

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE ELECTRICITY ACT**

**- and -**

**IN THE MATTER OF AN APPLICATION** for Approval of a Standard Form Power Purchase Agreement for the purchase of marine renewable energy from Independent Power Producers

**BEFORE:**



Peter W. Gurnham, Q.C., Chair  
Roland A. Deveau, Q.C., Vice Chair  
Roberta J. Clarke, Q.C., Member

**DECISION AND ORDER**

**WHEREAS** the Board received an application, on December 12, 2019, from the Procurement Administrator, pursuant to s. 37 of the *Renewable Electricity Regulations*, for approval of a Power Purchase Agreement (PPA) for the purchase of marine renewable energy from Independent Power Producers;

**AND WHEREAS** the Board determined that it would allow comments by interested parties and reply by the Procurement Administrator in a written process;

**AND WHEREAS** submissions were received from the Small Business Advocate dated January 15, 2020, which were responded to by the Procurement Administrator on January 24, 2020;

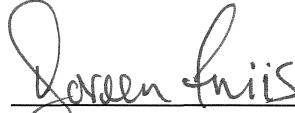
**AND WHEREAS** the Board considers the Procurement Administrator adequately responded to the SBA's concerns;

**AND WHEREAS** the Board is satisfied with the form of PPA;

**IT IS HEREBY ORDERED**, pursuant to s. 37 of the *Renewable Electricity Regulations*, that the Standard Form PPA, attached hereto as Schedule "A", is approved for the purchase of marine renewable energy from Independent Power Producers.

**IT IS FURTHER ORDERED** that the Procurement Administrator may make non-substantive changes to the form of PPA without Board approval subject to the Procurement Administrator providing notice to the Clerk of the Board, and notice to all parties registered with the Procurement Administrator, and posting such notice on the Nova Scotia Department of Energy and Mines' procurement website.

**DATED** at Halifax, Nova Scotia, this 30<sup>th</sup> day of January, 2020.

A handwritten signature in dark ink, appearing to read "Gordon Fries", is written over a horizontal line.

Clerk of the Board

**SCHEDULE "A"**



**MARINE RENEWABLE-ENERGY LICENCE**

**POWER PURCHASE AGREEMENT**

This Power Purchase Agreement (the "Agreement") is entered into as of the following date: \_\_\_\_\_ . The parties to this Agreement are the following:

**Nova Scotia Power Incorporated** ("NSPI") and **[Insert Name of Seller]** ("Seller")

1223 Lower Water Street  
P.O. Box 910  
Halifax, Nova Scotia  
B3J 2W5

**Notices:** Nova Scotia Power Incorporated  
P.O. Box 910  
Halifax, Nova Scotia  
B3J 2W5  
Fax: (902) 428-6171  
Attention: Corporate Secretary

**Notices:**

**Payments:** Nova Scotia Power Incorporated  
P.O. Box 910  
Halifax, Nova Scotia  
B3J 2W5  
Attention:

**Payments:**

For good and valuable consideration, the Parties agree to the following Commercial Terms:

**1. SUMMARY OF COMMERCIAL TERMS**

- a) Effective Date: [●] **[Upon issuance]**
- b) Marine Renewable-energy Licence No.:
- c) Final In-Service Date: December 31, 2024
- d) Term: 15 years from the Commercial Operation Date
- e) Site: Berth D at FORCE
- f) Aggregate Name Plate Capacity of the Generating Facility: up to 4MW
- g) Energy Rate: [●] (\$/MWh) **[Based on Procurement Administrator decision]**
- h) Annual Net Output: [●] (MWh/year);
- i) Energy Source: Developmental Tidal Array

**2. DESCRIPTION OF SCHEDULES**

Each of the following Schedules form part of the Agreement:

**Schedule “A” – General Terms and Conditions.** This Schedule sets out the terms and conditions that are binding on the Parties and govern the sale and delivery of Energy under this Agreement.

**Schedule “B” – Glossary of Terms.** This Schedule summarizes the key terms and technical phrases that are used in this Agreement to assist the Parties in the interpretation and application of this Agreement.

**Schedule “C” – Project Description.** This Schedule sets out a technical description of the Generating Facility and related assets.

**Schedule “D” – Marine Renewable-energy Licence.** This Schedule contains the Seller’s Marine Renewable-energy Licence.

### 3. ENTIRE AGREEMENT

This Agreement, together with the Schedules attached hereto, constitutes the entire agreement of the Parties regarding the subject matter of this Agreement and supersedes all prior agreements, understandings, representations and statements (oral or written).

Capitalized terms used herein but not otherwise defined have the meaning ascribed to them in Schedule “B” (Glossary of Terms) attached hereto.

**IN WITNESS THEREOF**, the Parties have duly executed this Agreement, in duplicate, as of the date set forth above.

**NOVA SCOTIA POWER INCORPORATED**

\_\_\_\_\_

Witness (*print name below*)

Per: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

Witness (*print name below*)

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Company

**[INSERT NAME OF COUNTERPARTY]**

\_\_\_\_\_  
Witness (*print name below*)

Per: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
Witness (*print name below*)

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Company

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**Schedule “A”**  
**GENERAL TERMS AND CONDITIONS**

**1 DEFINITIONS**

**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 Schedule “B” – Glossary of Terms.

**2. DEVELOPMENT OF THE FACILITY**

- a) The Seller shall perform, or cause to be performed, all activities necessary to complete the design, construction and commissioning of the Generating Facility, at the Site, using Good Utility Practice and in compliance with Laws and Regulations and all applicable provisions of the Agreement (including the Project Description), by the Final In-Service Date. The Seller shall ensure that the Generating Facility is designed and constructed to operate in accordance with the requirements of the Agreement from the Commercial Operation Date until expiry of the Term.
- b) The Seller agrees to obtain and maintain, or cause to be obtained and maintained, all relevant Permits required in connection with the design, development, construction, interconnection, and commissioning of the Project.
- c) Prior to the Commercial Operation Date, the Seller may restate the Annual Net Output for the Project without the consent of NSPI. The Annual Net Output for the project may not be increased. Both NSPI and the Minister must be provided with written notification of the amendment at the time of restatement.
- d) The Seller shall not make any material modification to the Generating Facility during the Term without the prior written consent of NSPI and written evidence of Ministerial approval if required, which consent may be given subject to conditions including the condition that any such modification be carried out using Good Utility Practice and in compliance with Laws and Regulations and all applicable provisions of the Agreement (including the requirements for Marine Renewable-energy Licence). For certainty, NSPI shall not be obliged to provide any such consent if the modification could reasonably be expected to have a material adverse effect on the rights or benefits of NSPI under the Agreement or on the Annual Net Output or the Aggregate Name Plate Capacity.

The Parties agree that the Seller may not make any material modifications to the Generating Facility during the Term that would increase or would reasonably be expected to increase the Annual Net Output without the prior written consent of NSPI and the Minister. For clarity, modifications which occur as a result of regular Generating Facility repair and maintenance that do not change the Aggregate Name Plate Capacity or increase Energy

production beyond 120 percent of the Annual Net Output, would not be considered material. Any modification affecting the output of a Generating Facility requires written notice to NSPI and the Minister.

- e) Until the Commercial Operation Date, the Seller shall provide NSPI with quarterly progress reports in a form agreed to by the Parties describing the status of efforts made by the Seller to meet the Final In-Service Date and the progress of the design and construction work. At NSPI's request, the Seller shall provide an opportunity for NSPI to meet with appropriate personnel of the Seller during regular business hours to discuss and assess the contents of any such quarterly progress report.

### **3. TERM OF AGREEMENT**

- a) The Agreement shall become effective upon the Effective Date. Without prejudice to the provisions of the Agreement relating to that period prior to the commencement of the Term, the Term shall commence on the Commercial Operation Date.
- b) Prior to the last six (6) months of the Term, the Seller agrees to exclusively negotiate with NSPI the terms of a new power purchase agreement. If NSPI waives the Seller's obligation to negotiate or the Parties are unable to agree on the terms of a new power purchase agreement prior to the last six (6) months of the Term, then, subject to applicable Laws and Regulations, the Seller shall be at liberty to negotiate the sale of Energy from the Generating Facility to any person.

### **4. PERFORMANCE SECURITY**

#### **4.1 Provision of Security**

The Seller shall, within ten (10) days of the date of this Agreement, provide the Performance Security to NSPI. The Performance Security shall remain in full force and effect until the Commercial Operation Date. If, for any reason except a Force Majeure Event (and then only to the extent of such event), the Seller does not achieve Commercial Operation by the Final In-Service Date, then NSPI, at its sole discretion, may immediately draw upon the full amount of the Performance Security, regardless of whether NSPI has terminated this Agreement pursuant to Section 13.1(e) or not.

Each Party hereby agrees that the provision of the Performance Security is reasonable, and that, in light of the anticipated harm and the difficulty of estimation or calculation of actual damages that would be incurred by NSPI as a result of the Seller failing to achieve Commercial Operation by the Final In-Service Date, the Performance Security represents a genuine estimate of NSPI's loss. The Seller hereby waives the right to contest such payments as an unreasonable penalty or for any other reason.

Other than the ability to terminate this Agreement pursuant to Section 13.1(e), the Performance Security (and NSPI's drawing thereon) shall be the sole and exclusive remedy of NSPI for the failure of the Seller to achieve Commercial Operation by the Final In-Service Date, and all other damages and remedies are hereby waived. If Commercial Operation occurs before the Final In-Service Date, NSPI shall return or cancel the Performance Security to the Seller within ten (10) days of receipt by NSPI of all documents required to demonstrate that the Project has achieved Commercial Operation.

## **5. PURCHASE AND SALE OF ENERGY**

### **5.1 Purchase and Sale**

Subject to, and in accordance with, the terms and conditions of this Agreement, the Seller shall sell and deliver to NSPI and NSPI shall purchase and take delivery at the Delivery Point, the entire Net Output of the Generating Facility (including the entire Net Output during the Interim Period). The Net Output shall be sold and delivered by the Seller free of any liens, encumbrances or adverse claims.

## **6. PAYMENT FOR ENERGY PRODUCED BY SELLER**

### **6.1 Energy Payment**

Subject to, and in accordance with, the terms and conditions of this Agreement:

- a) for Net Output during the Interim Period and for Net Output during any period where the Marine Renewable-energy Licence for the Generating Facility has been suspended for any reason whatsoever, but has not been revoked, NSPI shall pay the Seller the lower of:
  - i. the Incremental Energy Rate; and
  - ii. the Energy Rate;
- b) for Net Output produced in each Contract Year during the Term when the Seller's Marine Renewable-energy Licence has not been suspended or revoked, NSPI shall pay the Seller:
  - i. the Energy Rate for Net Output up to 120% of the Annual Net Output; and
  - ii. the Incremental Energy Rate for Net Output above 120% of the Annual Net Output; and
- c) notwithstanding Section 6.1(a) and Section 6.1(b), the Seller shall not be entitled to any payment for Net Output produced after the Marine Renewable-energy Licence for the Generating Facility has been revoked for any reason whatsoever.



Such amounts payable shall be billed monthly in arrears in accordance with the provisions of Section 6.2.

## **6.2 Billing, Meter Reading and Payment**

- a) The amount of Energy delivered by the Seller to the Delivery Point will be determined by NSPI through “revenue class” metering installed or approved by NSPI. The Energy delivered to NSPI at the Delivery Point will be determined by adjusting for Energy losses between the Meter Location and the Delivery Point.

NSPI shall read the meters on a monthly basis, prepare an Energy Statement (including time and date of reading) and issue payment together with the Energy Statement for the Energy supplied by the Seller during the month, under the terms of this Agreement, within 30 days following the reading of the meter. In the event that NSPI is late with the processing of any payment, and without limiting paragraph 13.3(c), NSPI will pay the Seller interest at the Prime Rate, compounded monthly, from the due date to the date payment is made. Seller shall have access to meters for reading and verification purposes.

- b) If there is any dispute over any Energy Statement, both Parties have the right to withhold that portion of payment in dispute until resolution is reached.
- c) Subject to Section 12(c), in the event that a meter reading error has occurred, adjustments will be made accordingly.
- d) In the event of a failure of the metering equipment to record Energy required for the purpose of determining payment hereunder, NSPI and the Seller agree to accept a reasonable estimate of the Energy delivered during the period of meter failure based on other recognized metering or measurement equipment on site. Where a check meter or other SCADA equipment has not been installed, NSPI will use turbine supplier software to estimate the amount of Energy generated.
- e) In the event that the metering equipment used to record Energy for the purpose of determining payment hereunder is measuring energy delivered to NSPI pursuant to two or more power purchase agreements with NSPI, NSPI and the Seller agree to accept a reasonable allocation of the electric energy produced pursuant to each power purchase agreement. Such reasonable allocation shall be based on the Seller’s SCADA or equivalent data for each generator being metered. The Seller shall provide NSPI with its SCADA or equivalent data immediately following the read of the meter by NSPI.
- f) Each of the Parties reserve the right to net off amounts owed to the other in any particular month. However, if there is a dispute over the amounts involved, then neither Party shall net off any disputed amounts without the dispute being resolved. Provided, however, that if the dispute has not been resolved or referred to dispute resolution

pursuant to Section 19 within twelve (12) months, the dispute shall be deemed to be withdrawn for the purposes of this Section 6.2(f).

### **6.3 Compliance with Marine Renewable-energy Licence Program**

The Seller represents and warrants to NSPI that the Seller will submit, at its cost, a Marine Renewable-energy Licence upon receipt. The Seller agrees that it will, at its cost, maintain the Marine Renewable-energy Licence. The failure of the Seller to maintain the Marine Renewable-energy Licence upon or effective upon the Final In-Service Date or to maintain such Marine Renewable-energy Licence for the Term, shall entitle NSPI to terminate this Agreement pursuant to Section 13.1(f) or Section 13.1(g).

### **6.4 Assignment of Emission Reductions and Renewable Energy Credits**

- a) Subject to section 6.4(c), the Seller hereby assigns, unconditionally and absolutely, all of its right, title and interest in and to all of the Emission Reductions and Renewable Energy Credits attributable to all of the Energy purchased by NSPI from the Seller pursuant to this Agreement (including any Energy purchased during the Interim Period). The Emission Reductions and Renewable Energy Credits shall be assigned by the Seller free of any liens, encumbrances or adverse claims. The Seller shall, upon the request of NSPI from time to time, execute and deliver (or cause to be executed and delivered) all such further documents and instruments and do all acts and things as NSPI may reasonably require to better effect, evidence or perfect such assignment (or if such assignment is not permitted, to hold such right, title and interest in trust for NSPI) or to otherwise deal with the Emission Reductions and Renewable Energy Credits. Any expense incurred by the Seller pursuant to any such request of NSPI shall be deemed to be included as part of the Energy Rate.
- b) Unless requested by NSPI, the Seller shall not participate in any voluntary program with respect to the Emission Reductions or Renewable Energy Credits without the prior written consent of NSPI, which consent may, subject to Section 6.4(c), be arbitrarily withheld.
- c) The provisions of Section 6.4(a) shall not apply to any Seller Benefits, provided the Seller shall not participate in any program giving rise to Seller Benefits if such participation reduces the amount of any Emission Reductions and Renewable Energy Credits to which NSPI would otherwise be entitled.

## **7. DELIVERY OF ENERGY BY THE SELLER**

### **7.1 Delivery of Energy**

Recognizing that the availability of the Energy Source may vary and, consequently, the resulting Net Output may vary, the Generating Facility shall be designed and constructed

so as to generate and deliver, throughout the Term, an average yearly Net Output not less than the Annual Net Output and the Seller shall use all reasonable commercial efforts to operate, maintain and rehabilitate the Generating Facility in a manner which meets such Energy requirement.

## **7.2 Inspections by NSPI**

Any review or inspection by NSPI of the design, construction, safety, operation, or maintenance of the Generating Facility is solely for the information of NSPI. By making such review or inspection, NSPI makes no representation as to the economic and technical feasibility, safety, operational capability, or reliability of the Generating Facility. Seller shall in no way represent to any third party that any such review or inspection by NSPI of the Generating Facility, including but not limited to, any review of the design, construction, operation, or maintenance of the Generating Facility by NSPI is a representation by NSPI as to the economic and technical feasibility, operational capability, or reliability of the Generating Facility. Seller is solely responsible for economic and technical feasibility, operational capability, or reliability thereof. NSPI shall not be liable to Seller for, and Seller shall defend and indemnify NSPI from, any claim, cost, loss, damage, or liability arising from any contrary representation by Seller or agents of Seller concerning the effect of NSPI's review of the design, construction, operation, or maintenance of the Generating Facility.

## **7.3 Metering Ownership**

NSPI shall own and maintain the Generating Facility's metering and telemetering equipment. This ownership extends beyond the expiration and/or termination of this Agreement.

# **8. ACCEPTANCE OF ENERGY BY NSPI**

## **8.1 Obligation to Purchase**

NSPI shall be obliged to purchase and take delivery of all of the Net Output supplied to the Delivery Point in accordance with this Agreement (including the entire Net Output during the Interim Period) provided that NSPI may suspend such obligation to purchase and to take delivery of Energy during any outage or interruptions in the delivery of electricity permitted by the Interconnection Agreement.

## **8.2 Curtailment of Supply**

NSPI may interrupt or curtail all or a portion of the Energy produced by the Generating Facility as and when permitted to do so by the Interconnection Agreement. The Seller shall not be entitled to any claim or compensation for Energy curtailed or interrupted pursuant to this section including, without limitation, payment of the Energy Rate for any Energy interrupted.

### **8.3 Emergency**

Notwithstanding Section 8.1, whenever the Electrical System or the systems with which it is directly or indirectly interconnected experiences an Emergency, or whenever it is necessary to aid in the restoration of service on the Electrical System or the systems with which it is directly or indirectly interconnected, NSPI may curtail or interrupt the taking of all or a portion of the Energy produced by the Generating Facility, provided such curtailment or interruption shall continue only for so long as it is necessary under Good Utility Practice. The Seller shall not be entitled to any claim or compensation for Energy curtailed or interrupted pursuant to this section including, without limitation, payment of the Energy Rate for any Energy interrupted.

### **8.4 Minimization of Interruptions**

NSPI agrees to use commercially reasonable efforts to coordinate and to minimize any periods of interruption or curtailment as provided for in this article with the periods of Scheduled Generating Facility Outage. NSPI shall, prior to initiating any interruption, reduction, or refusal of Energy produced by the Generating Facility, use commercially reasonable efforts to provide the Seller with a minimum of five (5) Business Days advance notice, such notice to include an explanation of the cause of the interruption, and an estimate of the start, duration, and termination of the interruption.

## **9. ENERGY PRODUCTION SCHEDULE**

### **9.1 Seller's Reporting**

- a) The Seller shall:
  - i. provide to NSPI, no later than that date ("Reporting Date") which is six (6) months prior to each Fiscal Year during the Term, an estimate of the Net Output for each month during that Fiscal Year together with a schedule of any outages of the Generating Facility which are planned during that Fiscal Year, and, in addition:
    - a) with respect to any part of a Contract Year which does not fall within each such Fiscal Year, the Seller shall provide to NSPI an estimate and schedule of outages for that period no later than six (6) months prior to the commencement of such period;
    - b) with respect to the Interim Period, provide to NSPI an estimate of the Net Output for that period no later than ten (10) days prior to the commencement of that period;

- ii. promptly update and report to NSPI any material changes to the information provided pursuant to Section 9.1(a) upon the Seller becoming aware of any such change; and
  - iii. comply with reasonable requirements and requests by NSPI for information in respect of the daily operation of the Generating Facility.
- b) The Seller shall:
- i. comply with reasonable requirements and requests by NSPI for information in respect of the daily operation of the Generating Facility;
  - ii. provide to NSPI an hourly production forecast, or mutually acceptable data such that a forecast could be produced, of the Net Output for each day of the Interim Period and each day of the Term, by 8:30 am Atlantic Prevailing Time of the previous day; and
  - iii. provide to NSPI a mid-day and/or morning same day updated forecast, or mutually acceptable data such that a forecast could be produced, with respect to any anticipated material variation from the previous forecast if the variation is attributable to sudden changes in the Energy Source availability.

## **10. OWNERSHIP, RISK AND INSURANCE**

### **10.1 Ownership and Risk**

- a) Property in and all risk relating to the Energy produced and delivered to NSPI by the Seller pursuant to this Agreement will pass from the Seller to NSPI at the Delivery Point. All responsibility of the Seller for the creation, transmission and delivery of Energy hereunder and all liability of the Seller with respect to the Energy shall cease at the Delivery Point.
- b) The Generating Facility shall be and remain the sole and exclusive property of the Seller or its permitted assignees and the Seller shall be solely responsible for the development, design, construction, operation, maintenance, rehabilitation and modification of the Generating Facility.
- c) The rights, duties, obligations and liabilities of the Parties hereunder shall be separate and not joint or collective, nor joint and several. Nothing contained herein shall be construed as creating a partnership, joint venture or association of any kind or as imposing upon either Party any partnership duty, obligation or liability to the other Party.

## **10.2 Insurance**

- a) The Seller shall, at all times during the Term, hold all risk property insurance and public liability insurance in respect of the Generating Facility as would be implemented by a reasonably prudent owner of such a Generating Facility.
- b) NSPI will be shown as an additional insured on the liability policy.
- c) The Seller shall provide NSPI with certificates issued by insurers evidencing the insurance coverages described above.

## **11. LIABILITY, INDEMNIFICATION, ETC.**

### **11.1 Indemnification**

- a) Each Party (each an "Indemnitor") shall indemnify and hold harmless the other Party and such other Party's Affiliates, directors, officers, partners, employees, contractors, subcontractors, agents and representatives thereof (individually and collectively called an "Indemnatee") from and against all losses, damages and liabilities suffered by the Indemnatee and all judgments, fines, penalties, charges, settlement amounts, costs, expenses and reasonable legal fees (on a solicitor and own client basis, including reasonable disbursements) incurred by the Indemnatee in connection with any causes of action, claim, suit, inquiry, proceeding, investigation or appeal therefrom, to the extent attributable to the wilful acts or omissions, fault or negligence of the Indemnitor or the breach of its obligations under this Agreement, or, in the case of the Seller, arising in connection with any emissions from the Generating Facility, or relating or attributable to Energy prior to its delivery to the Delivery Point, or in the case of NSPI, relating or attributable to Energy after it has been delivered to the Delivery Point.
- b) In respect of any indemnity obligation of the Indemnitor under the Agreement, the Indemnatee shall give notice to the Indemnitor of any claim or other proceeding which may give rise to such obligation, whereupon the Indemnitor shall, at its own cost, be entitled to take carriage of the defence of any such claim or other proceeding, provided the Indemnitor undertakes such defence promptly upon receiving such notice or otherwise becoming aware of any such claim or other proceeding. If, within a reasonable time after becoming aware of such claim or other proceeding (having regard to any limitation period for responding to same), the Indemnitor fails to undertake, without any reservation of rights, the defence of such claim or other proceeding, the Indemnatee shall have the right, for the account of the Indemnitor, to undertake the defence, settlement or compromise of such claim or other proceeding.

## **11.2 Consequential Loss**

Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other Party or its Affiliates, directors, officers, partners, employees, contractors, subcontractors, agents and representatives thereof for any reason (including negligence on the part of the first Party or any Person for whose acts it is responsible, and howsoever the head of damage may be formulated) in respect of any punitive, consequential or indirect damages of any nature whatsoever including loss of use, loss of revenue, loss of profit, loss of contract or loss of goodwill or any other loss or damage of an indirect or consequential nature suffered by the other Party or its Affiliates, directors, officers, partners, employees, contractors, subcontractors, agents and representatives thereof in connection with this Agreement other than as specifically provided for herein.

## **12. ENGINEERING STANDARDS, OPERATION AND MAINTENANCE STANDARDS, METERS**

- a) The Seller shall operate and maintain (or cause to be operated and maintained) the Generating Facility using Good Utility Practice and in compliance with Laws and Regulations and this Agreement (including the Project Description).
- b) The Seller shall provide NSPI access to the Generating Facility and the Site at all reasonable times upon prior notice for the purpose of reading, installing, maintaining or inspecting meters, examining the operation of the Generating Facility or other purposes related to performance under the terms of this Agreement. Such access shall not unreasonably interfere with the Seller's normal business operations. All NSPI personnel shall, to the extent reasonable, follow all the Seller's safety and procedural rules while on the Generating Facility premises. The Seller shall provide such safety and procedural rules to NSPI prior to the Commercial Operation Date and include updates as necessary. The inspection of the Generating Facility or the exercise of any audit rights or the failure to inspect the Generating Facility or to exercise audit rights by or on behalf of NSPI shall not relieve the Seller of any of its obligations to comply with the terms of this Agreement. No Event of Default by the Seller will be waived or deemed to have been waived by any inspection by or on behalf of NSPI. In no event will any inspection by NSPI hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.
- c) All Generating Facility metering equipment shall be routinely tested by NSPI. At any time, either Party may request a test of the accuracy of the metering equipment at its own expense. The results of meter calibrations or tests shall be available for examination by the Parties at all times. If at any time, any meter equipment is found to be outside of the accuracy requirements for revenue class meters as per NSP-DOC-026 of the "NSPI Metering Quality Assurance Program" in which Measurement Canada's error limits are identified, NSPI shall cause such metering equipment to be made

accurate or replaced as soon as possible. If the meter is found to be accurate within three percent (3%), no financial adjustment will be required.

Each Party shall be given reasonable opportunity to be represented in person at any time that a meter is sealed or unsealed for whatever reason from time to time (reasonable notice shall be provided by the initiating party to the other party for this purpose), and shall comply with any reasonable request of the other concerning the sealing of meters and other matters affecting the accuracy of the measurement of Energy delivered. If either Party believes that a meter is operating inaccurately, it shall immediately notify the other Party. In the event that a meter's accuracy, by testing, is found to be subject to variances of greater than three percent (3%), a financial adjustment will be made to compensate for any excess variance over the three percent (3%) limit for a period not to exceed ninety (90) days.

### **13. TERMINATION BY THE PARTIES**

#### **13.1 Termination by NSPI**

Notwithstanding any other provision of this Agreement, and without limiting any other remedies available at law, equity, contract or otherwise, and subject to Section 13.2, NSPI may terminate the Agreement in each of the following events ("Event of Default"):

- a) if the Seller ceases Energy production at the Generating Facility for a continuous period of six (6) months from events other than Force Majeure Event or NSPI or Seller (as applicable) interruptions pursuant to Section 8.2 or 8.3, and Seller does not,
  - i. within such six (6) month period, provide NSPI with a reasonable plan for restoring Generating Facility operations. Such reasonable plan shall at a minimum include: (i) an achievable commitment by the Seller to commence Energy production within twelve (12) months of the date of the plan; (ii) satisfactory evidence of the financial capacity of the Seller to carry out the plan and (iii) compliance with all Laws and Regulations; and
  - ii. within such six (6) month period demonstrate to the reasonable satisfaction of NSPI that Seller is using all reasonable efforts to restore Generating Facility operations and thereafter diligently use all reasonable efforts for the restoration of such Generating Facility operations; or
- b) if the Seller becomes insolvent or bankrupt within the meaning of the applicable bankruptcy law or makes a general assignment for the benefit of creditors or otherwise acknowledges its insolvency, or if an order is made or a resolution passed for the winding-up of the Seller, or an encumbrancer shall take possession of the Generating Facility or substantially all of the property of the Seller; or



- c) the failure of Seller to cure any default in the performance of its material obligations hereunder (not otherwise referred to in this Section 13.1) within ninety (90) days after notice has been given by NSPI or, if by reason of the nature of such default the same cannot be remedied within such ninety (90) day period, the failure of the Seller, within one-hundred twenty (120) days after the notice, to demonstrate to the reasonable satisfaction of NSPI that Seller is using all reasonable efforts to institute corrective action to cure and thereafter diligently use all reasonable efforts to cure such default; or
- d) according to the provisions of Section 14.2(b);
- e) if Commercial Operation as defined in this Agreement has not been achieved by the Final In-Service Date, as may be extended pursuant to Section 14.2 (c);
- f) if the Marine Renewable-energy Licence for the Generating Facility is suspended for any reason whatsoever and is not reinstated through the reasonable best efforts of the Seller within 90 days or such longer period of time as NSPI shall allow; or
- g) if the Marine Renewable-energy Licence for the Generating Facility is revoked.

### **13.2 Termination by NSPI where there is a secured lender**

Where the Seller has assigned, charged, pledged, or hypothecated its rights hereunder to any bank or other lending institution as security for present or future indebtedness, and has actually incurred indebtedness under the security agreement:

- a) NSPI may not terminate this Agreement where the only Event of Default relates to the bank or lending institution taking possession of the Project, or appointing a receiver or receiver and manager, and subject to the terms of this Agreement, will pay for the Net Output from the Generating Facility in accordance with Section 6.1;
- b) Subject to NSPI's rights to consent under Section 14.3, where a bank or lending institution, acting under its security agreement, transfers the Project to a third party who acquires and maintains a Marine Renewable-energy Licence, the terms of this Agreement shall continue to operate and the third party shall, subject to the terms of this Agreement, be paid at the Energy Rate. For greater certainty, nothing herein shall be construed as limiting NSPI's right to terminate this Agreement pursuant to Section 13.1(g);
- c) NSPI may not terminate this Agreement where there is an Event of Default, other than identified in Section 14.2(b), without first providing the bank or other lending institution with an opportunity to cure the default as if it were the Seller under Section 13.1; and
- d) The provisions of this Section 13.2 are in addition to the rights of NSPI or any bank or other lending institution under any consents, acknowledgements, agreements and other

assurances executed by NSPI and the bank or lending institution pursuant to Section 14.3(c).

### **13.3 Termination by the Seller**

Notwithstanding any other provision of this Agreement, and without limiting any other remedies available at law, equity, contract or otherwise, and subject to Section 14.2, the Seller may terminate the Agreement in each of the following events:

- a) if NSPI becomes insolvent or bankrupt within the meaning of the applicable bankruptcy law or a receiver is appointed in respect of any of its assets or it makes a general assignment for the benefit of creditors or otherwise acknowledges its insolvency, or if an order is made or a resolution passed for the winding-up of NSPI; or
- b) other than a default of payment as outlined in Section 13.3(c), the failure of NSPI to cure any default in the performance of its obligations hereunder within forty-five (45) days after notice has been given by Seller or, if by reason of the nature of such default the same cannot be remedied within such forty-five (45) day period, the failure of NSPI, within such forty-five (45) day period, to demonstrate to the reasonable satisfaction of Seller that NSPI is using all reasonable efforts to institute corrective action to cure the same and thereafter diligently use all reasonable efforts to cure such default; or
- c) the failure of NSPI to pay all monies due to the Seller and not the subject of a dispute pursuant to Section 6.2(b) for the purchase and sale of Energy hereunder within fifteen (15) days of written notice to NSPI of the default in payment; or
- d) according to the provisions of Section 14.2(b).

### **13.4 NSPI's Obligations on Termination or Expiry**

Upon the expiry or earlier termination of this Agreement, subject to applicable Laws and Regulations, NSPI shall continue to allow Seller access to the Electrical System for the delivery of Energy from the Generating Facility provided that Seller is a party to an Interconnection Agreement with NSPI or has acquired and maintains the right to access the Electrical System through a third party having an Interconnection Agreement with NSPI.

## **14 GENERAL PROVISIONS**

### **14.1 Permits**

The Seller hereby agrees to obtain, at its expense, any and all requisite governmental Permits, certifications, and approvals required for the Generating Facility and interconnection. The Seller must satisfy NSPI, acting reasonably, that all such Permits,

certifications and approvals have been obtained before NSPI will permit interconnection with its Electrical System.

#### **14.2 Force Majeure Event**

- a) Force Majeure Event shall mean an event, condition, occurrence, or circumstance beyond the reasonable control and not attributable to the fault or negligence of the Party claiming Force Majeure, which, despite all reasonable efforts at a reasonable cost of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party hereunder, including, without limitation, any act of God, labour disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment if caused by an event which would constitute Force Majeure, any order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, or any other cause beyond a Party's control. If either Party shall be unable, by reason of a Force Majeure Event, to carry out its obligations under this Agreement, either wholly or in part, that Party shall be excused for whatever performance is affected by the Force Majeure Event to the extent so affected, provided that the non-performing Party shall:
- i. give prompt notice to the other Party of the occurrence of the Force Majeure Event giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder and submitting good and satisfactory evidence of the existence of the Force Majeure Event;
  - ii. exercise all commercially reasonable efforts to continue to perform its obligations hereunder;
  - iii. expeditiously take action to correct or cure the Force Majeure Event and submit good and satisfactory evidence that it is making all reasonable efforts to correct or cure the Force Majeure Event;
  - iv. exercise all commercially reasonable efforts to mitigate or limit harm as a result of the Force Majeure Event to the other Party to the extent such action will not adversely affect its own interest;
  - v. provide prompt notice to the other Party of the cessation of the Force Majeure Event;
  - vi. as soon as reasonably possible after such Force Majeure Event to fulfill or resume fulfilling its obligations hereunder; and provided further, that any payment obligations of either Party which arose before the occurrence of the Force Majeure Event causing non-performance shall not be excused as a result of the occurrence of a Force Majeure Event.

- b) Upon the occurrence of a Force Majeure Event, the Party whose performance is affected by such event (the “Affected Party”) shall notify the other Party (the “Unaffected Party”) of the occurrence as required in Section 14.2(a) and the Affected Party shall include in such notice an estimate of the time to cure with reasonable diligence the performance affected by such event. If the Affected Party does not proceed forthwith to cure the event with reasonable diligence or the event is not cured within twenty-four (24) months after the occurrence of the event, the Unaffected Party shall be at liberty to terminate this Agreement.
- c) Notwithstanding anything to the contrary herein, if a Force Majeure Event causes the Seller to fail to achieve Commercial Operation by the Final In-Service Date, then the Final In-Service Date shall be deemed to be extended for such reasonable period of delay directly resulting from the impact of the Force Majeure Event and the term shall be correspondingly extended.
- d) Notwithstanding anything to the contrary herein, if a Force Majeure Event causes a failure of a subsea electric cable through which the Generating Facility connects, directly or indirectly, to the Electrical System; then, subject to any ability of a Party to terminate this Agreement in accordance with its provisions, the Term of this Agreement shall be extended by the lesser of 18 months or the amount of time required by the Seller, proceeding with reasonable diligence, to cure the failure.

### 14.3 Assignment

- a) NSPI may assign this Agreement, with the consent of the Minister pursuant to the RES Regulations, in whole but not in part, to any Person who can satisfy all NSPI's obligations hereunder; and until such time as the assignee has demonstrated to the reasonable satisfaction of the Seller, acting reasonably, that it is equally capable of satisfying all of the obligations of NSPI hereunder, the Seller shall not be required to recognize such assignment, but once so recognized by the Seller, the assignee shall be entitled to all rights and be bound by all the obligations of NSPI hereunder as of the effective date of the assignment, and NSPI shall no longer be entitled to any rights nor be bound by any obligations hereunder, other than those rights or obligations arising or accruing prior to the effective date of the assignment.
- b) The Seller shall only be permitted to assign this Agreement in whole, but not in part, to the Person (“Assignee”) to whom the Marine Renewable-energy Licence has been assigned with the consent of the Minister pursuant to the *Marine Renewable-energy Act*. Provided, however, that the Final-In-Service Date shall remain December 31, 2024 following any such permitted assignment by the Seller.
- c) Notwithstanding Sections 14.3(a) and (b), either Party may assign, charge, pledge or hypothecate its rights hereunder to any bank or other lending institution as security for present or future indebtedness, provided that any such assignment, charge, pledge or

hypothecation is subordinate to this Agreement and that any such bank or other lending institution or its agent shall agree to be bound by the terms and conditions of this Agreement and acknowledges in writing that upon realization it or its successor will be bound by this Agreement. The non-assigning Party shall execute and deliver such consents, acknowledgements, agreements and other assurances as such lending institution may require and as are acceptable to the non-assigning Party, acting reasonably in the context of the Project covered by this Agreement, in relation to the granting or enforcement of such security, including the entitlement of the lender, its receiver or receiver and manager or any transferee of this Agreement pursuant to such security to the rights, and the obligation of the lender, its receiver or receiver and manager or such transferee to be bound by the obligations of the assigning Party hereunder. Both Parties agree to execute consents, acknowledgements, agreements or other assurances within a reasonable period of time.

- d) Either Party may assign this Agreement to an Affiliate of such Party and the assignee shall be entitled to all rights and be bound by all the obligations of the assigning Party hereunder as of the effective date of the assignment. Notwithstanding any assignment pursuant to this Section 14.3(d), the assigning Party shall not be released from its obligations hereunder and the assigning Party and any such Affiliate shall be jointly and severally liable for all of such obligations of such Party unless the provisions of Sections 14.3(a) or (b) apply.
- e) Any Party requesting an amendment to this Agreement, an assignment of this Agreement or any of the rights hereunder, including an assignment, charge, pledge or hypothecation under Section 14.3(c), is responsible for the reasonable legal expenses incurred by the other Party, in connection with the proposed amendments or assignment.

#### **14.4 Applicable Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Nova Scotia.

#### **14.5 Severability**

If any clause, provision, or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, or section shall not affect any of the remaining provisions.

#### **14.6 Complete Agreement & Preparation**

All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Agreement are hereby abrogated. This Agreement may not be changed, modified, amended, released or discharged except by a subsequent written agreement entered into by duly authorized representatives of the Parties.

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

#### **14.7 Waiver**

The failure of either Party to require compliance with any provision of this Agreement shall not affect that Party's right to later enforce the same. It is agreed that the waiver by either Party of performance of any of the terms of this Agreement or of any breach thereof will not be held or deemed to be a waiver by that Party of any subsequent failure to perform the same or any other term or condition of this Agreement or any breach thereof.

#### **14.8 HST and Other Costs**

- a) Notwithstanding any provision of this Agreement, amounts payable pursuant to this Agreement are exclusive of HST or similar tax and each Party shall pay to the other, in addition to the amounts payable by this Agreement, all HST or similar tax properly exigible on such amounts.
- b) Each Party shall be a registrant and will continue to be a registrant in accordance with the provisions of the *Excise Tax Act* (Canada) from the Effective Date and for the Term.
- c) Each Party shall provide notice to the other of its HST registration number prior to or on the Effective Date.
- d) The following costs shall be the responsibility of the Seller:
  - i. real property taxes levied in respect of the Site;
  - ii. municipal taxes levied in respect of the personal property of the Seller comprised in the lands used by the Seller or any occupancy thereof;
  - iii. rent, charges or fees levied in respect of the availability or use of lands and the Energy Source by the Seller;
  - iv. costs associated with the design, construction, maintenance, operating, rehabilitation and modification of the Generating Facility, including utility costs; and
  - v. all costs of and associated with the Energy Source.

#### **14.9 Representations and Warranties of Seller**

The Seller covenants, represents and warrants to NSPI that:

- a) The Seller has been issued a Marine Renewable-energy Licence and will continue to meet the applicable requirements and conditions of the Marine Renewable-energy Licence at all times during the Term.
- b) The Seller has all necessary authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action.
- c) There is no claim, action, proceeding, or other litigation pending or, to the knowledge of the Seller, which, if adversely determined, would restrict or otherwise interfere in any material respect with the obligations of the Seller under this Agreement.
- d) Assuming the due execution and delivery by NSPI, this Agreement constitutes the legal, valid, and binding obligation of the Seller enforceable against the Seller in accordance with its terms, subject as to enforceability to limits imposed by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and the availability of equitable remedies.
- e) The execution and delivery of the Agreement and the consummation of the transactions contemplated hereby will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation, or acceleration of, its material obligations or any judgment, decree, order, or award to which it is subject or any licence, permit, approval, consent, or authorization held by it.
- f) At all times during the Interim Period and the Term, the entire Net Output of the Generating Facility will be free of any liens, encumbrances, or adverse claims and is not and will not be subject to or committed by the Seller under any contract or obligation other than this Agreement.
- g) It is the legal and beneficial owner of the Emission Reductions and Renewable Energy Credits free and clear of all liens, encumbrances and adverse claims.

#### **14.10 Representations and Warranties of NSPI**

NSPI represents and warrants to Seller that:

- a) NSPI is a company incorporated, validly existing, and in good standing under the laws of the jurisdiction of its incorporation.

- b) NSPI has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action.
- c) There is no claim, action, proceeding or other litigation pending or, to the knowledge of NSPI, which, if adversely determined, would restrict or otherwise interfere in any material respect with the obligations of NSPI under this Agreement.
- d) Assuming the due execution and delivery by Seller, this Agreement constitutes the legal, valid and binding obligation of NSPI enforceable against NSPI in accordance with its terms, subject as to enforceability to limits imposed by bankruptcy, insolvency or similar laws affecting creditors' rights generally and the availability of equitable remedies.

## **15 MISCELLANEOUS PROVISIONS**

- a) NSPI shall have no responsibility for protection of the Generating Facility, or any portion of the equipment which forms part of the Generating Facility. The Seller is responsible for completely protecting the Generating Facility in such a manner that faults or other disturbances of NSPI's Transmission System do not cause damage to the Generating Facility.
- b) Without limiting any rights the Seller may have against third parties, the Seller is responsible for any damage caused by operations of the Generating Facility that is not due to the negligence or willful misconduct of NSPI.
- c) The Seller shall comply at all times with all laws, regulations, by-laws, or orders of any duly constituted authority in respect of construction, operation, and maintenance of the Generating Facility, including the RES Regulations.
- d) NSPI has no responsibility for the suitability of the Site for the Generating Facility.
- e) Nothing in this Agreement shall be construed as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Energy generated at the Generating Facility. The Parties do not intend to create any rights, or grant any remedies to, any third party beneficiary of this Agreement.
- f) The Agreement may be executed by the Parties in counterparts, each of which, when so executed and delivered to the other, shall be deemed an original and when taken together shall be deemed one and the same instrument. The electronic delivery, including, without limitation, by email or facsimile transmission, of any signed original of this Agreement shall be the same as the delivery of an original.
- g) Each Party shall, from time to time, execute and deliver all such further documents and instruments and do all acts and things as the other Party may reasonably require to



effectively carry out or better evidence or perfect the full intent and meaning of the Agreement.

- h) The Article or Section headings herein are included solely for convenience of reference, are not intended to be full or accurate descriptions of the content thereof and shall not be considered part of this Agreement.
- i) For the purposes of interpreting the Agreement:
  - 1. Words in the singular include the plural and vice versa.
  - 2. The use of the words "including" and "include" are not limiting.
  - 3. References to monetary amounts are in Canadian Dollars unless otherwise stated.
  - 4. Reference to any legislation (including regulations) is a reference to that legislation in force from time to time and to any subsequent legislation which has the effect of supplementing or superseding that legislation.
  - 5. No consent or approval contemplated under the Agreement shall be effective unless given in writing.
  - 6. Time shall be of the essence.

## 16 NOTICE

Every communication provided for herein shall be in writing and delivered to, sent by recognized overnight delivery service or mailed by postage prepaid or facsimile to the Party to whom it is intended to be given at the address specified in this Agreement or such other address (or facsimile number) as a Party shall hereafter designate in writing from time to time.

Notice shall be given when received on a Business Day of the addressee. In the absence of proof of the actual receipt date, the following presumptions shall apply. Any communication personally delivered shall be deemed to have been received upon actual delivery. Any communication sent by overnight delivery service shall be deemed to have been received two (2) days after being sent. Any communication sent by mail shall be deemed to have been received five (5) days after having been mailed. Any communication sent by facsimile shall be deemed to have been received on the day following the date of transmission, provided that the sending Party has received a positive transmittal record of

such transmission and has promptly sent the original of such communication by prepaid mail or recognized overnight delivery service.

## **17 SURVIVAL OF AGREEMENT**

- a) This Agreement enures to the benefit of the Parties hereto and their respective heirs, successors, and permitted assigns.
- b) After termination of this Agreement, both Parties shall be discharged from all further obligations under the terms of this Agreement, excepting any liability which may have been incurred before the date of such termination or as contractually provided for as a result of such termination to the extent such liability or contractual right is claimed within five (5) years of such termination.

## **18 CONFIDENTIALITY**

### **18.1 Confidential Information**

- a) Any and all information and knowledge relating to the Generating Facility, the Energy generated therefrom, the ownership or operation of the Generating Facility, and any and all information emanating from the other Party's business in any form that a Party may acquire under the terms of this Agreement, or by virtue of the relationship between the Parties created by this Agreement (collectively, "Confidential Information"), shall be considered confidential and, except as permitted elsewhere in this Article, shall not be used, revealed, or divulged to any other Person, or published in any manner whatsoever, without first obtaining the written consent of the other Party.
- b) Notwithstanding the provisions of Section (a), a Party may reveal or divulge Confidential Information:
  - i. that is already in the public domain,
  - ii. as required by applicable laws, including, without limitation, as required by the Nova Scotia Utility and Review Board, the orders or directions of tribunals having jurisdiction or stock exchange or clearing house requirements,
  - iii. as necessary in connection with any dispute resolution commenced pursuant to this Agreement or any litigation commenced in respect of this Agreement; or
  - iv. in confidence, to the extent necessary, to any consultants, financial institutions or advisors to such Party, or any potential investors in, or lenders to, the Seller or the Generating Facility.
- c) The obligations of the Parties under this Section 18.1 shall not extend beyond that date which is the fifth (5th) anniversary of the end of the Term.

## **19 DISPUTE RESOLUTION**

In the event of a dispute arising between the Parties as to the subject matter of the Agreement that cannot be resolved between them, the Parties agree to submit the dispute to binding arbitration, pursuant to the terms of the *Commercial Arbitration Act* (Nova Scotia). In particular, the Parties agree to utilize the arbitration procedure attached as Schedule "A" to the *Commercial Arbitration Act* (Nova Scotia) in the conduct of the arbitration.

**SCHEDULE “B”**  
**GLOSSARY OF TERMS**

**DEFINITIONS**

Whenever used in the Agreement, the following capitalized terms have the meanings ascribed to them below:

**Affiliate** - means any Person that: (a) Controls a Party; (b) is controlled by a Party; or (c) is controlled by the same Person that Controls a Party.

**Aggregate Name Plate Capacity** - means the aggregate name plate capacity of the units forming the Generating Facility, as specified in section 1(f) of the Commercial Terms.

**Agreement** - means the Power Purchase Agreement executed by the Parties to which these General Terms and Conditions are attached and includes any schedules and any other attachments to the Agreement, as amended or supplemented from time to time in accordance with the provisions of the Agreement.

**Annual Net Output** – means the Net Output estimated to be delivered in each Contract Year, as specified in section 1(h) of the Commercial Terms.

**Award** – means an award by the Procurement Administrator following the procurement process under Section 4B of the *Electricity Act* (Nova Scotia).

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

**Commercial Operation** - means the achievement of all of the following: (a) completion of the design, construction and commissioning of the Generating Facility in accordance with the Agreement; (b) interconnection of the Generating Facility to the Electrical System in accordance with the Interconnection Agreement; (c) the Generating Facility has demonstrated the capability to generate at the Aggregate Name Plate Capacity; (d) obtaining Marine Renewable-energy Licence for the Generating Facility in accordance with the Agreement; (e) provision of the Performance Security required by section 4.1 and (f) written notice to NSPI by the Licence Holder that they have met all milestones and are ready to commence Commercial Operation.

**Commercial Operation Date** - means the first day of the calendar month following Commercial Operation.

**Commercial Terms** - means the commercial terms itemized in the Agreement.

**Confidential Information** – shall have the meaning set forth in Section 18.1(a) of this Agreement.

**Contract Year** - means a twelve-month period during the Term, starting from the Commercial Operation Date or an anniversary thereof.

**Control** - means, with respect to any Person at any time, (a) holding, whether directly or indirectly, as owner or other beneficiary (other than as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (b) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract, trust or otherwise.

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

**Delivery Point** - means the designated point between the Generating Facility and the Electrical System where Energy from the Generating Facility enters the Electrical System.

**Distribution System** – means NSPI’s facilities and equipment (nominally rated at 26,400 Volts or less).

**Effective Date** - means the date as specified in section 1(a) of the Summary of Commercial Terms.

**Electrical System** – means the Distribution System, the Transmission System or both as the context requires.

**Emergency** - means a condition or situation which does or is likely to result in the disruption of service to NSPI’s customers (excluding the effects of normal fluctuations in power generation due to natural resource variations), which does or is likely to threaten or result in physical damage to the Generating Facility in whole or in part, or does or is likely to endanger life or property.

**Emission Reductions** - mean those benefits recognized as intangible commodities by the Parties and/or others as arising under the Agreement through the direct displacement by Energy from renewable sources, of the emissions from coal, oil, petroleum coke, natural gas or other fossil fuelled thermal electrical generation and includes Emission Reduction Credits (ERC's). Emission Reductions under the Agreement related to Greenhouse Gas Emissions (GHG) and other specific emissions known to arise from some or all fossil fuel thermal electrical generation. GHG and other specific air emissions recognized under the Agreement are CO<sub>2</sub>e, NO<sub>x</sub>, SO<sub>2</sub>, Hg, particulates and heavy metals and/or their salts or combinations thereof. Emission Reductions and ERC's do not include any Seller Benefits.

**Emission Reduction Credits or ERC's** - means all rights, title and interest in and to all benefits, rewards, credits, premiums, incentives, and other advantages related, in whole or in part, to GHG Emission Reductions, whether in existence as of the date of the Agreement or arising during the Interim Period and the Term to the extent related or attributable to the operation of the Generating Facility for the generation of Energy or otherwise, including:

- a) any credit issued or granted by a government agency in connection with GHG Emission Reductions;
- b) any tradable allowance or allocated pollution right issued or granted in connection with GHG Emission Reductions;
- c) the sole right to claim credit in any reporting program established or maintained by any government agency relating to GHG Emission Reductions;
- d) the sole right to register, claim, file or bank GHG Emission Reductions in any registry system established or maintained by any government agency or nongovernmental organization or entity;
- e) the sole right to any form of acknowledgment by a government agency that actions have been taken by any Person in connection with GHG Emission Reductions that result in the reduction, avoidance, sequestration or mitigation of anthropogenic GHG;
- f) the sole right to claim or use GHG Emission Reductions for any and all purposes and in any manner or form whatsoever now or in the future;
- g) the sole right to any form of acknowledgment by a government agency to claim tradable GHG allowance allocations when those tradable allowance allocations can be:
  - i. banked for credit in the event of regulation requiring any reduction, avoidance or mitigation of, or compensation for, GHG,
  - ii. claimed for credit against any compliance requirement, or
  - iii. put to any other sanctioned use;
- h) the sole right to any form of acknowledgment by an International Agency in respect of GHG Emission Reductions including the right to any acknowledgment that GHG Emission Reductions constitute tradable emission reduction units for the purposes of International Rules; and
- i) the sole right to any offset of anthropogenic GHG that can be claimed by using GHG Emission Reductions.

**Energy** - means electric energy measured as units of watt hours (kWh, MWh, GWh), including such other electrical products arising from the operation of the Generating Facilities.

**Energy Source** - means the source used to generate Energy from the Generating Facility, as specified in section 1(i) of the Commercial Terms.

**Energy Statement** - means a statement prepared in accordance with section 6.2(a) and on a monthly basis setting out the Energy delivered to the Delivery Point by the Seller (subject to any adjustments to the delivered amount in accordance with this Agreement).

**Event of Default** - shall have the meaning as set forth in section 13.1.

**Final In-Service Date** - means the date as specified in section 1(c) of the Commercial Terms, which shall be December 31, 2024.

**Fiscal Year** – means the fiscal year of NSPI.

**Force Majeure Event** - shall have the meaning set forth in section 14.2(a).

**Forced Outage** - means any partial or total curtailment, interruption or reduction of the generation or delivery of Energy by the Generating Facility that is due to a total or partial breakdown or other failure of any electrical system or any machinery or equipment comprising the Generating Facility, which failure is attributable to any defect (including latent or recurring defect) in any such system, machinery or equipment (whether related to design, manufacture or installation) or any error in the operation, maintenance or rehabilitation of any such system, machinery or equipment or which is inherent in the use or operation of that type of system, machinery or equipment over time.

**Generating Facility** - means one or more generators described in the Project Description having, in the aggregate, the Aggregate Name Plate Capacity, together with all protective and other associated equipment and improvements as may be modified from time to time pursuant to the terms of this Agreement.

**GHG or Greenhouse Gas Emissions** - means any gas substance that is the subject of the Convention and related protocols, treaties, agreements and instruments and includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons and perfluorocarbons.

**GHG Emission Reductions** - mean reductions in Greenhouse Gas Emissions however measured and includes, for greater certainty, any reductions in Greenhouse Gas Emissions attributable to the purchase and resale by NSPI of Energy generated from the Generating Facility as an alternative to generating Energy by other means which would result in higher levels of Greenhouse Gas Emissions.

**Good Utility Practice** - means any of those practices, methods and activities (including the practices, methods and activities adopted by a significant portion of the North American

electric industry) which are applicable to the development, design, construction, operation, maintenance, rehabilitation or modification of similar facilities and other infrastructure required for the generation, transmission and distribution of Energy (having regard, as applicable, to the Energy Source) and which, at a particular time, in the exercise of skill, diligence, foresight and reasonable judgment and having regard to the circumstances known at that time, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, environmental protection, expedition and Laws and Regulations.

**HST** - means the harmonized sales tax exigible pursuant to the Excise Tax Act (Canada).

**Incremental Energy Rate** - means the rate in \$/MWh which is equal to NSPI's cost of generating or purchasing one more MWh of energy from sources other than the Generating Facility as calculated by NSPI averaged over the twelve (12) month period immediately preceding the relevant time.

**Interconnection Agreement** – means an agreement with Nova Scotia Power Incorporated which provides for the interconnection of the Generating Facility to the Electrical System.

**Interim Period** - means any period prior to Operation, but after interconnection of the Generating Facility to the Electrical System in accordance with the Interconnection Agreement, when the Facility is capable of generating Energy and delivering that Energy to the Delivery Point.

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

**International Rules** - means any principles, modalities, rules and guidelines including those pertaining to verification, reporting and accountability for trading ERC's and/or other Emission Reductions authorized, promulgated or otherwise sanctioned and adopted by an International Agency.

**Laws and Regulations** - means:

- a) applicable federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, government agency or other Person having jurisdiction;
- c) applicable rulings and conditions or any license, permit certificate, registration, authorization, consent and approval of any government agency (including the Permits); and



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

**Letter of Credit** - means one or more irrevocable and unconditional standby letters of credit issued by a financial institution at the cost of the Seller, with an Office or branch in Halifax, Nova Scotia, listed in either Schedule I or II of the Bank Act (Canada) or having a minimum credit rating of (i) A- with Standard & Poor's Standard & Poor's Financial Services LLC, (a division of McGraw-Hill Inc.) or its successor, (ii) A3 with Moody's Investors Service, Inc. or its successor, (iii) A-low with DBRS Ratings Limited or its successor, or (iv) A- with Fitch Ratings Inc. or its successor.

**Marine Renewable-energy Act** – means the Act respecting the generation of electricity from marine renewable-energy resources in Nova Scotia for the purpose of providing for the responsible, efficient and effective development of marine renewable-energy resources.

**Marine Renewable-energy Licence** – means a licence issued by the Minister under subsection 29(1) of the Marine Renewable-energy Act with respect to an application for a Marine Renewable-energy Licence together with any terms and conditions imposed by the Minister (including the Ministerial Conditions letter) in connection therewith to be incorporated into the Agreement, by way of attachment as Schedule “D”.

**Meter Location** - means the physical location where Energy is measured by the revenue class meter referred to in section 6.2(a).

**Minister** – means the Minister of Energy and Mines for the Province of Nova Scotia.

**Net Output** - means the Energy output of the Generating Facility at the Delivery Point, as determined in accordance with section 6.2.

**NSPI** - means Nova Scotia Power Incorporated.

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

**Performance Security** - means the security for the performance of the obligations of the Seller under the Agreement to be provided and maintained by the Seller for the benefit of NSPI in the form of one or more of a guarantee, Letter of Credit (as defined above) or other credit support from a Person, each of which is in the form and/or issued by a party that is acceptable to NSPI acting reasonably. The amount of the Performance Security shall equal the sum of **three** dollars per MWh (\$3.00/MWh) multiplied by the Annual Net Output in MWh.

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

**Person** - includes a natural person, a corporation, a partnership, a limited partnership, a joint venture, an association, a trust, a government agency and an unincorporated organization.

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

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

**Project Amendment** – means any material modification, variation, or amendment of the Project Description or the Commercial Terms.

**Project Description** - means the specifications and description of the Generating Facility set out in Schedule "C" upon execution or, if not attached at such time, to be provided by the Seller to NSPI prior to the commencement of construction of the Generating Facility in a form specified by NSPI and to be incorporated into the Agreement, by way of attachment, upon acceptance in writing by NSPI acting reasonably.

**Renewable Energy Credits** - mean those credits, benefits or other intangibles that now, or at any time in the future, convey a right in respect of those attributes (fungible or nonfungible), whether or not tradable, pertaining to the generation of Energy pursuant to the Agreement, representing the renewable aspect of the source of such Energy, and include "green tags", "tradable renewable energy credits", or "renewable portfolio standard tags".

**RES Regulations** – means the Renewable Electricity Regulations, as issued and amended from time to time under the *Electricity Act* (Nova Scotia), as it may be amended from time to time.

**Reporting Date** – shall have the meaning set forth in section 9.1(a).

**SCADA** – means a supervisory control and data acquisition system.

**Scheduled Generating Facility Outage** - means an outage which is scheduled by the Seller in advance of the event for the purpose of the Seller performing or causing to be performed routine maintenance on the Generating Facility.

**Seller** - means the Person or Persons identified as the "Seller" in the Agreement.

**Seller Benefits** - means any federal or provincial tax credits, benefits, incentives, subsidies, deductions or allowances, including, without limitation, the treatment of Canadian Renewable and Conservation Expenses under the *Income Tax Act* (Canada) and accelerated write-off in respect of property which is described in Section 43.1 of Schedule 11 of the *Income Tax Act* (Canada), but excluding credits and benefits under the ecoEnergy for Renewable Power Program.

**Site** - means the lands upon which the Generating Facility will be located, as specified in section 1(e) of the Commercial Terms.

**Term** - means the term of the Agreement, as specified in section 1(d) of the Commercial Terms (or any renewal thereof agreed by the Parties in writing), subject to early termination in accordance with the provisions of the Agreement.

**Transmission System** – means NSPI’s facilities and equipment (nominally rated at 69,000 Volts or higher)

**SCHEDULE "C"**  
**PROJECT DESCRIPTION**

**SCHEDULE "D"**  
**MARINE RENEWABLE-ENERGY LICENCE**