-	-	-	144,851
Rent Expense	-	-	809	809	809	809	809	809	809	809	809	809	809	809	809	809	809	809	809	809	809	809	16,189
Shipping - Freight	-	572	286	286	286	286	286	286	286	286	286	286	286	286	286	286	286	286	286	286	286	82	6,085
Audit & Accounting Exp.	-	-	-	-	7,500	-	-	-	-	-	-	7,500	-	-	-	7,500	-	-	-	-	7,500	-	30,000
Consulting	-	9,590	9,590	3,000	9,590	-	9,590	-	12,590	-	9,590	-	12,590	-	-	12,590	-	-	-	-	12,590	-	101,310
Meals & Entertainment	-	-	157	157	157	157	157	157	157	157	157	157	157	157	157	157	157	157	157	157	157	157	3,138
Office Supplies/Services	-	2,798	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	1,399	400	29,777
Building & Yard Maint.	-	4,694	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	2,347	671	49,959
Travel	-	-	693	693	693	693	693	693	693	693	693	693	693	693	693	693	693	693	693	693	693	693	13,862
Realty Tax Expense	-	-	-	-	-	-	15,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	15,000
Training	-	-	497	497	497	497	497	497	497	497	497	497	497	497	497	497	497	497	497	497	497	497	9,936
Telephone Expense	-	621	-	621	-	621	-	621	-	621	-	621	-	621	-	621	-	621	-	621	-	621	6,833
Lease Expense	-	8,400	-	8,400	-	-	-	-	8,400	-	-	-	8,400	-	-	-	8,400	-	-	-	-	-	42,000
R&M Unusual	-	14,492	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	7,246	2,070	154,237
Total Operating Disbursements	21,325	372,216	446,300	431,004	338,800	43,413	626,407	43,413	219,033	393,219	171,300	390,741	219,063	43,413	329,210	63,503	546,151	43,541	570,742	43,413	181,800	453,459	5,991,464
Operating Cash Flow	(21,325)	(372,216)	256,061	(431,004)	(338,800)	(43,413)	(626,407)	955,363	(219,033)	(393,219)	(171,300)	575,816	(219,063)	(43,413)	(329,210)	935,273	(546,151)	(43,541)	(570,742)	(43,413)	784,757	(453,459)	(1,358,439)
Capex/Mitigation																							
Optimization Stabilization Burner	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Second Wood Feed System	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Flue Gas Heat Exchanger	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Thermal Coil Burner	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Commissioning of Turbine Cascade Mode	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Critical Parts Inventory Replenishment	-	-	25,000	25,000	100,000	-	50,000	-	50,000	-	-	-	-	-	-	-	-	-	-	-	-	-	250,000
Utility Optimization Projects	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Capex	-	-	25,000	25,000	100,000	-	50,000	-	50,000	-	-	-	-	-	-	-	-	-	-	-	-	-	250,000
Free Cash Flow	(21,325)	(372,216)	231,061	(456,004)	(438,800)	(43,413)	(676,407)	955,363	(269,033)	(393,219)	(171,300)	575,816	(219,063)	(43,413)	(329,210)	935,273	(546,151)	(43,541)	(570,742)	(43,413)	784,757	(453,459)	(1,608,439)
Other Disbursements																							
Interest - Syndicate Loan	-	-	-	-	132,600	-	-	-	132,600	-	-	-	132,600	-	-	-	165,750	-	-	-	-	165,750	729,298
Interest - DIP Facility	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Professional Fees	-	271,532	55,000	-	-	-	273,414	305,000	345,000	-	305,000	-	245,000	-	255,000	-	165,000	-	170,000	-	145,000	-	2,534,946
Total Other Disbursements	-	271,532	55,000	-	132,600	-	273,414	305,000	477,600	-	305,000	-	377,600	-	255,000	-	330,750	-	170,000	-	145,000	165,750	3,264,244
Total Disbursements	21,325	643,748	526,300	456,004	571,400	43,413	949,822	348,413	746,632	393,219	476,300	390,741	596,662	43,413	584,210	63,503	876,901	43,541	740,742	43,413	326,800	619,208	9,505,709
Net Cash Flow	(21,325)	(643,748)	176,061	(456,004)	(571,400)	(43,413)	(949,822)	650,363	(746,632)	(393,219)	(476,300)	575,816	(596,662)	(43,413)	(584,210)	935,273	(876,901)	(43,541)	(740,742)	(43,413)	639,757	(619,208)	(4,872,683)
Closing Cash	10,730	(633,018)	(456,957)	(912,960)	(1,484,360)	(1,527,773)	(2,477,595)	(1,827,232)	(2,573,864)	(2,967,083)	(3,443,383)	(2,867,567)	(3,464,230)	(3,507,643)	(4,091,853)	(3,156,580)	(4,033,481)	(4,077,022)	(4,817,764)	(4,861,176)	(4,221,420)	(4,840,628)	(4,840,628)

This is **Exhibit "Q"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....
A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden
Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

LEGAL*44294745.1

CREDIT AGREEMENT

THIS AGREEMENT is dated for reference this 14th day of August, 2017.

BETWEEN:

INDEX EQUITY US LLC

(the "**DIP Lender**")

AND:

INDEX ENERGY MILLS ROAD CORPORATION

(the "**Borrower**")

WHEREAS:

A. The Borrower has requested that the DIP Lender provide financing to fund certain of the Borrower's obligations during the pendency of its proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"), to be commenced before the Ontario Superior Court of Justice - Commercial List (the "**Court**") in accordance with the terms and conditions set out herein; and

C. The DIP Lender has agreed to provide debtor-in-possession financing in order to fund certain obligations of the Borrower in accordance with the terms and conditions set out herein.

NOW THEREFORE, the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

1.	DIP FACILITY AND MAXIMUM AMOUNT:	The DIP Lender shall provide to the Borrower a secured super-priority debtor-in-possession non-revolving credit facility (the "**DIP Facility**") of up to five million dollars ($5,000,000) (the "**Maximum DIP Credit Amount**"), provided, however, that no more than one million six hundred thousand dollars ($1,600,000) may be drawn prior to the date on which the Court has granted an order confirming the provisions of Initial Order pursuant to the CCAA and approved a sales and investment solicitation process (the "**SISP**") in the CCAA Proceedings (the "**Confirmation Order**"). "**Initial Order**" means an order of the Court, in form and substance satisfactory to the DIP Lender, to be sought by the Borrower with respect to the commencement of proceedings under the CCAA and the appointment of the Monitor.
2.	CLOSING DATE OF INITIAL ADVANCE	The Borrower shall make an initial draw on the DIP Facility on the day following the date on which the conditions precedent in section 4 below have been satisfied (the "**Closing Date**"),

		provided that if the conditions precedent in section 4 below have not been satisfied by September 30, 2017, or such later dated as the DIP Lender may in its sole discretion agree to in writing, the DIP Facility shall be terminated and the DIP Lender shall be under no obligation to make any DIP Advance.
3.	REPAYMENT:	The aggregate principal amount owing under the DIP Facility, all accrued and unpaid interest, and all fees and expenses incurred by the DIP Lender in connection with the DIP Facility (the "**DIP Obligations**") shall be due and payable on the earlier of: (a) the date that is six (6) months after the Closing Date; (b) the date of the termination of the stay period under the Initial Order or any extension orders relating thereto, without the written consent of the DIP Lender,; (c) the date on which (i) an assignment in bankruptcy is made by the Borrower under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), (ii) a bankruptcy order is issued in respect of the Borrower pursuant to the BIA, (iii) a notice of intention to make a proposal under the BIA is filed by or on behalf of the Borrower, (iv) a receiver or receiver and manager is appointed by any court of competent jurisdiction in respect of the Borrower or any of its assets, undertakings or properties, in each case without the prior written consent of the DIP Lender; or (d) the date on which the DIP Lender demands repayment of the DIP Facility after the occurrence of an Event of Default, (such earliest date, the "**Maturity Date**"). The Maturity Date may be extended at the request of the Borrower and with the prior written consent of the DIP Lender, in its sole discretion, for such period and on such terms and conditions as the Borrower and the DIP Lender may agree, subject to approval from the Court if so required. The commitment in respect of the DIP Facility shall expire on the Maturity Date and all DIP Obligations shall be repaid in full no later than the Maturity Date, without the DIP Lender being required to make further demand upon the Borrower or to give notice that the DIP Facility has expired and/or that the DIP Obligations are due and payable. All payments received by the DIP Lender shall be applied first to any fees and expenses due hereunder, then to accrued and unpaid interest, and then after all such fees and interest are paid current in full, to principal.

4.	AVAILABILITY UNDER DIP FACILITY:	The Borrower shall request advances under the DIP Facility (each, a "**DIP Advance**") by submission to the DIP Lender of a drawdown request in the form attached as Schedule "B" hereto (the "**Drawdown Request**") no more frequently than once a week and not less than three business days prior to the requested advance date, unless otherwise agreed to by the DIP Lender. Each DIP Advance shall be in a minimum amount of fifty thousand dollars ($50,000) and in multiples of fifty thousand dollars ($50,000) in excess thereof. Availability under the DIP Facility is limited to the Maximum DIP Credit Amount and is subject to the other conditions described herein. The aggregate borrowings under the DIP Facility during any week shall not exceed the forecasted borrowing requirements set forth in the Cash Flow Budget by more than 15% without the consent of the DIP Lender. For the purposes of this Agreement, "**Cash Flow Budget**" means the detailed thirteen (13) week rolling cash flow budget of receipts and disbursements prepared by the Borrower with the assistance of the monitor appointed under the Initial Order (the "**Monitor**"), which is attached as Schedule "A" to this Agreement, together with any subsequent detailed cash flow budget prepared by the Borrower with the assistance of the Monitor, submitted by the Borrower to the DIP Lender. The following conditions precedent shall be satisfied, or waived by the DIP Lender in its sole discretion, prior to each DIP Advance hereunder: (a) execution and delivery of this Agreement and all documentation relating to the DIP Facility, including, without limitation, all security documents required hereunder; (b) the Borrower's application materials in connection with its application for the Initial Order, the DIP Order and the Confirmation Order shall be satisfactory to the DIP Lender; (c) the Court shall have issued the Initial Order and the DIP Order, each in form and substance satisfactory to the DIP Lender. "**DIP Order**" means an order of the Court, *inter alia*, approving this Agreement and the DIP Facility and authorizing the Borrower to execute and carry out the terms of this Agreement and all agreements contemplated herein, granting the DIP Charge (as defined below) and establishing the priority thereof relative to other claims and encumbrances, which Order shall be expressly subject to provisional execution and shall declare that DIP Advances made in accordance

			with the provisional execution provisions shall have priority over all claims and encumbrances, including those of the Construction Lien Claimants (as defined below), notwithstanding any appeal from the DIP Order;
		(d)	prior to any DIP Advance that would cause the aggregate amount of all DIP Advances to exceed one million six hundred thousand dollars ($1,600,000), the Court shall have issued an Order, in form and substance satisfactory to the DIP Lender in its sole discretion, obtained on prior notice to all relevant persons who have or may assert a claim or encumbrance in priority to the DIP Charge, and which shall include all persons with registrations under the *Personal Property Security Act* (Ontario) other than Permitted Encumbrances, all relevant taxing authorities, and all persons ("**Construction Lien Claimants**") who have or may assert a claim against any Collateral in priority to the DIP Charge pursuant to the *Construction Lien Act* (Ontario) or any other law relating to liens or trusts generally, (the "**Confirmation Order**");
		(e)	there shall be no encumbrances on any Collateral (as defined below) ranking in priority to or *pari passu* with the DIP Charge (as defined below) other than as permitted by the terms hereof;
		(f)	each DIP Advance (together with all previous and outstanding DIP Advances) must be no greater than 15% in excess of the amount shown on the Cash Flow Budget, as reviewed by the Monitor, and in the aggregate shall not exceed the Maximum DIP Credit Amount and shall be subject to the terms and conditions hereof;
		(g)	delivery to the DIP Lender (with a copy to the Monitor) of a Drawdown Request, executed by an officer on behalf of the Borrower;
		(h)	no application for leave to appeal, notice of appeal or an appeal in respect of the Initial Order, the DIP Order or the Confirmation Order, shall have been made;
		(i)	no motion to amend, vary or stay the Initial Order, the DIP Order or the Confirmation Order shall have been made in a manner materially adverse to the DIP Lender;
		(j)	the DIP Lender shall have been named as an additional insured and loss payee, as applicable, on the Borrower's all-risk and liability insurance policies;
		(k)	there shall have been no breach of any covenant or other obligation of the Borrower under or in connection with this Agreement;

		(l) there is no Event of Default (nor any event which could with the giving of notice or lapse of time or both constitute an Event of Default) which has occurred and is continuing, nor will any Event of Default (nor any event which could with the giving of notice or lapse of time or both constitute an Event of Default) occur as a result of the DIP Advance; (m) there are no pending appeals, injunctions or other legal impediments relating to the DIP Facility, or pending litigation seeking to restrain or prohibit the DIP Facility; and (n) each of the representations and warranties made in this Agreement shall be true and correct as of the date made or deemed made.
5.	USE OF PROCEEDS:	The DIP Facility may only be used by the Borrower to pay: (a) expenditures provided for in the Cash Flow Budget, subject to an aggregate variance of up to fifteen percent (15%) in excess of those budgeted; (b) fees and expenses associated with the DIP Facility; and (c) such other expenditures as the DIP Lender shall have consented to in writing. The proceeds of each DIP Advance shall be paid into such of the Borrower's existing bank account(s) as the Borrower may advise from time to time, without the prior written approval of the Monitor, which bank account(s) the Borrower acknowledges, agrees and confirms are not and will not be blocked account(s) or subject to one or more blocked account agreements.
6.	SECURITY:	To secure the payment and performance by the Borrower under this Agreement and all ancillary documents related thereto including, without limitation, all of the DIP Obligations, the Borrower hereby grants to the DIP Lender a fully perfected security interest, charge and mortgage in and on all of the existing and after-acquired real and personal, tangible and intangible, property, assets and undertaking of the Borrower, including, without limitation, all cash, cash equivalents, bank accounts, accounts, other receivables, chattel paper, contract rights, inventory, instruments, documents, securities (whether or not marketable), equipment, fixtures, real property interests, franchise rights, patents, trade names, trademarks, copyrights, intellectual property, intangibles, capital stock, supporting obligations, letter of credit rights, commercial tort claims, causes of action and all substitutions, accessions and proceeds of the foregoing, wherever located, including insurance or other

		proceeds thereof, but excluding the funds paid into court by the Borrower in the amount of $7,970,895.70 by order of the Court dated March 24, 2017 in proceedings having Court File No. 93054/15, (collectively, the "**Collateral**") and agrees to seek as part of the DIP Order a Court-ordered charge over the Collateral in favour of the DIP Lender (the "**DIP Charge**"). The DIP Charge will rank in priority to all other creditors, interest holders, lien holders and claimants of any kind whatsoever other than the Permitted Encumbrances.
7.	PERMITTED ENCUMBRANCES AND PRIORITY:	All Collateral will be free and clear of liens, encumbrances and claims ranking in priority or *pari passu* with the DIP Charge, except for (a) a court ordered administration charge provided for by the Initial Order to secure payment of professional fees for Borrower's counsel, the Monitor and Monitor's counsel in a principal amount not to exceed $1,000,000, (b) the security interest of Caterpillar Financial Services Limited registered against, *inter alios*, the Borrower in relation to a 2014 Caterpillar 950K loader having VIN CAT0950KLR4A02402, and (c) any other liens or encumbrances which are acceptable to the DIP Lender in its sole discretion (collectively, the "**Permitted Encumbrances**").
8.	INTEREST:	The outstanding principal amount of all DIP Advances shall bear interest at the rate of six percent (6.0%) per annum, calculated daily and added to the DIP Obligations monthly in arrears on the last day of each calendar month commencing on August 31, 2017. No payment of interest shall be required until the Maturity Date. At any time that an Event of Default occurs and is continuing, the aforesaid interest rate of six percent (6%) per annum shall be increased by an additional two percent (2%) per annum. Interest on each DIP Advance shall accrue on the basis of a year of three hundred and sixty-five (365) days and will be calculated, payable and compounded monthly on the last business day of each month. For the purposes of the *Interest Act* (Canada), the annual rates of interest or fees to which the rates calculated in accordance with this DIP Facility are equivalent to the rates so calculated multiplied by the actual number of days in the calendar year in which such calculation is made and divided by three hundred and sixty-five (365) or three hundred and sixty-six (366), as applicable. If any provision of this Agreement or any ancillary document in connection with this Agreement would obligate the Borrower to make any payment of interest or other amount payable to the DIP Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the DIP Lender of interest at a criminal rate (as such terms are construed under

		the *Criminal Code* (Canada)) then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the DIP Lender of interest at a criminal rate and any such amounts actually paid by the Borrower in excess of the adjusted amount shall be forthwith refunded to the Borrower.
9.	PREPAYMENT:	The Borrower shall be entitled to prepay the DIP Facility or any portion thereof at any time, without notice or bonus.
10.	MANDATORY REPAYMENTS:	Subject to any order of the Court and subject to the Permitted Encumbrances, unless the DIP Lender otherwise agrees, the Borrower is required to pay all proceeds arising from: (a) any disposition of assets or other transaction involving all or any part of the Collateral including, without limitation, any refinancing or sale and lease back agreement; and (b) insurance proceeds in respect of any of the Collateral, as repayment of the DIP Obligations. The Borrower shall immediately make any payments required to eliminate any amount by which the principal amount outstanding at any time under the DIP Facility exceeds the Maximum DIP Credit Amount.
11.	ADDITIONAL DOCUMENTATION:	All documentation relating to the DIP Facility shall be in form and substance satisfactory to the DIP Lender. The Borrower shall execute and deliver to the DIP Lender such documents and assurances as the DIP Lender may request to give full force and effect to this Agreement. At the option of the DIP Lender, the Borrower shall execute and deliver such acknowledgments, mortgages, security agreements, charges and other ancillary documents as the DIP Lender may from time to time request.
12.	REPRESENTATIONS AND WARRANTIES:	The Borrower represents and warrants to the DIP Lender, upon which the DIP Lender relies in entering into this Agreement, that subject to the granting of the Initial Order and the DIP Order: (a) the Borrower is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business makes such qualification necessary; (b) the Borrower has all requisite corporate power and authority to (i) own and operate its properties and assets

		and to develop, own and operate its business and (ii) to enter into and perform its obligations under this Agreement; (c) the execution and delivery of this Agreement by the Borrower and the performance by the Borrower of its obligations hereunder have been duly authorized by all necessary corporate action and no authorization under any applicable law, and no registration, qualification, designation, declaration or filing with any Governmental Authority, is or was necessary therefor, other than those contained in the Initial Order and DIP Order, and filings which may be made to register or otherwise record the DIP Charge. "**Governmental Authority**" means any domestic or foreign (i) federal, provincial, state, municipal, local or other government, (ii) any governmental or quasi-governmental authority of any nature, including any governmental ministry, agency, branch, department, court, commission, board, tribunal, bureau or instrumentality, or (iii) any body exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power of any nature; (d) this Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against it in accordance with its terms, subject only to any limitation under applicable laws relating to (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally and (ii) the discretion that a court may exercise in the granting of equitable remedies; (e) (i) the Collateral is unconditionally owned by the Borrower and is only located at the locations disclosed to the DIP Lender, (ii) the Collateral has not been sold, leased or otherwise disposed of other than inventory in the ordinary course of business and (iii) upon the granting of the DIP Charge, the Collateral will not be subject to any rights of any person or entity in priority to or *pari passu* with the DIP Charge, other than the Permitted Encumbrances; and (f) all representations and warranties made by the Borrower in this Agreement are true and correct as of the date such representations and warranties are made or deemed to be made.
13	AFFIRMATIVE COVENANTS:	The Borrower covenants and agrees to: (a) submit to the Court the Initial Order, the DIP Order, the Confirmation Order and any other Court orders which are being sought by the Borrower in a form confirmed in

		advance to be satisfactory to the DIP Lender, acting reasonably, and subject to any amendments that are required by the Court that are acceptable to the DIP Lender, acting reasonably; (b) subject to the terms of the Initial Order, the DIP Order and the Confirmation Order, comply with all material laws, rules, regulations and orders, including, without limitation, environmental laws and regulations and including payment on a timely basis of all municipal taxes, utility charges or other amounts in relation to the Collateral where the non-payment of same could give rise to a lien, charge or other encumbrance ranking prior to or *pari passu* with the DIP Charge and immediately notify the DIP Lender of any action, claim, lawsuit, demand, investigation or proceeding pending against the Borrower, before any court, Governmental Authority, regulatory authority, arbitrator or tribunal; (c) maintain in good standing at all times all insurance coverage as is customarily carried by companies which are engaged in the same or similar business to the business of the Borrower or as otherwise may be required by the DIP Lender; (d) except where a stay of proceedings applies and subject to the terms of the Initial Order, pay when due all statutory liens, trust and other Crown claims including employee source deductions, GST, HST, PST and workplace safety and insurance premiums but only with respect to those priority payments which rank ahead of the DIP Charge or with respect to the Borrower's post-CCAA filing obligations in all cases in accordance with the Cash Flow Budget; (e) comply with the provisions of the court orders made in connection with the CCAA Proceedings; (f) pay when due all amounts payable by the Borrower under this Agreement and under any other agreements related thereto; (g) preserve, renew and keep in full force its corporate existence and its material licenses, permits and approvals required in respect of its business, properties, assets or any activities or operations carried out therein, including, without limitation, the Borrower's Feed-in-Tariff Agreement with Ontario's Independent Electricity Operator and sufficient biomass feedstock supply agreements to continue its business; (h) forthwith notify the DIP Lender and the Monitor of the

		occurrence of any Event of Default, or of any event or circumstance that may constitute an Event of Default; and (i) permit the DIP Lender, its representatives and agents, to have access, at any time, to the books, records, property and premises of the Borrower and cause management thereof to fully co-operate with any directors, officers, employees, agents, advisors and representatives of the DIP Lender.
14.	REPORTING COVENANTS:	The Borrower shall deliver to the DIP Lender: (a) on a bi-weekly basis an updated Cash Flow Budget in form and substance satisfactory to the DIP Lender together with a comparison prepared by the Borrower with the assistance of the Monitor of the previous week's forecast to actual results; (b) forthwith, notice of: (i) any breach of covenant or other obligation of the Borrower under or in connection with this Agreement; (ii) any material adverse change in the operations or financial conditions of the Borrower; (iii) any investigation, proceeding, order, claim or notice by any Governmental Authority with respect to any violation or alleged violation of applicable laws; and (c) such further reports and information as the DIP Lender may reasonably request from time to time.
15.	NEGATIVE COVENANTS:	The Borrower covenants and agrees not to do the following while any DIP Obligations remain outstanding, other than with the prior written consent of the DIP Lender: (a) except as permitted by the Initial Order or further order of the Court, make any payment of principal or interest in respect of any indebtedness outstanding on the date the Initial Order is granted; (b) permit any new liens to exist on any of its properties or assets, other than Permitted Encumbrances and the liens and charges in favour of the DIP Lender, that rank in priority or *pari passu* with the DIP Charge; (c) sell any assets outside of the ordinary course of business other than sales of redundant or non-material assets

		permitted pursuant to the Initial Order; (d) (A) make an assignment in bankruptcy under the BIA, (B) consent to the issuance of a bankruptcy order in respect of the Borrower pursuant to the BIA, (iii) file a notice of intention to make a proposal under the BIA, (iv) consent to the appointment of a receiver or receiver and manager by any court of competent jurisdiction in respect of the Borrower or any of its assets, undertakings or properties; or (e) enter into any agreement, initiate any process or put forward or participate in any plan or arrangement that contemplates any amendment or waiver of the DIP Lender's rights under this Agreement.
16.	EVENTS OF DEFAULT:	The occurrence of any one or more of the following events, without the prior written consent of the DIP Lender, shall constitute an event of default ("**Event of Default**") under this Agreement: (a) failure by the Borrower to pay any amounts when due and owing hereunder; (b) any representation or warranty made or deemed to be made by the Borrower herein or in any other document in connection with this Agreement shall prove to have been false in any material respect at the time made or deemed made; (c) the Borrower defaults in the observance or performance of any other covenant or obligation hereunder which, if curable, is not cured within ten (10) days after written notice from the DIP Lender; (d) if a new Monitor is appointed in the CCAA Proceedings without the DIP Lender's prior written consent; (e) the issuance of an order terminating the CCAA Proceedings or lifting the stay in the CCAA Proceedings to permit the enforcement of any security against the Borrower, or the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against any Borrower; (f) the issuance of an order granting a lien which is senior to or *pari passu* with the DIP Charge, other than the Permitted Encumbrances; (g) the issuance of an order staying, reversing, vacating or otherwise modifying the DIP Charge, or any order in the

		CCAA Proceedings, in a manner which materially adversely impacts the rights and interests of the DIP Lender, provided, however, that any such order which provides for payment in full of all of the obligations of the Borrower under the DIP Facility shall not constitute an Event of Default; (h) any breach by the Borrower of any of the Initial Order, the DIP Order, the Confirmation Order or any other order of the Court made in the CCAA Proceedings; or (i) there has been a Material Adverse Effect. "**Material Adverse Effect**" means: (a) any effect which is or could reasonably be expected to be adverse on the: (i) status or conditions (financial or otherwise), properties, assets, ownership, capital, liabilities, obligations (whether absolute, accrued, conditional or otherwise), business operations or results of operations of the Borrower that, in the DIP Lender's opinion, acting reasonably, is material; or (ii) ability of the Borrower to perform or discharge its obligations under this Agreement or any of the other documents relating hereto which, in the DIP Lender's opinion, acting reasonably, is material or (b) any event which would constitute an Event of Default of any event which, with the giving of notice of the lapse of time or otherwise, could constitute an Event of Default.
17	REMEDIES:	On the date of the occurrence of an Event of Default, any right of the Borrower to receive any advance or other accommodation of credit from the DIP Lender shall be immediately terminated and any further advances made, if any, thereafter shall be in the sole discretion of the DIP Lender. The DIP Lender shall be entitled, in addition to all other remedies at law and under any security or other agreement, to exercise its rights to notify and direct account debtors of the Borrower to pay accounts receivable directly to the DIP Lender. In addition, and subject to the provisions of section 3 "Repayment" hereof, upon demand for repayment of the DIP Facility by the DIP Lender of the Borrower on or after the occurrence of an Event of Default (except an Event of Default contemplated in clause 16(f) and (g) hereof, in respect of which demand shall not be required) (the "**Termination Date**"), all debts, obligations and liabilities of the Borrower to the DIP Lender hereunder shall become immediately due and payable. Without limiting the foregoing, from and after the Termination Date, the DIP Lender shall have the right to exercise all other customary remedies under applicable law, including, without limitation, the right to realize on all Collateral and the collateral

		securing the DIP Obligations in each case without the necessity of obtaining further relief or order from any court, other than as set out in the DIP Order. For greater certainty, nothing shall prevent the DIP Lender from applying to the Court or any court in any relevant foreign jurisdiction for such relief as the DIP Lender may determine is necessary or appropriate at any time. For the avoidance of doubt, no failure or delay by the DIP Lender in exercising any of its rights hereunder or at law shall be deemed a waiver of any kind, and the DIP Lender shall be entitled to exercise such rights in accordance with this Agreement at any time. The DIP Order shall provide that the DIP Lender shall not be prevented by the stay of proceedings or any order of the Court, as applicable, other than the provisions of the Initial Order and the DIP Order regarding enforcement by the DIP Lender and the DIP Charge specifically, from exercising any or all of the rights, remedies and entitlements available to it hereunder, under the DIP Charge and under any security or other ancillary documents related thereto, and that the indebtedness and obligations of the Borrower to the DIP Lender hereunder shall not be compromised or otherwise affected in any plan filed by or on behalf of any of the Borrower.
18.	EXPENSES:	The Borrower shall pay all of the DIP Lender's costs and expenses, including those incurred for due diligence, transportation, computers, copying, appraisals, inspections, audits, insurance, consultants, searches, filing and recording fees, collateral auditing fees and all other out-of-pocket costs and expenses incurred by the DIP Lender (including the fees and expenses of its legal counsel). The Borrower shall also pay the costs and expenses of the DIP Lender in connection with this Agreement and the transactions contemplated herein, as well as any enforcement of the terms hereof or of the DIP Charge or otherwise incurred in connection with the DIP Facility. All such costs and expenses, if not immediately paid by the Borrower upon demand, shall be added to the DIP Obligations.
19.	INDEMNITY AND RELEASE	The Borrower agrees to indemnify and hold harmless the DIP Lender, its affiliates and their officers, directors, employees, agents and advisors (each. an "**Indemnified Person**") from and against any and all suits, actions, proceedings, orders, claims, damages, losses, liabilities and expenses (including legal fees and disbursements and other costs of investigation or defence, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as a result of or in connection with credit having been extended, suspended or terminated under or in relation to the DIP Facility

		or the use of the proceeds thereof and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and any actions or failure to act in connection therewith including the taking of any enforcement actions by the DIP Lender and including any and all environmental liabilities and legal costs and expenses arising out of or incurred in connection with disputes between or among any parties hereto. All such indemnified amounts, if not immediately paid by the Borrower upon demand, shall be secured by the DIP Charge. The indemnities granted under this Agreement shall survive any termination of the DIP Facility.
20.	DIP LENDER APPROVALS:	Any consent, approval, instruction or other expression of the DIP Lender to be delivered in writing may be delivered by any written instrument, including by way of electronic mail, by the DIP Lender pursuant to the terms hereof.
21.	NOTICES	Any notice, request or other communication hereunder to any of the parties shall be in writing and be sufficiently given if delivered personally or sent by fax or electronic mail to the attention of the person as set forth below: (a) in the case of the Borrower: Index Energy Mills Road Corporation 170 Mills Road Ajax, Ontario L1S 2H1 Attention: Rickard Haraldsson Email: Rickard.haraldsson@indexinvest.com with a copy to: Cassels Brock & Blackwell LLP 40 King Street West, Suite 2100 Toronto, ON M5H 3C2 Attention: Shayne Kukulowicz, Jane Deitrich & Lance Williams Fax: 416.360.8877 Email: skukulowicz@casselsbrock.com jdeitrich@casselsbrock.com lwilliams@casselsbrock.com with a copy to the Monitor: Grant Thornton Limited

		11th Floor, 200 King Street West Box 11 Toronto, ON M5H 3T4 Attention: Michael Creber Fax: 416.360.4949 Email: Michael.Creber@ca.gt.ca with a copy to the Monitor's counsel: Goodmans LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, Ontario M5H 2S7 Attention: Brian Empey & Dan Dedic Fax: 416.979.1234 Email: bempey@goodmans.ca ddedic@goodmans.ca (b) in the case of the DIP Lender: Index Equity US LLC 1044 N. U.S. Hwy One, Suite 101 Jupiter, Florida 33477 USA Attention: Bjarne Borg Email: bjarne.borg@indexinvest.com with a copy to: Torys LLP 79 Wellington St. W. , 33rd Floor Box 270, TD South Tower Toronto, Ontario M5K 1N2 Attention: Jonathan Weisz & David Bish Fax: 416.865.7380 Email: jweisz@torys.com/dbish@torys.com Any such notice shall be deemed to be given and received, when received, unless received after 5:00 p.m. EST or on a day other than a business day, in which case the notice shall be deemed to be received the next business day. Either party may request notices be sent to additional recipients so long as, in the case of notices to the DIP Lender, such recipient is subject to confidentiality obligations.

22.	GOVERNING LAW AND JURISDICTION:	This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
23.	AMENDMENTS, WAIVERS, ETC.:	No amendment or waiver of any provision of this Agreement will be effective unless it is in writing, and then the amendment, modification, waiver or consent will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given.
24.	FURTHER ASSURANCES:	The Borrower shall from time to time promptly, upon the request of the DIP Lender, take or cause to take such action, and execute and deliver such further documents as may be reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement.
25.	ENTIRE AGREEMENT; CONFLICT:	This Agreement, including the schedules hereto constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior agreements and understandings relating thereto.
26.	ASSIGNMENT:	The DIP Lender may assign this Agreement and its rights and obligations hereunder, in whole or in part, to any party acceptable to the DIP Lender in its sole and absolute discretion (subject to providing the Monitor with advance notice thereof and reasonable evidence that such assignee has the financial capacity to fulfill the obligations of the DIP Lender hereunder and, if necessary, approval of the Court). For greater certainty, any such assignee shall have the benefit of this Agreement, any security granted in favour of the DIP Lender by the Borrower, and the DIP Charge. In the event that the DIP Lender grants a participation in the loans made pursuant to this Agreement to any party,(i) the DIP Lender shall remain solely entitled to enforce all rights under this Agreement and all documents delivered in connection with this Agreement, and shall remain solely responsible for the performance of all obligations of the DIP Lender under this Agreement, (ii) no participant shall have any direct enforceable rights against the Borrower in respect of the portion of the loans, other than its rights against the DIP Lender, and (iii) the Borrower shall not have any direct obligations to any participant with respect to any portion of the loans participated in. Neither this Agreement nor any right and obligation hereunder may be assigned by the Borrower without the prior written approval of the DIP Lender.
27.	SEVERABILITY:	Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability

		without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
28.	NO THIRD PARTY BENEFICIARY:	No person, other than the Borrower and the DIP Lender are entitled to rely upon this Agreement and the parties expressly agree that this Agreement does not confer rights upon any party not a signatory hereto.
29.	CURRENCY:	Unless otherwise stated, all monetary denominations shall be in lawful currency of Canada.
30.	COUNTERPARTS AND FACSIMILE SIGNATURES:	This Agreement may be executed in any number of counterparts and by facsimile or other electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this Agreement by signing any counterpart of it.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

INDEX EQUITY US LLC

By: ______________________________
Name: Bjarne Borg
Title:
Authorized Signatory

INDEX ENERGY MILLS ROAD CORPORATION

By: ______________________________
Name: Rickard Haraldsson
Title: Director
Authorized Signatory

SCHEDULE "A"

CASH FLOW BUDGET

See attached.

SCHEDULE "B"

FORM OF DRAWDOWN REQUEST

DRAWDOWN REQUEST

TO: **INDEX EQUITY US LLC** (the "**DIP Lender**")

FROM: **INDEX ENERGY MILLS ROAD CORPORATION** (the "**Borrower**")

DATE: **[__], 2017**

Pursuant to the DIP Credit Facility Agreement dated August ___, 2017, among the DIP Lender and the Borrower (as amended, restated and otherwise modified from time to time, the "**Agreement**"), the Borrower is required as a condition precedent to each DIP Advance to deliver this Drawdown Request to the DIP Lender. Unless otherwise defined herein, all capitalized terms used in this Drawdown Request shall have the meanings specified for such terms in the Agreement.

The Borrower hereby certifies that:

(a) the requested drawdown is within the variance permitted to the Cash Flow Budget under the Agreement;

(b) the Borrower is in compliance with the Initial Order, the DIP Order and every other order granted by the Court in the CCAA Proceedings;

(c) the representations and warranties set forth in the Agreement are and shall be true and accurate and the Borrower is in compliance with the covenants set forth therein;

(d) no event has occurred and is continuing which constitutes an Event of Default or which would constitute an Event of Default with the giving of notice or lapse of time or both; and

(e) all conditions precedent to the requested DIP Advance pursuant to the Agreement have been satisfied.

The Borrower hereby requests a DIP Advance as follows:

Date of DIP Advance:	[__]
Amount of DIP Advance:	CDN $[__]

IN WITNESS WHEREOF the undersigned has executed this Drawdown Request on the date first above written.

INDEX ENERGY MILLS ROAD CORPORATION

By: ______________________________
Name:
Title:

This is **Exhibit "R"**
to the affidavit of **Rickard Haraldsson**
sworn before me this 15th day of August, 2017

....
A Commissioner and/or Notary Public for taking affidavits, etc. in Stockholm, Sweden

Björn Sandin

NOTARIUS PUBLICUS I STOCKHOLM
BJÖRN SANDIN

Court File No. ________________

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDEX ENERGY MILLS ROAD CORPORATION

Applicant

MONITOR'S CONSENT

Grant Thornton Limited hereby consents to act as Court-appointed monitor of Index Energy Mills Road Corporation in respect of these proeeedings.

Dated as of August 14th, 2017

Grant Thornton Limited

Per: ______________________
Name: Michael Creber
Title: Senior Vice-President

Court File No: ____________

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDEX ENERGY MILLS ROAD CORPORATION

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

MONITOR'S CONSENT

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Lawyers for the Proposed Monitor

6724748

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDEX ENERGY MILLS ROAD CORPORATION

Court File No. CV-17-580840-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF RICKARD HARALDSSON
(sworn August 15, 2017)

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