

**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 SKYPOWER CORP.**

Applicant

MOTION RECORD
(returnable November 18, 2009)

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Applicant

**NOTICE OF MOTION
(Returnable November 18, 2009)**

SkyPower Corp. (the "Applicant") will make a motion to a judge presiding over the Commercial List on Wednesday, November 18, 2009, at 10:00 a.m. or as soon after that time as the motion can be heard at the Courthouse, 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: This Motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, *inter alia*:
 - (a) abridging the time for service of the Notice of Motion and the materials filed in support of the Motion;
 - (b) approving the sale of SkyPower's to 3240384 Nova Scotia Limited, a subsidiary of Emera Incorporated ("Emera") of SkyPower's interest in the capital stock of

Scotian Windfield Partners Corp. and certain of its wind project assets (the “**Emera Transaction**”);

- (c) approving the sale to Elemental Energy Inc. (“**Elemental**”) of all of the issued and outstanding shares in the capital of Fermeuse Wind Power Corp. and all of SkyPower’s rights, title and interest under the administrative services agreement between SkyPower and Fermeuse Wind Power Corp. dated June 30, 2009; (the “**Elemental Transaction**”); and
- (d) such further and other relief as the Applicant may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION are as follows:

- 2. The Applicant is a renewable energy developer in Canada. It is an industry leader with extensive expertise in developing large-scale wind, solar and other renewable energy power projects;
- 3. Pursuant to the Initial CCAA Order, the Applicant was granted protection pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and an initial stay of proceedings to and including September 11, 2009, in respect of the Applicant and certain other parties, is currently in effect. The stay of proceedings has been extended from time to time to November 30, 2009;
- 4. On August 21, 2009, the Bankruptcy Court for the District of Delaware granted SkyPower an Order for provisional relief under Chapter 15 of the U.S. Bankruptcy Code. A final Order under Chapter 15 was granted on September 15, 2009;

5. Pursuant to an Order of this Honourable Court dated August 25, 2009, the Applicant was authorized to run a sale process in respect of all of its assets, property and undertaking;
6. The sale process is ongoing. On October 27, 2009, this Honourable Court approved a sale in respect of SkyPower's solar business to an affiliate of CIM Group, SkyPower's debtor-in-possession lender. The parties are working to close the transaction;
7. As part of the sale process, SkyPower has negotiated the terms of two additional transactions – the Emera Transaction and the Elemental Transaction;
8. KPMG Inc., as monitor of SkyPower (the “**Monitor**”), and SkyPower's senior secured lenders support the Emera Transaction and the Elemental Transaction;
9. The Applicant believes the transactions to be in the best interests of the Applicant and its stakeholders;
10. the provisions of the CCAA;
11. Rules 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure* (Ontario); and
12. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Motion Record in connection with the within motion, filed;
2. the Fourth Report of the Monitor, filed; and

3. such further and other evidence as counsel may submit and this Honourable Court may admit.

Date: November 13, 2009

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKYPOWER CORP.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(returnable November 18, 2009)**

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Court File No. 09-8321-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**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 SKYPOWER CORP.**

**AFFIDAVIT OF KERRY E. ADLER
(sworn November 13, 2009)**

I, **KERRY E. ADLER**, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am the Chief Executive Officer of SkyPower Corp. ("**SkyPower**"). As such, I have personal knowledge of the matters to which I depose in this Affidavit. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, I believe it to be true.
2. This Affidavit is sworn in support of the motion by SkyPower for an order:
 - (a) approving the sale to 3240384 Nova Scotia Limited, a subsidiary of Emera Incorporated ("**Emera**"), of SkyPower's interest in the capital stock of Scotian Windfield Partners Corp. and certain of its wind project assets, as described more fully in the purchase agreement attached as Exhibit "A" hereto; and

(b) approving the sale to Elemental Energy Inc. (“**Elemental**”) of all of the issued and outstanding shares in the capital of Fermeuse Wind Power Corp. and all of SkyPower’s rights, title and interests under the administrative services agreement between SkyPower and Fermeuse Wind Power Corp. dated June 30, 2009, as described more fully in the purchase agreement attached as Exhibit “B” hereto.

A. OVERVIEW

3. SkyPower is a renewable energy developer in Canada with expertise in developing large-scale wind, solar and other renewable energy power projects.
4. By Order dated August 12, 2009, this Honourable Court granted SkyPower protection pursuant to the *Companies’ Creditors Arrangement Act* (the “**Initial Order**”). By Order dated October 27, 2009, this Honourable Court granted an extension of SkyPower’s stay of proceedings to and including November 30, 2009.
5. On August 21, 2009, the Bankruptcy Court for the District of Delaware granted SkyPower an Order for provisional relief under Chapter 15 of the U.S. Bankruptcy Code. A final Order under Chapter 15 was granted on September 15, 2009.
6. By Order dated August 25, 2009 (the “**Sale Process Order**”), this Honourable Court approved a process for the sale of all of SkyPower’s assets, and in

particular, SkyPower's development business (the "**Development Business**") and its turbine inventory (the "**Turbines**").

7. With respect to the Development Business, bidders were permitted to bid on all major components of the business, including SkyPower's: (a) Solar Operating Assets; (b) Solar Development Pipeline; (c) Wind Operating Assets; (d) Wind Development Pipeline, or any combination thereof.
8. The deadline for the submission of binding offers was October 5, 2009.
9. SkyPower received a total of 22 bids or expressions of interest in respect of the Development Business and a total of 18 bids or expressions of interest in respect of the Turbines.
10. Each of SkyPower, the Monitor and SkyPower's principal secured lenders, being its lending syndicate, led by HSH Nordbank AG, and Lehman Brothers Holdings Inc. (collectively, the "**Secured Lenders**"), reviewed the bids and expressions of interest received and SkyPower has engaged in discussions with a select number of bidders who submitted binding offers in accordance with the court-approved sale process.
11. The sale process is ongoing. By Order dated October 27, 2009, this Honourable Court approved a transaction in respect of, *inter alia*, SkyPower's Solar Operating Assets and Solar Development Pipeline (the "**Solar Business**") with an affiliate of CIM Group, SkyPower's DIP Lender.

12. Further details regarding the sale process, the status thereof, the process for selecting the successful bidders, including the criteria considered in doing so, were included in the Third Report of the Monitor dated October 25, 2009, previously filed with this Honourable Court.

B. WIND PROJECT TRANSACTION

13. SkyPower and Marathon LLC have negotiated the terms of a purchase agreement (the “**Digby Wind Project Purchase Agreement**”) for SkyPower’s assets relating to its Digby wind project (the “**Digby Wind Project**”) and wind-related assets (the “**Digby Wind Project Transaction**”) with 3240384 Nova Scotia Limited (the “**324**”), a subsidiary of Emera. This bid leading up to this transaction was the most favourable in terms of purchase price and conditions.
14. SkyPower has received a deposit from 324.
15. A copy of the Wind Project Purchase Agreement is attached as Exhibit “A” hereto. A summary of the principal terms of the Wind Project Purchase Agreement are as follows:
 - (a) The purchased assets include, *inter alia*:
 - (i) SkyPower’s shares in the capital stock of Scotian Windfield Partners Corp. (the “**Joint Venture Company**”), being a joint venture company owned by SkyPower and Scotian Windfields Inc. (“**Scotian**”) that develops wind projects in Nova Scotia – Digby County, Guyborough County, Antigonish East Beaver Mountain

and Antigonish West Big Marsh (collectively, the “**Wind Projects**”). Prior to closing all assets relating to these Wind Projects, other than those relating to the Digby Wind Project, will be transferred out of the Joint Venture Company to another company jointly owned by SkyPower and Scotian;

- (ii) certain contracts, agreements, permits, licenses and other documents pertaining to the Digby Wind Project, including land option/easement agreements; and
 - (iii) certain GE SLE wind turbine generators which will be used by 324 at the Digby Wind Project.
- (c) The transaction is an “as is where is” transaction with limited representations and warranties;
- (d) The transaction is conditional upon, *inter alia*:
- (i) an approval and vesting order being granted by this Honourable Court;
 - (ii) certain required consents having been obtained;
 - (iii) board approval of the transaction having been obtained. I am advised by counsel to SkyPower that such approval has been obtained;

- (iv) an agreement having been reached between 324 and Scotian, SkyPower's joint venture partner in the Joint Venture Company, respecting certain matters involving the Joint Venture Company and the Digby Wind Project;
 - (v) certain amendments to the joint venture agreement in respect of the Joint Venture Company having been agreed between Scotian and 324; and
 - (vi) 324 having reached an agreement with General Electric Company and General Electric Canada (collectively, "GE") with respect to the assignment of a contract between SkyPower and GE for the sale of power generation equipment and related services.
16. At the request of 324, SkyPower is requesting that this Honourable Court seal the purchase price to be paid pursuant to the Wind Project Purchase Agreement.
17. I understand that the Monitor and the Secured Lenders support the Digby Wind Project Transaction.
18. I believe that, based on a review of all other offers received and the recommendation of Marathon Capital, SkyPower's financial advisor, the Digby Wind Project Transaction is in the best interests of SkyPower and its stakeholders.

C. **FERMEUSE TRANSACTION**

19. SkyPower and Marathon LLC have also negotiated the terms of a purchase agreement (the “**Fermeuse Purchase Agreement**”) for SkyPower’s interest in Fermeuse Wind Power Corp. (the “**Fermeuse Transaction**”) with Elemental.
20. Fermeuse Wind Power Corp. is a wholly-owned subsidiary of SkyPower that owns the wind power project known as the Fermeuse Wind Power Project. The Fermeuse Wind Power Project achieved commercial operation on June 30, 2009 and consists of nine 3.0 MW, V90 Vestas wind turbines that are currently delivering power to the grid operated by Newfoundland Power.
21. Elemental’s bid was the most favourable in terms of purchase price and conditions.
22. SkyPower has received a deposit from Elemental.
23. A copy of the Fermeuse Purchase Agreement is attached as Exhibit “B” hereto. A summary of the principal terms of the Fermeuse Purchase Agreement are as follows:
 - (a) The purchased assets include, *inter alia*:
 - (i) all of the issued and outstanding shares in the capital of Fermeuse Wind Power Corp.; and
 - (ii) all of SkyPower’s rights, title and interests under the administrative services agreement between SkyPower and Fermeuse Wind Power

Corp. dated June 30, 2009 (the “**Administrative Services Agreement**”).

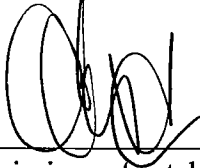
- (c) The transaction is an “as is where is” transaction with limited representations and warranties;
- (d) The transaction is conditional upon, *inter alia*:
 - (i) an approval and vesting order being granted by this Honourable Court;
 - (ii) the assignment by SkyPower and the assumption by Elemental of the obligations under the Administrative Services Agreement pursuant to which SkyPower will provide to closing certain administrative services in relation to the Fermeuse Wind Power Project;
 - (iii) certain required consents having been obtained;
 - (iv) delivery of a written resignation for each director of Fermeuse Wind Power Corp.; and
 - (v) written confirmation from counterparties to certain key agreements that the agreement in question continues to be in full force and effect and that the counterparty consents to and approves of the assignment of the agreement to Elemental.

- 24. At the request of Elemental, SkyPower is requesting that this Honourable Court seal the purchase price contemplated by the Fermeuse Purchase Agreement.

- 25. I understand that the Monitor and the Secured Lenders support the Fermeuse Transaction.

- 26. I believe that, based on a review of all other offers received and the recommendation of Marathon Capital, SkyPower's financial advisor, the Fermeuse Transaction is in the best interests of SkyPower and its stakeholders.

SWORN before me at the City of
Toronto in the Province of Ontario on
November 13, 2009.



A Commissioner for taking affidavits



Kerry E. Adler
Chief Executive Officer

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 SKYPOWER CORP.

Court File No: 09-83.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF KERRY E. ADLER
(sworn November 13, 2009)

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A

PURCHASE AGREEMENT

SKYPOWER CORP.

as Seller

- and -

3240384 NOVA SCOTIA LIMITED

as Buyer

- and -

EMERA INCORPORATED

as Guarantor

Made as of October 23, 2009

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PURCHASE AGREEMENT

THIS AGREEMENT is made as of October 23, 2009

B E T W E E N:

SKYPOWER CORP., a corporation incorporated under the laws of Canada

(the “**Seller**”)

- and -

3240384 Nova Scotia Limited, a corporation incorporated under the laws of the Province of Nova Scotia

(the “**Buyer**”)

- and -

Emera Incorporated, a corporation incorporated under the laws of the Province of Nova Scotia

(the “**Guarantor**”)

RECITALS:

- A. The Seller is a renewable energy development company headquartered in Toronto, Canada with a portfolio of wind and solar energy projects at varying stages of development throughout Canada.
- B. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) dated August 12, 2009 (the “**Initial CCAA Order**”), the Seller was granted protection pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).
- C. Pursuant to an Order of the CCAA Court dated August 25, 2009, the Seller was authorized to conduct a sale process with respect to its assets, property and undertaking.
- D. The Guarantor is a party to this Agreement for the purpose of making certain representations and warranties and giving certain covenants, including guaranteeing the obligations of the Buyer hereunder;
- E. The Seller and Nova Scotia Power Incorporated (“**NSPI**”) entered into a power purchase agreement dated March 31, 2008 for renewable energy whereby the Seller agreed to sell to NSPI and NSPI agreed to purchase from the Seller wind energy on the terms and conditions set out therein (the “**PPA**”).

- F. The Seller wishes to sell, and the Buyer wishes to purchase, the Purchased Assets (as defined in this Agreement), and Buyer further wishes to assume certain liabilities in connection therewith, subject to the terms and conditions of this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) **“affiliate”** of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and **“control”** and any derivation thereof means the control by one Person of another Person in accordance with the following: a Person (**“A”**) controls another Person (**“B”**) where A has the power to determine the management and policies of B by contract or status (for example the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose;
- (b) **“Agreement”** means this Purchase Agreement and all attached Schedules, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“hereby”** and similar expressions refer to this Agreement and all attached Schedules and unless otherwise indicated, references to Articles, Sections and Schedules are to Articles, Sections and Schedules in this Agreement;
- (c) **“Applicable Law”** means any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, restriction, by-law (zoning or otherwise), order, or any consent, exemption, approval or licence of any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Seller, the Buyer or any of the Purchased Assets;
- (d) **“Approval and Vesting Order”** means an order granted by the CCAA Court substantially in the form attached hereto as Schedule 1.1(d), on notice to a service list acceptable to the Buyer, acting reasonably, which will, among other things:
 - (i) authorize this Agreement and authorize and direct the execution and delivery thereof by the Seller;

- (ii) authorize and direct the Seller to complete the transactions contemplated by this Agreement;
 - (iii) provide for the vesting of title to the Purchased Assets in the Buyer in accordance with the terms and conditions of this Agreement, free and clear of all claims against the Purchased Assets of every nature or kind whatsoever and howsoever arising, including all Encumbrances upon the delivery of a certificate by the Monitor to the Buyer indicating that all matters to be completed prior to the consummation of the transactions contemplated by this Agreement have been satisfied or waived (where permissible);
 - (iv) provide that the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets; and
 - (v) declare that all requirements of applicable bulk sales legislation have been complied with, or exempt the transactions contemplated by this Agreement from compliance with such legislation and dispense with any notice requirements thereunder.
- (e) “**Assigned Contracts**” has the meaning given to such term in Section 2.5;
 - (f) “**Assumed Liabilities**” has the meaning given to such term in Section 2.3;
 - (g) “**Business Day**” means any day, other than a Saturday or Sunday, on which the principal chartered banks of Canada in Toronto, Ontario and Halifax, Nova Scotia are open for commercial banking business during normal banking hours;
 - (h) “**Buyer**” has the meaning given to such term in the preamble to this Agreement;
 - (i) “**CCAA**” has the meaning given to such term in the recitals to this Agreement;
 - (j) “**CCAA Court**” has the meaning given to such term in the recitals to this Agreement;
 - (k) “**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Seller pursuant to the Initial CCAA Order;
 - (l) “**Closing**” means the completion of the sale and purchase of the Purchased Assets pursuant to this Agreement at the Closing Time and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets;
 - (m) “**Closing Date**” means the second Business Day following the first date by which the conditions in Section 6.1 and Section 6.2 have been satisfied or such later date as may be agreed upon by the Parties hereto;
 - (n) “**Closing Documents**” means all contracts, agreements and instruments required by this Agreement to be delivered at or before the Closing;

- (o) “**Closing Time**” means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place;
- (p) “**Confidential Information**” means non-public, confidential, personal or proprietary information which is furnished to the Buyer by the Seller, including, without limitation, information about identifiable individuals, any information relating to the Seller and its affiliates or any customer or supplier of the Seller, but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Buyer or its representatives or that is received by Buyer from an independent third party that obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information);
- (q) “**Contracts**” means contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Seller is a party or by which the Seller is bound or under which the Seller has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied);
- (r) “**Court Approval**” means the issuance of the Approval and Vesting Order by the CCAA Court;
- (s) “**Deposit**” means a sum equal to five percent (5%) of the Purchase Price, which will be paid by the Buyer to the Seller’s solicitors in trust within two Business Days of the execution of this Agreement;
- (t) “**Encumbrance**” means any security interest, lien, prior claim, charge, hypothec, hypothecation, reservation of ownership, pledge, encumbrance, mortgage or adverse claim of any nature or kind other than licenses of intellectual property, including but not limited to, those security interests held by the Secured Lenders and any charges granted by the CCAA Court;
- (u) “**Excluded Assets**” has the meaning given to such term in Section 2.2;
- (v) “**Excluded Liabilities**” has the meaning given to such term in Section 2.4;
- (w) “**Final**” with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and Seller) or vacated, and all time periods within which such order could at law be appealed shall have expired;
- (x) “**GE Contract**” means the Amended and Restated Contract for the sale of power generation equipment and related services among General Electric Company and General Electric Canada and the Seller dated March 2, 2009, together with change orders Nos. 1 through 8 issued thereunder;

- (y) **“GE Turbines”** means the 20 GE 1.5 SLE wind turbine generators under the GE Contract.
- (z) **“Governmental Authority”** means any government, regulatory authority, governmental department, agency, commission, bureau, court, judicial body, arbitral body or other law, rule or regulation-making entity:
 - (i) having jurisdiction over the Seller, the Buyer, the Purchased Assets or the Assumed Liabilities on behalf of any country, province, state, locality or other geographical or political subdivision thereof; or
 - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or Taxing Authority or power;
- (aa) **“Governmental Authorizations”** means authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licences, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority;
- (bb) **“GST”** means goods and services tax payable under the GST Legislation;
- (cc) **“GST Legislation”** means Part IX of the Excise Tax Act (Canada);
- (dd) **“HSH Bank Syndicate”** means HSH Nordbank AG, New York Branch, as administrative agent and collateral agent on behalf of itself, Bayerische Landesbank, New York Branch and Union Bank of California, Canada Branch (n/k/a Union Bank, Canada Branch);
- (ee) **“including”** and **“includes”** shall be interpreted on an inclusive basis and shall be deemed to be followed by the words “without limitation”;
- (ff) **“Initial CCAA Order”** has the meaning given to such term in the recitals to this Agreement;
- (gg) **“Joint Venture”** means the joint venture formed between the Seller and Scotian pursuant to the Joint Venture Agreement;
- (hh) **“Joint Venture Agreement”** means the Memorandum of Understanding between the Seller and Scotian dated March 2, 2007;
- (ii) **“Joint Venture Company”** means Scotian Windfield Partners Corp., a body corporate, which was incorporated by the Seller and Scotian for the purposes of developing the Wind Projects;
- (jj) **“Lehman”** means Lehman Brothers Holdings Inc.;
- (kk) **“Monitor”** means KPMG Inc., the monitor appointed by the CCAA Court under the Initial CCAA Order;

- (ll) “**Options**” means all of the land option/easement agreements in the name of the Seller forming part of the Purchased Assets and which are set out in Schedule 1.1(ss);
- (mm) “**Parties**” means the Seller and the Buyer collectively, and “**Party**” means either the Seller or the Buyer;
- (nn) “**Permits**” means all of the permits, licences, approvals and authorizations, including environmental permits from any Governmental Authority forming part of the Purchased Assets;
- (oo) “**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;
- (pp) “**Performance Security**” means the sum of \$750,000 Cdn provided by the Seller and held by NSPI as security under the terms of the PPA;
- (qq) “**PPA**” has the meaning given to such term in the recitals to this Agreement;
- (rr) “**Purchase Price**” has the meaning given to such term in Section 3.2;
- (ss) “**Purchased Assets**” means
- (i) the Shares; and
 - (ii) any and all of the Seller’s interest in the assets set out in Schedule 1.1(ss) attached hereto (including any interest acquired through the Seller’s interest in the Joint Venture Company and any and all of the Seller’s interest in the GE Turbines);
- (tt) “**Real Property**” means all real or immovable property and all plants, buildings, structures, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment) thereon, forming part thereof or benefiting such real or immovable property;
- (uu) “**Required Consents**” means the specific consents relating to the Purchased Assets set forth on Schedule 1.1(uu);
- (vv) “**Restricted Rights**” has the meaning given to such term in Section 2.5;
- (ww) “**RST**” means all taxes payable under the RST Legislation;
- (xx) “**RST Legislation**” means the *Retail Sales Tax Act* (Ontario);
- (yy) “**Scotian**” means Scotian Windfields Inc., a body corporate, organized under the laws of the Province of Nova Scotia;

- (zz) “**Secured Lenders**” means collectively the HSH Bank Syndicate and Lehman;
- (aaa) “**Seller**” has the meaning given to such term in the preamble to this Agreement;
- (bbb) “**Shares**” means all of the shares in the capital stock of the Joint Venture Company legally or beneficially owned by the Seller;
- (ccc) “**Sunset Date**” has the meaning given to such term in Section 9.1(b);
- (ddd) “**Tax**” and “**Taxes**” includes:
 - (i) taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, Québec and other government pension plan premiums or contributions; and
 - (ii) any liability in respect of any items described in clause (i) payable by reason of Contract, assumption, transferee liability, operation of law, United States Income Tax Regulation Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under law) or otherwise;
- (eee) “**Taxing Authority**” means any Governmental Authority, domestic or foreign, having jurisdiction over the assessment, determination, collection, or other imposition of any Tax;
- (fff) “**Transferred Contracts**” means all Contracts forming part of the Purchased Assets;
- (ggg) “**Transfer Taxes**” has the meaning given to such term in Section 7.5(c);
- (hhh) “**Turbine Assets**” has the meaning given to such term in Section 2.6;
- (iii) “**Turbine Sale Process**” has the meaning given to such term in Section 2.6;
- (jjj) “**Wind Projects**” means the following wind energy projects being developed by the Seller, Scotian and the Joint Venture Company in Nova Scotia:
 - (i) Digby County;

- (ii) Guysborough County; and
- (iii) Antigonish East Beaver Mountain; and
- (iv) Antigonish West Big Marsh

1.2 Schedules

The following Schedules form part of this Agreement:

Schedule 1.1(d)	Form of Approval and Vesting Order
Schedule 1.1(ss)	Purchased Assets
Schedule 1.1(uu)	Required Consents

1.3 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.

1.4 Knowledge and Disclosure

Any reference to the “knowledge” or awareness of the Seller, will mean the actual knowledge, information and belief of the President and Chief Executive Officer and the Chief Financial Officer of the Seller, without inquiry, in their capacity as officers or directors of the Seller and not in their personal capacity or in any other capacity, and without personal liability, as of the date of this Agreement.

1.5 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.6 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.

1.7 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars.

1.8 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.9 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.10 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by each of the Parties hereto. 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 unless otherwise expressly provided.

1.11 Governing Law; Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort, or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the courts of Ontario for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.8 shall be deemed effective service of process on such Party.

Notwithstanding the foregoing, any and all documents or orders that may be filed, made or entered in the CCAA Proceedings, and the rights and obligations of the Parties thereunder, including all matters of construction, validity and performance thereunder, shall in all respects be governed by, and interpreted, construed and determined in accordance with the CCAA, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the CCAA Court for the resolution of any such disputes, regardless of whether such disputes arose under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.8 shall be deemed effective service of process on such Party.

ARTICLE 2 - PURCHASE AND SALE

2.1 Agreement to Purchase and Sell Purchased Assets

Subject to the terms and conditions of this Agreement (including the provisions of Sections 2.5 and 2.6), at the Closing the Seller shall sell and the Buyer shall purchase, free and clear of all Encumbrances, all of the Seller's right, title and interest in, to and under, or relating to, the Purchased Assets.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, the Purchased Assets shall not include any of the following assets of the Seller (collectively, the "**Excluded Assets**"):

- (a) *Corporate Records* – original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Seller as a Person, in each case that do not relate exclusively or primarily to any of the Purchased Assets, provided that if they do relate exclusively or primarily to any of the Purchased Assets, the Seller may redact any confidential or sensitive information that does not relate exclusively or primarily to the Purchased Assets and provided further that the Buyer may take copies of all redacted Tax records and books and records pertaining to such records to the extent necessary after Closing including the filing of any Tax return; provided, however that the Seller shall retain the original copies of any of the records required to be provided to the Buyer hereunder (and provide the Buyer with a copy thereof) to the extent Seller is required to do so under Applicable Law;
- (b) *Rights under Agreement* – all of the Seller's rights under this Agreement, the Closing Documents and the transactions contemplated by this Agreement;
- (c) *Claims of Affiliates* – all claims of the Seller against its affiliates;
- (d) *Insurance* – all insurance policies, proceeds and claims related to the Purchased Assets;
- (e) *Nova Scotia Development Assets* – all of the Seller's rights to the Wind Projects described in Section 1.1(jjj)(ii) through (iv); and
- (f) *Turbine Assets* – all Turbine Assets that are to be sold pursuant to the Turbine Sale Process.

2.3 Assumption of Liabilities

The Buyer shall assume as of the Closing Time and shall pay, discharge and perform, as the case may be, from and after the Closing Time, the following liabilities and obligations of the Seller with respect to the Purchased Assets (collectively, the "**Assumed Liabilities**"):

- (a) *After Closing Time* - all liabilities and obligations of any kind relating to the Purchased Assets arising from events occurring on or after the Closing Time; and
- (b) *Obligations under GE Contract*. – all liabilities and interests of the Seller under the GE Contract, provided that the maximum amount payable in respect of the GE Turbines, but excluding any applicable Taxes, shall be US \$29,800,000, which amount for greater certainty includes all amounts paid by the Seller to date to the date of this Agreement under the GE Contract.

2.4 Excluded Liabilities

Except as expressly assumed pursuant to Section 2.4, all debts, obligations, Contracts and liabilities of the Seller, of any kind or nature, shall remain the sole responsibility of the Seller, and the Buyer shall not assume, accept or undertake any debt, obligation, duty, Contract or liability of the Seller of any kind whatsoever, except as expressly included in the Assumed Liabilities, whether accrued, contingent, known or unknown or otherwise, and specifically excluding (without limitation) the following liabilities or obligations which shall be retained by the Sellers (collectively, the “**Excluded Liabilities**”):

- (a) *Intercompany Accounts Payable* – any debts due or accruing due prior to the Closing Date from the Seller to any shareholder, director, or affiliate of the Seller;
- (b) *Excluded Assets* – all liabilities and obligations relating to the Excluded Assets;
- (c) *Taxes* – all liabilities for taxes on the income or profit of the Seller; and
- (d) *Other* – claims, demands, complaints, actions, applications, suits, causes of action, charges, indictments, prosecutions, informations or other similar processes, orders (including injunctions, judgments, administrative complaints, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by any Governmental Authority or arbitrator and including remedial orders), assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date, including liabilities relating to any breach of Applicable Law and the following liabilities or obligations relating to the environment: (a) liabilities arising in connection with properties formerly owned or operated by the Seller, (b) liabilities arising in connection with facilities to which any of the Seller sent hazardous waste for disposal prior to the Closing Date, or (c) fines or penalties arising from violations of environmental laws, regulations, or permits occurring prior to the Closing Date, but specifically excluding the Assumed Liabilities.

2.5 Assignment of Purchased Assets

Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Purchased Asset or any right thereunder if an attempted

assignment or transfer, without the consent of a third Person, would constitute a breach or in any way adversely affect the rights of the Buyer thereunder (“**Restricted Rights**”). The Seller shall use commercially reasonable efforts to take all such action and do or cause to be done all such things within its reasonable control as are reasonably necessary or proper in order that the obligations of the Seller under such Restricted Rights may be performed in such manner that the value of such Restricted Rights is preserved and enures to the benefit of the Buyer, and that any amounts due and payable or which become due and payable in and under the Restricted Rights are received by the Buyer. The Seller shall promptly pay to the Buyer all amounts collected by or paid to the Seller in respect of all such Restricted Rights, net of any costs incurred by the Seller in performing its obligations under this Section 2.5. The Seller shall not, without the prior written consent of the Buyer, not to be unreasonably withheld, agree to any modification of any Restricted Rights.

If a consent to transferring the Restricted Rights to the Buyer is not obtained or such assignment is not attainable, the Seller and the Buyer shall cooperate and use their respective commercially reasonable efforts to implement a mutually agreeable arrangement pursuant to which the Buyer will obtain the benefits and assume the liabilities and obligations related to such Restricted Rights in accordance with this Agreement and the Buyer shall be responsible for the Seller’s full costs and expenses relating thereto, provided, however, that the Buyer acknowledges and agrees that nothing in this Section 2.5 shall operate to prohibit or diminish in any way the right of the Seller to dissolve, wind-up or otherwise cease operations as it may determine in its sole discretion at any time after the Closing Date.

The Seller shall, prior to the Closing Date, use commercially reasonable efforts to obtain any necessary consents or approvals in order to assign the Transferred Contracts and the Permits forming part of the Purchased Assets to the Buyer (the “Assigned Contracts”). To the extent assignable and transferable to the Buyer, all Assigned Contracts shall be assigned by the Seller to the Buyer.

2.6 Permitted Disposition

The Parties acknowledge that the Seller proposes to sell all or a portion of its inventory of 134 GE XLE wind turbine generators (the “**Turbine Assets**”) pursuant to a court-approved sale process currently being conducted by the Seller (the “**Turbine Sale Process**”). Notwithstanding anything else contained herein, such disposition is expressly permitted by Buyer. Neither the Turbine Assets to be sold pursuant to the Turbine Sale Process nor the proceeds of any sale thereof will be considered Purchased Assets hereunder.

2.7 As is, Where is

THE BUYER ACKNOWLEDGES AND AGREES THAT THE PURCHASED ASSETS ARE SOLD “AS IS, WHERE IS” AS THEY SHALL EXIST AT THE CLOSING TIME WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS AND WITHOUT ANY RECOURSE TO THE SELLER OR ANY OF ITS DIRECTORS, OFFICERS, SHAREHOLDERS, REPRESENTATIVES OR ADVISORS, OTHER THAN FOR FRAUD. THE BUYER AGREES TO ACCEPT THE PURCHASED ASSETS AND THE ASSUMED LIABILITIES IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE

CLOSING DATE BASED ON THEIR OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO THE SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Buyer acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Seller in this Agreement or in any instrument furnished in connection with this Agreement, as to title, outstanding liens, consents to transfer, description, fitness for purpose, sufficiency to carry on any business, merchantability, quantity, condition, quality, value, suitability, durability, assignability or marketability thereof, or in respect of any other matter or thing whatsoever including the right, title and interest of the Seller, if any, in the Purchased Assets and wherever all or part of the Purchased Assets are situated, and all of the same are expressly excluded.

The Buyer further acknowledges and agrees that the description of the Purchased Assets in the Schedules hereto is for the purposes of identification only. No representation, warranty or condition has or will be given by the Seller concerning the completeness or accuracy of such descriptions.

ARTICLE 3 - PURCHASE PRICE AND RELATED MATTERS

3.1 Deposit

The Buyer shall deliver the Deposit to the Seller's solicitors in trust within two (2) Business Days of the execution and delivery of this Agreement. The Deposit may be paid by the Buyer by way of wire transfer or bank draft. The Deposit shall be placed in an interest bearing account with a Canadian chartered bank and, upon Closing, the Deposit plus accrued interest earned thereon shall be credited to the Buyer on account of the Purchase Price. If the Closing is not completed at the fault of the Buyer, the Deposit plus accrued interest shall be forfeited by the Buyer and be retained by and become the property of the Seller but without prejudice to any rights the Seller may have to be compensated in full for damages which it may have suffered. If the Closing is not completed at the fault of the Seller, the Deposit plus accrued interest earned thereon shall be returned to the Buyer but without prejudice to any rights the Buyer may have to be compensated in full for damages which it may have suffered. If the Closing is not completed for a reason which is not the fault of either party, the Deposit plus accrued interest earned thereon shall be returned to the Buyer.

3.2 Purchase Price

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.3 Purchase Price Allocation

Prior to the Closing Date, or as soon as practicable following the Closing, the Buyer shall prepare a written allocation of the sales price of each of the Purchased Assets, which shall include an allocation of the Purchase Price among the Purchased Assets (except the GE Contract). For greater certainty, the parties shall allocate the Contract Balance to the GE Contract. Within sixty (60) days following the receipt of the proposed Purchase Price allocation, the Seller shall respond providing either (a) its acceptance of such allocation or (b) any objections, in which case the Seller shall also provide its determination of the allocation of the Purchase Price. The Buyer and the Seller agree to act in good faith to resolve any differences between them. In the event that agreement cannot be reached, the Parties will jointly choose an independent accounting firm, whose decision shall be final. Half of the costs of such firm shall be paid by the Seller and the other half of such costs by the Buyer. The Buyer and the Seller shall report the purchase and sale of the Purchased Assets in any income Tax returns relating to the transactions contemplated in this Agreement as so determined by the Buyer.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES BY THE SELLER

The Seller represents and warrants to the Buyer and acknowledges that the Buyer is relying upon the following representations and warranties in connection with its purchase of the Purchased Assets the matters set out below:

4.1 Corporate Power

The Seller is a corporation validly existing under the laws of its jurisdiction of incorporation.

4.2 Residence of the Seller

The Seller is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

4.3 Due Authorization and Enforceability of Obligations

Subject to Court Approval being obtained and the Approval and Vesting Order being issued and entered, the Seller has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action of the Seller. This Agreement constitutes

a valid and binding obligation of the Seller enforceable against it in accordance with its terms, except:

- (a) as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally; and
- (b) as such enforceability may be limited by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

4.4 CCAA Proceedings

The Seller has provided the Buyer true and complete copies of all orders issued by the CCAA Court in connection with the CCAA Proceedings.

4.5 Absence of Conflicting Agreements

The execution and delivery of this Agreement and the performance by the Seller of its obligations hereunder does not:

- (i) violate, contravene or breach, or constitute a default under, the constating instruments or by-laws of the Seller;
- (ii) violate, contravene or breach, or constitute a default under any contract, agreement, indenture, instrument or commitment to which Seller may be party or subject; or
- (iii) result in the violation of any laws.

4.6 No Options

There is no agreement or option, right in equity or at law, that is binding upon or which in any way at any time in the future may become binding upon the Seller to sell, transfer, assign, pledge, charge, mortgage, or in any way dispose of or encumber any of the Shares other than pursuant to the provisions of this Agreement. During the currency of this Agreement and up until the Closing Time, no additional shares of the Joint Venture Company will be issued.

4.7 Capital Stock of Joint Venture Company

To the knowledge of the Seller, the authorized capital stock of the Joint Venture Company consists of:

- (a) an unlimited number of Class "A" common shares;
- (b) an unlimited number of Class "B" common shares; and
- (c) an unlimited number of Class "C" common shares;
- (d) an unlimited number of Class "D" preference shares
- (e) an unlimited number of Class "E" preference shares

- (f) an unlimited number of Class "F" preference shares;
- (g) an unlimited number of Class "G" preference shares

of which 1000 Class "A" common shares are issued and outstanding. 500 of such class "A" common shares are held by Scotian and the remaining 500 class "A" shares are held by the Seller. The Shares have been duly authorized, validly issued and are fully paid and non assessable.

4.8 Joint Venture Company - Due Incorporation

To the knowledge of the Seller, the Joint Venture Company:

- (i) is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation; and
- (ii) has all necessary corporate power and authority to own, lease and operate its properties and to conduct its business as and in the places where such properties are now owned, leased or operated or such business is now conducted and is not a "distributing corporation" as such term is defined under the Canada Business Corporations Act and there is no published market in respect of the shares of the Corporation.

4.9 No Debts

No debts, obligations, accounts, or payments will, at Closing Time, be owing by the Joint Venture Company to the Seller or any affiliate of the Seller or any of the officers, directors or employees of the Seller or any affiliate thereof.

4.10 No Actions Against Joint Venture Company

The Seller is not aware of any existing grounds on which any action, suit or proceeding might be commenced against the Joint Venture Company. In addition, there are no judgments or executions outstanding against the Joint Venture Company and there will be no judgments or executions outstanding against the Joint Venture Company on the Closing Date. The Seller is also not aware of any outstanding debts, obligations, accounts, or payments owed by the Joint Venture Company to any third party.

4.11 Tax Matters

To the knowledge of the Seller:

- (a) the Joint Venture Company is not in arrears or in default in respect of the filing of any required federal, provincial or municipal tax or other return and all such returns are true, correct and complete in all material respects;
- (b) all Taxes, filing fees and other assessments due and payable by the Joint Venture Company have been paid or collected;

- (c) no claim for additional Taxes, filing fees or other amounts or assessments has been made which has not been paid; and
- (d) there is no proposed reassessment by a Taxing Authority in respect of taxation periods ending prior to or on the Closing Date.

4.12 Title to Shares

The Vendor is the legal and beneficial owner of record of the Shares and has good and valid title to the Shares, free and clear of all Encumbrances.

4.13 No Default

Except for such defaults as are attributable to the Seller's insolvency and/or the Seller's application for the CCAA Order, and except for payment defaults under the GE Contract, the Seller is (i) in good standing, (ii) has performed all obligations required to be performed under, and (iii) is not in default under, or in breach of, any of the Assigned Contracts and there exist no circumstance or fact which, after notice or lapse of time or both, would constitute such a default or breach of any of the Assigned Contracts.

4.14 Options

With respect to the Options:

- (i) there have been no amendments, changes or modifications of any of the Options and there are no agreements outside the Options between the Seller and any landowner under any Options;
- (ii) there are no existing disputes between the Seller and any of the landowners under the Options;
- (iii) any and all fees due and payable to the landowner upon or in connection with the execution of the Options has been paid in full in accordance with the terms of the Options;
- (iv) the Options are validly existing and any and all fees due and owing by the Seller to the landowner in connection with the execution of the Options have been paid in full by the Seller to the landlords; and
- (v) none of the options set out in the Options have been exercised by the Seller.

Notwithstanding anything to the contrary contained in this Agreement, the Buyer provides no representation or warranty, express or implied, in respect of any Real Property underlying the Options (including, for greater certainty, any representations or warranties as to the title of such Real Property).

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES OF THE BUYER AND THE GUARANTOR

The Buyer and the Guarantor jointly and severally represent and warrant to the Seller as follows, and acknowledge that the Seller is relying upon the following representations and warranties in connection with its sale of the Purchased Assets:

5.1 Corporate Power

Each of the Buyer and the Guarantor is a corporation existing under the laws of its jurisdiction of incorporation.

5.2 Residence of the Buyer

Neither of the Buyer nor the Guarantor is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada) and is a "Canadian" for the purposes of the *Investment Canada Act* (Canada).

5.3 Absence of Conflicts

Neither the Buyer nor the Guarantor is a party to, bound or affected by or subject to any charter or by-law provision or Applicable Laws or Governmental Authorizations that would be violated, breached by, or under which any default would occur or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except for any violations, breaches or defaults that would not have a material adverse effect on the Buyer's or the Guarantor's respective ability to perform its obligations hereunder in a timely manner.

5.4 Due Authorization and Enforceability of Obligations

Subject to approval being obtained from the Buyer's and the Guarantor's Board of Directors provided for in Section 6.2 herein: (1) each of the Buyer and the Guarantor shall have all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement; (2) the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement shall have been duly authorized by all necessary corporate action of the Buyer and the Guarantor, respectively; and (3) this Agreement shall constitute a valid and binding obligation of each of the Buyer and the Guarantor enforceable against it in accordance with its terms, except:

- (a) as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally; and
- (b) as such enforceability may be limited by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

5.5 Approvals and Consents

Except for: (a) Court Approval; and (b) any consent that may be required in connection with the assignment of a Purchased Asset; and (c) approval by the Buyer's and the Guarantor's Board of Directors; no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer or the Guarantor, as the case may be, and each of the agreements to be executed and delivered by each of the Buyer and the Guarantor hereunder or, in the case of the Buyer, the purchase of any of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices that would not have a material adverse effect on the Buyer's or the Guarantor's respective ability to perform its obligations under this Agreement in a timely manner.

5.6 GST Registration

Prior to Closing, the Buyer will be registered for purposes of GST Legislation and will provide its registration numbers to the Seller.

5.7 Informed and Sophisticated Purchaser

The Buyer is an informed and sophisticated purchaser, and has engaged expert advisors or is experienced in the evaluation and purchase of property and assets such as the Purchased Assets as contemplated hereunder. The Buyer has undertaken such investigations and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement.

5.8 Diligence

The Buyer acknowledges and agrees that: (a) it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets and the Assumed Liabilities prior to the execution of this Agreement; (b) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets and/or the Assumed Liabilities; (c) it is not relying upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets or Assumed Liabilities; and (d) the obligations of the Buyer under this Agreement are not conditional upon any additional due diligence.

5.9 No Other Representations and Warranties.

Except for the representations and warranties contained in this Agreement, neither the Buyer, the Guarantor, nor any other Person makes any representation or warranty, express or implied, on behalf of the Buyer with respect to the transactions contemplated by this Agreement.

ARTICLE 6 - CONDITIONS

6.1 Conditions for the Benefit of the Buyer and the Seller

The respective obligations of the Buyer and of the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets pursuant to this Agreement shall be in effect; and
- (b) all Required Consents shall have been obtained; and
- (c) the Approval and Vesting Order, in form and content satisfactory to the Parties and their respective legal counsel, shall have been made and shall be Final and been issued by the CCAA Court.

6.2 Conditions for the Benefit of the Buyer

The obligation of the Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver in writing by the Buyer of, at or prior to the Closing Time (unless another date is specified herein), each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Buyer):

- (a) the covenants contained in this Agreement to be performed by the Seller at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) the Buyer shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.2(a) and 6.2(d), signed for and on behalf of the Seller without personal liability by an executive officer of the Seller or other Person reasonably acceptable to the Buyer, in each case in form and substance reasonably satisfactory to the Buyer;
- (c) subject to Section 2.5, all instruments of conveyance and other documentation relating to the sale and purchase of the Purchased Assets including assumptions and assignments of Transferred Contracts shall be satisfactory to the Buyer, acting reasonably, and the Buyer shall have received copies of all such documentation or other evidence as it may reasonably request in order to establish the consummation of the transactions contemplated by this Agreement and the taking of all corporate proceedings in connection with such transactions in compliance with these conditions, in form (as to certification and otherwise) and substance satisfactory to the Buyer, acting reasonably;
- (d) the representations and warranties of the Seller set forth in this Agreement or in any certificate or other document delivered or given pursuant to this Agreement shall be true and correct in all material respects at the Closing Time with the same force and effect as if made at and as of such time;

- (e) there are no actions, suits, claims, trials, demands, investigations, arbitrations, proceedings pending or threatened to restrain, enjoin or invalidate the transactions contemplated by this Agreement;
- (f) the Buyer and the Guarantor shall have each received approval, satisfactory to the Buyer and the Guarantor, as the case may be, in their sole discretion, of this Agreement and all transactions contemplated herein from the Buyer's and the Guarantor's respective Board of Directors by November 9, 2009; provided that if the Buyer or the Guarantor, as the case may be, shall not either have (i) notified the Seller that such approval has been obtained; or (ii) waived this condition, by November 9, 2009, this Agreement shall terminate and become of no further force and effect in accordance with Section 9.2;
- (g) the Buyer shall have reached an agreement with Scotian with respect to (i) the ownership, development and operation of the Wind Project referred to in Section 1.1(jjj)(i); (ii) Scotian's interest in the Joint Venture Company; and (iii) any assets of the Wind Project referred to in Section 1.1(jjj)(i) not owned by the Seller, in each case on terms satisfactory to the Buyer in its sole discretion;
- (h) The Seller and Scotian shall have amended the Joint Venture Agreement in a manner satisfactory to Buyer acting reasonably to provide that it does not apply to or govern the Wind Project referred to in Section 1.1(jjj)(i) or the Joint Venture Company;
- (i) the Buyer shall have reached an agreement with the General Electric Company and General Electric Canada with respect to the assignment of the GE Contract on terms and conditions satisfactory to Buyer in its sole discretion; and
- (j) all minute book documentation for the Joint Venture Company shall have been executed.

6.3 Conditions for the Benefit of the Seller

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver in writing where applicable, by the Seller of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Seller):

- (a) the representations and warranties of each of the Buyer and the Guarantor set forth in this Agreement shall be true and correct in all material respects at the Closing Time with the same force and effect as if made at and as of such time;
- (b) the covenants contained in this Agreement to be performed by the Buyer and the Guarantor, as the case may be, at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (c) the Seller shall not have lost its ability to convey the Purchased Assets or any part thereof;

- (d) the Seller shall have received certificates from each of the Buyer and the Guarantor confirming their respective satisfaction of the conditions contained in Sections 6.3(a) and 6.3(b) signed for and on behalf of the Buyer and the Guarantor, as the case may be, without personal liability by an executive officer of the Buyer and the Guarantor, as the case may be, or other Person reasonably acceptable to the Seller, in each case in form and substance reasonably satisfactory to the Seller; and
- (e) NSPI shall have executed and delivered in favour of the Seller a full and final release of any and all of its obligations under the power purchase agreement dated March 31, 2008 for renewable energy whereby the Seller agreed to sell to NSPI and NSPI agreed to purchase from the Seller wind energy on the terms and conditions set out therein, in a form acceptable to the Seller, acting reasonably.

ARTICLE 7 - ADDITIONAL AGREEMENTS OF THE PARTIES

7.1 Access to Information

Until the Closing Time, the Seller shall give to the Buyer's personnel engaged in this transaction and their accountants, legal advisers, consultants and representatives during normal business hours reasonable access to its premises and to all of the books and records relating to the Purchased Assets and the Assumed Liabilities and to members of the Sellers' senior management and shall furnish them with all such information relating to the Purchased Assets and the Assumed Liabilities as the Buyer may reasonably request in connection with the transactions contemplated by this Agreement. Notwithstanding anything in this Section 7.1 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the possible sale thereof or of any of the Excluded Assets to any other Person or the Turbine Sale Process or the sale of the Turbine Assets.

7.2 Conduct of Business Until Closing Time

Except: (1) as expressly provided in this Agreement; (2) with the prior written consent of the Buyer (not to be unreasonably withheld or delayed); (3) as necessary in connection with the CCAA Proceedings; or (4) as otherwise provided in the Court Orders, prior to the Closing Time, to the extent reasonably practicable having regard to the CCAA Proceedings, the Seller shall:

- (a) (i) use, hold or operate the Purchased Assets only in the ordinary course in all material respects; (ii) use commercially reasonable efforts to preserve its business organization, including the services of its officers and employees, and its business relationships and goodwill with customers, suppliers and others having business dealings with it; (iii) pay and discharge the debts authorized by the CCAA Court under the CCAA Proceedings; (iv) use commercially reasonable efforts to maintain in full force and effect all material insurance policies and binders relating to Purchased Assets; and (v) seek to collect the receivables of business in the ordinary course of business and in the same manner as previously collected; and

- (b) not: (i) transfer, lease, license, sell, create any Encumbrance on or otherwise dispose of any of the Purchased Assets; (ii) waive or release any claims held by it related to the Purchased Assets; (iii) (A) amend, terminate or assign any Transferred Contract forming part of Purchased Assets, (B) waive, release, permit the lapse of, relinquish or assign any Transferred Contract (C) enter into any lease, contract or agreement, licence or other commitment related to the Purchased Assets (iii) incur any additional indebtedness other than as permitted in the Initial CCAA Order; (iv) make or rescind any election related to Taxes;

Notwithstanding the foregoing, the Seller shall be entitled to make expenditures in accordance with the cash flows approved by the CCAA Court.

7.3 Approvals and Consents

The Seller and the Buyer shall:

- (a) as soon as reasonably possible following the date hereof, make all such filings and seek all such consents, approvals, permits and authorizations with any Governmental Authorities whose consent is required for consummation of the transactions contemplated by this Agreement and the Buyer will request any expedited processing available; and
- (b) use commercially reasonable efforts to seek all consents, approvals or authorizations required in connection with the assignment of the Purchased Assets to the Buyer.

7.4 Further Assurances

Each of the Parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Parties hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use commercially reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement. Upon and subject to the terms and conditions of this Agreement and subject to the directions of any applicable courts to the Seller, the Parties shall use their commercially reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things necessary proper or advisable under Applicable Laws and within their reasonable control to consummate and make effective the transactions contemplated by this Agreement, including using commercially reasonable efforts to satisfy or waive the conditions precedent to the obligations of the Parties hereto.

7.5 Tax Matters

- (a) The Buyer and the Seller agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts

during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters.

- (b) For purposes of any income Tax return related to the transactions contemplated in this Agreement, the Buyer and, to the extent applicable, the Seller, agree to report the transactions contemplated in this Agreement in a manner consistent with the Purchase Price and Contract Balance allocation determined in accordance with Section 3.3. The Buyer and the Seller shall each be responsible for the preparation of their own statements required to be filed under the *Income Tax Act* (Canada) and other similar forms in accordance with applicable Tax laws.
- (c) All amounts payable by the Buyer to the Seller pursuant to this Agreement are exclusive of any GST, RST or any other federal, provincial, state or local or foreign value-added, sale, use, consumption, multi-staged, ad valorem, personal property, customs, excise, stamp, transfer, land or Real Property transfer, or similar Taxes, duties, or charges, or any recording or filing fees or similar charges (collectively, "**Transfer Taxes**"). All Transfer Taxes are the responsibility of and for the account of the party required to pay such taxes under Applicable Laws. The Buyer and the Seller agree to cooperate to determine the amount of Transfer Taxes payable in connection with the transactions contemplated under this Agreement. If the Seller is required by Applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Buyer, the Buyer shall pay such amounts to the Seller concurrent with the payment of any consideration payable pursuant to this Agreement, and Seller shall pay such amounts to the applicable Governmental Authority on a timely basis and otherwise in accordance with Applicable Laws.

7.6 Damage or Destruction

The Purchased Assets shall be and remain at the risk of the Seller up to and including the Closing Time and thereafter shall be at the risk of the Buyer. For greater certainty, all insurance policies held by the Seller in respect of the Purchased Assets shall be terminated by the Seller at the Closing Time and the Buyer shall be obligated to obtain its own insurance in respect of the Purchased Assets forthwith after the Closing Time.

If, prior to the Closing Time, all or any part of the Purchased Assets are destroyed or damaged by fire or any other casualty or shall be appropriated, expropriated or seized by governmental or other lawful authority, the Buyer shall have the option, exercisable by notice in writing given no later than 10 Business Days after the Buyer receives notice in writing from the Seller of such destruction, damage, appropriation, expropriation or seizure:

- (a) to reduce the Purchase Price by an amount equal to the cost of repair, or, if destroyed or damaged beyond repair or appropriated, expropriated or seized, by an amount equal to the replacement cost of the assets forming part of the Purchased Assets so destroyed, damaged, appropriated, expropriated or seized, and to complete the purchase; or

