

**INNERGEX POWER INCOME FUND**  
- and -  
**INNERGEX RENEWABLE ENERGY INC.**

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**ARRANGEMENT AGREEMENT**

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January 31, 2010

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## ARRANGEMENT AGREEMENT

**THIS AGREEMENT** is made as of January 31, 2010.

**BETWEEN:**

**INNERGEX POWER INCOME FUND**, a trust established under the laws of the Province of Québec, acting by its trustee represented by Innergex Power Trust, acting by two of its trustees;

(hereinafter, the “**Fund**”)

**AND:**

**INNERGEX RENEWABLE ENERGY INC.**, a corporation incorporated under the *Canada Business Corporations Act*;

(hereinafter, “**IRE**”)

**WHEREAS** the Parties desire to enter into this Agreement to implement the reorganization and combination of the businesses of the Fund and IRE;

**WHEREAS** the Parties intend to carry out the transactions contemplated herein by way of an arrangement under the provisions of the *Canada Business Corporations Act*;

**WHEREAS** the Parties have entered into this Agreement to provide for the matters referred to in the foregoing recitals and for other matters relating to such arrangement;

**NOW THEREFORE**, in consideration of the covenants and agreements herein contained, the parties hereby covenant and agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement (including the Schedules hereto), the following terms shall have the following meanings, and grammatical variations shall have the respective corresponding meanings:

“**Acquisition Proposal**” means, with respect to the Fund or IRE, as the case may be, a proposal or offer, oral or written, relating to any of the following (other than the transactions contemplated by this Agreement or the Arrangement): (i) any merger, amalgamation, arrangement, share exchange, take-over bid, tender offer, recapitalization, consolidation, other business combination, liquidation or winding up directly or indirectly involving such Party or any of its Subsidiaries whose assets, individually or in the aggregate, constitute 20% or more of the consolidated assets of such Party (based on book value), (ii) any sale or acquisition of assets representing 20% or more of the consolidated assets of such Party (based on book value), or any lease, long-term supply agreement (other than in the ordinary course of business), exchange, mortgage, pledge or other arrangement having a similar economic effect, in a single transaction

or a series of related transactions, or (iii) any sale or acquisition of beneficial ownership of 20% or more of the voting securities of such Party (or securities convertible or exchangeable into voting securities of such Party) or a majority of the voting securities of any of its Subsidiaries (or securities convertible or exchangeable into voting securities of such Subsidiaries) whose assets, individually or in the aggregate, constitute 20% or more of the consolidated assets of such Party (based on book value), or rights or interests therein or thereto in a single transaction or a series of related transactions;

“**Affiliate**” has the meaning ascribed thereto in the Securities Act;

“**Agreement**” means this arrangement agreement, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof;

“**Arrangement**” means an arrangement under section 192 of the CBCA on the terms and subject to the conditions set out in the Plan of Arrangement, subject to any amendments or variations thereto made in accordance with Article 5 of the Plan of Arrangement or made at the direction of the Court in the Final Order;

“**Articles of Arrangement**” means the articles of arrangement in respect of the Arrangement, required by the CBCA to be sent to the Director after the Final Order is made, which shall be in a form and content satisfactory to the Fund and IRE, acting reasonably;

“**Benefit Plans**” means any pension or retirement income, benefit, supplemental benefit, health, welfare, medical, dental, disability plans or any other employee compensation or benefit plans, policies, programs or other arrangements and all related agreements and policies with third parties such as trustees or insurance companies, which are maintained by or binding upon a Party or any of its Subsidiaries with respect to any of their current or former employees, directors, officers or other individuals providing services to such Party or any of its Subsidiaries;

“**Business Day**” means any day other than a Saturday, Sunday or a statutory holiday in the Province of Québec;

“**CBCA**” means the *Canada Business Corporations Act* and the regulations made thereunder;

“**Certificate of Arrangement**” means the certificate of arrangement to be issued by the Director pursuant to subsection 192(7) of the CBCA in respect of the Articles of Arrangement;

“**Commitment Letters**” means the binding commitment letters received by the Fund from each of The Bank of Montreal and The Toronto Dominion Bank and made available to IRE;

“**Competition Act**” means the *Competition Act* (Canada), R.S.C., c. C-34, as amended;

“**Competition Act Approval**” has the meaning ascribed in Schedule A annexed hereto;

“**Competition Filing**” has the meaning ascribed in Paragraph 4.4(a);

“**Contract**” means any contract, agreement, license, lease, commitment, understanding or other right or obligation (written or oral) to which a Party or any of its Subsidiaries is a party or by which a Party or any of its Subsidiaries is bound or affected or to which any of their respective properties or assets is subject;

“**Court**” means the Superior Court of Québec;

“**Director**” means the Director appointed pursuant to section 260 of the CBCA;

“**Dissent Rights**” means the rights to dissent in respect of the Arrangement to be granted to the IRE Shareholders pursuant to the Plan of Arrangement;

“**Effective Date**” means the date shown on the Certificate of Arrangement, which date shall be determined in accordance with Section 2.7;

“**Effective Time**” has the meaning ascribed thereto in the Plan of Arrangement;

“**Encumbrances**” means pledges, liens, charges, security interests, leases, title retention agreements, mortgages, hypothecs, title defects, adverse claims or encumbrances of any kind or character whatsoever, and any agreement, option, right of first refusal, right or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing;

“**Environmental Laws**” means all Laws relating to pollution or protection of human health and safety, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, Laws relating to the discharge, release or spill or threatened discharge, release or spill of Hazardous Substances or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances;

“**Final Order**” means the final order of the Court, in a form acceptable to the Fund and IRE, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the consent of both the Fund and IRE, each acting reasonably) at any time prior to the Effective Date or, if appealed, then unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Fund and IRE, each acting reasonably) on appeal;

“**Fund Annual Financial Statements**” means the audited consolidated financial statements of the Fund as at and for the years ended December 31, 2008 and 2007, together with the notes thereto and the auditors’ report thereon;

“**Fund Benefit Plans**” means all of the Benefit Plans maintained or contributed to by the Fund or any of the Fund Subsidiaries;

“**Fund Disclosure Letter**” means the disclosure letter provided by the Fund to IRE concurrently with the execution and delivery of this Agreement;

“**Fund Facilities**” means all of the facilities in which the Fund holds a direct or indirect interest, each of which is listed in the Fund Disclosure Letter;

**“Fund Financial Statements”** means, collectively, the Fund Annual Financial Statements and the Fund Interim Financial Statements;

**“Fund Indenture”** means the amended and restated trust indenture of the Fund made effective as of June 25, 2003, as amended by the first amendment thereto dated March 14, 2007;

**“Fund Interim Financial Statements”** means the unaudited consolidated financial statements of the Fund for the three and nine month periods ended respectively on September 30, 2009 and 2008, together with the notes thereto;

**“Fund Material Contracts”** means all Contracts to which the Fund or any of the Fund Subsidiaries is a party or by which any of them is bound (excluding Contracts entered into among the Fund and the Fund Subsidiaries or between any of them): (i) which involve aggregate future payments by or to any of them in excess of \$500,000 in any 12-month period or which extend for a period of more than two years and are not terminable without penalty of less than \$100,000; (ii) which, if terminated without the consent of the Fund or any of the Fund Subsidiaries, would have, or reasonably be expected to have, a Material Adverse Effect; (iii) entered into since January 1, 2008, for the sale of securities or assets of the Fund or any of the Fund Subsidiaries, or for the acquisition of securities, assets or businesses of others (by merger, amalgamation, reorganization, arrangement or otherwise) or for the grant to any person of any preferential rights to purchase any of its assets; (iv) which are indentures, credit agreements, security agreements, mortgages, hypothecs, guarantees, promissory notes and other contracts relating to the borrowing of money; and (v) which are “material contracts” within the meaning of applicable Securities Laws;

**“Fund Meeting”** means the special meeting of Fund Unitholders, including any adjournment or postponement thereof, to be held to consider and, if deemed advisable, to approve the Arrangement;

**“Fund Public Documents”** means all forms, reports, schedules, statements and other documents filed with all applicable Securities Authorities by the Fund since December 31, 2008 and accessible to the public on the SEDAR website;

**“Fund Subsidiaries”** means IPT and all of the other corporate entities, trusts or partnerships through which the Fund holds its indirect interests in the Fund Facilities, each of which is listed in the Fund Disclosure Letter;

**“Fund Support and Voting Agreements”** means, collectively, (i) the support and voting agreements entered into between the Fund and each of Régime de Rentes du Mouvement Desjardins, TD Capital Group Limited, Kruger Inc. Master Trust, SIPAR – Société d’investissement en participations Inc., Gilles Lefrançois and Michel Letellier on the date hereof, and (ii) the letter agreements entered into between the Fund and each senior officer of IRE (other than Messrs. Lefrançois and Letellier) on the date hereof;

**“Fund Termination Fee”** has the meaning ascribed thereto in Paragraph 6.3(a);

**“Fund Trustee”** means Computershare Trust Company of Canada, the sole trustee of the Fund pursuant to the Fund Indenture;

“**Fund Unitholders**” means holders of Fund Units;

“**Fund Units**” means the units in the capital of the Fund;

“**GAAP**” means generally accepted accounting principles in effect from time to time in Canada, including those principles set forth in the Handbook published by the Canadian Institute of Chartered Accountants or any successor institute;

“**Governmental Entity**” means (i) any multinational, federal, provincial, state, regional, municipal, local or other government, governmental or public department, ministry, central bank, court, tribunal, arbitral body, commission, commissioner, board, bureau or agency, domestic or foreign, (ii) any subdivision, agent or authority of any of the foregoing or (iii) any quasi-governmental or private body, including any tribunal, commission, regulatory agency or self-regulatory organization, exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;

“**Hazardous Substances**” means chemicals, pollutants, contaminants, wastes, residual materials, toxic substances, deleterious substances, hazardous substances, petroleum or petroleum products;

“**Intellectual Property**” means any intellectual property rights, whether registered or not, including (i) patents and patents which may be issued from current applications applied for or registered, inventions, (ii) trade-marks, service marks, trade-names, business names and other indicia of origin, domain names, and any applications and registrations therefor, (iii) trade secrets, (iv) copyrights, including copyright applications and registrations, and (v) industrial designs, including registrations and applications;

“**Interim Order**” means the interim order of the Court, in a form acceptable to the Fund and IRE, each acting reasonably, in respect of the Arrangement, as the same may be amended by the Court (with the consent of both the Fund and IRE, each acting reasonably);

“**IPT**” means Innergex Power Trust;

“**IPT Board**” means the board of trustees of IPT pursuant to the IPT Indenture;

“**IPT Committee**” means the special committee of independent trustees established by the IPT Board in connection with the Arrangement comprised of Jean La Couture and Daniel L. Lafrance (Co-Chairs), John A. Hanna and Lise Lachapelle;

“**IPT Indenture**” means the trust indenture of IPT made effective as of June 25, 2003;

“**IRE Annual Financial Statements**” means the audited consolidated financial statements of IRE as at and for the years ended December 31, 2008 and 2007, together with the notes thereto and the auditors’ report thereon;

“**IRE Benefit Plans**” means all of the Benefit Plans maintained or contributed to by IRE or any of the IRE Subsidiaries;

“**IRE Board**” means the board of directors of IRE;



“**IRE Committee**” means the special committee of independent directors established by the IRE Board in connection with the Arrangement comprised of Cyrille Vittecoq (Chair), Pierre Brodeur and Susan M. Smith;

“**IRE Disclosure Letter**” means the disclosure letter provided by IRE to the Fund concurrently with the execution and delivery of this Agreement;

“**IRE Facilities**” means all of the facilities and projects with PPAs in which IRE holds a direct or indirect interest, each of which is listed in the IRE Disclosure Letter;

“**IRE Financial Statements**” means, collectively, the IRE Annual Financial Statements and the IRE Interim Financial Statements;

“**IRE Interim Financial Statements**” means the unaudited consolidated financial statements of IRE for the three and nine month periods ended respectively on September 30, 2009 and 2008, together with the notes thereto;

“**IRE Material Contracts**” means all Contracts to which IRE or any of the IRE Subsidiaries is a party or by which any of them is bound (excluding Contracts entered into among IRE and the IRE Subsidiaries or between any of them): (i) which involve aggregate future payments by or to any of them in excess of \$500,000 in any 12-month period or which extend for a period of more than two years and are not terminable without penalty of less than \$100,000; (ii) which, if terminated without the consent of IRE or any of the IRE Subsidiaries, would have, or reasonably be expected to have, a Material Adverse Effect; (iii) entered into since January 1, 2008, for the sale of securities or assets of IRE or any of the IRE Subsidiaries, or for the acquisition of securities, assets or businesses of others (by merger, amalgamation, reorganization, arrangement or otherwise) or for the grant to any person of any preferential rights to purchase any of its assets; (iv) which are indentures, credit agreements, security agreements, mortgages, hypothecs, guarantees, promissory notes and other contracts relating to the borrowing of money; and (v) which are “material contracts” within the meaning of applicable Securities Laws;

“**IRE Meeting**” means the special meeting of IRE Shareholders, including any adjournment or postponement thereof, to be held to consider and, if deemed advisable, to approve the Arrangement and the reduction of the stated capital of the IRE Shares contemplated by Section 2.10, and to elect new members of the IRE Board in compliance with Section 2.8 (with effect upon completion of the Arrangement);

“**IRE Options**” means options to purchase IRE Shares granted under the IRE Stock Option Plan;

“**IRE Public Documents**” means all forms, reports, schedules, statements and other documents filed with all applicable Securities Authorities by IRE since December 31, 2008 and accessible to the public on the SEDAR website;

“**IRE Shareholders**” means holders of IRE Shares;

“**IRE Shares**” means the common shares in the share capital of IRE;

**“IRE Stock Option Plan”** means the stock option plan adopted by resolution of the IRE Board on December 3, 2007;

**“IRE Subsidiaries”** means all of the corporate entities, trusts or partnerships through which IRE holds its indirect interests in the IRE Facilities, each of which is listed in the IRE Disclosure Letter;

**“IRE Support and Voting Agreements”** means, collectively, the support and voting agreements entered into between IRE and each of Goodman & Company, Investment Counsel Ltd., MFC Global Investment Management Inc., Gilles Lefrançois and Michel Letellier on the date hereof, and (ii) the letter agreements entered into between IRE and Richard Laflamme (being the only member of the IPT Board other than Messrs. Lefrançois and Letellier and the members of the IPT Committee) and each senior officer of IRE (other than Messrs. Lefrançois and Letellier) on the date hereof;

**“IRE Termination Fee”** has the meaning ascribed thereto in Paragraph 6.3(b);

**“IRE Warrants”** means warrants to purchase IRE Shares;

**“Joint Circular”** means the notices of meeting and joint management information circular, including all schedules, appendices and exhibits thereto, to be prepared and mailed to the Fund Unitholders and the IRE Shareholders in connection with the Fund Meeting and the IRE Meeting, as may be amended, updated, supplemented or otherwise modified;

**“Law”** or **“Laws”** means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, statutory rules, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and terms and conditions of any grant of approval, permission, authority or licence of any Governmental Entity, statutory body or self-regulatory authority, and the term **“applicable”** with respect to such Laws and in the context that refers to one or more Persons, means that such Laws apply to such Person or Persons or its or their business, undertaking, property or securities and emanate from a Governmental Entity having jurisdiction over the Person or Persons or its or their business, undertaking or securities;

**“Material Adverse Effect”** means, with respect to the Fund or IRE, a change, effect, event, occurrence, state of facts or development that is, or would reasonably be expected to have, an impact that is both material and adverse to the business, properties, assets, financial condition or results of operations of such Party and its Subsidiaries taken as a whole, other than any change, effect, event, occurrence, state of facts or development:

- (i) relating to general political, economic or financial conditions or the securities market in North America;
- (ii) relating to any natural disaster or epidemic or any acts of terrorism, sabotage, military action or war (whether or not declared) or any escalation or worsening thereof;

- (iii) relating to any changes in Laws or regulations or interpretations thereof by any Governmental Entity or in GAAP;
- (iv) affecting generally the industry in which such Party and its Subsidiaries operate;
- (v) relating to a change in the market trading price or trading volume of any publicly traded securities of such Party (it being understood that causes underlying and other facts relating to such change may be taken into account in determining whether a Material Adverse Effect has occurred);
- (vi) relating to any failure by such Party to meet any forecasts, projections or earnings guidance or expectations publicly released or provided to the other Party by such Party for any period (it being understood that causes underlying and other facts relating to such failure may be taken into account in determining whether a Material Adverse Effect has occurred);
- (vii) resulting from the announcement of this Agreement or the transactions contemplated hereby or from compliance with the terms of this Agreement; or
- (viii) which is temporary in nature;

provided, however, that the change, effect, event, occurrence or state of facts or development referred to in clauses (i) to (iv) above shall not be excluded from the definition of Material Adverse Effect if it materially disproportionately adversely affects such Party and its Subsidiaries, taken as a whole, compared to other companies of similar size operating in the industry in which such Party and its Subsidiaries operate;

“**Material Change**” has the meaning ascribed thereto in the Securities Act;

“**Material Fact**” has the meaning ascribed thereto in the Securities Act;

“**MI 61-101**” means *Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions*;

“**Non-Disclosure Agreement**” means the reciprocal non-disclosure and standstill agreement dated September 1, 2009 between the Fund and IRE;

“**Outside Date**” means April 30, 2010 or such later date as may be mutually agreed to in writing by the Parties, subject to the right of any Party to postpone the Outside Date for up to an additional 30 days (in 10-day increments) if the consummation of the transactions contemplated hereby is delayed by (i) any appealable judgment rendered by a court of competent jurisdiction enforceable against the Fund or IRE, or (ii) the Parties not having obtained any Regulatory Approval that was not denied by a non-appealable decision of a Governmental Entity, by giving written notice to the other Party to such effect no later than 5:00 p.m. (Eastern time) on the date that is not less than five days prior to the original Outside Date (and any subsequent Outside Date); provided that such judgment is being appealed or such Regulatory Approval is actively sought, as applicable;

“**Parties**” means, collectively, the Fund and IRE, and “**Party**” means either of them;

“**Permitted Encumbrances**” means those Encumbrances (i) which are arising in the ordinary course of business and are not material in the aggregate, (ii) which are disclosed in the Fund Public Documents or the IRE Public Documents, as applicable, or (iii) which are disclosed in the Fund Disclosure Letter or the IRE Disclosure Letter, as applicable;

“**Person**” includes an individual, limited or general partnership, limited liability company, limited liability partnership, trust, joint venture, association, body corporate, unincorporated organization, trustee, executor, administrator, legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status;

“**Plan of Arrangement**” means the plan of arrangement, substantially in the form and content of Schedule C attached hereto, and any amendments or variations thereto made in accordance with Section 6.1 hereof or Article 5 of the Plan of Arrangement or made at the direction of the Court in the Final Order (with the consent of both the Fund and IRE, each acting reasonably);

“**PPAs**” means power purchase agreements, energy supply agreements, electricity supply agreements or renewable energy supply agreements for power projects;

“**Regulatory Approvals**” means those sanctions, rulings, consents, orders, exemptions, permits and other approvals (including the lapse, without objection, of a prescribed time under a statute or regulation that states that a transaction may be implemented if a prescribed time lapses following the giving of notice without an objection being made) of Governmental Entities set forth in Schedule A attached hereto;

“**Securities Act**” means the *Securities Act* (Québec) and the rules, regulations and published policies made thereunder;

“**Securities Authorities**” means the securities commissions or similar regulatory authorities in each of the provinces of Canada;

“**Securities Laws**” means the Securities Act and all other applicable Canadian securities laws, rules and regulations and published policies thereunder;

“**Subsidiaries**” means, as the context requires, the Fund Subsidiaries or the IRE Subsidiaries;

“**Superior Proposal**” means, with respect to the Fund or IRE, any *bona fide* written Acquisition Proposal made by a third party that was not solicited by or on behalf of such Party after the date hereof, and that the IPT Board or the IRE Board, as applicable, determines in its good faith (after receipt of advice from its financial advisors and outside legal counsel) (i) is reasonably capable of being completed without undue delay, taking into account all legal, financial, regulatory and other aspects of such Acquisition Proposal and the party making such Acquisition Proposal, (ii) in respect of which any required financing to complete such Acquisition Proposal is committed, (iii) which is available to all Fund Unitholders or IRE Shareholders, as applicable; and (iv) which would, taking into account all of the terms and conditions of such Acquisition Proposal, if consummated in accordance with its terms (but not assuming away any risk of non-completion), result in a transaction more favourable to the Fund Unitholders or the IRE

Shareholders, as applicable, from a financial point of view than the Arrangement (including any adjustment to the terms and conditions of the Arrangement proposed by the other Party pursuant to Paragraph 4.5(f); provided that, for purposes of this definition, “**Acquisition Proposal**” shall have the meaning set forth above, except that the references in the definition thereof to “20% or more of the securities” shall be deemed to be references to “a majority of the securities” and references to “20% or more of the consolidated assets” shall be deemed to be references to “a majority of the consolidated assets”;

“**Tax Act**” means the *Income Tax Act* (Canada) and the regulations made thereunder;

“**Tax**” or “**Taxes**” means all federal, state, provincial, territorial, county, municipal, local or foreign taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Governmental Entity including, (i) any gross income, net income, gross receipts, business, royalty, capital, capital gains, goods and services, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, profits, windfall profits, environmental, payroll, employment, employer health, pension plan, anti-dumping, countervail, excise, severance, stamp, occupation, or premium tax, (ii) all withholdings on amounts paid to or by the relevant person, (iii) all employment insurance premiums, Canada, Québec and any other pension plan contributions or premiums, (iv) any fine, penalty, interest, or addition to tax, (v) any tax imposed, assessed, or collected or payable pursuant to any tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency, or fee, and (vi) any liability for any of the foregoing as a transferee, successor, guarantor, or by contract or by operation of Law;

“**Tax Returns**” means all reports, forms, elections, designations, schedules, statements, estimates, declarations of estimated Tax, information statements and returns required to be filed with a Governmental Entity with respect to Taxes;

“**TSX**” means the Toronto Stock Exchange; and

“**Valuation**” means the formal valuation of the Fund Units and any non-cash consideration being offered to or received by the Fund Unitholders (being the IRE Shares), dated as of the date hereof, prepared by National Bank Financial Inc. in accordance with the requirements of MI 61-101 and addressed to the IPT Committee and providing for a fair market value between \$9.85 and \$10.85 per Fund Unit and a fair market value between \$6.40 and \$7.40 per IRE Share.

## **1.2 Interpretation Not Affected by Headings**

The division of this Agreement into Articles, Sections, Paragraphs and Schedules and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “**hereof**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article, Section, Paragraph, Schedule or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections, Paragraphs and Schedules are to Articles, Sections and Paragraphs of, and Schedules to, this Agreement.

### **1.3 Number and Gender**

In this Agreement, words importing the singular number include the plural and vice versa, and words importing any gender include all genders.

### **1.4 Date for Any Action**

If the date on which any action is required to be taken hereunder by a Party is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

### **1.5 Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

### **1.6 Currency**

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada and “\$” refers to Canadian dollars.

### **1.7 Accounting Matters**

Unless otherwise stated, all accounting terms used in this Agreement shall have the meanings attributable thereto under GAAP and all determinations of an accounting nature required to be made shall be made in a manner consistent with GAAP and past practice.

### **1.8 Rules of Construction**

The Parties hereto acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement, and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of this Agreement.

### **1.9 Fund Power and Capacity**

In this Agreement references to the power and capacity of the Fund are deemed to be references to that of the Fund Trustee, or its duly authorized representatives, delegates or agents, pursuant to the power and capacity of trustees generally under the Laws of the Province of Québec, and pursuant to the powers of the trustee specified in the Fund Indenture.

### **1.10 Consents and Approvals**

Any requirement in this Agreement for a Party to consent to or approve of an action taken or proposed to be taken by the other Party, or for a Party to be satisfied as to certain matters (including the conditions to closing contained herein), and any similar phrases, shall require the

consent, approval or satisfaction of the IPT Committee, in the case of the Fund, and of the IRE Committee, in the case of IRE.

### **1.11 Knowledge**

In this Agreement, references to “**the knowledge of the Fund**” means the actual knowledge, in their capacity as officers of the manager of the Fund, of each of Gilles Lefrançois, Michel Letellier, Jean Perron, Michèle Beauchamp and Jean Trudel, after due enquiry, and references to “**the knowledge of IRE**” means the actual knowledge, in their capacity as officers of IRE, of each of Gilles Lefrançois, Michel Letellier, Jean Perron, Michèle Beauchamp and Jean Trudel, after due inquiry.

### **1.12 Schedules**

The following Schedules are attached to this Agreement and are incorporated by reference into this Agreement and form a part hereof:

- Schedule A – Regulatory Approvals
- Schedule B – Third-Party Consents
- Schedule C – Plan of Arrangement
- Schedule D – Changes to the IRE Board

## **ARTICLE 2 THE ARRANGEMENT**

### **2.1 Plan of Arrangement**

As soon as practicable following the date hereof, the Fund and IRE shall proceed to effect the reorganization and combination of their respective businesses by way of a plan of arrangement under section 192 of the CBCA and in respect of which Arrangement, on the Effective Date, on the terms and subject to the conditions contained in the Plan of Arrangement, Fund Unitholders shall receive 1.46 IRE Shares for each Fund Unit held.

### **2.2 Actions to be Taken by the Fund**

Subject to the terms and conditions of this Agreement, in order to facilitate the Arrangement, the Fund shall take all action necessary in accordance with all applicable Laws, including Securities Laws, to:

- (a) make and diligently pursue a joint application with IRE to the Court for the Interim Order in respect of the Arrangement;
- (b) cooperate with IRE in making an application to the TSX for the additional listing of the IRE Shares issuable pursuant to the Arrangement;
- (c) in accordance with the terms of and the procedures contained in the Interim Order, duly call, give notice of, convene and hold the Fund Meeting as promptly

as practicable, and in any event not later than April 23, 2010, to consider and, if deemed advisable, to approve the Arrangement;

- (d) solicit proxies of Fund Unitholders in favour of the Arrangement (including by retaining a proxy solicitation agent that is acceptable to IRE, acting reasonably);
- (e) advise IRE as it may reasonably request, and on a daily basis on each of the last three Business Days prior to the Fund Meeting, as to the aggregate tally of the proxies received by the Fund;
- (f) subject to obtaining the approvals as contemplated in the Interim Order and as may be directed by the Court in the Interim Order, take all steps necessary or desirable jointly with IRE to submit the Arrangement to the Court and apply for the Final Order;
- (g) deliver jointly with IRE the Articles of Arrangement to the Director on the Effective Date; and
- (h) execute such documents and instruments and do all things necessary or desirable to give effect to the Arrangement.

### **2.3 Actions to be Taken by IRE**

Subject to the terms and conditions of this Agreement, in order to facilitate the Arrangement, IRE shall take all action necessary in accordance with all applicable Laws, including Securities Laws, to:

- (a) make and diligently pursue a joint application with the Fund to the Court for the Interim Order in respect of the Arrangement;
- (b) make and diligently pursue an application to the TSX for the additional listing of the IRE Shares issuable pursuant to the Arrangement;
- (c) in accordance with the terms of and the procedures contained in the Interim Order, duly call, give notice of, convene and hold the IRE Meeting as promptly as practicable, and in any event not later than April 23, 2010, to consider and, if deemed advisable, to approve the Arrangement and the reduction of the stated capital of the IRE Shares contemplated by Section 2.10, and to elect new members of the IRE Board in compliance with Section 2.8 (with effect upon completion of the Arrangement);
- (d) solicit proxies of IRE Shareholders in favour of the Arrangement and the election of the new members of the IRE Board (including by retaining a proxy solicitation agent that is acceptable to the Fund, acting reasonably);
- (e) advise the Fund as it may reasonably request, and on a daily basis on each of the last three Business Days prior to the IRE Meeting, as to the aggregate tally of the proxies received by IRE;



- (f) advise the Fund of any written notice of Dissent Rights exercised or purported to have been exercised by any IRE Shareholder received by IRE in relation to the IRE Meeting and the Arrangement and any withdrawal of Dissent Rights received by IRE and, subject to applicable Laws, any written communications sent by or on behalf of IRE to any IRE Shareholder exercising or purporting to exercise Dissent Rights in relation to the Arrangement;
- (g) vote the Fund Units held by IRE in favour of the Arrangement at the Fund Meeting;
- (h) subject to obtaining the approvals as contemplated in the Interim Order and as may be directed by the Court in the Interim Order, take all steps necessary or desirable jointly with the Fund to submit the Arrangement to the Court and apply for the Final Order;
- (i) deliver jointly with the Fund the Articles of Arrangement to the Director on the Effective Date; and
- (j) execute such documents and instruments and do all things necessary or desirable to give effect to the Arrangement.

## **2.4 Interim Order**

The joint application referred to in Paragraphs 2.2(a) and 2.3(a) shall request that the Interim Order provide, among other things:

- (a) for the class of persons to whom notice is to be provided in respect of the Arrangement and the Fund Meeting and the IRE Meeting (such class of persons being the Fund Unitholders in respect of the Fund and the IRE Shareholders in respect of IRE) and for the manner in which such notice is to be provided;
- (b) that the requisite approval for the resolution approving the Arrangement to be place before the Fund Meeting shall be (i) at least 66 2/3% of the votes cast on the resolution by Fund Unitholders present in person or by proxy, and (ii) at least a majority of the votes cast on the resolution by Fund Unitholders present in person or by proxy, after excluding the votes cast by those Persons whose votes are required to be excluded pursuant to MI 61-101;
- (c) that the requisite approval for the resolution approving the Arrangement to be place before the IRE Meeting shall be (i) at least 66 2/3% of the votes cast on the resolution by IRE Shareholders present in person or by proxy, and (ii) any additional vote required by the TSX;
- (d) that, in all other respects, the terms, restrictions and conditions of the Fund Indenture, including quorum requirements and all other matters, shall apply in respect of the Fund Meeting;

- (e) that, in all other respects, the terms, restrictions and conditions of the articles and by-laws of IRE, including quorum requirements and all other matters, shall apply in respect of the IRE Meeting;
- (f) for the grant of Dissent Rights as set forth in the Plan of Arrangement;
- (g) for the notice requirements with respect to the presentation of the joint application to the Court for the Final Order; and
- (h) that the Fund Meeting and/or the IRE Meeting may be adjourned or postponed from time to time in compliance with Section 2.6 by the Fund or IRE, as applicable, without the need for additional approval of the Court.

## **2.5 Circular**

Each Party shall use its reasonable commercial efforts to obtain and furnish to the other Party the information required on its behalf to be included in the Joint Circular and shall use its reasonable commercial efforts to prepare with the other Party and mail to the Fund Unitholders and the IRE Shareholders and file with the applicable Securities Authorities the Joint Circular. As of the date the Joint Circular is first mailed to the Fund Unitholders and the IRE Shareholders and the date of the Fund Meeting and the IRE Meeting, the information provided by each Party for use in the preparation of the Joint Circular shall be complete and correct in all material respects, shall not contain any untrue statement of a Material Fact or omit to state a Material Fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they are made, not misleading, shall set out any material information regarding the Fund of which IRE has knowledge and shall comply in all material respects with all applicable Laws. Each Party agrees to promptly correct any such information provided by it for use in the Joint Circular which shall have become false or misleading at any time prior to the Fund Meeting or the IRE Meeting. Without limiting the generality of the foregoing, each Party shall ensure that the Joint Circular provides the Fund Unitholders and the IRE Shareholders with information in sufficient detail to permit them to form a reasoned judgment concerning the matters to be placed before them at the Fund Meeting and the IRE Meeting, respectively. The Joint Circular will include the favourable recommendations of the IPT Board and the IRE Board (unless it has been withdrawn, modified or amended in accordance with this Agreement) and will include a summary and a copy of the Valuation in accordance with MI 61-101 as well as summaries and copies of the fairness opinions referred to in Paragraphs 3.1(c) and 3.2(c).

## **2.6 Conduct of Meetings**

Subject to the terms of this Agreement and the Interim Order, the Fund agrees to convene and conduct the Fund Meeting, and IRE agrees to convene and conduct the IRE Meeting, in each case, in accordance with the Interim Order, their respective constating documents and applicable Laws, and each agrees not to propose to adjourn or postpone its meeting without the prior consent of the other Party except (i) as required for quorum purposes, (ii) as required by applicable Law or by a Governmental Entity having jurisdiction, (iii) to supplement the information contained in the Joint Circular as contemplated by Section 2.5, and (iv) as expressly contemplated by Paragraph 4.5(g). Notwithstanding the receipt by a Party of a Superior Proposal,

unless otherwise agreed to in writing by the other Party or unless this Agreement is terminated in accordance with its terms, and except as required by applicable Law or by a Governmental Entity having jurisdiction, the Party receiving such Superior Proposal shall continue to take all steps reasonably necessary to hold the Fund Meeting or the IRE Meeting, as applicable, and to cause the Arrangement to be voted on at such meeting and shall not propose to adjourn or postpone such meeting other than as expressly contemplated by this Agreement.

## **2.7 Effective Date**

The Arrangement shall become effective at the Effective Time on the Effective Date, which shall be no later than the third Business Day after the satisfaction or waiver (subject to applicable Laws) of the conditions set forth in Article 5 (excluding conditions that, by their terms, cannot be satisfied until the Effective Date, but subject to the satisfaction or, where permitted, waiver of those conditions as of the Effective Date), unless another date is agreed to in writing by the Parties. The Parties shall use their reasonable commercial efforts to cause the Effective Date to occur on or about March 26, 2010 or as soon thereafter as reasonably practicable and in any event by the Outside Date.

## **2.8 Changes to IRE Board**

The Parties agree that the IRE Board upon completion of the Arrangement shall be as set out in Schedule D, and IRE shall use reasonable commercial efforts to obtain the resignation of the relevant directors of IRE effective on the Effective Date and use reasonable commercial efforts to cause the election of the persons referred to in Schedule D that are not otherwise members of the IRE Board.

## **2.9 IRE Dividend Policy**

Each of the Fund and IRE acknowledges and agrees that it is the current intention of the Parties that, following the Effective Time, IRE will, subject to Applicable Laws, adopt a dividend policy of \$0.58 per IRE Share per annum (equivalent to \$0.85 per Fund Unit).

## **2.10 Reduction of Stated Capital of IRE Shares**

Subject to obtaining the requisite approval at the IRE Meeting, IRE shall proceed with (i) a reduction of the stated capital of the IRE Shares (without any payment to the IRE Shareholders) by an amount sufficient to satisfy the test set forth in subsection 192(2) of the CBCA, effective immediately after the IRE Meeting, and (ii) a subsequent reduction of the stated capital of the IRE Shares (without any payment to the IRE Shareholders), pursuant to the Arrangement or otherwise, by an amount sufficient to satisfy the test set forth in section 42 of the CBCA in connection with the declaration and payment of dividends by IRE in accordance with the dividend policy described in Section 2.9, effective within 30 days of the Effective Date. The respective amounts of such reductions shall be determined by the Parties, acting reasonably, as promptly as practicable, and in any event not later than the date of printing of the Joint Circular.

## **2.11 Post-Arrangement Reorganization**

The Parties agree that (i) as promptly as practicable (and in any event not later than December 31, 2010), IPT shall distribute all of its assets and transfer all of its liabilities to the Fund and IPT will cease to exist in accordance with the IPT Indenture (as may be amended before then), and the Fund shall distribute all of its assets and transfer all of its liabilities to IRE and the Fund will cease to exist in accordance with the Fund Indenture (as may be amended before then), and (ii) no later than December 31, 2010, Innergex Inc. and Innergex II Inc. shall amalgamate in accordance with the provisions of Part 1A of the *Companies Act* (Québec), unless, in each case, the IRE Board resolves otherwise after the Effective Date.

## **2.12 Change of Control Provisions**

IRE acknowledges and represents that the Arrangement will not result in any form of accelerated vesting for the purposes of the IRE Stock Option Plan or in a “change of control” or any other form of accelerated payment for the purposes of and any employment or change of control agreements or incentive, bonus or similar plan applicable to any employee, consultant or director of IRE or its Subsidiaries, and has received verbal acknowledgments to that effect from each of Gilles Lefrançois, Michel Letellier, Jean Perron, Michèle Beauchamp and Jean Trudel with respect to their respective agreements and plans.

## **2.13 Public Communications**

The Fund and IRE agree to co-operate and participate in presentations to investors regarding the Arrangement prior to the making of such presentations and to promptly advise, consult and co-operate with each other in issuing any press releases or otherwise making public statements with respect to this Agreement or the Arrangement. Each Party shall use all reasonable commercial efforts to enable the other Party to review and comment on all such press releases prior to the release thereof; provided, however, that the foregoing shall be subject to each Party’s overriding obligation to make disclosure in accordance with applicable Laws, and if such disclosure is required and the other Party has not reviewed or commented on the disclosure, the Party making such disclosure shall use reasonable commercial efforts to give prior oral or written notice to the other Party, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure. The Parties agree to issue jointly a press release with respect to this Agreement as soon as practicable after its due execution.

# **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

## **3.1 Representations and Warranties of the Fund**

The Fund hereby represents and warrants to and in favour of IRE as follows and acknowledges that IRE is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) Organization, Standing and Power. Each of the Fund and the Fund Subsidiaries has been incorporated or constituted and is validly existing under the Laws of its jurisdiction of incorporation or constitution, and has all requisite power, capacity

and authority to own its properties and assets and to carry on its business as presently owned and conducted and as proposed to be conducted as contemplated in the Fund Public Documents.

- (b) Authority; No Conflict. The Fund has the requisite power, capacity and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by the Fund and constitutes a valid and binding obligation of the Fund, enforceable against the Fund in accordance with its terms, (subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of a court). Except as described in the Fund Disclosure Letter, the execution and delivery by the Fund of this Agreement and the completion of the transactions contemplated hereby will not result in a breach of or default under, and do not and will not create a state of facts which, after notice or lapse of time or both, will result in a breach of or default under, and do not and will not conflict with, or give rise to any right to accelerate the maturity or require the prepayment of any indebtedness under, or result in the creation or imposition of any Encumbrance upon any property or assets of the Fund or any of the Fund Subsidiaries under:
- (i) any of the provisions of the constating documents or by-laws of the Fund or any of the Fund Subsidiaries, or any resolutions of any of the directors, trustees, shareholders, unitholders or partners, as applicable, of the Fund or any of the Fund Subsidiaries, or any committee of any of them or any indenture to which the Fund or any of the Fund Subsidiaries is a party or by which it or any of them are contractually bound;
  - (ii) any of the terms or provisions of any Contract to which the Fund or any of the Fund Subsidiaries is a party or by which any of them may be bound, or to which any of them or any of their respective assets or businesses is subject, which individually or in the aggregate would (A) have or result in a Material Adverse Effect, (B) materially impair the Fund's ability to perform the obligations contemplated in this Agreement, or (C) materially affect the consummation of the transactions contemplated in this Agreement; or
  - (iii) to the knowledge of the Fund, any Law applicable to the Fund or any of the Fund Subsidiaries (including, without limitation, the Securities Laws) or any judgment, order or decree of any governmental body, agency, commission, tribunal or court having jurisdiction over the Fund or any of the Fund Subsidiaries.
- (c) Board Approval. The Fund Trustee, by written resolution, has delegated to the IPT Board the approval of this Agreement and any matter relating to the Arrangement. The IPT Board has received an opinion from National Bank Financial Inc. as to the fairness, from a financial point of view, of the exchange

ratio pursuant the Arrangement for the Fund Unitholders (other than IRE). The IPT Board, after receipt of a unanimous favourable recommendation from the IPT Committee and consultation with its financial and legal advisors, has unanimously (with the three nominees of IRE on the IPT Board abstaining) determined that the Arrangement is fair to the Fund Unitholders (other than IRE) and is in the best interests of the Fund and such Fund Unitholders and has unanimously resolved to recommend that the Fund Unitholders (other than IRE) vote their Fund Units in favour of the Arrangement. The IPT Board has unanimously approved the execution and performance of this Agreement.

- (d) Regulatory Approvals. Other than the Interim Order, the Final Order and the Regulatory Approvals, no material consent, approval or authorization of, or declaration or filing with, or notice to, any Governmental Entity which has not been received or made is required by the Fund in connection with the execution and delivery by the Fund of this Agreement and the completion of the transactions contemplated by this Agreement.
- (e) Capital Structure. The authorized capital of the Fund consists of an unlimited number of Fund Units. As at January 31, 2010, there were 29,404,276 Fund Units issued and outstanding as fully-paid and non-assessable. To the knowledge of the Fund, other than this Agreement and the IRE Support and Voting Agreements or as disclosed in the Fund Public Documents, no agreement is currently in force or effect which in any manner affects the voting or control of any of the securities of the Fund.
- (f) Subsidiaries. Except as disclosed in the Fund Disclosure Letter, neither the Fund nor any Fund Subsidiary owns shares, units or any other form of equity or investment interest in any Person, except in other Fund Subsidiaries. Except as disclosed in the Fund Disclosure Letter, the Fund beneficially owns, directly or indirectly, all of the issued and outstanding securities of each of the Fund Subsidiaries free and clear of all Encumbrances, except for Permitted Encumbrances and restrictions on transfer contained in the constating documents of the Fund Subsidiaries.
- (g) Existing Commitments. Except as disclosed in the Fund Public Documents or the Fund Disclosure Letter, (i) no Person has any agreement or option, or right or privilege (whether pre-emptive or contractual) capable of becoming an agreement or option (including convertible or exchangeable securities or warrants) for the purchase, subscription for or issuance of Fund Units or of any unissued interest in or securities of any kind in the Fund or any of the Fund Subsidiaries, or the purchase or acquisition of the assets or property of any kind of the Fund or any of the Fund Subsidiaries, (ii) there is no agreement which grants to any Person the right to purchase or otherwise acquire any interest in a Fund Subsidiary, (iii) none of the Fund or the Fund Subsidiaries has any undertakings or agreements, options or commitments to acquire any shares or securities of any Person or to acquire or lease any business operations, real property or assets, and (iv) none of the Fund or

the Fund Subsidiaries is party to or bound by any Contract or commitment to pay any royalty, licence fee or management fee.

- (h) Compliance with Laws. Each of the Fund and the Fund Subsidiaries has conducted and is conducting its activities or business and the business and activities of the Fund Facilities in compliance with all applicable Laws (including without limitation those of the country, province and municipality in which such entity carries on business or conducts its activities), except as would not have or result in a Material Adverse Effect.
- (i) Permits and Licenses. Each of the operating Fund Facilities has all material permits, by-laws, licences, waivers, exemptions, consents, certificates, registrations, authorizations, approvals, rights, rights of way, entitlements, water licences, licenses of occupation and environmental permits which are required from any Governmental Entity or any other person required or necessary to conduct its business and activities as currently conducted and all such permits, by-laws, licences, waivers, exemptions, consents, certificates, registrations, authorizations, approvals, rights, rights of way and entitlements and the like are in full force and effect and in good standing, except as would not have or result in a Material Adverse Effect.
- (j) Canadian Securities Laws; TSX Requirements. The Fund is a “reporting issuer” under applicable Securities Laws and is not in default of any material requirements of any applicable Securities Laws. The Fund Units are listed on the TSX, and the Fund is not in default of any material requirements of the TSX. No order, ruling or determination having the effect of suspending the sale or ceasing the trading of the Fund Units or any other securities of the Fund has been issued or made by any Securities Authority or the TSX or any other regulatory authority and is continuing in effect and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the Fund, contemplated or threatened by any such authority or under any Securities Laws.
- (k) Fund Public Documents. The Fund has filed with all applicable Securities Authorities and the TSX true and complete copies of the Fund Public Documents that the Fund was required to file therewith. The Fund Public Documents, at the time filed, complied in all material respects with the requirements of applicable Securities Laws and the TSX and did not contain any misleading or untrue statement of a Material Fact or omit to state a Material Fact required to be stated therein or necessary to make the statement therein not misleading in light of the circumstances under which it was made. The Fund has not filed any confidential material change report with the Autorité des marchés financiers or any other Securities Authority which, as of the date hereof, remains confidential.
- (l) Financial Statements. The Fund Financial Statements (i) are in accordance with the books, records and accounts of the Fund and the Fund Subsidiaries, (ii) are true and correct and present fairly the consolidated financial position of the Fund for the periods ended on, and as at, the dates indicated, (iii) have been prepared in

accordance with GAAP consistently applied, and (iv) present fairly all of the assets and liabilities of the Fund and the Fund Subsidiaries as at the dates indicated including all contingent liabilities of the Fund and the Fund Subsidiaries as at the dates indicated, except in each case as otherwise indicated in the Fund Financial Statements and the notes thereto or, in the case of the Fund Annual Financial Statements, in the related report of the Fund's independent auditors and, in the case of the Fund Interim Financial Statements, subject to audit and normal year-end audit adjustments.

- (m) Disclosure Controls. Since January 1, 2008: (i) neither the Fund nor any of the Fund Subsidiaries has received any material written complaint, allegation, assertion or claim, regarding the accounting or auditing practices of the Fund or any of the Fund Subsidiaries or their respective internal accounting controls, including any complaint, allegation, assertion, or claim that the Fund or any of the Fund Subsidiaries has engaged in questionable accounting or auditing practices; and (ii) no attorney representing the Fund or any of the Fund Subsidiaries, whether or not employed by the Fund or any of the Fund Subsidiaries, has reported evidence of a material violation of Securities Laws, material breach of fiduciary duty or similar violation by the Fund, any of the Fund Subsidiaries or any of their respective officers, trustees, directors, employees or agents to the IPT Board or any committee thereof.
- (n) Absence of Certain Changes. Except as disclosed in the Fund Public Documents, subsequent to the date of the Fund Interim Financial Statements, there has not occurred (i) any Material Adverse Effect, (ii) any Material Change or any development involving a prospective Material Change in the business, operations or capital of the Fund and the Fund Subsidiaries, or (ii) any material damage to any of the Fund Facilities.
- (o) Corporate Records. The minute books of the Fund, since the date of its initial public offering, and the Fund Subsidiaries, since the date of acquisition of such Fund Subsidiaries, have been maintained in accordance with all applicable Laws in all material respects, are complete and accurate in all material respects and contain minutes of all meetings and resolutions of the directors, trustees, shareholders, unitholders or partners, as applicable, or any committee of any of them, held since such date. The financial books and records and accounts of the Fund, and those of the Fund Subsidiaries since such Fund Subsidiaries have been owned by the Fund, have been maintained in accordance with industry practices on a basis consistent with prior years and accurately and fairly reflect in all material respects the basis for the Fund's consolidated financial statements.
- (p) Title to Assets and Undertakings. Each of the Fund and the Fund Subsidiaries has good title to all of its material assets and undertakings, free and clear of all Encumbrances (other than Permitted Encumbrances).



- (q) Operation of Fund Facilities. The Fund has made available to IRE and its advisors all material information relating to the operation of the Fund Facilities and all such information is true, correct and complete in all material respects and no material facts have been omitted therefrom that would make such information misleading. There are no Fund Facilities in need of significant maintenance or repair, and there are no outstanding material insurance claims by the Fund or the Fund Subsidiaries in respect of any of such Fund Facilities for which insurance coverage has been denied or likely to be denied.
  
- (r) Material Contracts. All the Fund Material Contracts have been made available to IRE and its advisors on the Fund's data site in connection with IRE's due diligence on the Fund. All such Fund Material Contracts are valid and binding obligations of the Fund or the Fund Subsidiaries, as applicable, and are in good standing. Except as would not reasonably be expected to have or result in a Material Adverse Effect, (i) none of the Fund or the Fund Subsidiaries have waived any rights under any such Fund Material Contract and (ii) no default exists under and no event has occurred which, after notice or lapse of time or both, or otherwise, would constitute a default under or breach of, by the Fund, any of the Fund Subsidiaries or, to the knowledge of the Fund, any other person, any obligation, agreement, covenant or condition contained in any Fund Material Contract.
  
- (s) Litigation. There is no claim, action, suit, proceeding or investigation which is pending or, to the knowledge of the Fund, which is threatened against or affecting the Fund or any of the Fund Subsidiaries or any of their properties, or to which the Fund or any of the Fund Subsidiaries is or may be a party or to which any property of the Fund or any of the Fund Subsidiaries is or may be subject, at Law or in equity, before or by any Governmental Entity, which is, or could reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect, or which questions the validity of any action taken or to be taken by the Fund or any of the Fund Subsidiaries pursuant to or in connection with this Agreement.
  
- (t) Environmental Matters. Except as disclosed in the Fund Public Documents or as would not have or result in a Material Adverse Effect:
  - (i) none of the Fund, any Fund Subsidiaries or the Fund Facilities is or has been in violation of any Environmental Laws;
  
  - (ii) The Fund, the Fund Subsidiaries and the Fund Facilities have all permits, authorizations, certificates, registrations, consents and any similar approvals issued by a governmental authority required under any applicable Environmental Laws (to the extent their current activities require such permits, authorizations and approvals) and are each in compliance with their requirements;

- (iii) there are no pending or, to the knowledge of the Fund, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, orders, notices of non-compliance, infraction or violation, prosecution, investigation or proceedings relating to any Environmental Law against the Fund, any of the Fund Subsidiaries or the Fund Facilities; and
- (iv) there are no events or circumstances that might reasonably be expected to form the basis of an order for investigation, characterization, clean-up or remediation, or an order requiring that any activity cease, or an action, suit or proceeding by any private party or Governmental Entity, against or affecting the Fund, any of the Fund Subsidiaries or the Fund Facilities relating to Hazardous Substances or any Environmental Laws.
- (u) Employee Matters. Neither the Fund nor any of the Fund Subsidiaries has any employees, except for those employees who operate the Fund Facilities.
- (v) Fund Benefit Plans.
  - (i) The Fund Disclosure Letter lists all of the Fund Benefit Plans. Except as disclosed in the Fund Disclosure Letter, no person will, as a result of the Fund entering into and completing the transactions contemplated by this Agreement, become entitled to (i) any retirement, severance, bonus or other similar payment; (ii) the acceleration of the vesting or the time to exercise of any outstanding stock option or employee benefits, (iii) the forgiveness or postponement of payment of any indebtedness owing by such person to the Fund or any of the Fund Subsidiaries, or (iv) receive any additional payments or compensation under or in respect of any employee benefits (including a cash surrender or similar payment in respect of outstanding stock options);
  - (ii) No Fund Benefit Plan exists that could require, as a result of the transactions contemplated by this Agreement, accelerated or increased funding requirements for any Fund Benefit Plan;
  - (iii) Each Fund Benefit Plan has been administered in all material respects according to its terms and applicable Laws and there are no outstanding violations or defaults thereunder nor any actions, claims or other proceedings pending or, to the knowledge of the Fund, threatened with respect to any Fund Benefit Plan;
  - (iv) No Fund Benefit Plan is currently under a governmental investigation or audit and, to the knowledge of the Fund, no such investigation or audit has been threatened;

- (v) None of the Fund Benefit Plans covers Persons other than current or former employees of the Fund and the Fund Subsidiaries and their dependants and beneficiaries or provides for the payment of post-employment or post-retirement benefits;
  - (vi) All contributions or premiums required to be made by the Fund and the Fund Subsidiaries under the terms of each Fund Benefit Plan or pursuant to applicable Laws have been made in a timely fashion in accordance with applicable Laws and the terms of the Fund Benefit Plans, and the Fund and the Fund Subsidiaries do not have any actual or potential unfunded liabilities with respect to any of the Fund Benefit Plans. No event has occurred which could subject the Fund or any of the Fund Subsidiaries to any liability with respect to any Tax, penalty or fiduciary duty in connection with any Fund Benefit Plan which has not been accrued on the Fund Financial Statements;
  - (vii) All obligations regarding the Fund Benefit Plans have been satisfied, there are no outstanding defaults or violations by the Fund or the Fund Subsidiaries or any other party to a Fund Benefit Plan;
  - (viii) No insurance policy or other contract or agreement affecting any Fund Benefit Plan requires or permits a retroactive increase in premiums or payments due thereunder;
  - (ix) Each Fund Benefit Plan that requires funding is funded to the extent required by its terms and applicable Laws. There have been no withdrawals of surplus or contribution holiday, except as permitted by applicable Law and the terms of the Fund Benefit Plans;
  - (x) The Fund has made available to IRE all Fund Benefit Plans as of the date of this Agreement, together with all related material documentation which accurately describe the benefits provided under each such Fund Benefit Plan referred to therein.
- (w) Intellectual Property. The conduct of the business of the Fund and the Fund Subsidiaries, including the operation of the Fund Facilities, does not, to the knowledge of the Fund, infringe upon the Intellectual Property of any other Person, and the Fund and the Fund Subsidiaries have not received any notice alleging any such infringement.
- (x) Tax Matters. Except as disclosed in the Fund Disclosure Letter:
- (i) none of the Fund or the Fund Subsidiaries has any liability, obligation or commitment for the payment of Taxes, except (i) such as are disclosed in the Fund Public Documents, (ii) such as are not material, or (iii) such Taxes not yet due as have arisen in the usual and ordinary course of business consistent with past practice, and none of the Fund or the Fund

Subsidiaries is in arrears with respect to any required withholdings or instalment payments of any Tax of any kind;

- (ii) each of the Fund and the Fund Subsidiaries has (i) filed all Tax Returns required to be filed within the prescribed time and all such Tax Returns are complete and correct in all material respects; (ii) paid all material Taxes which are due and payable; and (iii) made adequate and timely payment of all material instalments of the Taxes;
- (iii) none of the Fund or the Fund Subsidiaries is subject to any assessments, penalties or levies with respect to Taxes that will result in any material liability on its part in respect of any period to the date hereof, and none of the Fund or the Fund Subsidiaries has filed a waiver in regard of any taxation year;
- (iv) no audit, review, proposal or investigation in respect of, or assessment or reassessment of, Taxes in respect of any of the Fund or the Fund Subsidiaries is, to the knowledge of the Fund, reasonably anticipated, threatened or, underway or imminent and none of the Fund or the Fund Subsidiaries has received any notification that any issues involving Taxes have been raised or are currently pending with any Governmental Entity;
- (v) none of the Fund or the Fund Subsidiaries has entered into or become a party to any material non-arm's length agreements or arrangements other than on terms and at a price that would have applied if the parties had been dealing at arm's length;
- (vi) the books and records of the Fund and the Fund Subsidiaries have been maintained in compliance with statutory obligations under the Tax Act;
- (vii) to the knowledge of the Fund, there is no reason to believe that any of the Fund Facilities which have applied for the incentive payments under the "ecoEnergy Initiative" will not be eligible under such program;
- (viii) none of the Fund or the Fund Subsidiaries has ever had a "permanent establishment" (as defined in any applicable income tax treaty) in any country other than Canada or the United States;
- (ix) none of the Fund or the Fund Subsidiaries is a non-resident within the meaning of section 116 of the Tax Act and each of the Fund Subsidiaries which is a partnership is and was, at all times since its formation, a Canadian partnership for the purposes of the Tax Act; and
- (x) there are no material Taxes owing or that may become owing by the Fund or any of the Fund Subsidiaries in respect of any period commencing after December 31, 2009 and ending on the date hereof except such Taxes not yet due as have arisen in the usual and ordinary course of business consistent with past practice.

- (y) Fees. Except as described in the Fund Disclosure Letter, none of the Fund or the Fund Subsidiaries will be liable, directly or indirectly, for the fees, commissions or expenses of any broker, finder, investment banker or other similar agent in connection with the transaction contemplated by this Agreement.
- (z) Fund Support and Voting Agreements. True and complete copies of the Fund Support and Voting Agreements have been provided to IRE. Other than the Fund Support and Voting Agreements, the Fund has not entered into any voting, lock up, escrow or similar agreement with any IRE Shareholder.

### **3.2 Representations and Warranties of IRE**

IRE hereby represents and warrants to and in favour of the Fund as follows and acknowledges that the Fund is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) Organization, Standing and Power. Each of IRE and the IRE Subsidiaries has been incorporated or constituted and is validly existing under the Laws of its jurisdiction of incorporation or constitution, and has all requisite power, capacity and authority to own its properties and assets and to carry on its business as presently owned and conducted and as proposed to be conducted as contemplated in the IRE Public Documents.
- (b) Authority; No Conflict. IRE has the requisite power, capacity and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by IRE and constitutes a valid and binding obligation of IRE, enforceable against IRE in accordance with its terms, (subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of a court). All of the IRE Shares to be issued by IRE to the Fund Unitholders in connection with the Arrangement have been duly authorized for issuance and, at the Effective Time, will be duly and validly issued as fully paid and non-assessable. Except as described in the IRE Disclosure Letter, the execution and delivery by IRE of this Agreement and the completion of the transactions contemplated hereby will not result in a breach of or default under, and do not and will not create a state of facts which, after notice or lapse of time or both, will result in a breach of or default under, and do not and will not conflict with, or give rise to any right to accelerate the maturity or require the prepayment of any indebtedness under, or result in the creation or imposition of any Encumbrance upon any property or assets of IRE or any of the IRE Subsidiaries under:
  - (i) any of the provisions of the constating documents or by-laws of IRE or any of the IRE Subsidiaries, or any resolutions of any of the directors, trustees, shareholders, unitholders or partners, as applicable, of IRE or any of the IRE Subsidiaries, or any committee of any of them or any indenture

to which IRE or any of the IRE Subsidiaries is a party or by which it or any of them are contractually bound;

- (ii) any of the terms or provisions of any Contract to which IRE or any of the IRE Subsidiaries is a party or by which any of them may be bound, or to which any of them or any of their respective assets or businesses is subject, which individually or in the aggregate would (A) have or result in a Material Adverse Effect, (B) materially impair IRE's ability to perform the obligations contemplated in this Agreement, or (C) materially affect the consummation of the transactions contemplated in this Agreement; or
  - (iii) to the knowledge of IRE, any Law applicable to IRE or any of the IRE Subsidiaries (including, without limitation, the Securities Laws) or any judgment, order or decree of any governmental body, agency, commission, tribunal or court having jurisdiction over IRE or any of IRE Subsidiaries.
- (c) Board Approval. The IRE Board has received an opinion from TD Securities Inc. as to the fairness, from a financial point of view, of the consideration to the IRE Shareholders. The IRE Board, after receipt of a unanimous favourable recommendation from the IRE Committee and consultation with its financial and legal advisors, has unanimously (with interested and non-independent directors abstaining) determined that the Arrangement is fair to the IRE Shareholders and is in the best interests of IRE and has unanimously resolved to recommend that the IRE Shareholders vote their IRE Shares in favour of the Arrangement. The IRE Board has unanimously approved the execution and performance of this Agreement.
- (d) Regulatory Approvals. Other than the Interim Order, the Final Order and the Regulatory Approvals, no material consent, approval or authorization of, or declaration or filing with, or notice to, any Governmental Entity which has not been received or made is required by IRE in connection with the execution and delivery by IRE of this Agreement and the completion of the transactions contemplated by this Agreement.
- (e) Capital Structure. The authorized share capital of IRE consists of an unlimited number of IRE Shares. As at January 31, 2010, there were 23,500,000 IRE Shares issued and outstanding as fully-paid and non-assessable and 1,410,000 IRE Options and 200,000 IRE Warrants outstanding. The IRE Disclosure Letter sets forth the name of each holder of IRE Options or IRE Warrants, the number of vested and unvested IRE Options or IRE Warrants he/she holds and the exercise price and expiry date of such IRE Options or IRE Warrants. To the knowledge of IRE, other than the Fund Support and Voting Agreements or as disclosed in the IRE Public Documents, no agreement is currently in force or effect which in any manner affects the voting or control of any of the securities of IRE.

- (f) Subsidiaries. Except for the 4,724,409 Fund Units held by IRE or as disclosed in the IRE Disclosure Letter, neither IRE nor any IRE Subsidiary owns shares, units or any other form of equity or investment interest in any Person, except in other IRE Subsidiaries. Except as disclosed in the IRE Disclosure Letter, IRE beneficially owns, directly or indirectly, all of the issued and outstanding securities of each of the IRE Subsidiaries free and clear of all Encumbrances, except for Permitted Encumbrances and restrictions on transfer contained in the constating documents of the IRE Subsidiaries.
- (g) Existing Commitments. Except as disclosed in the IRE Public Documents, the IRE Disclosure Letter or in Paragraph 3.2(e), (i) no Person has any agreement or option, or right or privilege (whether pre-emptive or contractual) capable of becoming an agreement or option (including convertible or exchangeable securities or warrants) for the purchase, subscription for or issuance of IRE Shares or of any unissued interest in or securities of any kind in IRE or any of the IRE Subsidiaries, or the purchase or acquisition of the assets or property of any kind of IRE or any of the IRE Subsidiaries, (ii) there is no agreement which grants to any Person the right to purchase or otherwise acquire any interest in an IRE Subsidiary, (iii) none of IRE or the IRE Subsidiaries has any undertakings or agreements, options or commitments to acquire any shares or securities of any Person or to acquire or lease any business operations, real property or assets, and (iv) none of IRE or the IRE Subsidiaries is party to or bound by any Contract or commitment to pay any royalty, licence fee or management fee.
- (h) Compliance with Laws. Each of IRE and the IRE Subsidiaries has conducted and is conducting its activities or business and the business and activities of the IRE Facilities in compliance with all applicable Laws (including without limitation those of the country, province and municipality in which such entity carries on business or conducts its activities), except as would not have or result in a Material Adverse Effect.
- (i) Permits and Licences. Each of the operating IRE Facilities has all material permits, by-laws, licences, waivers, exemptions, consents, certificates, registrations, authorizations, approvals, rights, rights of way, entitlements, water licences, licenses of occupation and environmental permits which are required from any Governmental Entity or any other person required or necessary to conduct its business and activities as currently conducted and all such permits, by-laws, licences, waivers, exemptions, consents, certificates, registrations, authorizations, approvals, rights, rights of way and entitlements and the like are in full force and effect and in good standing in all material respects, except as would not have or result in a Material Adverse Effect.
- (j) Canadian Securities Laws; TSX Requirements. IRE is a “reporting issuer” under applicable Securities Laws and is not in default of any material requirements of any applicable Securities Laws. The IRE Shares are listed on the TSX, and IRE is not in default of any material requirements of the TSX. No order, ruling or determination having the effect of suspending the sale or ceasing the trading of

the IRE Shares or any other securities of IRE has been issued or made by any Securities Authority or the TSX or any other regulatory authority and is continuing in effect and no proceedings for that purpose have been instituted or are pending or, to the knowledge of IRE, contemplated or threatened by any such authority or under any Securities Laws.

- (k) IRE Public Documents. IRE has filed with all applicable Securities Authorities and the TSX true and complete copies of the IRE Public Documents that IRE was required to file therewith. The IRE Public Documents, at the time filed, complied in all material respects with the requirements of applicable Securities Laws and the TSX and did not contain any misleading or untrue statement of a Material Fact or omit to state a Material Fact required to be stated therein or necessary to make the statement therein not misleading in light of the circumstances under which it was made. IRE has not filed any confidential material change report with the Autorité des marchés financiers or any other Securities Authority which, as of the date hereof, remains confidential.
- (l) Financial Statements. The IRE Financial Statements (i) are in accordance with the books, records and accounts of IRE and the IRE Subsidiaries, (ii) are true and correct and present fairly the consolidated financial position of IRE for the periods ended on, and as at, the dates indicated, (iii) have been prepared in accordance with GAAP consistently applied, and (iv) present fairly all of the assets and liabilities of IRE and the IRE Subsidiaries as at the dates indicated including all contingent liabilities of IRE and the IRE Subsidiaries as at the dates indicated, except in each case as otherwise indicated in the IRE Financial Statements and the notes thereto or, in the case of the IRE Annual Financial Statements, in the related report of IRE's independent auditors and, in the case of the IRE Interim Financial Statements, subject to audit and normal year-end audit adjustments.
- (m) Disclosure Controls. Management of IRE has implemented disclosure controls and procedures designed to ensure that material information relating to IRE, including the IRE Subsidiaries, is made known to management of IRE by others within those entities, which disclosure controls and procedures are, given the size of IRE and the nature of its business, reasonably expected by management to be effective in alerting, on a timely basis, IRE's President and Chief Executive Officer and, its Chief Financial Officer to material information required to be included in the IRE Public Documents. To the knowledge of IRE, there has not been any fraud, whether or not material, that involves management or other employees who have a significant role in IRE's internal control over financial reporting that occurred within the two years preceding the date of this Agreement.

Since January 1, 2008: (i) neither IRE nor any of the IRE Subsidiaries has received any material written complaint, allegation, assertion or claim, regarding the accounting or auditing practices of IRE or any of the IRE Subsidiaries or their respective internal accounting controls, including any complaint, allegation, assertion, or claim that IRE or any of the IRE Subsidiaries has engaged in



questionable accounting or auditing practices; and (ii) no attorney representing IRE or any of the IRE Subsidiaries, whether or not employed by IRE or any of the IRE Subsidiaries, has reported evidence of a material violation of Securities Laws, material breach of fiduciary duty or similar violation by IRE, any of the IRE Subsidiaries or any of their respective officers, directors, employees or agents to the IRE Board or any committee thereof or to any director or officer of IRE.

- (n) Absence of Certain Changes. Except as disclosed in the IRE Public Documents, subsequent to the date of the IRE Interim Financial Statements, there has not occurred (i) any Material Adverse Effect, (ii) any Material Change or any development involving a prospective Material Change in the business, operations or capital of IRE and the IRE Subsidiaries, or (ii) any material damage to any of the IRE Facilities.
- (o) Corporate Records. The minute books of IRE, since the date of its initial public offering, and the IRE Subsidiaries, since the date of acquisition of such IRE Subsidiaries, have been maintained in accordance with all applicable Laws in all material respects, are complete and accurate in all material respects and contain minutes of all meetings and resolutions of the directors, trustees, shareholders, unitholders or partners, as applicable, or any committee of any of them, held since such date. The financial books and records and accounts of IRE, and those of the IRE Subsidiaries since such IRE Subsidiaries have been owned by IRE, have been maintained in accordance with industry practices on a basis consistent with prior years and accurately and fairly reflect in all material respects the basis for IRE's consolidated financial statements.
- (p) Title to Assets and Undertakings. Each of IRE and the IRE Subsidiaries has good title to all of its material assets and undertakings, free and clear of all Encumbrances (other than Permitted Encumbrances).
- (q) Construction and Operation of IRE Facilities. IRE has made available to the Fund and its advisors all material information relating to the construction and operation of the IRE Facilities which are under construction or operation and all such information is true, correct and complete in all material respects and no material facts have been omitted therefrom that would make such information misleading. There is no material default with respect to the construction of any of the IRE Facilities who are in operation or under construction with PPAs, nor is any of the operating IRE Facilities in need of significant maintenance or repair, and there are no outstanding material insurance claims by IRE or the IRE Subsidiaries in respect of any of such IRE Facilities for which insurance coverage has been denied or likely to be denied.
- (r) Material Contracts. All the IRE Material Contracts have been made available to the Fund and its advisors on IRE's data site in connection with the Fund's due diligence on IRE. All such IRE Material Contracts are valid and binding obligations of IRE or the IRE Subsidiaries, as applicable, and are in good standing. Except as would not reasonably be expected to have or result in a

Material Adverse Effect, (i) none of IRE or the IRE Subsidiaries have waived any rights under any such IRE Material Contract and (ii) no default exists under and no event has occurred which, after notice or lapse of time or both, or otherwise, would constitute a default under or breach of, by IRE, any of the IRE Subsidiaries or, to the knowledge of IRE, any other person, any obligation, agreement, covenant or condition contained in any IRE Material Contract.

- (s) Litigation. Except as disclosed in the IRE Disclosure Letter, there is no claim, action, suit, proceeding or investigation which is pending or, to the knowledge of IRE, which is threatened against or affecting IRE or any of the IRE Subsidiaries or any of their properties, or to which IRE or any of the IRE Subsidiaries is or may be a party or to which any property of IRE or any of the IRE Subsidiaries is or may be subject, at Law or in equity, before or by any Governmental Entity, which is, or could reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect, or which questions the validity of any action taken or to be taken by IRE or any of the IRE Subsidiaries pursuant to or in connection with this Agreement.
- (t) Environmental Matters. Except as disclosed in the IRE Public Documents or as would not have or result in a Material Adverse Effect:
  - (i) none of IRE, any IRE Subsidiaries or the IRE Facilities is or has been in violation of any Environmental Laws;
  - (ii) IRE, the IRE Subsidiaries and the IRE Facilities have all permits, authorizations, certificates, registrations, consents, and any similar approvals issued by a governmental authority required under any applicable Environmental Laws (to the extent their current activities require such permits, authorizations and approvals) and are each in compliance with their requirements;
  - (iii) there are no pending or, to the knowledge of IRE, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, orders, notices of non-compliance, infraction or violation, prosecution, investigation or proceedings relating to any Environmental Law against IRE, any of the IRE Subsidiaries or the IRE Facilities; and
  - (iv) there are no events or circumstances that might reasonably be expected to form the basis of an order for investigation, characterization, clean-up or remediation, or an order requiring that any activity cease, or an action, suit or proceeding by any private party or Governmental Entity, against or affecting IRE, any of the IRE Subsidiaries or the IRE Facilities relating to Hazardous Substances or any Environmental Laws.

- (u) Employee Matters. No labour dispute with any employees of IRE or any of the IRE Subsidiaries exists or, to the knowledge of IRE, is imminent, and IRE is not aware of any existing or imminent labour disturbance by the employees of any of its or any IRE Subsidiary's principal suppliers, manufacturers, customers or contractors, which, in either case, may reasonably be expected to have or result in a Material Adverse Effect. None of IRE or the IRE Subsidiaries is bound by or party to any collective bargaining agreement, and no trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds any bargaining rights with respect to IRE or the IRE Subsidiaries or the IRE Facilities, and, to the knowledge of IRE, no person has applied to have IRE or any of the IRE Subsidiaries declared a related employer or successor employer pursuant to applicable labour Laws.
  
- (v) IRE Benefit Plans.
  - (i) The IRE Disclosure Letter lists all of the IRE Benefit Plans. Except as disclosed in the IRE Disclosure Letter, no person will, as a result of IRE entering into and completing the transactions contemplated by this Agreement, become entitled to (i) any retirement, severance, bonus or other similar payment; (ii) the acceleration of the vesting or the time to exercise of any outstanding stock option or employee benefits, (iii) the forgiveness or postponement of payment of any indebtedness owing by such person to IRE or any of the IRE Subsidiaries, or (iv) receive any additional payments or compensation under or in respect of any employee benefits (including a cash surrender or similar payment in respect of outstanding stock options);
  - (ii) No IRE Benefit Plan exists that could require, as a result of the transactions contemplated by this Agreement, accelerated or increased funding requirements for any IRE Benefit Plan;
  - (iii) Each IRE Benefit Plan has been administered in all material respects according to its terms and applicable Laws and there are no outstanding violations or defaults thereunder nor any actions, claims or other proceedings pending or, to the knowledge of IRE, threatened with respect to any IRE Benefit Plan;
  - (iv) No IRE Benefit Plan is currently under a governmental investigation or audit and, to the knowledge of IRE, no such investigation or audit has been threatened;
  - (v) None of the IRE Benefit Plans covers Persons other than current or former employees of IRE and the IRE Subsidiaries and their dependants and beneficiaries or provides for the payment of post-employment or post-retirement benefits;

- (vi) All contributions or premiums required to be made by IRE and the IRE Subsidiaries under the terms of each IRE Benefit Plan or pursuant to applicable Laws have been made in a timely fashion in accordance with applicable Laws and the terms of the IRE Benefit Plans, and IRE and the IRE Subsidiaries do not have any actual or potential unfunded liabilities with respect to any of the IRE Benefit Plans. No event has occurred which could subject IRE or any of the IRE Subsidiaries to any liability with respect to any Tax, penalty or fiduciary duty in connection with any IRE Benefit Plan which has not been accrued on the IRE Financial Statements;
- (vii) All obligations regarding the IRE Benefit Plans have been satisfied, there are no outstanding defaults or violations by IRE or the IRE Subsidiaries or any other party to an IRE Benefit Plan;
- (viii) No insurance policy or other contract or agreement affecting any IRE Benefit Plan requires or permits a retroactive increase in premiums or payments due thereunder;
- (ix) Each IRE Benefit Plan that requires funding is funded to the extent required by its terms and applicable Laws. There have been no withdrawals of surplus or contribution holiday, except as permitted by applicable Law and the terms of the IRE Benefit Plans;
- (x) IRE has made available to the Fund all IRE Benefit Plans as of the date of this Agreement, together with all related material documentation which accurately describe the benefits provided under each such IRE Benefit Plan referred to therein.
- (w) Intellectual Property. The conduct of the business of IRE and the IRE Subsidiaries, including the operation of the IRE Facilities, does not, to the knowledge of IRE, infringe upon the Intellectual Property of any other Person, and IRE and IRE Subsidiaries have not received any notice alleging any such infringement.
- (x) Tax Matters. Except as disclosed in the IRE Disclosure Letter:
  - (i) none of IRE or the IRE Subsidiaries has any liability, obligation or commitment for the payment of Taxes, except (i) such as are disclosed in the IRE Public Documents, (ii) such as are not material, or (iii) such Taxes not yet due as have arisen in the usual and ordinary course of business consistent with past practice, and none of IRE or the IRE Subsidiaries is in arrears with respect to any required withholdings or instalment payments of any Tax of any kind;
  - (ii) each of IRE and the IRE Subsidiaries has (i) filed all Tax Returns required to be filed within the prescribed time and all such Tax Returns are complete and correct in all material respects; (ii) paid all material Taxes

which are due and payable; and (iii) made adequate and timely payment of all material instalments of the Taxes;

- (iii) none of IRE or the IRE Subsidiaries is subject to any assessments, penalties or levies with respect to Taxes that will result in any material liability on its part in respect of any period to the date hereof, and none of IRE or the IRE Subsidiaries has filed a waiver in regard of any taxation year;
- (iv) no audit, review, proposal or investigation in respect of, or assessment or reassessment of, Taxes in respect of any of IRE or the IRE Subsidiaries is, to the knowledge of IRE, reasonably anticipated, threatened or, underway or imminent and none of IRE or the IRE Subsidiaries has received any notification that any issues involving Taxes have been raised or are currently pending with any Governmental Entity;
- (v) none of IRE or the IRE Subsidiaries has entered into or become a party to any material non-arm's length agreements or arrangements other than on terms and at a price that would have applied if the parties had been dealing at arm's length;
- (vi) the books and records of IRE and the IRE Subsidiaries have been maintained in compliance with statutory obligations under the Tax Act;
- (vii) to the knowledge of IRE, there is no reason to believe that any of the IRE Facilities which have applied for the incentive payments under the "ecoEnergy Initiative" will not be eligible under such program;
- (viii) none of IRE or the IRE Subsidiaries has ever had a "permanent establishment" (as defined in any applicable income tax treaty) in any country other than Canada;
- (ix) none of IRE or the IRE Subsidiaries is a non-resident within the meaning of section 116 of the Tax Act and each of the IRE Subsidiaries which is a partnership is and was, at all times since its formation, a Canadian partnership for the purposes of the Tax Act; and
- (x) there are no material Taxes owing or that may become owing by IRE or any of the IRE Subsidiaries in respect of any period commencing after December 31, 2009 and ending on the date hereof, except for such Taxes not yet due as have arisen in the usual and ordinary course of business consistent with past practice.
- (y) Fees. Except as described in the IRE Disclosure Letter, none of IRE or the IRE Subsidiaries will be liable, directly or indirectly, for the fees, commissions or expenses of any broker, finder, investment banker or other similar agent in connection with the transaction contemplated by this Agreement.

- (z) IRE Support and Voting Agreements. True and complete copies of the IRE Support and Voting Agreements have been provided to the Fund. Other than the IRE Support and Voting Agreements, IRE has not entered into any voting, lock up, escrow or similar agreement with any Fund Unitholder.
- (aa) Investment Canada Act. IRE is a “Canadian” for purposes of the *Investment Canada Act*.

### **3.3 Disclosure Letters**

Concurrently with the execution and delivery of this Agreement, the Fund is delivering to IRE the Fund Disclosure Letter, which is deemed to modify the representations and warranties of the Fund contained in this Agreement, and IRE is delivering to the Fund the IRE Disclosure Letter, which is deemed to modify the representations and warranties of IRE contained in this Agreement. Notwithstanding anything in the Fund Disclosure Letter or the IRE Disclosure Letter to the contrary, all disclosures in the Fund Disclosure Letter and the IRE Disclosure Letter must reference or be associated with a particular Section or Paragraph in this Agreement, but will also be interpreted to relate to or modify other Sections or Paragraphs of this Agreement if the intention to so relate or modify is readily apparent on the face of such disclosure. The inclusion of any item in the Fund Disclosure Letter or the IRE Disclosure Letter shall not be construed as an admission by the Fund or IRE, as applicable, of the materiality of such item.

### **3.4 Survival of Representations and Warranties**

The representations and warranties contained in this Agreement shall not survive the completion of the Arrangement and shall expire and be terminated on the earlier of (i) the Effective Time, and (ii) the date on which this Agreement is terminated in accordance with its terms. Except for the representations and warranties contained herein, none of the Fund, IRE or any other Persons on behalf of the Fund or IRE makes any express or implied representation or warranty with respect to the Fund or IRE or with respect to any other information provided or otherwise made available in connection with the transactions contemplated hereby. This Section 3.4 will not limit any covenant or agreement of any of the Parties which, by its terms, contemplates performance after the Effective Time or the date on which this Agreement is terminated, as the case may be.

## **ARTICLE 4 COVENANTS**

### **4.1 Conduct of Business by the Fund**

The Fund covenants and agrees that it shall, and shall cause the Fund Subsidiaries to, during the period from the date of this Agreement until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, unless IRE shall otherwise agree in writing (such agreement not to be unreasonably withheld or delayed), and except as otherwise expressly permitted or specifically contemplated by this Agreement or the Plan of Arrangement, as specifically contemplated by the Fund Disclosure Letter, or as is otherwise required by applicable Law, conduct its business only in, and not take any action except in, the ordinary course of business and consistent with past practice, and use all reasonable commercial efforts to

maintain and preserve its business organization, assets, employees and advantageous business relationships, and not:

- (a) amend or propose to amend the Fund Indenture or the constating documents of any Fund Subsidiary;
- (b) adopt a plan of liquidation or resolutions providing for its liquidation or dissolution;
- (c) split, consolidate, combine, reclassify or otherwise amend the terms of any class of securities;
- (d) issue or agree to issue any additional securities or any options, warrants, calls, conversion privileges or rights of any kind to acquire any securities;
- (e) redeem, purchase or otherwise acquire any of its securities;
- (f) declare, set aside or pay any dividend or other distribution or payment in cash, securities or property with respect to any class of securities (other than (i) the regular monthly distribution to Fund Unitholders in an amount consistent with past practice, (ii) a special distribution payable to Fund Unitholders of record immediately prior to the Closing Date in an amount representing the unpaid proportion of the regular monthly distribution based on days elapsed since the last regular monthly distribution, and (iii) dividends or other distributions or payments to the Fund or any of the Fund Subsidiaries);
- (g) make any loan or advances to any other Person other than wholly-owned Fund Subsidiaries, except in the ordinary course of business consistent with past practice;
- (h) sell, pledge, dispose of or encumber any property or assets with a value individually or in the aggregate exceeding \$500,000;
- (i) acquire, by merger, amalgamation, consolidation, acquisition of securities or assets or otherwise, any corporation, partnership or other business organization or division thereof or make any investment therein either by purchase of securities, contributions of capital or property transfer, with an acquisition or investment cost individually or in the aggregate exceeding \$500,000;
- (j) incur or commit to capital expenditures in excess of \$500,000 prior to the Effective Date;
- (k) incur any indebtedness for borrowed money or any other liability or obligation or issue any debt securities or assume, guarantee, endorse or otherwise as an accommodation become responsible for, the obligations of any other Person, or make any loans or advances, except in the ordinary course of business consistent with past practice;

- (l) waive, release, relinquish, terminate, grant or transfer any rights of value or amend, modify or change any existing Fund Material Contract or any permit, license or authorization which is material to its business or enter into any new Fund Material Contract, other than in the ordinary course of business consistent with past practice;
- (m) pay, discharge or satisfy any claims, liabilities or obligations which are material to the business of the Fund, other than as reflected or reserved against in the Fund Financial Statements or otherwise in the ordinary course of business;
- (n) make any changes to any of its accounting policies, principles, methods, practices or procedures, except as required by applicable Laws or under GAAP;
- (o) make or change any material Tax election, change any annual Tax accounting period, adopt or change any method of Tax accounting, amend any material Tax Returns, or enter into any agreement with any Governmental Entity relating to Taxes; and
- (p) agree, resolve or commit to do any of the foregoing.

In addition, the Fund covenants and agrees that it shall, and shall cause the Fund Subsidiaries to, during the period from the date of this Agreement until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, use its reasonable commercial efforts (taking into account insurance market conditions and offerings and industry practices) to cause its current insurance policies, including directors' and officers' insurance, not to be cancelled or terminated or any of the coverage thereunder to lapse, except where such cancellation, termination or lapse would not individually or in the aggregate be material to the Fund, unless simultaneously with such termination, cancellation or lapse, replacement policies underwritten by insurance or re-insurance companies of nationally recognized standing having comparable deductibles and providing coverage equal to or greater than the coverage under the cancelled, terminated or lapsed policies for substantially similar premiums are in full force and effect.

#### **4.2 Conduct of Business by IRE**

IRE covenants and agrees that it shall, and shall cause the IRE Subsidiaries to, during the period from the date of this Agreement until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, unless the Fund shall otherwise agree in writing (such agreement not to be unreasonably withheld or delayed), and except as otherwise expressly permitted or specifically contemplated by this Agreement or the Plan of Arrangement, as specifically contemplated by the IRE Disclosure Letter, or as is otherwise required by applicable Law, conduct its business only in, and not take any action except in, the ordinary course of business and consistent with past practice, and use all reasonable commercial efforts to maintain and preserve its business organization, assets, employees and advantageous business relationships, and not:

- (a) amend or propose to amend the articles or by-laws of IRE or the constating documents of any IRE Subsidiary;



- (b) adopt a plan of liquidation or resolutions providing for its liquidation or dissolution;
- (c) split, consolidate, combine, reclassify or otherwise amend the terms of any class of securities;
- (d) issue or agree to issue any additional securities or any options, warrants, calls, conversion privileges or rights of any kind to acquire any securities, except for the issuance of additional securities of IRE Subsidiaries in the ordinary course of business consistent with past practice;
- (e) redeem, purchase or otherwise acquire any of its securities;
- (f) declare, set aside or pay any dividend or other distribution or payment in cash, securities or property with respect to any class of securities, except to wholly-owned Subsidiaries;
- (g) make any loan or advances to any other Person other than wholly-owned IRE Subsidiaries, except in the ordinary course of business consistent with past practice;
- (h) sell, pledge, dispose of or encumber any property or assets with a value individually or in the aggregate exceeding \$500,000;
- (i) acquire, by merger, amalgamation, consolidation, acquisition of securities or assets or otherwise, any corporation, partnership or other business organization or division thereof or make any investment therein either by purchase of securities, contributions of capital or property transfer, with an acquisition or investment cost individually or in the aggregate exceeding \$500,000;
- (j) incur or commit to capital expenditures in excess of \$500,000 prior to the Effective Date, except in accordance with IRE's 2010 budget made available to the Fund and its advisors;
- (k) incur any indebtedness for borrowed money or any other liability or obligation or issue any debt securities or assume, guarantee, endorse or otherwise as an accommodation become responsible for, the obligations of any other Person, or make any loans or advances, except in the ordinary course of business consistent with past practice or in accordance with IRE's 2010 budget made available to the Fund and its advisors;
- (l) waive, release, relinquish, terminate, grant or transfer any rights of value or amend, modify or change any existing IRE Material Contract or any permit, license or authorization which is material to its business or enter into any new IRE Material Contract, other than in the ordinary course of business consistent with past practice;

- (m) pay, discharge or satisfy any claims, liabilities or obligations which are material to the business of IRE, other than as reflected or reserved against in the IRE Financial Statements or otherwise in the ordinary course of business;
- (n) except in the ordinary course of business consistent with past practice or pursuant to existing employment, pension, termination or compensation arrangements, policies or agreements, grant to any director, officer or employee an increase in compensation in any form, make any loan to any director, officer or employee, or take any action with respect to the grant of any change of control, severance, retention or termination pay to, or the entering into of any employment agreement with, any director, officer or employee, or with respect to any increase of benefits payable under its current change of control, severance or termination pay policies;
- (o) adopt or amend or make any contribution to any bonus, profit sharing, option, pension, retirement, deferred compensation, insurance, retention, incentive compensation, other compensation or other similar plan, agreement, trust, fund or arrangement for the benefit of employees, except as is necessary to comply with applicable Law or non-discretionary requirements of pre-existing plans or to implement a Board decision made before the date of this Agreement and disclosed in the IRE Disclosure Letter;
- (p) make any changes to any of its accounting policies, principles, methods, practices or procedures, except as required by applicable Laws or under GAAP;
- (q) make or change any material Tax election, change any annual Tax accounting period, adopt or change any method of Tax accounting, amend any material Tax Returns, or enter into any agreement with any Governmental Entity relating to Taxes; and
- (r) agree, resolve or commit to do any of the foregoing.

In addition, IRE covenants and agrees that it shall, and shall cause the IRE Subsidiaries to, during the period from the date of this Agreement until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, use its reasonable commercial efforts (taking into account insurance market conditions and offerings and industry practices) to cause its current insurance policies, including directors' and officers' insurance, not to be cancelled or terminated or any of the coverage thereunder to lapse, except where such cancellation, termination or lapse would not individually or in the aggregate be material to IRE, unless simultaneously with such termination, cancellation or lapse, replacement policies underwritten by insurance or re-insurance companies of nationally recognized standing having comparable deductibles and providing coverage equal to or greater than the coverage under the cancelled, terminated or lapsed policies for substantially similar premiums are in full force and effect.

#### **4.3 Mutual Covenants Regarding the Arrangement**

Each Party shall perform, and shall cause its Subsidiaries to perform, all obligations required or desirable to be performed by such Party or any of its Subsidiaries under this Agreement, co-

operate with the other Party in connection therewith, and do all such other acts and things as may be necessary or desirable in order to satisfy (or cause the satisfaction of) the conditions precedent to its obligations hereunder as set forth in Article 5 (to the extent the same is within its control) and to consummate and make effective, as soon as reasonably practicable, the transactions contemplated in this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause its Subsidiaries to:

- (a) apply for and use all commercially reasonable efforts to obtain, and use all commercially reasonable efforts to assist the other Party to obtain, all Regulatory Approvals relating to such Party or any of its Subsidiaries and, in doing so, keep the other Party reasonably informed as to the status of the proceedings related to obtaining the Regulatory Approvals, including providing the other Party and its advisors with copies of all related applications and notifications, in draft form, in order for the other Party and its advisors to provide their comments thereon;
- (b) apply for and use all commercially reasonable efforts to obtain all necessary waivers, consents and approvals required to be obtained by such Party or any of its Subsidiaries in connection with the Arrangement from other parties to Contracts (without paying, and without committing itself or the other Party to pay any consideration or incur any liability or obligation to or in respect of any such other party without the prior written consent of the other Party);
- (c) effect all necessary registrations, filings and submissions of information requested by Governmental Entities required to be effected by such Party or any of its Subsidiaries in connection with the Arrangement and participate and appear in any proceedings of either Party before Governmental Entities;
- (d) use all commercially reasonable efforts to comply promptly with all requirements which applicable Laws may impose on such Party or any of its Subsidiaries with respect to the Arrangement;
- (e) defend all lawsuits or other legal, regulatory or other proceedings against such Party or any of its Subsidiaries challenging or affecting this Agreement or the consummation of the transactions contemplated hereby;
- (f) use all commercially reasonable efforts to have lifted or rescinded any injunction or restraining order relating to such Party or any of its Subsidiaries or other order which may adversely affect the ability of the Parties to consummate the Arrangement;
- (g) not knowingly take or cause to be taken any action that would or could reasonably be expected to impede, interfere with, prevent or delay the transactions contemplated by this Agreement or the Arrangement or to materially reduce the benefits of the other Party under this Agreement or the Arrangement; and
- (h) promptly advise the other Party orally and, if then requested, in writing:

- (i) of any event occurring subsequent to the date of this Agreement that would render any representation or warranty in respect of such Party contained in this Agreement (except any such representation or warranty which speaks solely as of a date prior to the occurrence of such event), if made on or as of the date of such event or the Effective Time, untrue or inaccurate in any material respect;
- (ii) of any material breach by such Party of any covenant or agreement contained in this Agreement; and
- (iii) of any change, effect, event or occurrence which would reasonably be expected to have a Material Adverse Effect on such Party, or to materially impair or delay the consummation of the transactions contemplated by this Agreement or the ability of such Party to perform its obligations hereunder.

#### **4.4 Competition Act Approval**

- (a) The Fund and IRE and/or any of their Subsidiaries, as applicable, shall: (i) take promptly all reasonable actions necessary to make the filings required, or which the Fund and IRE jointly elect to make in respect of the Competition Act Approval (the “**Competition Filing**”); and (ii) comply at the earliest practicable date with any request for additional information or documentary material received by the Fund or IRE or any of their Subsidiaries from a Governmental Entity with respect to a Competition Filing.
- (b) Each of the Fund and IRE shall pay 50% of any and all application or filing fees with respect to any and all applications or filings in respect of the Competition Act Approval.
- (c) All requests and enquiries from any Governmental Entity in respect of the Competition Act Approval shall be dealt with by the Fund and IRE in consultation with each other, and the Fund and IRE shall promptly co-operate with and provide all necessary information and assistance reasonably required by such Governmental Entity in respect of the Competition Act Approval upon being requested to do so by such authority or by the other party.

#### **4.5 Mutual Covenants Regarding Non-Solicitation**

- (a) On and after the date of this Agreement, except as otherwise provided in this Agreement, neither Party shall, directly or indirectly, through any officer, director, trustee, employee, representative (including for greater certainty any financial or other advisors) or agent:
  - (i) solicit, assist, initiate, knowingly encourage or otherwise facilitate (including by way of furnishing non-public information or entering into any form of Contract) any inquiries, proposals or offers regarding any Acquisition Proposal;

- (ii) engage in any discussions or negotiations regarding, or provide any confidential information with respect to, any Acquisition Proposal (provided that, for greater certainty, such Party may advise any Person making an unsolicited Acquisition Proposal that such Acquisition Proposal does not constitute a Superior Proposal when the Board has so determined);
  - (iii) withdraw, modify or qualify (or publicly propose to or publicly state that it intends to withdraw, modify or qualify) in any manner adverse to the other Party the approval or recommendation of the IPT Board or the IRE Board, as applicable, of this Agreement or the Arrangement (it being understood that a failure to reiterate its recommendation within three Business Days of a request to do so shall constitute a withdrawal or modification by the IPT Board or the IRE Board, as applicable, of its recommendation); or
  - (iv) approve or recommend, or propose publicly to approve or recommend, any Acquisition Proposal, or accept or enter into, or publicly propose to accept or enter into, any Contract related to any Acquisition Proposal.
- (b) Each Party will cease and cause to be terminated any existing solicitation, activity, discussion or negotiation with any Person by such Party or any of its representatives or agents with respect to any Acquisition Proposal, whether or not initiated by such Party, and, in connection therewith, such Party will discontinue access to any data rooms (virtual or otherwise) previously provided to any such Person and will request (and exercise all rights it has to require) the return or destruction of all information regarding such Party and its Subsidiaries previously provided to any such Person. Neither Party shall terminate, waive, amend or modify any provision of any existing confidentiality agreement relating to an Acquisition Proposal or any standstill agreement to which it is a party (it being understood that the automatic termination of the standstill provisions of such agreements as a result of entering into or announcing this Agreement shall not be a violation of this Paragraph 4.5(b)).
- (c) From and after the date of this Agreement, each Party shall promptly (and in any event within 24 hours) notify the other Party, at first orally and then in writing, of any proposal, inquiry, offer, expression of interest or request relating to or constituting an Acquisition Proposal, any request for discussions or negotiations, and any request for non-public information relating to such Party or its Subsidiaries received by such Party's directors, officers, representatives or agents, or any material amendments to the foregoing. Such notice shall include a copy of any written proposal and if the proposal is not in written form, a description of the material terms and conditions of, and the identity of the Person making, any proposal, inquiry, offer or request. The relevant Party shall, at the reasonable request of the other Party, inform the other Party as to the status of any such proposal, inquiry, offer or request and shall in any event inform the other Party of any material amendments to such proposal, inquiry, offer or request.

- (d) Notwithstanding Paragraph 4.5(a) and any other provision of this Agreement, if a Party receives a *bona fide* written Acquisition Proposal that was not solicited after the date hereof, such Party shall be permitted to engage in discussions or negotiations, provide information and otherwise cooperate with and assist the Person making such Acquisition Proposal, if and only to the extent that:
- (i) such Party has provided the other Party with the notice required by Paragraph 4.5(c) in respect of such Acquisition Proposal;
  - (ii) the Fund Meeting (in respect of the Fund) or the IRE Meeting (in respect of IRE) has not occurred;
  - (iii) the IPT Board or the IRE Board, as applicable, determines in good faith, after consultation with their outside legal and financial advisors, that such Acquisition Proposal constitutes, or could reasonably be expected to lead to, a Superior Proposal and that the failure to take such action would be inconsistent with its fiduciary duties under applicable Laws (and the IPT Indenture in the case of the IPT Board);
  - (iv) prior to providing any information or data, such Party receives from the Person making the Acquisition Proposal an executed confidentiality agreement that contains provisions that are not less favourable to such Party than those contained in the Non-Disclosure Agreement (except that such agreement need not contain any standstill restriction), and such Party sends a copy of any such confidentiality agreement to the other Party promptly upon its execution; and
  - (v) the other Party is provided promptly with a list of, or in the case of information that was not previously made available to the other Party, copies of, any material information provided to the Person making the Acquisition Proposal.
- (e) Notwithstanding Paragraph 4.5(a) and any other provision of this Agreement, if a Party receives a *bona fide* written Acquisition Proposal that was not solicited after the date hereof, the IPT Board or the IRE Board, as applicable, shall be permitted to withdraw, modify or qualify (or propose to withdraw, modify or qualify) in any manner adverse to the other Party the approval or recommendation of this Agreement and the Arrangement and to terminate this Agreement in order to accept, approve, recommend or enter into a definitive agreement (other than a confidentiality agreement contemplated by Paragraph 4.5(d) above) with respect to such Acquisition Proposal, if and only to the extent that:
- (i) such Party has provided the other Party with the notice required by Paragraph 4.5(c) in respect of such Acquisition Proposal;
  - (ii) the Fund Meeting (in respect of the Fund) or the IRE Meeting (in respect of IRE) has not occurred;

- (iii) the IPT Board or the IRE Board, as applicable, determines in good faith, after consultation with their outside legal and financial advisors, that such Acquisition Proposal constitutes a Superior Proposal and that the failure to take such action would be inconsistent with its fiduciary duties under applicable Laws (and the IPT Indenture in the case of the IPT Board);
  - (iv) such Party has provided the other Party with a written notice advising them of the Board's determination and a copy of the Acquisition Proposal;
  - (v) five Business Days shall have elapsed from the date the other Party received the notice required by clause (iv) above.
- (f) During the five Business Day period referred to in Paragraph 4.5(e), the other Party shall have the opportunity, but not the obligation, to offer to amend the terms of this Agreement. The IPT Board or the IRE Board, as applicable, will review any offer by the other Party to amend the terms of this Agreement in good faith in order to determine, in its discretion in the exercise of its fiduciary duties under applicable Laws (and the IPT Indenture in the case of the IPT Board), whether such amended offer, upon acceptance, would, if consummated in accordance with its terms, result in the Acquisition Proposal no longer being a Superior Proposal. If it so determines, the Parties will enter into an amended agreement reflecting the amended offer. If it continues to believe, in good faith, after consultation with its outside legal and financial advisors, that such Acquisition Proposal remains a Superior Proposal and therefore rejects the amended offer, the Party that received the Acquisition Proposal may approve, recommend, accept or enter into a definitive agreement with respect to the Superior Proposal.
- (g) In the event that a Party provides the notice contemplated by Paragraph 4.5(e)(iv) on a date which is less than five Business Days prior to the Fund or the IRE Meeting, the Party who called such meeting shall be entitled to adjourn or postpone the meeting, to the extent permitted by Law, to a date that is not more than five Business Days after the date of such notice, and the Party who received such notice shall be entitled to request that it do so.
- (h) Each Party agrees that all information that may be provided to it by the other Party with respect to any Acquisition Proposal pursuant to this Section 4.5 shall be treated as "Confidential Information" as that term is defined in the Non-Disclosure Agreement, and shall not be disclosed or used except in accordance with the provisions of the Non-Disclosure Agreement or in order to enforce its rights under this Agreement in legal proceedings.
- (i) Each Party shall ensure that its officers, directors, trustees and key employees and any financial advisors or other advisors, representatives or agents retained by it are aware of the provisions of this Section 4.5, and shall be responsible for any breach of this Section 4.5 by such officers, directors, trustees, key employees, financial advisors or other advisors, representatives or agents.

#### **4.6 Access to Information; Confidentiality**

From the date hereof until the earlier of the Effective Time and the termination of this Agreement, subject to compliance with applicable Law and the terms of any existing Contracts and upon reasonable notice, each Party shall, and shall cause its Subsidiaries to, afford to the other Party and its officers, employees, agents and representatives reasonable access, during normal business hours to their officers, employees, agents, properties, books, records and Contracts for strategic and integration planning, the structuring of any post-closing reorganization and any other reasons reasonably relating to the transactions contemplated herein. Each of the Parties acknowledges and agrees that information furnished pursuant to this Section 4.6 shall be subject to the terms and conditions of the Non-Disclosure Agreement.

#### **4.7 Insurance and Indemnification**

- (a) The Fund and IRE agree that the Fund will be entitled to secure directors' and trustees' and officers' liability insurance coverage for the current and former directors, trustees and officers of the Fund and the Fund Subsidiaries on a six year "trailing" or "run-off" basis. If the Fund elects not to subscribe to such a policy for any reason, then IRE agrees that, for not less than six years from the Effective Time, it shall maintain insurance coverage substantially equivalent to that in effect under the current policies of the directors', trustees' and officers' liability insurance maintained by the Fund or any of the Fund Subsidiaries which is no less advantageous, and with no gaps or lapses in coverage with respect to matters occurring prior to on or the Effective Time.
- (b) IRE also undertakes in favour the current and former directors, trustees and officers of IRE and the IRE Subsidiaries to maintain, for not less than six years from the Effective Time, insurance coverage substantially equivalent to that in effect under the current policies of the directors', trustees' and officers' liability insurance maintained by IRE or any of the IRE Subsidiaries which is no less advantageous, and with no gaps or lapses in coverage with respect to matters occurring prior to on or the Effective Time.
- (c) The Fund and IRE agree that all rights to indemnification, exculpation or expenses reimbursement now existing in favour of present and former officers, trustees and directors of the Fund, the Fund Subsidiaries, IRE and the IRE Subsidiaries shall survive the Arrangement and shall continue in full force and effect for a period of not less than six years from the Effective Date.
- (d) The provisions of this Section 4.7 are intended for the benefit of all present and former directors, trustees and officers of the Fund, the Fund Subsidiaries, IRE and the IRE Subsidiaries, as and to the extent applicable in accordance with their terms, and shall be enforceable by each of such Persons and his or her heirs, executors administrators and other legal representatives and shall not be terminated, modified or waived in such a manner as to adversely affect any such Person, it being expressly agreed that the Persons to whom this Section 4.7



applies shall be third party beneficiaries of, and entitled to directly enforce, this Section 4.7.

## **ARTICLE 5 CONDITIONS PRECEDENT**

### **5.1 Mutual Conditions Precedent**

The obligations of the Parties to complete the transactions contemplated by this Agreement are subject to the fulfillment, on or before the Effective Time, of each of the following conditions precedent, each of which is for the mutual benefit of the Fund and IRE, and may only be waived by the mutual consent of the Parties:

- (a) the requisite Fund Unitholder and IRE Shareholder approvals shall have been obtained at the Fund Meeting and the IRE Meeting, respectively, in accordance with the Interim Order;
- (b) the Interim Order and the Final Order shall each have been obtained on terms consistent with this Agreement, and shall not have been set aside or modified in a manner unacceptable to the Parties, acting reasonably, on appeal or otherwise;
- (c) no person shall have filed any notice of appeal of the Final Order, and no person shall have communicated to the Fund or IRE any intention to appeal the Final Order which would, in the judgment of the Parties, acting reasonably, make it inadvisable to proceed with the implementation of the Arrangement;
- (d) all Regulatory Approvals shall have been obtained or satisfied on terms and conditions satisfactory to the Parties, acting reasonably;
- (e) the additional listing of the IRE Shares issuable pursuant to the Arrangement shall have been conditionally approved by the TSX, subject only to the satisfaction by IRE of customary post-closing conditions imposed by the TSX in similar circumstances;
- (f) no Law shall have been enacted, issued, promulgated, enforced, made, entered, issued or applied and no action or proceeding shall otherwise have been taken under any Laws by any Governmental Entity (whether temporary, preliminary or permanent):
  - (i) that makes the Arrangement illegal or otherwise directly or indirectly cease trades, enjoins, restrains or otherwise prohibits consummation of the Arrangement or the transactions contemplated herein;
  - (ii) seeking to prohibit or limit the ownership by IRE of the Fund Units or to compel IRE to dispose of or hold separate any of the Fund Units or any portion of the business or assets of the Fund, as a result of the Arrangement or seeking to impose limitations on the ability of IRE to hold or exercise full rights of ownership of, any of the Fund Units, including

the right to vote the Fund Units acquired by it or imposing any condition or limitation that in the judgment of the Parties, acting reasonably, would be burdensome to the future operations or business of IRE after the Effective Date; or

- (iii) which results, or could reasonably be expected to result, in any judgment or assessment of damages, directly or indirectly, relating to the Arrangement or the transactions contemplated herein which would have a Material Adverse Effect;
- (g) there shall be no proceeding, of a judicial or administrative nature or otherwise in progress (or threatened in writing by a Governmental Entity) that relates to or results from the transactions contemplated by this Agreement that would, if successful, result in an order or ruling that would reasonably be expected to cease trade, enjoin, prohibit or impose material limitations or conditions on the completion of the transactions contemplated by this Agreement or the Arrangement in accordance with its terms;
- (h) this Agreement shall not have been terminated in accordance with its terms;
- (i) the Articles of Arrangement to be filed with the Director in accordance with the Arrangement shall be in form and substance satisfactory to each of the Fund and IRE, acting reasonably;
- (j) credit facilities shall be in place for IRE following the Effective Time substantially upon the terms set forth in the Commitment Letters or otherwise upon terms satisfactory to each of the Fund and IRE, acting reasonably, with all the necessary consents or waivers of the lenders under the current credit facilities of the Fund and IRE having been obtained;
- (k) the time period for the exercise of Dissent Rights shall have expired, and any of such rights shall not have been exercised (and not abandoned) with respect to greater than 5% of the number of outstanding IRE Shares; and
- (l) all waivers, consents and approvals required to be obtained by the Fund, IRE or any of their respective Subsidiaries in connection with the Arrangement from the other parties to Contracts listed in Schedule B hereto shall have been obtained by the Fund, IRE or the Subsidiary, as the case may be.

## **5.2 Additional Conditions Precedent to the Obligations of the Fund**

The obligations of the Fund to complete the transactions contemplated by this Agreement shall also be subject to the fulfillment of each of the following conditions precedent (each of which is for the exclusive benefit of the Fund and may be waived by the Fund):

- (a) all covenants of IRE under this Agreement to be performed on or before the Effective Time shall have been duly performed by IRE in all material respects, and the Fund shall have received a certificate of IRE addressed to the Fund and dated the Effective Date, signed on behalf of IRE by two senior executive officers of IRE (on IRE's behalf and without personal liability), confirming the same as at the Effective Time;
- (b) the representations and warranties of IRE set forth in this Agreement shall be true and correct as of the Effective Time, as though made on and as of the Effective Time (other than representations and warranties made as of a specified date, the accuracy of which shall be determined as of that specified date), except where the failure or failures of such representations and warranties to be so true would not, individually or in the aggregate, constitute a Material Adverse Effect or prevent, restrict or materially delay the consummation of the Arrangement, and the Fund shall have received a certificate of IRE addressed to the Fund and dated the Effective Date, signed on behalf of IRE by two senior executive officers of IRE (on IRE's behalf and without personal liability), confirming the same as at the Effective Time;
- (c) no Material Adverse Effect in respect of IRE shall have occurred after the date hereof and prior to the Effective Date;
- (d) the IRE Shareholders shall have elected new members of the IRE Board at the IRE Meeting in compliance with Section 2.8; and
- (e) none of the Fund Support and Voting Agreements (other than the Fund Support and Voting Agreements with the senior officers of IRE other than Messrs. Lefrançois and Letellier) shall have been terminated in accordance with its terms.

### **5.3 Additional Conditions Precedent to the Obligations of IRE**

The obligations of IRE to complete the transactions contemplated by this Agreement shall also be subject to the following conditions precedent (each of which is for the exclusive benefit of IRE and may be waived by IRE):

- (a) all covenants of the Fund under this Agreement to be performed on or before the Effective Time shall have been duly performed by the Fund in all material respects, and IRE shall have received a certificate of the Fund addressed to IRE and dated the Effective Date, signed on behalf of the Fund by two members of the IPT Board (on the Fund's behalf and without personal liability), confirming the same as of the Effective Time; and
- (b) the representations and warranties of the Fund set forth in this Agreement shall be true and correct as of the Effective Time, as though made on and as of the Effective Time (other than representations and warranties made as of a specified date, the accuracy of which shall be determined as of that specified date), except where the failure or failures of such representations and warranties to be so true would not, individually or in the aggregate, constitute a Material Adverse Effect

or prevent, restrict or materially delay the consummation of the Arrangement, and IRE shall have received a certificate of the Fund addressed to IRE and dated the Effective Date, signed on behalf of the Fund by two members of the IPT Board (on the Fund's behalf and without personal liability), confirming the same as of the Effective Time;

- (c) no Material Adverse Effect in respect of the Fund shall have occurred after the date hereof and prior to the Effective Date; and
- (d) none of the IRE Support and Voting Agreements (other than the IRE Support and Voting Agreements with the three nominees of IRE on the IPT Board and the senior officers of IRE) shall have been terminated in accordance with its terms.

#### **5.4 Satisfaction of Conditions**

The conditions precedent set out in Sections 5.1, 5.2 and 5.3 shall be conclusively deemed to have been satisfied, waived or released when, with the agreement of the Fund and IRE, a Certificate of Arrangement in respect of the Arrangement is issued by the Director.

### **ARTICLE 6 AMENDMENT AND TERMINATION**

#### **6.1 Amendment**

This Agreement and the Plan of Arrangement may, at any time and from time to time before or after the holding of the Fund Meeting and the IRE Meeting but not later than the Effective Date, be amended by mutual written agreement of the Parties, and any such amendment may without further notice to or authorization on the part of the Fund Unitholders or the IRE Shareholders (subject to the Interim Order, the Final Order and applicable Laws), and any such amendment may, without limitation:

- (a) change the time for performance of any of the obligations or acts of the Parties;
- (b) waive any inaccuracies or modify any representation or warranty contained herein or in any document delivered pursuant hereto;
- (c) waive compliance with or modify any of the covenants herein contained and waive or modify performance of any of the obligations of the parties; and/or
- (d) waive compliance with or modify any conditions precedent contained herein;

provided that no such amendment may reduce or materially adversely affect the consideration to be received by the Fund Unitholders without approval by the Fund Unitholders given in the same manner as required for the approval of the Arrangement or as may be ordered by the Court.

## 6.2 Termination

- (a) This Agreement may be terminated, in each case prior to the Effective Time:
- (i) by the mutual written agreement of the Parties (and for greater certainty, without further action on the part of Fund Unitholders or IRE Shareholders);
  - (ii) by the Fund, if (A) the IRE Board shall have failed to recommend or shall have withdrawn, modified or changed in a manner adverse to the Fund its approval or recommendation of this Agreement or the Arrangement, or (B) the IRE Board shall have approved or recommended any Acquisition Proposal;
  - (iii) by IRE, if (A) the IPT Board shall have failed to recommend or shall have withdrawn, modified or changed in a manner adverse to IRE its approval or recommendation of this Agreement or the Arrangement, or (B) the IPT Board shall have approved or recommended any Acquisition Proposal;
  - (iv) by the Fund, in order to enter into a definitive agreement with respect to a Superior Proposal in accordance with Paragraph 4.5(e), subject to the prior payment by the Fund of the IRE Termination Fee;
  - (v) by IRE, in order to enter into a definitive agreement with respect to a Superior Proposal in accordance with Paragraph 4.5(e), subject to the prior payment by IRE of the Fund Termination Fee;
  - (vi) by either the Fund or IRE, if the Fund Meeting is held and the Arrangement fails to receive the requisite Fund Unitholder approval in accordance with the Interim Order;
  - (vii) by either the Fund or IRE, if the IRE Meeting is held and the Arrangement fails to receive the requisite IRE Shareholder approval in accordance with the Interim Order;
  - (viii) by the Fund, if it is not in material breach of its obligations under this Agreement and (A) there has been a breach on the part of IRE of any of its covenants or agreements herein such that the condition in Paragraph 5.2(a) would not be satisfied, or (B) any of the representations and warranties in respect of IRE herein shall have been at the date hereof untrue or incorrect, or shall have become untrue or inaccurate at any time prior to the Effective Time, such that the condition contained in Paragraph 5.2(b) would not be satisfied, and such default or incorrectness in clauses (A) or (B) is not curable or, if curable, is not cured by the earlier of the date which is 10 days from the date of written notice of such breach and the Outside Date;

- (ix) by IRE, if it is not in material breach of its obligations under this Agreement and (A) there has been a breach on the part of the Fund of any of its covenants or agreements herein such that the condition in Paragraph 5.3(a) would not be satisfied, or (B) any of the representations and warranties in respect of the Fund herein shall have been at the date hereof untrue or incorrect, or shall have become untrue or inaccurate at any time prior to the Effective Time, such that the condition contained in Paragraph 5.3(b) would not be satisfied, and such default or incorrectness in clauses (A) or (B) is not curable or, if curable, is not cured by the earlier of the date which is 10 days from the date of written notice of such breach and the Outside Date;
  - (x) by either the Fund or IRE, if any Law makes the consummation of the Arrangement or the transactions contemplated by this Agreement illegal or otherwise prohibited, and such Law has become final; or
  - (xi) by either the Fund or IRE, if the Effective Date has not occurred on or prior to the Outside Date, provided that the right to terminate this Agreement pursuant to this Paragraph 6.2(a)(xi) shall not be available to the Party seeking to terminate if any action of such Party or its Affiliates or the failure of such Party to perform any of its obligations under this Agreement required to be performed at or prior to the Effective Time shall have resulted in the conditions contained in Sections 5.1, 5.2 or 5.3 (as applicable) not having been satisfied prior to the Outside Date.
- (b) If this Agreement is terminated in accordance with the foregoing provisions of this Section 6.2, no Party shall have any further liability to perform its obligations under this Agreement except the obligations set forth in Section 6.3 and as otherwise expressly contemplated by this Agreement, and provided that neither the termination of this Agreement nor anything contained in this Section 6.2 shall relieve any Party from any liability for any breach by it of this Agreement, including from any inaccuracy in its representations and warranties and any non-performance by it of its covenants made herein.

### **6.3 Termination Fees and Expense Reimbursement**

- (a) If (A) this Agreement is terminated by the Fund pursuant to Paragraph 6.2(a)(ii), (B) this Agreement is terminated by IRE pursuant to Paragraph 6.2(a)(v), (C) this Agreement is terminated by the Fund pursuant to Paragraph 6.2(a)(viii) as a result of a breach by IRE of its non-solicitation covenants under Section 4.5 or (D) this Agreement is terminated by either the Fund or IRE pursuant to Paragraph 6.2(a)(vii) and (1) an Acquisition Proposal was publicly announced, proposed, offered or made to the shareholders of IRE or any Person shall have publicly announced an intention to make an Acquisition Proposal prior to the termination of this Agreement and (2) an Acquisition Proposal involving IRE is subsequently completed within 12 months after such termination, then, in either such case, IRE shall pay to the Fund \$4,500,000 (the “**Fund Termination Fee**”) in immediately

available funds to an account designated by the Fund. Such payment shall be made within one Business Day after the date of termination in the case of clauses (A) and (C) above, immediately prior to the termination of this Agreement in the case of clause (B) above, and on the date of completion of the Acquisition Proposal in the case of clause (D) above. IRE shall not be obligated to make more than one payment pursuant to this Section 6.3. Any payment under clause (D) above shall be reduced by any expenses reimbursement payment previously made pursuant to Paragraph 6.3(c).

- (b) If (A) this Agreement is terminated by IRE pursuant to Paragraph 6.2(a)(iii), (B) this Agreement is terminated by the Fund pursuant to Paragraph 6.2(a)(iv), or (C) this Agreement is terminated by IRE pursuant to Paragraph 6.2(a)(ix) as a result of a breach by the Fund of its non-solicitation covenants under Section 4.4 or (D) this Agreement is terminated by either the Fund or IRE pursuant to Paragraph 6.2(a)(vi) and (1) an Acquisition Proposal was publicly announced, proposed, offered or made to the unitholders of the Fund or any Person shall have publicly announced an intention to make an Acquisition Proposal prior to the termination of this Agreement and (2) an Acquisition Proposal involving the Fund is subsequently completed within 12 months after such termination, then, in either such case, the Fund shall pay to IRE \$7,500,000 (the “**IRE Termination Fee**”) in immediately available funds to an account designated by IRE. Such payment shall be made within one Business Day after the date of termination in the case of clauses (A) and (C) above, immediately prior to the termination of this Agreement in the case of clause (B) above, and on the date of completion of the Acquisition Proposal in the case of clause (D) above. The Fund shall not be obligated to make more than one payment pursuant to this Section 6.3. Any payment under clause (D) above shall be reduced by any expenses reimbursement payment previously made pursuant to Paragraph 6.3(d).
- (c) If this Agreement is terminated by the Fund pursuant to Paragraph 6.2(a)(viii), then IRE shall reimburse the Fund’s reasonable documented out-of-pocket expenses (including fees and disbursements of financial and legal advisors) up to an amount of \$2,000,000 within two Business Days following receipt of satisfactory documentation.
- (d) If this Agreement is terminated by IRE pursuant to Paragraph 6.2(a)(ix), then the Fund shall reimburse IRE’s reasonable documented out-of-pocket expenses (including fees and disbursements of financial and legal advisors) up to an amount of \$2,000,000 within two Business Days following receipt of satisfactory documentation.

#### **6.4 Liquidated Damages**

Each Party acknowledges that all of the payment amounts set out in Section 6.3 are payments of liquidated damages which are a genuine pre-estimate of the damages which the Fund or IRE will suffer or incur as a result of the event giving rise to such damages and resultant termination of the Agreement and are not penalties. Each Party irrevocably waives any right it may have to

raise as a defence that any such liquidated damages are excessive or punitive. For greater certainty, the Parties agree that the payment of any amounts pursuant to Section 6.3 is the sole remedy of the Fund and IRE; provided, however, that this limitation shall not apply in the event of fraud or intentional breach of this Agreement by a Party.

## **ARTICLE 7 GENERAL PROVISIONS**

### **7.1 Notices**

All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered or sent if delivered personally or sent by facsimile or e-mail transmission, or as of the following Business Day if sent by prepaid overnight courier, to the Parties at the following addresses (or at such other addresses as shall be specified by any Party by notice to the other given in accordance with these provisions):

- (a) if to the Fund:

Innergex Power Income Fund  
c/o Innergex Power Trust  
1111 St-Charles Street West  
East Tower, Suite 1255  
Longueuil, QC J4K 5G4

Attention: Jean La Couture and Daniel L. Lafrance  
Fax: 514-282-2214 and 514-527-1610  
E-mail: lacouture@huisclos.com and dlafrance@lantic.ca

with a copy (which shall not constitute notice) to:

Fasken Martineau DuMoulin LLP  
Stock Exchange Tower  
800 Square Victoria  
Suite 3700, P.O. Box 242  
Montreal, QC H4Z 1E9

Attention: Robert Paré and Marie-Josée Neveu  
Fax: 514-397-7600  
E-mail: rpare@fasken.com and mneveu@fasken.com

- (b) if to IRE:

Innergex Renewable Energy Inc.  
1111 St-Charles Street West  
East Tower, Suite 1255  
Longueuil, QC J4K 5G4



Attention: Cyrille Vittecoq  
E-mail:cvittecoq@lacaisses.com

Attention: Michel Letellier  
Fax: 450-928-2544  
E-mail:mletellier@innnergex.com

and a copy (which shall not constitute notice) to:

Davies Ward Phillips & Vineberg LLP  
1501 McGill College Avenue  
26<sup>th</sup> Floor  
Montreal, QC H3A 3N9

Attention: Sylvain Cossette & Brian Kujavsky  
Fax: 514-841-6499  
E-mail:scossette@dwpv.com

with a copy (which shall not constitute notice) to:

McCarthy Tétrault LLP  
1000 De La Gauchetière Street West  
Suite 2500  
Montreal, QC H3B 0A2

Attention: Marc Dorion & Frédéric Cotnoir  
Fax: 514-397-7016  
E-mail:fcotnoir@mccarthy.ca

## **7.2 Entire Agreement, Binding Effect and Assignment**

This Agreement shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement (including the schedules hereto), the Fund Disclosure Letter, the IRE Disclosure Letter and the Non-Disclosure Agreement constitute the entire agreement, and supersede all other prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof and thereof. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any of the Parties without the prior written consent of the other Parties. The Parties hereby confirm that they remain bound by the terms of the Non-Disclosure Agreement in accordance with the terms thereof, notwithstanding that this Agreement may be terminated for any reason whatsoever.

## **7.3 Severability**

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

#### **7.4 No Third Party Beneficiaries**

Except as provided in Section 4.7, this Agreement is not intended to confer any rights or remedies upon any Person other than the Parties to this Agreement.

#### **7.5 Time of Essence**

Time shall be of the essence in this Agreement.

#### **7.6 Remedies**

The Parties acknowledge and agree that an award of money damages alone would be inadequate for any breach of this Agreement by any Party or its representatives and any such breach would cause the non-breaching party irreparable harm. Accordingly, the Parties agree that, in the event of any breach or threatened breach of this Agreement by one of the Parties, a non-breaching Party may also be entitled to equitable relief, including injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to each of the parties.

#### **7.7 Costs and Expenses**

Except as provided in Section 6.3 and as otherwise agreed to in writing between the Parties, the Parties agree that all costs and expenses of the Parties relating to the Arrangement and the transactions contemplated hereby, including legal fees, accounting fees, financial advisory fees, regulatory filing fees, stock exchange fees, all disbursements of advisors and printing and mailing costs, shall be paid by the Party incurring such expenses.

#### **7.8 Governing Law**

This Agreement shall be governed, including as to validity, interpretation and effect, by the laws of the Province of Québec and the federal laws of Canada applicable therein, and shall be construed and treated in all respects as a Québec contract. Each of the Parties hereby irrevocably attorns to the exclusive jurisdiction of the Courts of the Province of Québec in respect of all matters arising under and in relation to this Agreement and the Arrangement.

#### **7.9 Notice of Limitation**

This Agreement is signed by the Fund Trustee (represented by IPT) in its capacity as trustee of the Fund, and not in any other capacity, and the Fund solely shall be responsible for the performance of the Fund's obligations under this Agreement and the "Fund Property" (as defined in the Fund Indenture) solely shall be subject to levy or execution in satisfaction of such obligations.

### **7.10 Counterparts, Execution**

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The Parties shall be entitled to rely upon delivery of an executed facsimile or similar executed electronic copy of this Agreement, and such facsimile or similar executed electronic copy shall be legally effective to create a valid and binding agreement between the Parties.

*(remainder of this page left blank intentionally)*

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**INNERGEX POWER INCOME FUND,  
acting by its trustee represented by Innergex  
Power Trust, acting by two of its trustees**

Per: (s) Jean La Couture  
Jean La Couture

Per: (s) Daniel L. Lafrance  
Daniel L. Lafrance

**INNERGEX RENEWABLE ENERGY INC.**

Per: (s) Cyrille Vittecoq  
Cyrille Vittecoq

Per: (s) Pierre Brodeur  
Pierre Brodeur

**SCHEDULE A**  
**REGULATORY APPROVALS**

1. Compliance with the Competition Act with respect to the transactions contemplated by this Agreement in any one of the following manners:
  - (a) the issuance of an advance ruling certificate issued by the Commissioner of Competition pursuant to subsection 102(1) of the Competition Act with respect to the transactions contemplated by this Agreement; or
  - (b) the Fund and IRE have given the notice required under section 114 of the Competition Act with respect to the transactions contemplated by this Agreement and the applicable waiting period under section 123 of the Competition Act has expired or been waived in accordance with the Competition Act; or
  - (c) the obligation to give the requisite notice has been waived pursuant to subsection 113(c) of the Competition Act,and, in the case of (b) or (c) above, the Fund and IRE have been advised in writing by the Commissioner of Competition or a person authorized by the Commissioner of Competition that such person is of the view, at that time, that, in effect, grounds do not exist to initiate proceedings before the Competition Tribunal under the merger provisions of the Competition Act with respect to the transactions contemplated by this Agreement, and the form of and any material terms and conditions attached to any such advice would not adversely affect the Fund and IRE in their discretion, acting reasonably, and such advice has not been rescinded or amended (collectively the “**Competition Act Approval**”).
2. Any required exemption orders or approvals from the relevant Canadian securities regulatory authorities with respect to any securities Law matter.
3. Conditional approval of the TSX to the listing of the IRE Shares issuable as contemplated hereby.

**SCHEDULE B**  
**THIRD-PARTY CONSENTS**

*[Omitted list of consents required to be obtained by the Fund, IRE and their respective Subsidiaries in connection with the Arrangement from the other parties to certain Contracts]*

**SCHEDULE C  
PLAN OF ARRANGEMENT**

See attached document.

**INNERGEX RENEWABLE ENERGY INC.  
INNERGEX POWER INCOME FUND**

**PLAN OF ARRANGEMENT  
UNDER SECTION 192  
OF THE CANADA BUSINESS CORPORATIONS ACT**

**ARTICLE 1  
INTERPRETATION**

**Section 1.01 Definitions.**

In this Plan of Arrangement the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

“**Arrangement**” means an arrangement under section 192 of the CBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations thereto made in accordance with Article 5 hereof or made at the direction of the Court in the Final Order;

“**Arrangement Agreement**” means the arrangement agreement dated January 31, 2010 between IRE and the Fund, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof;

“**Articles of Arrangement**” means the articles of arrangement in respect of the Arrangement, required by the CBCA to be sent to the Director after the Final Order is made, which shall be in a form and content satisfactory to the Fund and IRE, acting reasonably;

“**Business Day**” means any day other than a Saturday, Sunday or a statutory holiday in the Province of Québec;

“**CBCA**” means the *Canada Business Corporations Act* and the regulations made thereunder;

“**Certificate of Arrangement**” means the certificate of arrangement to be issued by the Director pursuant to subsection 192(7) of the CBCA in respect of the Articles of Arrangement;

“**Court**” means the Superior Court of Québec;

“**Depository**” means Computershare Trust Company of Canada at its offices in Toronto and Montreal;

“**Director**” means the Director appointed under section 260 of the CBCA;

“**Dissenting IRE Shareholder**” means any registered IRE Shareholder who has duly exercised its right of dissent provided for hereunder and in the Interim Order;

“**Effective Date**” means the date shown on the Certificate of Arrangement, which date shall be determined in accordance with Section 2.7 of the Arrangement Agreement;

“**Effective Time**” means 12:01 a.m. on the Effective Date;

“**Exchange Ratio**” means 1.460 IRE Shares for each Fund Unit;

“**Final Fund Distribution**” has the meaning ascribed to it in Section 2.03(i);



“**Final Order**” means the final order of the Court, in a form acceptable to the Fund and IRE, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the consent of both the Fund and IRE, each acting reasonably) at any time prior to the Effective Date or, if appealed, then unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Fund and IRE, each acting reasonably) on appeal;

“**Fund**” means Innergex Power Income Fund, a trust existing under the laws of Québec;

“**Fund Indenture**” means the amended and restated trust indenture of the Fund made effective as of June 25, 2003, as amended by the first amendment thereto dated March 14, 2007;

“**Fund Meeting**” means the special meeting of Fund Unitholders, including any adjournment or postponement thereof, to be held to consider and, if deemed advisable, to approve the Arrangement;

“**Fund Unitholders**” means holders of Fund Units;

“**Fund Units**” means the units in the capital of the Fund;

“**Interim Order**” means the interim order of the Court, in a form acceptable to the Fund and IRE, each acting reasonably, in respect of the Arrangement, as the same may be amended by the Court (with the consent of both the Fund and IRE, each acting reasonably);

“**IRE**” means Innergex Renewable Energy Inc., a corporation existing under the laws of Canada;

“**IRE Meeting**” means the special meeting of IRE Shareholders, including any adjournment or postponement thereof, to be held to consider and, if deemed advisable, to approve the Arrangement and to elect certain new members of the board of directors of IRE in compliance with Section 2.8 of the Arrangement Agreement (with effect upon completion of the Arrangement);

“**IRE Shareholders**” means holders of IRE Shares;

“**IRE Shares**” means the common shares in the share capital of IRE;

“**Letter of Transmittal**” means the letter of transmittal to be sent by the Fund to the Fund Unitholders in connection with the Arrangement;

“**Person**” includes an individual, limited or general partnership, limited liability company, limited liability partnership, trust, joint venture, association, body corporate, unincorporated organization, trustee, executor, administrator, legal representative, government or any other entity, whether or not having legal status.

## **Section 1.02 Interpretation Not Affected by Headings, etc.**

The division of this Plan of Arrangement into Articles, Sections and other portions and the insertion of headings are for reference purposes only and shall not affect the interpretation of this Plan of Arrangement. Unless otherwise indicated, any reference in this Plan of Arrangement to “Article” or “Section” followed by a number refers to the specified Article or Section of this Plan of Arrangement. The terms “this Plan of Arrangement”, “hereof”, “herein”, “hereunder” and similar expressions refer to this Plan of Arrangement, and any amendments, variations or supplements hereto made in accordance Article 5 hereof or made at the direction of the Court in the Final Order and do not refer to any particular Article, Section or other portion of this Plan of Arrangement.

**Section 1.03 Rules of Construction.**

In this Plan of Arrangement, unless the context otherwise requires, (a) words importing the singular number include the plural and vice versa, (b) words importing any gender include all genders, and (c) "include", "includes" and "including" shall be deemed to be followed by the words "without limitation".

**Section 1.04 Time.**

Time shall be of the essence in every matter or action contemplated hereunder.

**Section 1.05 Currency.**

All references in this Plan of Arrangement to sums of money and payments to be made hereunder are expressed in lawful money of Canada.

**Section 1.06 Statutes.**

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

**ARTICLE 2  
ARRANGEMENT**

**Section 2.01 Arrangement Agreement.**

This Plan of Arrangement is made pursuant to, is subject to the provisions of and forms part of the Arrangement Agreement, and constitutes an arrangement as referred to in section 192 of the CBCA.

**Section 2.02 Binding Effect.**

This Plan of Arrangement will become effective on, and be binding on and after, the Effective Time on IRE, the IRE Shareholders (including the Dissenting IRE Shareholders), the Fund and the Fund Unitholders.

**Section 2.03 Arrangement.**

On the Effective Date, commencing at the Effective Time, the following events set out in this Section 2.03 shall occur and shall be deemed to occur consecutively in the order set out in this Section 2.03 without any further authorization, act or formality:

- (i) the Fund Indenture shall be amended to the extent necessary to facilitate the Arrangement and the implementation of the steps and transactions described herein or otherwise contemplated in the Arrangement Agreement, all as may be reflected in a further amended and restated trust indenture to be dated as of the Effective Date;
- (ii) The Fund shall declare a distribution and pay such distribution, as soon as practicable on or after the Effective Date, to each Fund Unitholder (including IRE), equal to \$0.00274 per Fund Unit multiplied by the number of days from March 1, 2010 to the Effective Date inclusively (the "**Final Fund Distribution**");
- (iii) The Fund Units held by Fund Unitholders, other than and excluding IRE, shall be transferred, and shall be deemed to have been transferred to IRE and, in exchange for such

Fund Units, IRE Shares shall be issued by IRE to Fund Unitholders on the basis of the Exchange Ratio;

- (iv) the IRE Shares held by Dissenting IRE Shareholders shall be, and shall be deemed to be, cancelled and the Dissenting IRE Shareholders shall cease to have any rights as IRE Shareholders other than the right to be paid by IRE, in accordance with Section 3.01, an amount equal to the fair value of the IRE Shares held by such Dissenting IRE Shareholder immediately prior to the Effective Time; and
- (v) Effective within 30 days of the Effective Date, the stated capital of the IRE Shares shall be reduced by the directors of IRE, without further formality or approval, and without any payment to the holders of IRE Shares, by \$● ***[AMOUNT TO BE DETERMINED IN ACCORDANCE WITH SECTION 2.10 OF THE ARRANGEMENT AGREEMENT]*** and the amount of such reduction shall be added to the contributed surplus of IRE.

### **ARTICLE 3 RIGHTS OF DISSENT**

#### **Section 3.01        Rights of Dissent.**

Each registered IRE Shareholder shall have the right to dissent with respect to the Arrangement as provided in section 190 of the CBCA, except as modified by the terms of this Plan of Arrangement and the Interim Order or the Final Order. Notwithstanding subsection (5) of section 190 of the CBCA, the written objection to the Arrangement referred to in subsection (5) of section 190 of the CBCA must be received by IRE not later than 5:00 p.m. (Montreal time) on the Business Day that is two Business Days prior to the date of the IRE Meeting. In addition to any other restrictions under section 190 of the CBCA and, for greater certainty, IRE Shareholders who vote, or who have instructed a proxyholder to vote and have not revoked such instructions, in favour of the Arrangement, shall not be entitled to exercise rights of dissent.

#### **Section 3.02        Recognition of Dissenting IRE Shareholders.**

In no event shall IRE, the Fund or any other Person be required to recognize a Dissenting IRE Shareholder as an IRE Shareholder after the Effective Time, and the names of such holders shall be removed from the register of IRE Shareholders as at the Effective Time. Dissenting IRE Shareholders who have given a demand for payment which remains outstanding as at the Effective Time in accordance with the rights of dissent in respect of this Plan of Arrangement and who are ultimately not so entitled to be paid the fair value by IRE for the IRE Shares in respect of which they dissent, shall be treated as if they had participated in this Plan of Arrangement on the same basis as a non-dissenting IRE Shareholder.

### **ARTICLE 4 CERTIFICATES AND DELIVERY**

#### **Section 4.01        Exchange of Fund Certificates and Final Fund Distribution.**

- (a) On the Effective Date, IRE shall deposit with the Depositary, for the benefit of Fund Unitholders, sufficient IRE Shares to comply with Section 2.03(iii). On the Effective Date, the Fund shall deposit with the Depositary, for the benefit of the Fund Unitholders, sufficient money to comply with Section 2.03(ii). Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Fund Units that are to be exchanged for IRE Shares, together with a duly completed and executed Letter of Transmittal and such additional documents and instruments as the Depositary may reasonably require, the Fund Unitholder of such surrendered certificate shall be entitled to receive from the Depositary, and the Depositary shall deliver as soon as

possible to such Fund Unitholder, the IRE Shares and the amount of the Final Fund Distribution which such Fund Unitholder has the right to receive under the Arrangement.

- (b) Until surrendered as contemplated by this Section 4.01, each certificate which immediately prior to the Effective Time represented Fund Units shall be deemed after the Effective Time to represent only the right to be exchanged for IRE Shares and to receive the Final Fund Distribution payable in respect of such Fund Units.
- (c) Fund Unitholders shall not receive IRE Shares or any dividends or other distributions which may be declared thereon after the Effective Date until they submit the certificates for their Fund Units to the Depository along with a duly completed Letter of Transmittal. All dividends or other distributions, if any, made with respect to any IRE Shares allotted and issued pursuant to the Arrangement but for which a certificate has not been issued shall be paid or delivered to the Depository to be held by the Depository, in trust, for the registered holder thereof. Subject to applicable law, each certificate formerly representing Fund Units that is not deposited with all other documents as required pursuant to this Plan of Arrangement on or prior to the sixth anniversary of the Effective Date shall cease to represent a right or claim of any kind or nature including the right of the holder to receive IRE Shares, the Final Fund Distribution payable in respect of such Fund Units or any dividends or other distributions which may have been declared thereon.
- (d) In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Fund Units shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, the Depository will issue in exchange for such lost, stolen or destroyed certificate, IRE Shares and remit the applicable Final Fund Distribution payable in respect of such Fund Units in accordance with such holder's Letter of Transmittal. When authorizing such delivery, the Person to whom such shares are to be delivered shall as a condition precedent to the delivery, give a bond satisfactory to IRE and the Depository in such sum as IRE and the Depository may direct, or otherwise indemnify IRE and the Depository in a manner satisfactory to IRE and the Depository, against any claim that may be made with respect to the certificate alleged to have been lost, stolen or destroyed.
- (e) No certificates representing fractional IRE Shares shall be issued under this Arrangement. In lieu of any fractional shares, each registered Fund Unitholder otherwise entitled to a fractional interest in an IRE Share will receive the nearest whole number of IRE Shares (with fractions equal to or greater than exactly 0.5 being rounded up and less than 0.5 being rounded down).

## **ARTICLE 5 AMENDMENTS**

### **Section 5.01      Amendments to Plan of Arrangement.**

- (a) IRE and the Fund may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time; provided that each such amendment, modification and/or supplement must be (i) set out in writing, (ii) consented to in writing by each of IRE and the Fund (in each case, acting reasonably), (iii) filed with the Court and, if made following the IRE Meeting or Fund Meeting, approved by the Court, and (iv) communicated to IRE Shareholders and Fund Unitholders if and as required by the Court.
- (b) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by IRE or the Fund at any time prior to the IRE Meeting or Fund Meeting (provided that the other shall have consented thereto in writing) with or without any other prior notice or communication, and if so

proposed and accepted by the Persons voting at the IRE Meeting or Fund Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.

- (c) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the IRE Meeting or Fund Meeting shall be effective only if (i) it is consented to by each of IRE and the Fund (in each case, acting reasonably), and (ii) if required by the Court, it is consented to by IRE Shareholders and/or Fund Unitholders voting in the manner directed by the Court.
- (d) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Time unilaterally by IRE, provided that it concerns a matter which, in the reasonable opinion of IRE, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former holder of Fund Units.
- (e) This Plan of Arrangement may be withdrawn prior to the Effective Time in accordance with the terms of the Arrangement Agreement.

## **ARTICLE 6 FURTHER ASSURANCES**

### **Section 6.01 Further Assurances.**

Notwithstanding that the transactions and events set out herein shall occur and be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them in order further to document or evidence any of the transactions or events set out herein.

**SCHEDULE D**  
**CHANGES TO THE IRE BOARD**

The members of the IRE Board from the Effective Date until the next annual meeting or until their successors are elected or appointed shall consist of nine directors, including:

- five current members of the IPT Board (being John A. Hanna, Lise Lachapelle, Jean La Couture, Richard Laflamme and Daniel L. Lafrance);
- three current members of the IRE Board (being Pierre Brodeur, William A. Lambert and Susan M. Smith); and
- one director who currently sits on both the IPT Board and the IRE Board (being Michel Letellier).

Jean La Couture will be appointed as Chairman of the Board of IRE.