

## EVCO PARTNERSHIP AGREEMENT

THIS AGREEMENT MADE this 1st day of June, 2016.

### BETWEEN:

**The Corporation of the Town of Minto**

a corporation duly incorporated in the Province of Ontario  
(hereinafter "**Partner**")

-and-

**Arntjen Solar North America Inc.**

a corporation incorporated pursuant to the laws of Canada and having its registered head office in Innerkip, Ontario  
(hereinafter "**Recipient**")

### BACKGROUND

The Province is putting its new Climate Change Strategy into action by investing \$20 million from the Ontario Green Investment Fund to support the build out of a network of public electric vehicle charging stations (also referred to as "Electric Vehicle Supply Equipment" or "EVSE", as defined in Schedule "A") across Ontario.

Through the \$20million Electric Vehicle Chargers Ontario Program (the "EVCO"), the Province offers a grant program that complies to the EVCO-Program Requirements for Projects with Partners as outlined in Schedule "C".

The **Recipient** has, under the EVCO, applied for funds to assist the **Recipient** in carrying out the Projects (as defined in Schedule "A",) which supports the goals of the EVCO-Program.

The Province agreed, subject to terms and conditions to be set out in a transfer payment agreement, to financially contribute to the Project and wishes to provide Funds to the **Recipient** for the Project.

### WHEREAS

The **Recipient** wishes to install EVSE on parcels of land listed in Schedule "B" (Premises) to this agreement owned by **Partner** pursuant to the EVCO-Program and the subsequent sale of electrical power to the public at a prescribed rate so that they may charge their electric vehicles;

**AND WHEREAS** the **Partner** owns the Premises where said Facility in Schedule "A" will be installed under the EVCO-Program;

**NOW THEREFORE** this agreement witnesseth that in consideration of the mutual covenants herein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

## ARTICLE I LEASED PREMISES AND TERM

### **1.01 – Leased Premises.**

In consideration of the covenants and agreements hereinafter reserved and contained the **Partner** shall provide the Premises, more particularly described in Schedule “B” to this Agreement at all times and until the end of the Term of this Agreement at no cost to the **Recipient**. The Facility shall remain the sole and exclusive property of the **Recipient** and nothing herein shall be interpreted or construed to the contrary.

**1.02 –Term of Financing.** As the sole purpose of this Agreement is to facilitate Minto’s intention to install electric vehicle charging systems under the Provincial EVCO program and to make available electrical power to the public for the purposes of charging electrical vehicles, the term (the "Term") of this Agreement shall commence on the date which the individual facility at the locations listed in Schedule “B” are available to the public having been inspected by the appropriate authority (the “Commencement Date”) and running for a period of ten (10) years and will be subject to the Parties’ agreement to renew in section 1.03.

**1.03 – Renewal.** Provided that neither Party has defaulted on any of its covenants or requirements pursuant to this Agreement, either Party shall have the right to renew this Agreement for a further two term of five (5) years upon the same terms and conditions as contained in this Agreement, save and except that the finance payments shall be in an amount mutually agreed to by the parties hereto.

**1.04 – Surrender of Equipment.** **Recipient** covenants that, upon the termination of this Agreement and renewal period, the Facilities remain the property of the **Partner** and **Recipient** agrees to leave the Facility as situated in good repair and condition, or prior to the termination upon written request of the **Partner**, the **Recipient** shall remove the facilities provided for under this agreement at the equally shared cost and expense of the **Recipient** and **Partner** including restoring the Premises to their original condition to the satisfaction of the **Partner** acting reasonably. The Parties' obligations to observe or perform this covenant shall survive the expiration or other termination of the Term of this Agreement.

## **ARTICLE II LEASE PAYMENTS**

**2.01 – Lease Payments.** In Lieu of a regular Lease Payment (“Payments”) for the Premises, the **Recipient** agrees to equally share all income received and expenses incurred for the Facilities with the **Partner** under this agreement as follows:

(i) Years 1-5. Transfer Payments from the EVCO-Program will be exclusively used by the **Recipient** to cover all applicable capital and installation costs for the approved facility described in Schedule “B”.

(a) Upon completion of then facility installation, any capital costs incurred by the **Partner** and eligible und der EVCO-Program rules will be invoiced to the **Recipient** for immediate payment by the **Recipient**;

(b) For operating and maintenance costs the **Partner** will provide the **Recipient** a copy of the hydro bill associated with each installed facility, and the **Recipient** shall provide the **Partner** a quarterly summary of the electricity consumed by the EVSE. These quarterly operating and maintenance costs shall be calculated, and paid by the **Recipient** to the **Partner**. The **Recipient** shall agrees to provide the **Partner** with an annual account statement showing the opening balance at the start of the year and all revenues and expenses throughout the year.

(c) Net Revenue from public use of the EVSE facility shall be split 50-50 equally between the **Partner** and **Recipient**.

(iii) Renewals. The Parties agree that any Payments and timing of said Payments associated with any renewals of this Agreement shall be mutually agreed upon by the Parties hereto with the intent that the **Recipient** makes quarterly payments to the **Partner** for all the Facilities listed in Schedule "B".

**2.02 – Failure to Make Payments.** The **Recipient** warrants to the **Partner** that payments described in Section 2.01 shall be made for operating and maintenance of the facilities as per Section 2.01. Subject to any other remedies in this agreement, failure of the **Recipient** to pay the equally shared net income amounts to the **Partner** shall result in a default of this agreement and the provisions of Article VII shall apply.

### ARTICLE III DUTIES AND RESPONSIBILITIES OF PARTNER

#### 3.01 – Partner Shall:

- a) provide a portion of land with an approximate area of 20 feet x 20 feet more or less to host the EVSE facility (the "Premises") as mutually agreed to by the parties;
- b) allow the registration of an easement for the facility provided by the **Recipient** if necessary, on the Premises identified herein by to allow **Recipient** or its representatives to have access to the Facility for the purposes of construction, maintenance and monitoring;
- c) allow the inspection and Audits of Contracts and Partner Agreements in the right of the Province of Ontario, its authorized representatives and independent auditors identified by the Province and the Auditor General to carry out the inspection and audits contemplated pursuant to the Agreement and will coordinate access with any Third Party and Partner for the purpose of such inspections and audits.
- d) comply to the EVCO-Program Requirements for Projects with Partners as outlined in Schedule "C"
- e) due to the extreme sensitivity of the technology being used at the Facility, the Parties acknowledge that it is imperative that the **Partner** maintains the property year around in as much as the property is maintained in the usual manner and that no obstructions are installed on the dedicated parking spots for the EVSE of the Facility;
- f) allow all required electrical connections of the Facility to the panel at the applicable location subject to such work being completed by a qualified person with all applicable permits and approvals;
- g) maintain the parking area around and leading to the facilities including paving, snow removal and proper drainage.
- h) provide all hydro bills to the **Recipient** as per Section 2.01 of this agreement.

### ARTICLE IV DUTIES AND RESPONSIBILITIES OF THE RECIPIENT

#### 4.01 – Recipient shall:

- a) execute the Transfer Agreement under the EVCO-Program
- b) comply to the EVCO-Program Requirements for Projects with Partners as outlined in Schedule "C"
- c) build, commission and maintain the Facility;

- d) obtain all electrical inspection and approvals from the Electrical Safety Authority and obtain the necessary approvals and connection agreement with the Local Distribution Company;
- e) maintain and operate the Facility for the Term;
- f) remove the Facility and restore the lands described in Schedule "B" at an equally shared expense after the end of the Term or any subsequent renewal terms, if any upon receipt of a written request to do so, or otherwise surrender all interest in the Facility as per Section 1.04 of this agreement; and
- g) calculate the required operating and maintenance costs using the meter connected to the electric vehicle charging station and **Partner's** hydro bills, pay all costs and revenue share provided for under Section 2.01 including providing applicable quarterly statements to the **Partner**.
- h) not encumber the premises described in Schedule "B" in any way and to promptly discharge and remedy any liens or other title matter related to installation of the facilities on the lands.

## ARTICLE V MAINTENANCE AND REPAIR OF PREMISES

**5.01 – Maintenance and Repair by Partner.** The **Partner** covenants with the **Recipient** that, throughout the Term of this Agreement and any renewals, it shall maintain and repair the whole of the Premises and all fixtures, equipment, parking spaces therein in good order, first class condition and repair, acting reasonably, so as to ensure that nothing constructed or maintained by the **Partner**, whether organic or structural in nature, shall prevent safe public use of the EVSE Facilities. All alterations, additions and improvements made by the **Partner** to the Premises or made by the **Recipient** on the **Partner's** behalf by agreement or under this Agreement shall remain the property of the **Partner** for the Term hereof.

## ARTICLE VI INSURANCE

**6.01 – Liability Insurance.** The **Recipient** shall, during the entire Term hereof and any renewals, keep in full force and effect, at its own expense, a policy of public liability and property damage insurance with companies qualified to do business in the Province of Ontario with respect to the leased Premises, in which the limits of public liability shall be in such amount of \$5,000,000 as stipulated by the **Partner**. The **Partner** and the **Recipient** as well as the Province of Ontario shall be named as additional insured under the policy and this policy will be available for the **Partner** and the Province of Ontario to review annually including providing a written copy of the certificate of insurance annually or upon written request by the **Partner**.

**6.02 – Indemnification.** The **Recipient** will indemnify the **Partner** and the **Partner** will indemnify the **Recipient** and save the other harmless from and against any and all claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Premises, the occupancy or use by the **Recipient** of the Premises, or any part thereof, or occasioned wholly or in part by any act or omission or negligence of either party, its agents, contractors, employees, servants, licensees or invitees. In case either party shall, without fault on its part in circumstances where either must indemnify the other, be made party to any litigation commenced by or against either party, then the other shall protect and hold the other party harmless and shall pay all reasonable costs, expenses and solicitors and

counsel fees, on a solicitor and his own client basis, incurred or paid by either in connection with such litigation.

## **ARTICLE VII DEFAULT OF THE RECIPIENT**

**7.01 – No Right to Re-Enter.** In the event of default by the **Recipient** of any of its obligations set out in Article VI or any other provision of this agreement, the **Partner** shall inform the **Recipient** of the said default or non-performance in writing and shall allow for no less than thirty (30) business days to rectify the non-performance of the **Recipient**. In the event of default by the **Recipient**, after the initial five (5) year contract period, the **Partner** can immediately disconnect the facilities from the hydro supply and barricade the locations from public use. Before the **Partner's** attempt to secure entire payments collected by the **Recipients** from the sale of the installed ESVE equipment, the **Partner** must inform the Province of Ontario in writing first and get approval for the sale of the EVSE or until the **Recipient** is in compliance with the provisions of this agreement. The **Recipient** shall not have the right to re-enter any property or to remove or interfere with the Facility in any way until the requirements of this agreement have been met. Should the **Recipient** remain in default under this agreement until the end of the term provided by the **Partner** at its sole discretion and after consulting with the Province of Ontario shall determine the proper course of action to secure compliance by the **Recipient** and may charge any and all additional costs to secure payment to the **Recipient**.

## **ARTICLE VIII DEFAULT OF THE PARTNER**

**8.01 – Removal of Facility.** Where the **Partner** fails to comply with this agreement and the **Recipient** notifies the **Partner** in writing such failure shall be deemed a default if not rectified within thirty (30) business days by the **Partner** under this Agreement and following the **Partner's** failure to rectify said default in accordance with this section, the **Recipient** may, in addition to any remedies available to it under this Agreement or in law, and consultation/approval with the Province of Ontario seize the Facility and remove same from the Premises at the sole cost of the **Partner**.

## **ARTICLE IX MISCELLANEOUS**

**9.01 – Approval.** Unless otherwise expressly stated herein to the contrary, where any provision of this Agreement requires one Party to obtain the consent of the other Party such consent may not be unreasonably withheld.

**9.02 – Governing Law.** This Agreement is to be governed by and construed according to the laws of the Province of Ontario.

**9.03 – Partial Invalidity.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

**9.04 – Time of Essence.** Time shall be of the essence of this Agreement and every part hereof.

**9.05 – Assigns and Successors.** This Agreement shall be binding on the parties hereto and their respective successors and assigns. This Agreement shall remain in force and survive in the event of the sale of the Premises by the **Partner** to a new owner. The Facility shall remain on the premises during the initial Term of the agreement and any renewal thereof, and this agreement shall continue until its termination unless otherwise agreed to by the parties and the Province of Ontario.

**9.06 – Exclusivity.** The **Recipient** covenants that so long as the **Partner** or its successors are in actual possession of the lands described in Schedule “B” and the **Recipient** is carrying on its business on the Premises in accordance with the terms of this Agreement, the **Partner** or its successors will not, at any time during the initial Term or any renewal thereof, permit any other party or occupant of the **Partner’s** or its successors property to conduct, as a business the operation of an EVSE.

**IN WITNESS WHEREOF** the **Partner** and the **Recipient** have signed and sealed this Agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED  
In the presence of:

**The Corporation of the Town of Minto**

**Arntjen Solar North America Inc.**

Per: \_\_\_\_\_  
Name: George A Bridge  
Title: Mayor, Town of Minto

Per: \_\_\_\_\_  
Name: Rolf Maurer PMP, P.Eng.  
Title: .VP Americas  
Dated: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: Bill White  
Title: CAO Clerk, Town of Minto

## **Schedule "A"**

The Electric Vehicle Supply Equipment" or "EVSE", (the "Facilities") to be installed at the Premises shall consist of:

- **One (1) Level 3 EVSE direct current (DC) Fast Charger**
  - ABB Terra 53CJ fast charger with up to 60kVA, 480V, 60 Hz, 3P+PE with dual-connector CHAdeMO and CCS charging standard including remote data monitoring, and ongoing operation and maintenance support
  
- **One (1) Level 2 EVSE alternating current (AC)**
  - AddENERGIE SmartTWO-BDR or equivalent with up to 7.2kVA, 208/240V, 60Hz, 1P+PE with single connector to J-1772 charging standard including remote data monitoring, and ongoing operation and maintenance support

## **Schedule "B"**

**Premises on which Electric Vehicle Supply Equipment" or "EVSE", may be located**

- 1. Clifford Arena - Level 3 DC Fast Charger (ABB Terra 53CJ)**
  - Level 2 AC Charger (AddENERGIE SmartTWO or equivalent)



## Schedule "C"

### EVCO-Program Requirements for Project with Partners

#### 1. Recipient Representation of Partners.

The **Recipient** warrants that it is entitled to represent each of its **Partners**, and represents that each Partner has committed itself to undertake all steps necessary to support the Recipient in fulfilling its obligations as specified in the EVCO-Program Agreement.

#### 2. Partner Agreement

The **Recipient** agrees to bind each of the **Partners** to the applicable terms and conditions of the Agreement, through a Partner Agreement, and any adjustment to it to capture changes in the Agreement that affects the Partner Agreement.

#### 3. Tasks, Mutual Responsibilities and Obligations of Recipients and Partners

The **Recipient** warrants that each Partner Agreement will provide for a clear division, in line with the **Recipient's** application documents, of the allocation of tasks, mutual responsibilities and obligations among the **Recipient** and its **Partner**.

#### 4. Provisions of Partner Agreement

The **Recipient** agrees to make each **Partner** aware of its responsibilities and obligations, and ensure that each Partner Agreement is consistent with and incorporates the relevant provisions of the Agreement. More specifically but without limiting the generality of the foregoing, the **Recipient** agrees to include in any Partner Agreement provisions to require from each **Partner** that it:

(a) complies with the Requirements of Law which applies to the **Partner** and obtains any necessary approval including, without limitation, building permission and environmental impact assessment statement;

(b) provides the Province, or anyone appointed by the Province, through the **Recipient**, with any document or information requested for evaluation purpose;

(c) promptly reacts, through the **Recipient**, to any request made by the Province;

(d) prior to the **Recipient** making payment of Funds to a **Partner** for Project costs, the **Partner** warrants and provides all necessary proof that such Funds will be used towards Eligible Costs and for the purpose of implementing the Project;

(e) immediately informs the **Recipient** if costs are reduced or any of the disbursement conditions ceases to be fulfilled, or circumstances arise which entitle the Province to demand repayment of Funds and, if any, interest earned on Funds, from the **Recipient** or the **Partner**, or both or invoke its other remedies under the Agreement; and

(f) complies, without limitation and with any necessary modification, with any applicable obligations of the **Recipient** under the Agreement, including those concerning representations, warranties, covenants, Funds, Project, acquisition of goods and services, disposal of assets, conflict of interest, record keeping, reporting, accounting, inspection, auditing, review, communications, publicity, indemnity, insurance, acknowledgment of other legislation and directives, and repayment. More specifically and without limiting the

generality of the foregoing, the **Recipient** must ensure that the Partner Agreement includes:

- (i) report back to the **Recipient** on how the distributed Funds and interest earned are used;
- (ii) the ability of the **Recipient** or the Province, or both, to demand the return of those Funds and an amount equal to the interest earned if not spent in accordance with the Agreement; and
- (iii) Funds provided to the **Partner** be deposited by the **Partner** into a separate account at a Canadian Financial institution that is in the name of the **Partner**.

## **5. Copy of Partner Agreement**

The **Recipient** agrees to make accessible to the Province at all times and, upon the Province's request, provide the Province with a copy of any Partner Agreement.

## **6. Responsibilities of Recipient**

Despite having Partners for the Project and entering into Partner Agreements with Partners, the **Recipient** agrees that it assumes the sole responsibility towards the Province for the implementation, management and coordination of the entire Project and the fulfillment of all obligations arising from the Agreement. Accordingly, the **Recipient** agrees that it bears the financial and legal responsibility for the entire Project and for each of its **Partners**. The Recipient will be held liable, in the same way as for its own conduct, if obligations as laid out in the Agreement or in applicable Requirements of Laws are not fulfilled by any of its **Partners**.

## **7. Repayment of Funds**

If the Province demands repayment of Funds in accordance with the Agreement, the **Recipient** is liable to the Province for the total amount of those Funds, whether or not the **Recipient** has provided such Funds to a **Partner**.

## **8. Changes to Application Documents**

The participation and contribution of the **Recipient** and each **Partner** are clearly defined in the application documents. Any change to the above information, if such change impacts the Project, requires the prior written approval of the Province.

## **9. Public Disclosure**

The **Recipient** shall ensure that each **Partner** agrees to the Province publicly disclosing in communications concerning the Project, the **Partner's** name and address and the purpose and amount of Funds provided to it.

## **10. Liability**

Without limiting the requirements set out in paragraph C.4. (f) and the indemnity and insurance obligations under the Agreement, the **Recipient** agrees to ensure each **Partner** agrees that the Province shall not, under any circumstances or for any reason whatsoever, be held liable for damage or injury sustained by the staff or property of the **Partner** while the Project is being carried out. The Province will therefore not accept any claim for compensation or increases in payment in connection with such damage or injury.