

## **SOLAR PV PROJECT DEVELOPMENT, INSTALLATION AND COMMISSIONING AGREEMENT**

THIS AGREEMENT is made and entered into as of the [\_\_\_\_] day of \_\_\_\_\_ 2019, (“the Effective Date”)

Between:

**Municipality of the Town of Amherst**  
(herein referred to as "Client")

and

**Thermo Dynamics Limited**  
(herein referred to as "TDL")

### **WHEREAS:**

1. Client is seeking system design, procurement, electrical interconnection, installation and commissioning services for multiple solar PV energy systems, as listed in Schedule A, that have been awarded power purchase agreements (“PPA”) with Nova Scotia Power Inc (“NSPI”) by the Province of Nova Scotia through The Solar Electricity for Community Buildings Pilot Program (“the Program”) (“the Project”);
2. Client is a party to a memorandum of understanding with the Alternative Resource Energy Authority (“AREA”) where AREA provides overall project management services, one of which, was the selection of TDL as design and technical partner for its projects developed for the Program, after AREA conducted its request-for-proposals for such services;
3. Client wishes to move forward with the Project and engage the services of TDL to provide system design, procurement, installation and commissioning services for the Project.
4. TDL has agreed to provide the Services in accordance with the terms and conditions set out in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements hereinafter stated, Client and TDL agree as follows:

## **LIST OF PROJECTS**

- 1) Schedule A lists the solar PV systems governed by this Agreement, (ii) the date by which the specific solar PV system must achieve commercial operation as defined in the PPA with NSPI and (iii) the fees that TDL may invoice the owner once the solar PV system achieves commercial operation as defined in the NSPI PPA.
- 2) Schedule B appended to this agreement contains TDL's proposal sheet for each project listed on Schedule A.
- 3) Client may add solar PV systems to Schedule A provided the Province awards a power purchase agreement with NSPI to the Client and the project receives the necessary organizational approval from the owner. The associated fees for projects that Client adds to Schedule A shall be equal to the budgeted amounts in the financial model used to determine the project's bid price into the Program.

## **SERVICES**

- 4) TDL shall provide to Client all the services required for each solar PV system listed in Schedule A to achieve the commercial operation date ("COD") as defined in the NSPI PPA. Such services shall include:
  - a) Completing, on Client's behalf, all PPA schedules as requested by the Province and NSPI;
  - b) Completing, on Client's behalf, all of the NSPI interconnection information and/or application forms required to connect to the NSPI electrical grid;
  - c) Management of the budget and communications with third-party suppliers and NSPI;
  - d) Design of the solar PV system;
  - e) Procurement of the components required for the solar PV system to achieve commercial operations as defined in the NSPI PPA;
  - f) Installation, electrical interconnection and commissioning of the solar PV system;
  - g) Reporting to the Client on the Schedule A Construction Project(s) progress at the following intervals; immediately upon site arrival, at 50% completion, at 90% completion and at COD;
  - h) At the request of the Client and at a time that is mutually agreed by Client and TDL, both acting reasonably, attendance at 1 (one) council meeting to explain all components of the Project which are included in the agreement between TDL and the Client; said meeting to occur at a mutually agreeable time prior to project construction.
  - i) Providing electronic documentation for specifications and warranties regarding each component of the solar PV system;
  - j) Providing details regarding solar PV systems operations and maintenance best practices, including, but not limited to, regular inspection and testing and methods to rectify expected issues identified during inspection and testing;
  - k) Any other task that TDL represents to perform as described in TDL's proposals as attached to Schedule B.
  - l) Consultation with the Provincial Government associated with an environmental approval of the project.

("Services")

- 5) TDL shall not proceed with any service beyond 4(c) above until NSPI has confirmed in writing the required interconnection components and associated NSPI interconnection costs, unless this restriction is waived by the Client in writing.
- 6) TDL provided a cost estimate for the equipment that NSPI will require between the solar PV electrical panel and the NSPI distribution system, for AREA to include in the financial model used to determine the bid price for the Program submissions. This estimated interconnection equipment cost is not part of the fixed price in Schedule A. Subject to paragraph 13 below, TDL shall procure the equipment specified by NSPI for installation between the solar PV electrical panel and the NSPI distribution system, and invoice these costs with receipts and without markup to the Client, upon achieving commercial operation for each project. TDL's installation costs of such equipment are included in the fixed price listed in Schedule A.
- 7) To ensure that the Client receives systems using top-tier solar PV component manufacturers, TDL shall only procure components from the associated vendors in Schedule C.
- 8) TDL is responsible to determine the manner and specifications for the provision of the Services and TDL shall provide an orderly, competent and skillful completion of such Services.
- 9) The Client or the Client's designated agent may inspect the progress of the project upon reasonable notice.
- 10) TDL is an independent contractor of Client and is not and shall not be deemed to be an employee, agent, partner or joint venturer of Client.
- 11) TDL is under no obligation to provide any Services if Client fails to pay the Fees and Expenses in the amount and within the time set out in this Agreement. Such withdrawal of services shall not be considered a breach entitling Client to terminate this Agreement.

#### **NSPI'S TERMINATION OF A PPA OR SIGNIFICANT NSPI INTERCONNECTION COST**

- 12) Client may remove a solar PV system from Schedule A if NSPI terminates the PPA because TDL has failed to achieve commercial operation by the date specified in Schedule A.
- 13) Client may remove a solar PV system from Schedule A if the cost of NSPI's interconnection equipment, as determined in Section 6), would cause the total project installation cost, including contingency, to exceed that estimated in the financial model used by AREA for the submission to the Program.

#### **CLIENT'S RESPONSIBILITIES**

- 14) The Client shall provide TDL with all available building structural information or data pertinent to the Project which is required by TDL to perform the services under this Agreement. TDL shall be entitled to rely upon the accuracy and completeness of all building information and data furnished by the Client, including information and data originating from other parties employed by the Client whether such

parties are engaged at the request of TDL or otherwise. Where such information or data originates either with the Client or its consultants then TDL shall not be responsible to the Client for the consequences of any error or omission contained therein.

When required by TDL, and mutually agreed by TDL and the Client, the Client shall engage such consultants or other service providers directly to perform items of work necessary to enable TDL to carry out the services. When arranged by the Client or TDL, these services shall be deemed to be provided under direct contracts to the Client unless expressly provided otherwise.

The Client shall give prompt consideration to all documentation related to the Project prepared by TDL and wherever prompt action is necessary shall inform TDL of Client's decisions in such reasonable time so as not to delay the proposed (or as amended from time to time) schedule for providing services.

## **EXCLUSIONS**

- 15) For greater certainty, Services provided under the terms of this Agreement and the Fees do not include the following:
- a) Assistance with the negotiation of any site lease;
  - b) Assistance with the application by the Client for funding from Service Nova Scotia and the Municipal Finance Corporation;
  - c) Attendance at more than one (1) council meetings to explain all components of the Project which are included in the agreement between TDL and the Client;
  - d) Consultation with the Provincial Government not associated with an environmental approval of the Project;
  - e) work arising from a change to the current state of government legislation, by-laws, policy, guidelines, or other public requirements, except that Services will include providing information to Client with regard to such changes and the impact of any such changes;
  - f) Work arising from a response to a governmental order;
  - g) Work arising from the negligence of any party other than TDL;
  - h) Work arising from failures caused by improper environmental conditions affecting the Project or electrical power fluctuations, if due to conditions beyond TDL's control;
  - i) Work arising from a denial of access to TDL to the Project; and
  - j) Disposal of contaminants. Contaminants remain the property and the responsibility of Client. Client shall be responsible for the proper storage and disposal of contaminants. This includes, but is not limited to, used oil, contaminated or uncontaminated refrigerant, and PCBs.

## **LIMITATION ON SERVICES**

- 16) Client acknowledges that:
- a) TDL is providing solar PV system design, engineering, electrical, mechanical, installation and safety services and is not providing financial, accounting, legal, environmental, or other professional services;

- b) TDL is not and will not act as a fiduciary for Client with respect to the Services;
- c) TDL has not and will not give to Client any assurance or guarantee as to the merits (whether legal, regulatory, tax, financial, accounting or otherwise) of any strategy, course of action or transaction; and
- d) the Services are being executed at the discretion of TDL and in a commercially reasonable manner and TDL does not provide any warranty or guarantee as to the financial viability or profitability of the Project.

## **FEES and EXPENSES**

- 17) Client shall pay to TDL the fees specified in Schedule A per solar PV system, due upon receipt of an invoice from TDL on the following schedule:
  - a) 90% of the project-specific fee specified in Schedule A upon TDL's commissioning of the specific project, which shall include, but not be limited to, demonstrating that the specific project can achieve the inverter's nameplate electrical production;
  - b) 10% of the project-specific fee specified in Schedule A upon NSPI's written confirmation that the specific project has achieved commercial operation as defined in the PPA.
- 18) In addition to the above Fees, and only with prior written approval from Client, Client shall reimburse TDL for out-of-pocket expenses and taxes incurred by TDL in the performance of the Services, including, but not limited to:
  - a) Third party fees paid by TDL on behalf of Client relating to the Project; (collectively "Expenses").
- 19) TDL shall invoice Client for Expenses as they are incurred.
- 20) Payment of the invoiced amount shall be made by Client within 30 days of invoicing. Overdue accounts are subject to interest at 2 % per month.

## **COSTS AND WORK OF OTHERS**

- 21) TDL shall provide a comprehensive estimate of the cost of the Project, as soon as sufficient information, drawings and specifications have been prepared which estimate shall include all work and services done or to be performed. Client will review and approve the estimate and Client shall be responsible for entering into all required contracts directly to complete the Project and shall make all payments for work done on the Project as approved by TDL. TDL agrees to provide to Client regular updates of the estimate and, as soon as practicable, notice of any increase or decrease in the estimate. TDL shall not be responsible for the work of others including but not limited to:
  - a) Failure by a contractor or Client to proceed or carry out work anticipated as part of the Project;
  - b) Breach by any contractor or consultant of any contract related to the Project;
  - c) Costs of Project exceeding initial Project estimates; and
  - d) Delays caused by any contractor, consultant, Client or others.

## SUSPENSION

- 22) If the Client suspends the Project for more than thirty (30) calendar days in the aggregate, TDL shall be compensated for services performed and expenses incurred prior to the receipt of the notice to suspend, and, upon resumption, an equitable adjustment in fees to accommodate the resulting costs and expenses from the suspension (including any wind down and wind up costs). In addition there shall be an equitable adjustment in the Project schedule based on the delay caused by the suspension. If the Project is suspended for more than ninety (90) days TDL may, at its option, terminate this Agreement upon giving written notice to the Client.

## TERM

- 23) Subject to early termination or removal of a PV system in accordance with this Agreement, this Agreement shall continue until the Services for the Project outlined above are complete for each solar PV system listed in Schedule A.

## TERMINATION

- 24) Either party may terminate this agreement without notice or other act if,
- a) either party is in default in any material respect in the performance of any of its obligations under this agreement or otherwise commits any material breach of this agreement, and such default continues after thirty (30) days' written notice from the non-defaulting party to the defaulting party stating the particulars of such default.
  - b) bankruptcy or insolvency proceedings are instituted by or against the other party, or the other party is adjudicated a bankrupt, becomes insolvent, makes an assignment for the benefit of creditors or proposes or makes any arrangements for the liquidation of its debts or a receiver or receiver and manager is appointed with respect to all or any part of the assets of the other party;
  - c) If any
    - (i) amendment to applicable law, by-law, statute, regulation, rule, ordinance, policy, order, code, information letter, guideline, bulletin or directive;
    - (ii) judicial or regulatory order; or
    - (iii) ruling, decision, or directive by a utility board, transmission provider, or other agency, commission, authority, entity, or body.

requires or directs, directly or indirectly, that a material term be amended, inserted, or deleted in this Agreement and one party notifies the other that it wishes to renegotiate the terms and conditions of this Agreement in connection with such amendment, insertion, or deletion and the parties are unable to agree upon revised terms and conditions of this Agreement within 30 days of such notice.

- 25) Notwithstanding termination of this Agreement for any reason:
- a) all warranties set out in this agreement and all obligations of indemnification herein shall survive and continue to bind the parties after the date of termination;
  - b) Client shall honor any outstanding and remaining payment of Fees and Expenses owing or incurred as of the date of termination;

### **COMPLIANCE WITH LAWS and REGULATORY REQUIREMENTS**

- 26) In performing its obligations under the terms of this Agreement, the parties agree to comply at all times with all applicable laws, regulations, orders and licensing requirements applicable to this project.
- 27) The parties acknowledge and agree that they are or may become bound by:
- a) agreements with and certain policies, guidelines and directives of NSPI, power generating companies, or other agencies, commissions, authorities, entities, or other bodies involved in the generation and transmission of electricity; or
  - b) the legislation, regulations, rules, instructions, policies, pronouncements and other directives of governmental, regulatory, or industry agencies, commissions, authorities, entities, or other bodies, relating to the supply and delivery of electricity to and in Nova Scotia.  
(collectively, "Industry Terms and Directives")
- 28) The parties agree to cooperate with each other in order for each other to comply with the Industry Terms and Directives and to promptly do anything or execute any documents or directives reasonably required to implement the terms of this Agreement.
- 29) However, it is expressly acknowledged and agreed by the parties that as the Project proceeds such Industry Terms and Directives may change or the interpretation may differ from the interpretation of each of the parties, through no fault of the parties, and any extra costs necessary to conform to such changes or interpretations during or after the execution of the services will be paid by the Client.

### **INDEMNITY and LIMITATION OF LIABILITY**

- 30) The parties shall indemnify and save harmless each other from and against all risks of every kind and nature whatsoever, and fully indemnify each other from and against all manner of claims, demands, losses, costs, damages, actions, suits or proceedings (including all costs of investigating and defending the same) including, but not limited to environmental damages, personal and bodily injury, and property damage which any person, company or other entity has or may have for or by reason of any cause whatsoever arising out of, attributable to or in connection with negligent, tortious, or otherwise illegal conduct of the other party.
- 31) Notwithstanding anything to the contrary contained in this Agreement, including the indemnity set out in paragraph 30) above, neither Party shall be liable to the other, whether in contract, tort, misrepresentation, warranty, negligence, strict liability or otherwise for any consequential, indirect or incidental damages including, but not limited to, loss of use, loss of profits or business interruption or

loss of markets arising from a failure of such Party to perform any of its obligation under this Agreement, unless such obligation arises out of fraudulent actions of such Party.

## **DISPUTE RESOLUTION**

32) Any dispute related to this Agreement, which cannot be resolved by the parties on their own accord shall be determined in the following manner:

- (a) All disputes between the parties shall be resolved by mediation, and failing resolution by mediation, then by binding arbitration.
- (b) For purposes of commencing the resolution of any such dispute, any party hereto may give written notice to the other party, requesting mediation. Within three (3) business days after the day a receipt of such notice, the parties shall use their best efforts to agree upon the appointment of an independent mediator.
- (c) If, within the three (3) business days, the parties are unable to agree upon the appointment of an independent mediator, then either party may, within the next two (2) business days thereafter, give written notice to the other party and the then President (or Executive Director, if there shall be one) of the ADR Atlantic Institute requesting the President (or Executive Director, as the case may be) to appoint, within five (5) business days after the day of receipt of such notice, an independent mediator, who is prepared and available to mediate the dispute within three (3) days of accepting the appointment.
- (d) If the matter in dispute cannot be resolved through mediation, then within three (3) business days after the conclusion of the mediation, either party may give written notice to the other party and the then President (or Executive Director, if there shall be one) of the ADR Atlantic Institute requesting the President (or Executive Director, as the case may be) to appoint, within five (5) business days after the day of receipt of such notice, an independent arbitrator, who is prepared and available to arbitrate the dispute within one (1) month of accepting appointment. The parties shall not have the right to appeal the decision of the independent arbitrator.
- (e) Except as modified herein or as otherwise agreed to by the parties in writing, the place of mediation or arbitration shall be at a place in Yarmouth County, Nova Scotia, as agreed by the parties and, if they cannot agree, then at a place determined by the mediator or arbitrator.
- (f) The rules and procedures for the mediation shall be determined by the mediator and the rules and procedures for the arbitration, except as modified herein or as otherwise agreed to by the parties in writing, shall be those as set forth in the Commercial Arbitration Act, S.N.S. 1999 c. 5, as amended.
- (g) Except as provided elsewhere in the Agreement, cost of the mediation or arbitration shall be borne equally by the parties. An arbitration decision shall be final and binding on the parties, with no right of appeal, except as may be provided in the aforesaid applicable arbitration statute. Provided the parties agree in writing, they may shorten or extend any time periods referenced in this Article.
- (h) Notwithstanding the foregoing, either party may at any time apply to the Supreme Court of Nova Scotia for an injunction or other equitable remedy to protect their rights under this Agreement until such time as the determination has been made by arbitration under this Agreement



## **INTELLECTUAL PROPERTY**

- 33) All documents including preparatory information and materials (“Project Documents”) prepared by TDL or on behalf of TDL in connection with the Project are instruments of service for the execution of the Project. TDL has and retains the intellectual property rights including copyright in the Project Documents, whether the project is executed or not and are protected by copyright and any other applicable intellectual property rights and laws. Payment to TDL of the compensation as set out in this Agreement shall be a condition precedent to the Client’s right to use the Project Documents. The Project Documents may not be used by the Client or any other party without the express prior written agreement of TDL. Client has the right to the use of and the benefit of authorized copies of the documentation in connection with the Project for the life of the Project.

## **MEDIA RELEASES AND PROJECT PROMOTION**

- 34) The parties shall mutually approve the form and substance of all publicity releases or announcements concerning the Project and this Agreement. Also, where the Client has control or influence over construction signage, events, press releases and/or other promotional information identifying the project (“Project Promotion”), the Client agrees to include TDL in such Project Promotion,

## **NOTICES**

- 35) Any notice or other documents required or permitted to be given hereunder shall be in writing and shall be delivered, mailed by pre-paid registered mail, return receipt requested or sent by facsimile transmission addressed to the party or parties to whom it is to be given at the address shown below or at such other address or addresses as the party or parties to whom such writing or document is to be given shall have last notified all other parties hereto in accordance with the provisions of this section:

- i) if to TDL at:

Peter Allen, President  
101 Frazee Drive  
Dartmouth NS B3B 1Z4

Telephone 902-468-1001; Fax 902-468-1002; Email: [peter.allen@thermo-dynamics.com](mailto:peter.allen@thermo-dynamics.com)

- ii) if to Client at:

Gregory D. Herrett, CA, CPA, Chief Administrative Officer  
98 Victoria Street East, Amherst, Nova Scotia B4H 1X6  
[gherrett@amherst.ca](mailto:gherrett@amherst.ca)  
902-667-3352

**GENERAL**

- 36) The rights or duties of the parties shall not be assigned, transferred or conveyed by the other, without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 37) This agreement is binding upon the parties' successors and assigns.
- 38) All prior agreements, representations and undertakings with respect to the subject matter of the Agreement are superseded.
- 39) No waiver or modification in this Agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith.
- 40) In the event that any provision, clause or paragraph herein, or part thereof shall be deemed void, invalid or unenforceable by a court of competent jurisdiction, the remaining provisions, clauses or articles, or parts thereof shall be and remain in full force and effect.
- 41) This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Nova Scotia, and each party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of Nova Scotia and all courts competent to hear appeals therefrom.

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

THERMO DYNAMICS LIMITED

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

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

TOWN OF AMHERST

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

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

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Witness**

## **Schedule A:**

### **RFP Awards 2017 – each of which shall achieve commercial operation before October 1, 2019**

The TDL fees cited below do not include the 15% HST.

None

### **RFP Awards 2018 – each of which shall achieve commercial operation before July 1, 2020**

Amherst Stadium, 185 Church St, Amherst

75kWAC, 107.52kWpDC

Owner: Town of Amherst

TDL fees at COD: \$256,491 + NSPI interconnection equipment at cost

### **RFP Awards 2019**

## Schedule B

### Proposal to Design and Install a Photovoltaic System on the Amherst Stadium

Prepared for:  
The Town of Amherst (TOA)  
98 Victoria Street East, Amherst, Nova Scotia B4H 1X6

Prepared by:  
Thermo Dynamics Ltd. (TDL)  
101 Frazee Avenue, Dartmouth, Nova Scotia B3B 1Z4  
Tel: (902) 468-1001 Fax: (902) 468-1002  
Contact: Peter Allen

November 2018

#### Project Description

TDL proposes to install a photovoltaic (“PV”) system on the roof of the Amherst Stadium, situated at 185 Church Street, Amherst, Nova Scotia. The building is depicted in the photograph shown below.



The main components of the system are

- (i) one or more inverters, with a total AC power output of 75 kW
- (ii) PV modules with a total rated DC power output of 107.5 kW
- (iii) the mounting hardware required for the PV modules
- (iv) the wiring on the PV side of the system and on the 240-VAC side of the system.

The estimated output from the PV system is 123,000 kWh (AC) per year. The electricity generated by the PV modules will be fed into the NS Power grid. NS Power will pay for this electricity as per the terms of the agreement between TOA and NS Power. The equipment required to connect the PV system to the Nova Scotia

Power grid is a new PV-dedicated kWh meter. No changes are required to allow access to the site for construction and maintenance of the PV system.

The PV modules will be mounted on the roof facing 45 degrees east of true south, at a slope of approximately 15 degrees to the horizontal. The PV modules will cover an area of approximately 549 square meters (5,900 square feet), which is approximately 33% of the roof area available.

### **Timing of the Project**

TDL is prepared to undertake the design and installation upon receipt of this signed proposal. One month is required to obtain approval from NS Power for this project. TDL estimates that two months will be required to acquire all the system hardware, and another month is required to install the system and commission it.

### **System Price**

PV modules	<b>\$107,520</b>	
Inverters	<b>\$36,000</b>	
Balance of system	<b>\$51,610</b>	
Direct labour	<b>\$49,459</b>	
Building permits	<b>\$150</b>	
Electrical inspections/permits	<b>\$1,000</b>	
Overhead costs	<b>\$10,752</b>	includes administration
Total installation costs	<b>\$256,491</b>	plus applicable taxes

Thermo Dynamics Ltd. proposes to design, supply and install the above system. The cost of the TDL-supplied system is **\$256,491.00 (two hundred and fifty-six thousand, four hundred and ninety-one dollars), plus applicable taxes.**

### **Cost of connection to the NS Power grid**

TDL provided a cost estimate for the equipment that NS Power will require between the solar PV electrical panel and the NS Power distribution system. This estimated interconnection equipment cost is not part of the total contract price. TDL shall procure the equipment specified by NS Power for installation between the solar PV electrical panel and the NS Power distribution system, and invoice these costs (the interconnection costs) with receipts and without markup to TOA, upon achieving commercial operation for the project. TDL's installation costs of such equipment is included in the direct labour costs shown above.

### **Payment Schedule**

TOA shall pay to TDL the total contract price plus the interconnection costs shown above upon receipt of an invoice from TDL on the following schedule:

- a) 90% of the total contract price upon TDL's commissioning of the project, which shall include, but not be limited to, demonstrating that the project can achieve the inverter's nameplate electrical production;
- b) 10% of the total contract price and 100% of the interconnection costs upon NS Power's written confirmation that the specific project has achieved commercial operation as defined in the PPA.

**Warranty on Workmanship**

Thermo Dynamics Ltd. will provide a 2-year warranty on the workmanship of all the work undertaken by the employees of Thermo Dynamics Ltd. on this project.

**For Thermo Dynamics Ltd.**

\_\_\_\_\_ Date \_\_\_\_\_  
Peter Allen

**For the Town of Amherst**

I, the undersigned, understand and agree to the terms set forth in the above agreement. I agree to follow the payment schedule listed above, and will pay each installment upon receipt of invoice.

\_\_\_\_\_ Date \_\_\_\_\_

## **Schedule C**

### Solar PV Panels:

LG  
Hanwha  
Q-Cells  
HES  
Canadian Solar  
Panasonic  
SolarWorld  
Sharp  
Kyocera  
Trina  
Jinko  
Yingli Green  
JA Solar

### Inverters:

SMA  
Fronius  
SolarEdge  
ABB  
Enphase  
AP Systems  
OutBack  
Schneider