

PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014

SMALL CAPITAL PROJECT AGREEMENT

This Small Capital Project Agreement is made as of the Effective Date,

BETWEEN:

•, a corporation governed by the laws of the Province of Ontario, [INCLUDE THE LEGAL NAME OF THE LDC]

(the "LDC")

- and -

•, a • governed by the laws of •, [INCLUDE THE LEGAL NAME AND LEGAL FORM OF THE PARTICIPANT]

(the "Participant")

(each of the LDC and the Participant may be referred to as a "Party" and, collectively, the "Parties").

WHEREAS the Participant has submitted a Project Incentive Application for funding under the Project Incentive Initiative;

AND WHEREAS the LDC has accepted the Project Incentive Application;

NOW THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** All capitalized terms not herein defined will have the meanings given in Schedule "A".

1.2 **Interpretation.**

- (a) In this Agreement, words importing the singular number only will include the plural and vice versa and words importing gender will include all genders.
- (b) The insertion of headings is for convenience of reference only and will not affect the interpretation of this Agreement.
- (c) The invalidity, unenforceability or illegality of any provision in this Agreement will not, to the extent permitted by Applicable Law, affect the validity, enforceability or legality of any other provision of this Agreement, which will remain in full force and effect.
- (d) This Agreement, together with the Release and Waiver, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.
- (e) This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The LDC and the Participant each hereby attorns to the exclusive jurisdiction of the courts of the Province of Ontario.
- (f) No waiver of any provision of this Agreement will be binding unless executed in writing by an authorized signing officer of the Party to be bound thereby and no amendment of any provision of this Agreement will be binding unless executed in writing by the authorized signing officers of the Parties to this Agreement. The failure of any Party at any time to require performance by the other Party of any provision of the Agreement will not affect in any way the full right to require such performance at any subsequent time; nor will a waiver by any Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

1.3 **Schedules and Exhibits.** The following Schedules and Exhibits are attached to and will form part of this Agreement:

Schedule "A"	-	Definitions
Schedule "B"	-	Participant and Project Information
Schedule "C"	-	Adjustments to Project Incentive
Schedule "D"	-	M&V Plan
Exhibit 1	-	Statement of In-Service
Exhibit 2	-	Invoice Reconciliation Form

ARTICLE II
TERM

2.1 **Term and Survival.** Subject to earlier termination in accordance with the provisions of this Agreement, this Agreement will commence on the Effective Date and terminate on the last day of the Electricity Savings Period (the "Term"). Sections 1.2(e), 6.3, 13.2, 13.4, Article VII, Article IX, Article X, Article XI, Article XII, and this Section 2.1, and such other provisions as are necessary for the interpretation thereof and any other provisions hereof, the nature and intent of which is to survive termination or expiration of this Agreement, will survive the expiration or earlier termination of this Agreement.

ARTICLE III
PROJECT INCENTIVE

3.1 **Incentive Amounts and Payment.**

- (a) As at the Effective Date, the Parties agree that the Project Incentive for the Project is as set out under Section 1.3 of Schedule "B" and is an amount determined pursuant to Section 1.3 of Schedule "B", and subject to adjustment in accordance with Schedule "C".

- (b) In this Agreement, the “**Net Project Incentive**” means the amount, expressed in dollars, of the Project Incentive for a Project less the amounts of any Preliminary Engineering Incentive and Detailed Engineering Incentive paid or to be paid to the Participant in respect of such Project up to a maximum of \$1,000,000.00, subject to adjustment in accordance with Schedule “C”.
- (c) Subject to the Participant not being in default under this Agreement and otherwise satisfying all of its obligations herein contained, the LDC will pay the Participant the Net Project Incentive as follows:
- (i) 50% of the Net Project Incentive (the “**Initial NPI Payment**”), if the Participant meets the following criteria on the date the request for the Initial NPI Payment is assessed by the LDC:
 - A. the In-Service Date has been confirmed in accordance with Section 5.2;
 - B. the Participant has submitted and the LDC has accepted an Invoice Reconciliation Form; and
 - C. the first quarterly M&V Report has demonstrated, to the satisfaction of the Technical Reviewer, that the Participant has achieved no less than 80% of the Anticipated Electricity Savings; and
 - (ii) the balance of the Net Project Incentive is payable after the first anniversary of the In-Service Date, subject to adjustment in accordance with Schedule “C” (the “**Final NPI Payment**”).
- (d) If the Participant fails to meet any of the criteria to receive the Initial NPI Payment on the date the request for the Initial NPI Payment is assessed by the LDC, the LDC will pay the Net Project Incentive in one lump sum payment after the first anniversary of the In-Service Date, subject to any adjustments in accordance with Schedule “C” and provided that the Participant meets the criteria set out in Section 3.1(c)(i) before any payment is made by the LDC.

3.2 **Estimated Eligible Costs.** The Parties agree that the Estimated Eligible Costs are set out in Section 1.3 of Schedule “B”.

3.3 **Actual Eligible Costs.** The Parties agree that the Actual Eligible Costs will be as determined by the Technical Reviewer based on the Invoice Reconciliation Form submitted and whether the costs requested thereby satisfy the eligibility criteria for Eligible Costs set out herein.

ARTICLE IV DATA AND REPORTING REQUIREMENTS

4.1 **M&V Plan.** The Participant will fulfill all of its obligations as required pursuant to the M&V Plan, including, without limitation, providing all relevant data and any other information required pursuant to the M&V Plan.

4.2 **M&V Reports.** Upon receipt of all relevant data and any other information required pursuant to the M&V Plan, the LDC will request the Technical Reviewer to complete an M&V Report for each M&V Reporting Period specified in the M&V Plan within a reasonable period of time. The Technical Reviewer will provide a copy of each M&V Report to the LDC and the Participant within ten (10) Business Days of receipt of all required information. The Electricity Savings as determined by the Technical Reviewer and set out in any M&V Report will be used by the LDC and the Technical Reviewer, among other things, to assess whether the Project has achieved at least 80% of the Anticipated Electricity Savings for such M&V Reporting Period.

ARTICLE V OPERATIONAL RESPONSIBILITIES OF PARTICIPANT

5.1 **General Responsibilities of Participant.** The Participant’s responsibilities will include the following tasks and the Participant covenants to:

- (a) implement the Project and perform all of its other obligations hereunder in accordance with this Agreement, Good Engineering Practices and all Applicable Laws;
- (b) ensure that the Project actually achieves at least 80% of the Anticipated Electricity Savings for each corresponding M&V Reporting Period;
- (c) ensure that its relevant personnel are knowledgeable with the Project and are available to the LDC and the Technical Reviewer with respect to the M&V Plan and the IESO EM&V Protocols;
- (d) demonstrate leadership in the area of energy conservation, including, without limitation, electricity conservation, by, among other things, developing conservation policies and establishing employee, community and peer-to-peer awareness programs;
- (e) at the request of the LDC, provide audited or unaudited financial statements and/or a credit ratings report from one of the following rating agencies: The D&B Companies of Canada Ltd., Moody’s Investors Service Inc., or Standard and Poor’s Rating Group (advisor of McGraw-Hill Inc.);
- (f) obtain and maintain all permits and approvals necessary for the installation, verification and operation of the Project;
- (g) provide the LDC and the IESO with the right at any time to make public the Participant’s participation in the Project Incentive Initiative and data relating to the Project aggregated with other projects in a manner intended to report on the Project Incentive Initiative;
- (h) provide the LDC and the IESO with the right to advise other Participants of the features and equipment described in the Project Incentive Application unless the Participant, acting reasonably, has advised the LDC and the IESO in writing that such information is confidential;
- (i) acknowledge the assistance provided by the LDC and the IESO in all publications, releases and communications pertaining to the Project, provided that the LDC and the IESO will have the right to approve all such publications, releases and communications in advance;
- (j) ensure that all equipment being replaced in whole or in part by all or part of any Measure, when removed, is not sold for reuse and is decommissioned or disposed of in accordance with Applicable Laws;
- (k) at no time modify, vary or amend in any material respect any of the features or specifications of the Project (including, without limitation, its scope, objectives, contractors, consultants, Third Party Contributions, costs and implementation schedule) without first notifying the LDC in writing and obtaining the LDC’s consent in writing, such consent not to be unreasonably withheld; and
- (l) within ten (10) Business Days of a request by the Technical Reviewer or LDC, provide written clarification on any aspect of any Statement of In-Service, Invoice Reconciliation Form or other document submitted by the Participant to the satisfaction of the Technical Reviewer or LDC, acting reasonably.

- (m) The Participant will maintain, or will cause to be maintained, all of the equipment and improvements installed or implemented for each Project in good working order and will operate and maintain, or will cause to be operated and maintained, such equipment and improvements without any modification throughout the Electricity Savings Period.

5.2 In-Service Date.

- (a) The In-Service Date for the Project shall be no later than December 31, 2015. The anticipated In-Service Date is set out in Schedule "B".
- (b) The Participant will notify the LDC of the date that the Project is In-Service by delivering the Statement of In-Service in the form attached at Exhibit 1 (the "**Statement of In-Service**"). In this Agreement, "**In-Service**" means that the Project has been fully installed in accordance with this Agreement and is delivering Electricity Savings.
- (c) The process to confirm if a Project has achieved the requirements to meet the In-Service Date and that the In-Service Date has occurred is as set out in the M&V Plan and may involve one of the following options: (i) on-site review by the Technical Reviewer; (ii) on-site review by the LDC; or (iii) written confirmation by a registered professional engineer licensed to practice in Ontario. Upon confirmation of the occurrence of the In-Service Date as per Section 5.2(a) above, the LDC will notify the Participant of such confirmation.

ARTICLE VI PAYMENTS

- 6.1 **Method of Payment.** Payments under Section 3.1, as applicable, will either be made by cheque payable to the Participant or by electronic funds transfer to the account of the Participant specified in Schedule "B" under the heading "Account Details", at the sole discretion of the LDC. All dollar amounts referred to in this Agreement are expressed in Canadian funds.
- 6.2 **Invoice Reconciliation Form.** The Participant will prepare and submit to the LDC, in form and substance acceptable to the LDC and the Technical Reviewer, an Invoice Reconciliation Form, in respect of each of the payments set out in Section 3.1. An Invoice Reconciliation Form will be deemed to be a representation and warranty of the Participant to the LDC that the work required to be completed or costs required to be incurred and paid, including, without limitation, payment to all suppliers and contractors, to qualify to receive such payment has been completed in all material respects or paid in accordance with the evidence thereof provided to the LDC, unless otherwise agreed to in writing by the LDC.
- 6.3 **Responsibility for Taxes.** In addition to the Net Project Incentive, the LDC will pay any Applicable Taxes on the Net Project Incentive. The Participant will provide to the LDC sufficient supporting documentation, as requested by the LDC, to facilitate and support the LDC in claiming input tax credits in respect of the Net Project Incentive. In addition, if the LDC has reasonable grounds to commence a discussion, negotiation or challenge, in any manner whatsoever, with a tax authority regarding the validity of any Applicable Taxes imposed on the Net Project Incentive, the Participant will provide such reasonable assistance as may be required by the LDC with such discussion, negotiation or challenge. For greater certainty, in no event shall the LDC be relieved of its obligations under this Agreement, including, without limitation, the LDC's obligation to pay Applicable Taxes as provided hereunder, pending the outcome of any discussion, negotiation or challenge with a tax authority.

ARTICLE VII EVALUATION, MONITORING AND VERIFICATION

- 7.1 **EM&V.** The Participant will participate in any surveys, studies, evaluations or verifications conducted by the LDC or the IESO or their respective service providers in connection with the Project Incentive Initiative, including, without limitation, for the purpose of proper administration, monitoring and verification of this Agreement or evaluation of the Project Incentive Initiative.
- 7.2 **Retention of Records and Audit and Inspection Rights.** The Participant and the LDC will both keep complete and accurate books, accounts and records and all other data required by each of them for the purpose of proper administration, monitoring and verification of this Agreement and all such records and data will be maintained for a period which is the greater of seven (7) years and the period of time specified under Applicable Law. On reasonable notice, at any time during normal business hours, the Participant will provide reasonable access to the LDC, the IESO, and/or their respective designates to (a) such books, accounts, records and other data and (i) at the reasonable request of the LDC and/or IESO, make available to the LDC, the IESO, and/or their respective designates, the personnel of the Participant and its subcontractors involved in the performance of the Project and the maintenance of such books, accounts, records and data referred to above for the purpose of this Section 7.2; and (ii) permit the LDC, the IESO and/or their respective designates to examine and audit and take copies and extracts from such documents; and (b) its premises for purposes of performing an inspection or technical audit for purposes of evaluation and verification or to confirm that the Participant and each of its subcontractors has performed its obligations in respect of the Project, in accordance with this Agreement.

ARTICLE VIII REPRESENTATIONS AND WARRANTIES

- 8.1 **Mutual Representations of the Parties.** Each of the Participant and the LDC represents and warrants to the other as follows, and acknowledges that the other is relying on such representations and warranties in entering into this Agreement:
- (a) it has the requisite power, authority and capacity to enter into this Agreement and to perform its obligations hereunder, including, without limitation, in the case of the Participant, to implement the Project;
- (b) this Agreement has been duly authorized, executed, and delivered by it, as applicable, and constitutes a valid and binding obligation enforceable against it, as applicable, in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction; and
- (c) the execution and delivery of this Agreement by it and the consummation of the transactions contemplated hereby will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of, its material obligations or any judgment, decree, order or award to which it is subject or any license, permit, approval, consent or authorization held by it.
- 8.2 **Representations of the Participant.** In addition to the representations set out in Section 8.1, the Participant represents and warrants to the LDC as follows, and acknowledges that the LDC is relying on such representations and warranties in entering into this Agreement:
- (a) all of the information set out in this Agreement (including, without limitation, Schedule "B") pertaining to the Participant, and the Project, is true and correct, or, prior to the In-Service Date to the extent it relates to a Project yet to be constructed or implemented, is an accurate representation of the Participant's plans and designs for the construction of the Project; and
- (b) there are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Participant or, to the knowledge of the Participant, threatened against the Participant;
- (c) there are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Participant, threatened against the Participant, that could have a material adverse effect on the Participant;

- (d) the Facility is electrically connected directly to the Distribution System of a Local Distribution Company and is within the LDC's service area;
- (e) the Participant has not, prior to submitting an application for the Project, entered into an agreement with any contractor or consultant, or ordered or purchased any equipment for use in relation to the Project;
- (f) the Project does not involve the installation of any equipment or system or the operation thereof that, in either case, does not comply with all Applicable Laws;
- (g) the Participant is an Eligible Person and the Project satisfies the requirements of an Eligible Project and, for greater clarity, is not an Ineligible Project;
- (h) the Participant has not taken any actions to amend or suspend the Release and Waiver or to terminate its existence and it continues to be in full force and effect as of the date the Participant signs this Agreement;
- (i) the Participant is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada);
- (j) the Participant shall not directly or indirectly assign, transfer or sell any electricity it generates from a Generation Project;
- (k) the Participant shall not use a Generation Project at any time during the term of this Agreement for the primary purpose of reducing electricity demand during the five critical system-peak hours;
- (l) the Participant shall be a Distribution Consumer at all times during the term of this Agreement; and
- (m) The Participant's facility shall be connected to the Distribution System at all times during the term of this Agreement.

8.3 **Survival of Representations and Warranties.** The representations and warranties provided in this Article VIII will be continuing throughout the term of this Agreement, and any change in the accuracy of such representations and warranties will immediately be communicated by the relevant Party to the other Party in writing.

ARTICLE IX DEFAULT

9.1 **Participant Breach.** During the term of this Agreement, each of the following will be an event of default by the Participant (each, a "**Participant Event of Default**"):

- (a) the In-Service Date has not occurred by December 31, 2015;
- (b) the Participant fails to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the LDC;
- (c) any representation or warranty made by the Participant in this Agreement is not true or correct in any material respect at any time and is not made true or correct in all material respects within ten (10) Business Days after written notice of such failure from the LDC;
- (d) the Participant has made a material amendment to the Project that has not first been consented to in writing by the LDC, acting reasonably;
- (e) an effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Participant;
- (f) the Participant amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Participant under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Participant's obligations under this Agreement;
- (g) any one of the following occurs: (i) a receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Participant or of any of the Participant's property is appointed by a Governmental Authority and such appointment is not discharged, revoked or withdrawn within 30 days of the appointment; (ii) by decree, judgment or order of a Governmental Authority, the Participant is adjudicated bankrupt or insolvent or any substantial part of the Participant's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of 30 days after the entry thereof; or (iii) a petition, proceeding or filing is made against the Participant seeking to have the Participant declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Applicable Law, and such petition, proceeding or filing is not dismissed or withdrawn within 30 days;
- (h) the Participant makes an assignment for the benefit of its creditors generally under any Applicable Law, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Applicable Law;
- (i) if the equipment or improvements implemented through a Project ceases operation before the end of the Electricity Savings Period; or
- (j) if any equipment being replaced relating to a Measure is not decommissioned or disposed of in accordance with Applicable Law or such equipment is used again.

9.2 **Remedies of the LDC.**

- (a) If any Participant Event of Default occurs and is continuing:
 - (i) upon written notice to the Participant, the LDC may terminate this Agreement; and/or
 - (ii) the LDC will be entitled to:
 - A. withhold payment of any Net Project Incentives payable but not yet paid to the Participant until such Participant Event of Default is remedied, if such Participant Event of Default is capable of being remedied; and/or
 - B. an amount equal to a portion of the Net Project Incentive, calculated as follows:

(Amount of Net Project Incentive paid in relation to the defaulting Project) x (months remaining in Electricity Savings Period) ÷ (total months in the Electricity Savings Period)

For the purposes of this calculation, a Participant Event of Default occurring at any time during a month will be deemed as a Participant Event of Default for the full month; and

- (b) Notwithstanding anything else in this Agreement, on the occurrence of a Participant Event of Default referred to in Sections 9.1(e), 9.1(g) or 9.1(h), all of the LDC's obligations hereunder will be deemed to terminate immediately before such Participant Event of Default.
- (c) To the extent that any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the liquidated damages calculated hereunder constitute a reasonable approximation of the harm or loss.
- (d) The express rights and remedies of the LDC set out in Section 9.2 are in addition to and will not limit any other rights and remedies available to the LDC at law or in equity.
- (e) The Participant acknowledges and agrees that neither the LDC nor the IESO shall be liable for any Claim by the Participant or its Representatives arising out of or in any way connected with receiving or failing to receive transmission or distribution services, howsoever arising; and whether in contract tort or otherwise.

ARTICLE X LIMITATION OF LIABILITY AND INDEMNIFICATION

- 10.1 **No Warranty.** Except as specifically set forth or referenced in this Agreement, there are no representations, warranties, or conditions of either Party, express, implied, statutory or otherwise, regarding any matter including, without limitation, any implied warranties or conditions of quality or fitness for a particular purpose. Without limiting the generality of the foregoing, the Participant acknowledges that its participation in the Project Incentive Initiative under this Agreement is based on its own assessment of such Project Incentive Initiative and not on any reliance on anticipated or projected results, and that such participation may not result in the achievement of any Electricity Savings, which is expressly disclaimed by the Participant.
- 10.2 **Limitation of Liability.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY: (A) IN NO EVENT WILL THE PARTICIPANT BE ENTITLED TO RECOVER FROM THE LDC OR ANY OTHER INDEMNIFIED PARTY (as defined in this Agreement) FOR ANY LIABILITIES, DAMAGES, OBLIGATIONS, PAYMENTS, LOSSES, COSTS OR EXPENSES UNDER OR IN RELATION TO THIS AGREEMENT: (I) ANY AMOUNT IN EXCESS OF THE ACTUAL COMPENSATORY DIRECT DAMAGES, COURT COSTS AND REASONABLE FEES SUFFERED OR INCURRED BY THE PARTICIPANT AND IN ANY EVENT LIMITED TO THE PROJECT INCENTIVES PAID BY THE LDC HEREUNDER; OR (II) DAMAGES (WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL OR OTHERWISE) FOR (X) LOSS OF PROFIT, OR (Y) DIMINUTION OF VALUE OR LOSS OF USE OF ANY PROPERTY; AND (B) THE LDC AND INDEMNIFIED PARTIES WILL NOT BE LIABLE TO THE PARTICIPANT, ITS SUCCESSORS OR ASSIGNS, OR ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS OR REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE UNDER OR IN RELATION TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY.
- 10.3 **Indemnification by the Participant.** The Participant will indemnify, defend and hold the Indemnified Party harmless from and against any and all Claims, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including, without limitation, the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including, without limitation, death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "Indemnifiable Loss"), asserted against or suffered by the Participant relating to, in connection with, resulting from, or arising out of (i) any Claim by, or occurrence or event related to, any third party relating to the Project or this Agreement; and/or (ii) the negligence or wilful misconduct of the Participant, except in either case to the extent that any injury or damage related to such Claim, occurrence or event is attributable to the negligence or wilful misconduct of the Indemnified Party.

ARTICLE XI CONFIDENTIALITY AND MFIPPA/FIPPA

- 11.1 **Confidentiality Covenant.**
- (a) Each Party will, in its capacity as a Receiving Party:
 - (i) not use or reproduce Confidential Information of the Disclosing Party for any purpose, other than as and to the extent expressly permitted under this Agreement or as may be reasonably necessary for the exercise of its rights or the performance of its obligations set out in this Agreement;
 - (ii) not disclose, provide access to, transfer or otherwise make available any Confidential Information of the Disclosing Party except as expressly permitted in this Agreement; and
 - (iii) take all measures reasonably required to maintain the confidentiality and security of all Confidential Information of the Disclosing Party that it accesses, receives, collects, uses, stores, processes, records, discloses, transfers, retains, disposes of, destroys, manages or otherwise handles ("Handles").
 - (b) The Receiving Party may disclose Confidential Information of the Disclosing Party:
 - (i) to a third party that is not a Representative of the Receiving Party if and to the extent required by a Governmental Authority or otherwise as required by Applicable Laws, provided that the Receiving Party must first give the Disclosing Party notice of such compelled disclosure (except where prohibited by Applicable Laws from doing so) and must use commercially reasonable efforts to provide the Disclosing Party with an opportunity to take such steps as it desires to challenge or contest such disclosure or seek a protective order. Thereafter, the Receiving Party may disclose the Confidential Information of the Disclosing Party, but only to the extent required by Applicable Laws and subject to any protective order that applies to such disclosure; and
- to:
- A. its accountants, internal and external auditors and other professional advisors if and to the extent that such Persons need to know such Confidential Information in order to provide the applicable professional advisory services relating to the Receiving Party's business;
 - B. potential permitted assignees or successors of the Receiving Party if and to the extent that such Persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other transaction or transfer involving the business, assets or services provided by the Receiving Party; and

- C. employees of each Party and its other Representatives if and to the extent that such Persons need to know such Confidential Information to perform their respective obligations under this Agreement;

provided that any such Person is aware of the provisions of this Section 11.1 and has entered into a written agreement with the Receiving Party that includes confidentiality obligations in respect of such Confidential Information that are no less stringent than those contained in this Section 11.1.

- (c) Without limiting the foregoing, each Party acknowledges and agrees that:
- (i) the LDC will Handle reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, to the IESO on an ongoing basis as part of its participation in the Project Incentive Initiative or other CDM initiatives offered by the IESO and may do so without further notice to or further consent of the Participant; and the LDC and IESO may disclose and provide reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, to the OEB, the Ontario Ministry of Energy and the Ontario Environmental Commissioner for Handling by such entities provided that the LDC or the IESO, as the case may be, has in place with any such Person a written agreement that includes confidentiality obligations in respect of such Confidential Information that are comparable to those contained in this Section 11.1;
 - (ii) this Agreement and all Confidential Information in the possession or control of the LDC, the IESO or the Participant are subject to Applicable Laws that include the access provisions of MFIPPA or FIPPA, as the case may be, and that as a result, third parties may obtain access to each Party's Confidential Information. Moreover, the LDC and its Representatives are subject to MFIPPA or FIPPA and the IESO and its Representatives are subject to FIPPA, and that MFIPPA or FIPPA, as the case may be, applies to and governs all recorded information in any form or medium that is provided by the LDC or the IESO, respectively, or its Representatives to the Participant or provided by the Participant to the LDC or the IESO, respectively, or its Representatives for the purposes of this Agreement, or created by the Participant in the performance of this Agreement, and that is in the custody or control of the LDC or the IESO, as the case may be (collectively, the "Records"), and may require the disclosure of such Records to third parties;
- (d) each Party is responsible for ensuring that its agreements with Representatives contemplate and permit such potential access or disclosure, and will be fully liable to any such Representatives for any Claim arising out of or relating to such access;
- (e) the LDC and the IESO may at any time make public the Participant's participation in the Project Incentive Initiative and data relating thereto, including a description of the Project and type of Facility, historical energy use and consumption, aggregated with other Projects in a manner intended to report on the Project Incentive Initiative; and
- (f) the Participant may acknowledge the assistance provided by the LDC and the IESO in all public communications, provided that the LDC and the IESO will have the right to approve in writing all such public communications in advance.

11.2 **Injunctive Relief.** Each Party acknowledges that any violation of the provisions of this Article XI may cause irreparable damage or injury to the other Party (including, without limitation, in the case of the LDC, any of the other Indemnified Parties), the exact amount of which may be impossible to ascertain, and that, for such reason, in addition to any other remedies available to such Party (including, without limitation, in the case of the LDC, any of the other Indemnified Parties), such Party (including, without limitation, in the case of the LDC, any of the other Indemnified Parties) is entitled to obtain injunctive relief or any other remedy against any actual or potential breach of the provisions of this Article XI, without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made. Nothing in this Section 11.2 will be construed to limit the right of a Party (including, without limitation, in the case of the LDC, any of the other Indemnified Parties) to obtain injunctive relief in any other circumstance in which it may be otherwise entitled to relief.

11.3 **MFIPPA and FIPPA Compliance.** To the extent that the LDC or the IESO, as the case may be, must comply with disclosure obligations under MFIPPA or FIPPA, the Participant agrees (without limiting its obligation set out in Article XI):

- (b) to keep the Records in its possession secure;
- (c) to provide the Records to the LDC or the IESO, as the case may be, within seven calendar days of being directed to do so by the LDC or the IESO, as the case may be, for any reason under MFIPPA or FIPPA, as applicable, including an access request or privacy issue; and
- (d) to implement other specific security measures that in the reasonable opinion of the LDC or the IESO, as the case may be, would improve the adequacy and effectiveness of the Participant's measures to ensure, for the purposes of MFIPPA or FIPPA, as applicable, the security and integrity of the Records held in the Participant's possession.

ARTICLE XII DISPUTE RESOLUTION

12.1 **Informal Dispute Resolution.** If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties will promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, a senior executive from each Party will meet, either in person or by telephone, to attempt to resolve the dispute. Each senior executive will be prepared to propose a solution to the dispute. If, following such efforts, the dispute is not resolved, the dispute will be settled by arbitration pursuant to Section 12.2.

12.2 **Arbitration.** The arbitration shall be conducted by a single arbitrator (the "Arbitrator"). The Arbitrator shall be appointed by agreement of the Parties or, in the absence of an agreement within a reasonable period of time, such Arbitrator shall be appointed by a Judge of the Ontario Superior Court of Justice sitting in the Judicial District of Toronto Region, upon the application of any of the Parties and a Judge of the Ontario Superior Court of Justice sitting in the Judicial District of Toronto Region shall be entitled to act as such Arbitrator, if he or she so desires. The arbitration shall be held in the City of Toronto. The procedure to be followed shall be agreed by the Parties or, in default of agreement, determined by the Arbitrator. The arbitration shall proceed in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). The Arbitrator shall have the power to proceed with the arbitration and to deliver his or her award notwithstanding the default by any Party in respect of any procedural order made by the Arbitrator. The decision arrived at by the Arbitrator shall, to the extent permitted at law, be final and binding subject to the right of a Party to appeal on a question of fact or an issue of law, or mixed fact and law. Judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction.

ARTICLE XIII MISCELLANEOUS

13.1 **Force Majeure.**

- (a) If, by reason of Force Majeure the Participant is unable to achieve at least 80% of the Anticipated Electricity Savings, then the Participant will be excused and relieved on a day for day basis from performing or complying with such obligation for the period of time in which such Force Majeure will continue and will not be liable for any liabilities, damages, losses, payments, costs, expenses to, or incurred by, the LDC

in respect of or relating to such Force Majeure and the Participant's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure.

- (b) A Participant invoking Force Majeure will give the LDC written notice within ten (10) Business Days of the commencement and termination of Force Majeure.
- (c) A Participant will not be entitled to invoke Force Majeure, nor will it be relieved of its obligations hereunder in any of the following circumstances:
 - (i) if the Participant has caused the event of Force Majeure or has failed to use commercially reasonable efforts to prevent, remedy or remove the event of Force Majeure. For clarity, the settlement of strikes, lockouts and other labour disturbances will be deemed to be wholly within the discretion of the Participant;
 - (ii) if the Force Majeure was caused by a lack of funds or other financial cause; or
 - (iii) if the Party invoking Force Majeure fails to comply with the notice provisions in this Section 13.1.
- (d) If an event of Force Majeure causes the Participant to not achieve at least 80% of the Anticipated Electricity Savings, then the M&V Reporting Period will not consider those days that are subject to Force Majeure in calculating the Anticipated Electricity Savings. For greater clarity, under no circumstances will an event of Force Majeure extend the Term of this Agreement.
- (e) The LDC shall not be in default and shall not be deemed to be in default of its obligations under this Agreement by reason of delay or of failure or inability to perform its obligations hereunder where the said delay, failure or inability is due solely to any cause which is unavoidable or beyond the reasonable control of the LDC, including, without limitation, any act of GOD or other cause which frustrates the performance of the LDC's obligations under this Agreement.

13.2 Environmental Attributes.

- (a) All Environmental Attributes arising in respect of Electricity Savings for which the Project Incentive has been paid (the "**Electricity Savings Environmental Attributes**") will be, pursuant to Section 13.2(b), owned by the IESO and the Participant will have no entitlement to any such Electricity Savings Environmental Attributes. All other Environmental Attributes arising in relation to a Participant's Facility will be owned by the Participant and the LDC and the IESO will have no entitlement thereto.
- (b) The Participant hereby grants, transfers, conveys, assigns and sets over to, or to the extent such transfer or assignment is not permitted, holds in trust for, the LDC in its capacity as agent for and on behalf of the IESO, and not for the LDC's own benefit, free and clear of all liens, claims and encumbrances other than those in favour of the IESO, all of the Participant's right, title, benefit and interest in and to all Electricity Savings Environmental Attributes, and the IESO will own all right, title, benefit and interest in and to all Electricity Savings Environmental Attributes.
- (c) The Participant will from time to time, upon written direction of the IESO, take all such actions and do all such things necessary to effect, as set out in Section 13.2(b), the transfer and assignment to, or holding in trust for, the LDC in its capacity as agent for and on behalf of the IESO, all right, title, benefit and interest in and to all Electricity Savings Environmental Attributes.
- (d) The Participant will from time to time, upon written direction of the LDC or IESO, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies the Electricity Savings Environmental Attributes that are created and allocated or credited pursuant to Applicable Law from time to time for the purposes of transferring the Electricity Savings Environmental Attributes to the IESO in accordance with this Section 13.2. The Participant will be entitled to reimbursement of the cost of complying with a direction under this Section 13.2(d), provided that the LDC or IESO, acting reasonably, approved such cost in writing prior to the cost being incurred by the Participant.

13.3 Notices. All notices and communications given under this Agreement shall be in writing and shall be given by email or by hand-delivery as provided to the other Party as follows:

- If to the LDC:
 - Attention:
 - Email:
- If to the Participant:
 - Attention:
 - Email:

Either Party may, by written notice to the other, change its contact information for notices and communication. Notice or communication delivered or transmitted as provided above shall be deemed to have been given and received on the day it is transmitted (if by email) or received (if by courier or hand delivery), provided that it is transmitted or received on a Business Day prior to 5:00 p.m. local time in the place of receipt. Otherwise such notice will be deemed to have been given and received on the next Business Day.

13.4 General.

- (a) The Participant acknowledges that it is an independent contractor, and that there is no joint venture, partnership or agency created or implied by this Agreement.
- (b) The Parties acknowledge that the LDC and the Technical Reviewer are independent from one another and in no way does this Agreement contemplate or create a relationship of employment, service provider, partners, joint venturers, fiduciary, principal and agent or any other relationship between the Technical Reviewer and either of the Parties.
- (c) Each of the Parties will, from time to time, on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed and delivered all such further things as may be reasonably required in order to fully perform and to more effectively implement the terms of this Agreement.
- (d) Except as provided in Sections 5.1(g), 11.1(c), 13.2, Article VII and this Section 13.4(d), this Agreement is solely for the benefit of (i) the LDC and its successors and assigns, with respect to the obligations of the Participant under this Agreement, and (ii) the Participant and its successors and permitted assigns, with respect to the obligations of the LDC under this Agreement, and this Agreement will not be deemed to confer upon or give to any other Person any Claim or other right or remedy. The Participant appoints the LDC as the trustee for the IESO of the applicable provisions set out in this Agreement, including Sections 5.1(g), 5.1(i), 13.4(d), 13.4(f), Article VII, Article X and Article XI, and this Section 13.4(d), and the LDC accepts such appointment. The LDC is the agent of the IESO for the purpose of Section 13.2.
- (e) This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and assigns.

- (f) This Agreement may not be assigned by the Participant except with the prior written consent of the LDC, which consent may not be unreasonably withheld or delayed. The rights, benefits and obligations of the LDC under or in respect of this Agreement may, in whole or in part, be assigned by the LDC to one or more Persons, including, without limitation, the IESO, without the prior written consent of the Participant.
- (g) This Agreement may be executed in two or more counterparts, and all such counterparts will together constitute one and the same Agreement. Either Party may deliver an executed copy of this Agreement by electronic transmission but such Party will promptly deliver to the other Party an originally executed copy of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF the Parties have executed this Agreement by their duly authorized respective representative(s) as of the date first above written.

• [LEGAL NAME OF LDC]

• [LEGAL NAME OF PARTICIPANT]

Name:

Title:

Date:

Name:

Title:

Date:

Name:

Title:

Date:

Name:

Title:

Date:

[I/we] have the authority to sign this Agreement.

[I/we] have the authority to sign this Agreement.

SCHEDULE "A"

DEFINITIONS

Unless otherwise set out in this Agreement, the following terms will have the following meanings:

"Actual Eligible Costs" means the Eligible Costs that are actually incurred by the Participant to complete the Project as confirmed by the Technical Reviewer and the LDC in accordance with Section 3.3.

"Agreement" means this Small Capital Project Agreement, including, without limitation, all recitals and Schedules, as it or they may be amended, restated or supplemented from time to time.

"Annualized Electricity Savings" means Electricity Savings during the Electricity Savings Period divided by 5. Where the Expected Life of a Project is less than 5 years, then Electricity Savings during the period between the end of the Expected Life and the 5th anniversary of the In-Service Date will be deemed to be nil.

"Anticipated Electricity Savings" means, in each M&V Reporting Period specified in the M&V Plan, being the estimated Electricity Savings anticipated by the Technical Reviewer to be achieved during such period, or such other amount as approved by the LDC in writing.

"Applicable Law" means any applicable law, including, without limitation, any statute, legislation, treaty, regulation and any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Governmental Authority.

"Applicable Taxes" means any applicable HST and any other applicable sales or use taxes.

"Business Day" means a day, other than a Saturday or a Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

"CCHP" or **"Conservation Combined Heat and Power"** means the simultaneous production of electrical and thermal energy where both forms of energy are productively and efficiently used within the Facility and/or its processes.

"CDM" means electricity conservation and demand management.

"Claim" means any actual, threatened or potential civil, criminal, administrative, regulatory, arbitral or investigative demand, allegation, action, suit, investigation or proceeding or any other claim or demand, whether in contract, tort or otherwise.

"Confidential Information" of a Party means any and all information of such Party or any of its affiliates, licensors, customers and employees or other service providers, and information on the Project Incentive Applications, and in the case of the LDC includes the IESO and Governmental Authorities, (the **"Disclosing Party"**) that has or will come into the possession or knowledge of the other Party or any of their respective affiliates, licensors, customers and employees or other service providers and, in the case of the LDC, includes the IESO, (the **"Receiving Party"**) in connection with or as a result of entering into this Agreement, including, without limitation, information concerning the Disclosing Party's past, present or future customers, suppliers, technology, or business. Notwithstanding the foregoing, "Confidential Information" does not include information that is:

(a) publicly available when it is received by or becomes known to the Receiving Party or that subsequently becomes publicly available other than through a direct or indirect act or omission of the Receiving Party (but only after it becomes publicly available);

(b) established by evidence to have been already known to the Receiving Party at the time of its disclosure to the Receiving Party and is not known by the Receiving Party to be the subject of an obligation of confidence of any kind;

(c) independently developed by the Receiving Party without any use of or reference to the Confidential Information of the Disclosing Party as established by evidence that would be acceptable to a court of competent jurisdiction; or

(d) received by the Receiving Party in good faith without an obligation of confidence of any kind from a third party who the Receiving Party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence of any kind, but only until the Receiving Party subsequently comes to have reason to believe that such information was subject to an obligation of confidence of any kind when originally received;

provided, however, that, for the purposes of this Agreement, all personal information concerning any Participant will constitute Confidential Information, whether or not it falls into one of the exceptions set out in clause (a) through (d) of this definition.

"Detailed Engineering Incentive" means incentive funding paid by the LDC to the Participant pursuant to a Detailed Engineering Study Funding Contract.

"Detailed Engineering Study" means a detailed study of the consumption of electricity of a System within a Facility, or of a Facility, in order to assess and evaluate (a) Measures, or their implementation, that could give rise to Electricity Savings, or (b) if approved by the IESO, electricity generation by the Participant that could reduce the electricity consumption by a System within a Facility, or of a Facility, from a Distribution System.

"Detailed Engineering Study Funding Contract" means a contract between a Participant and the LDC for funding of a Detailed Engineering Study.

"Distribution Consumer" means an electricity consumer in the LDC's service area.

"Distribution System" means a system connected to the IESO-Controlled Grid (as defined in the IESO Market Rules) for distributing electricity at voltages of 50 kilovolts or less and includes any structures, equipment or other thing used for that purpose.

"Effective Date" means the date this Agreement was signed by both Parties and, for greater clarity, means the date this Agreement is signed by the second Party (as indicated by the date associated with that Party's signature).

"Electricity Savings" means the aggregate electricity consumption reduction over a specified period of time, expressed in MWh, obtained as a result of a specified Eligible Project measured under normal operating conditions.

"Electricity Output" means the gross annual electricity generated from the WER or CCHP Project in MWh.

“Electricity Savings Period” means the period commencing on the In-Service Date and ending on the earlier of: (i) the last day of the Expected Life; and (ii) the 5th anniversary of the In-Service Date.

“Eligible Costs” means those costs that satisfy the requirements of Schedule “C”.

“Eligible Person” means a Person that is an electricity consumer of the LDC and is not insolvent.

“Eligible Project” means, in respect of the Project Incentive Initiative, the proposed Project must:

- (a) involve the installation or implementation of a Measure or Measures;
- (b) be in respect of a single Facility of the Eligible Person connected to, or behind the meter of another electricity consumer connected to, a Local Distribution Company’s Distribution System but in the LDC’s service area;
- (c) be expected to deliver at least 100 MWh of Annualized Electricity Savings;
- (d) have achieved an actual In-Service Date no later than December 31, 2015; and
- (e) not be an Ineligible Project.
- (f) in the case of a Generation Project, in addition to any criteria set out in this Agreement:
 - (i) have a Gross Nameplate Capacity of less than 10MW;
 - (ii) not be used for the sole purpose of reducing electricity demand during the five critical system-peak hours;
 - (iii) in the case of a WER Project, demonstrate that natural gas or propane purchased from or otherwise supplied by a third party to the Participant does not exceed 10% of the Fuel Energy Input;
 - (iv) in the case of a CCHP Project, meet the following additional criteria:
 - A. use natural gas or propane as its sole fuel, unless otherwise approved in writing by the LDC;
 - B. be designed and operated in a manner that the CCHP Project achieves a minimum annual Total System Efficiency of 65%; and
 - C. not use the thermal output from the CCHP Project to generate electricity;
 - (v) not be the subject of, or have been the subject of, a physical or financial power or capacity purchase contract relating to the generation of electricity by such proposed Project (in whole or in part), or other form of contract relating to electricity relating to such proposed Project (in whole or in part) with the IESO, the Ontario Electricity Financial Corporation or the Government of Ontario or any other agency of the Government of Ontario; and
 - (vi) not be split across multiple applications for the purpose of circumventing the 10 MW limit on Gross Nameplate Capacity.

“Environmental Attributes” means all benefits and entitlements associated with a Measure or a Facility having decreased environmental impacts resulting from the implementation of a Project, and includes:

- (a) all rights to any fungible or non-fungible attributes, whether arising from a Facility itself, from the interaction of the Facility with a Distribution System or the IESO-Controlled Grid (as defined in the IESO Market Rules) or because of Applicable Law or voluntary programs established by any Governmental Authority;
- (b) all rights relating to the nature of the energy source as may be defined and awarded through Applicable Law or voluntary programs; and specific Environmental Attributes include ownership rights to any applicable credits, entitlements or other instruments resulting from interaction of the Facility or a Measure with a Distribution System or the IESO-Controlled Grid (as defined in the IESO Market Rules) or as specified by Applicable Law or voluntary programs;
- (c) all rights to quantify and register the foregoing with competent authorities; and
- (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing.

“Estimated Annualized Electricity Savings” means the amount set out in Section 1.3(a) of Schedule “B”.

“Estimated Eligible Costs” means the amount set out in Schedule “B”, which such amount is the aggregate estimated Eligible Costs necessary to complete the Project.

“Expected Life” means the number of years from the In-Service Date that a Project will deliver Electricity Savings, such period being equal to at least one (1) year, and as set out in Schedule “B”.

“Facility” means the building(s), premises or lands, or part thereof, owned or occupied by the Participant and in which the System is located.

“FIPPA” means the *Freedom of Information and Protection of Privacy Act* (Ontario) and the regulations thereunder.

“Force Majeure” means any act, event, cause or condition that prevents the Participant from achieving at least 80% of the Anticipated Electricity Savings, that is beyond the Participant’s reasonable control.

“Fuel Energy Input” means the total thermal energy (expressed in MWh-thermal) required to produce the thermal and Electricity Output as determined annually on an HHV basis.

“Generation” means a process used to produce energy in the form of electricity, including, but not limited to, CCHP and WER.

“Generation Project” means a Project involving Generation.

“Good Engineering Practices” means any of the practices, methods and activities adopted by a significant portion of North American industries as good practices applicable to the design, building, and operation of projects of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent engineer in light of all the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Applicable Law; Good Engineering Practices are not intended to be the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods or acts generally accepted in North American industries.

“Governmental Authority” means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including, without limitation, the System Operator, the OEB, the Electrical Safety Authority, the Environmental Commissioner’s Office, and any Person acting under the authority of any of the foregoing, but excluding the OPA.

“Gross Nameplate Capacity” means the manufacturer’s total installed rated capacity of the generating equipment to generate electricity.

“HHV” means Higher Heating Value or the amount of heat produced by the complete combustion of a unit quantity of fuel.

“HST” means any tax payable under Part IX of the *Excise Tax Act* (Canada) and the regulations thereunder.

“IESO” means the Independent Electricity System Operator of Ontario established under Part II of the *Electricity Act, 1998* (Ontario), or its successor.

“IESO EM&V Protocols” means the methods and processes that the IESO develops for the CDM Programs and Initiatives, as such methods and processes may be amended from time to time.

“IESO Market Rules” means the rules made under section 32 of the *Electricity Act, 1998* (Ontario), together with all market manuals, policies and guidelines issued by the IESO.

“Indemnified Party” means LDC, the IESO, the Government of Ontario, the members of the Government of Ontario’s Executive Council and their respective affiliates, and each of the foregoing Person’s respective directors, officers, employees, shareholders, advisors, third party service providers and agents (including, without limitation, contractors and their employees).

“Indemnifying Party” means the Participant.

“Ineligible Project” means

- (a) a Project that the LDC determines is more appropriately funded by another IESO or other existing program;
- (b) a Project with a Project Payback of less than one year;
- (c) a Project relating to equipment and controls used to provide illumination through the use of electricity resulting in a load;
- (d) a Project relating to a reduction in consumption of electricity as a result of the activation of Measures or protocols that are or were implemented in order to load shift or load shed in order to reduce the electricity demand;
- (e) a Project designed to reduce voltage or improve power factor or power quality, other than as an ancillary benefit to obtaining Electricity Savings;
- (f) a Project that is not reasonably expected to provide Electricity Savings one (1) year after the In-Service Date;
- (g) a Project that involves installation of any equipment or system if such equipment or system, or the operation of either, would not comply with all Applicable Laws;
- (h) except as otherwise approved in writing by the LDC, a Project for which any financial incentive has been, is being or may be received from the IESO (other than a Project Incentive), the Province of Ontario or any agency thereof;
- (i) prior to submitting an application for a Project Incentive, the Participant has entered into an agreement with a contractor or consultant (except to prepare an engineering study in respect of a Project Incentive Application), or ordered or purchased any equipment for use in relation to the Project;
- (j) a Generation Project, unless otherwise approved in writing by the LDC and provided that it meets all the criteria set out in this Agreement; or
- (k) a fuel-switching Project, unless otherwise approved in writing by the LDC.

“Invoice Reconciliation Form” means the invoice reconciliation form in Exhibit 2 specifically itemizing and describing all (a) eligible equipment, systems, parts and other products, and the related prices paid for same, and (b) services in respect thereof, the level of detail and sufficiency thereof shall be at the sole discretion of the LDC, but which, for greater certainty, shall include for internal resources, detailed time sheets setting out the names of all Persons providing services, their respective rates of labour paid and describing in sufficient detail the work performed and the length of time spent by each such Person in performing such work.

“In-Service Date” means the first day that the Project is fully installed in accordance with this Agreement and delivers Electricity Savings.

“Local Distribution Company” means the owner or operator of a Distribution System that is licensed by the OEB as an electricity distributor.

“M&V Plan” means the measurement and verification plan attached hereto in Schedule “D” outlining the methodology and activities to be undertaken to quantify and verify Electricity Savings from a Project as further described in Section 4.1.

“M&V Report” means a measurement and verification document containing the analysis by the Technical Reviewer of the quantified Electricity Savings delivered by the Measures included in a Project during the M&V Reporting Period specified by the M&V Plan which will not be less than the reporting periods set out in Section 4.1.

“M&V Reporting Period” will have the meaning ascribed thereto in the M&V Plan.

“**Measure**” means: (i) any activity undertaken for the primary purpose of obtaining or effecting, directly or indirectly, CDM, including, without limitation, the installation, retrofit, replacement, modification or commissioning of equipment, systems, processes or behaviours that consume or result in the consumption of electricity; or (ii) any equipment, system or product related to the foregoing.

“**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and the regulations thereunder.

“**MW**” means a megawatt.

“**MWh**” means a megawatt hour.

“**OEB**” means the Ontario Energy Board or its successor.

“**One-Year Project Payback**” means the amount that would provide a Project Payback of one year for a Project.

“**Person**” means a natural person, firm, trust, partnership, association, unincorporated organization, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

“**Preliminary Engineering Incentive**” means incentive funding paid by the LDC to the Participant pursuant to a Preliminary Engineering Study Funding Contract, as set out in Schedule “B” under the heading “Preliminary Engineering Incentive”.

“**Preliminary Engineering Study**” means a preliminary study of the consumption of electricity of a System within a Facility, or of a Facility, in order to assess and evaluate (a) Measures, or their implementation, that could give rise to Electricity Savings, or (b) where approved by the IESO, electricity generation by the Participant that could reduce the electricity consumption by a System within a Facility, or of a Facility, from a Distribution System.

“**Preliminary Engineering Study Funding Contract**” means a contract between a Participant and the LDC for funding of a Preliminary Engineering Study.

“**Project**” means one or more Measures, which, when installed, is expected to deliver at least 100 MWh of Annualized Electricity Savings, as such Project is described in the M&V Plan and which, for greater clarity, may be eligible to receive a Project Incentive up to a maximum of \$1,000,000.00.

“**Project Benefits**” means the dollar amount as set out in Schedule “B”, which is the sum of all benefits projected to be generated from the implementation of the Project during the Electricity Savings Period including, without limitation, Electricity Savings and benefits not related to Electricity Savings, including, without limitation, from reducing other energy consumption, use of alternative fuels, positive and negative difference in operating and maintenance costs and other avoided fuels.

“**Project Communication**” means all publications, publicity materials and other forms of release or communication pertaining to the Project.

“**Project Incentive**” means the dollar amount set out in Schedule “B”.

“**Project Incentive Application**” means an application by the Participant to receive a Project Incentive pursuant to this Agreement, as may be supplemented by requests for information from the LDC or the Technical Reviewer and the Participant’s responses thereto.

“**Project Incentive Initiative**” means a sub-initiative of the “Process and Systems Upgrade Initiatives” that are being offered by the LDC to eligible distribution-connected electricity consumers of the LDC in order to implement certain electricity efficiency Measures that require capital expenditures.

“**Project Payback**” means, at the time of determination, the number of years it will take a Project to recover the Eligible Costs of such Project through the receipt of Project Benefits, and is calculated by: (a) subtracting from the lower of the Estimated Eligible Costs and the Actual Eligible Costs the sum of any Third Party Contributions, the Preliminary Engineering Incentive, the Detailed Engineering Incentive and the Net Project Incentive, if any, and (b) dividing the difference thereof by the annualized Project Benefits, such amounts to be actual or estimated, as the case may be, at such time of determination. In determining the Project Payback of a Project where the Expected Life is less than 5 years, the annualized Project Benefits shall be calculated using only the period of Expected Life.

“**Release and Waiver**” means the release and waiver and consent executed by the Participant in favour of the LDC, among others, and submitted by the Participant with its Project Incentive Application.

“**Representative**” means, in respect of one of the Parties, any one of that Party’s employees, officers, directors, shareholders, contractors, agents, representatives and advisors.

“**System**” will be defined broadly and means an integrated or interdependent combination of installed equipment and processes that: (a) may be used for (i) manufacturing or other industrial or commercial processes, or (ii) circulating or distributing inside, outside or between Facilities commodities, goods or utilities (including, without limitation, heating, cooling, air or other gases, water or other liquids); and (b) consumes electricity.

“**System Operator**” means the Independent Electricity System Operator of Ontario established under Part II of the Electricity Act, and its successors, acting pursuant to its authority to make, administer and enforce the IESO Market Rules.

“**Technical Reviewer**” means a Person retained by the IESO having on its staff individuals who have professional experience and qualifications as approved by the IESO.

“**Third Party Contributions**” means any financial or other contribution (including, without limitation, the value of contributions in kind) towards the Eligible Costs of a Project from or by any Person other than the Participant or the LDC.

“**Total System Efficiency**” shall be calculated on an annual basis as the sum of (the Electricity Output (MWh) plus the Useful Thermal Output (MWh-thermal) of the CCHP Project) divided by the Fuel Energy Input (MWh-thermal)

“**Useful Thermal Output**” means thermal energy (expressed in MWh-thermal) produced by the Generation Project and used for a gainful commercial or industrial purpose where such use avoids or reduces the use of fuel to produce thermal energy in an alternate process within the Facility.

“WER” or **“Waste Energy Recovery”** means the generation of electricity primarily from heat or fuel that is a waste by-product of the Facility.

SCHEDULE "B"

Participant and Project Information

1.1 **Participant and Facility Information.** The Measures will be installed in the Facility at the following address:

Project Name: [•]
Municipal Address: [•]
City/Town: [•], Ontario
Postal Code: [•]

Participant's HST Registration Number: [•]

LDC Account Reference Number: [•]
Account Details: [•]

1.2 **Project Information.**

Brief Description of Project: [•]
Anticipated In-Service Date: [•], 201[•]
Expected Life: [•] years
Third-Party Contributions (if any): \$[fill in dollar amount or write "none"]
Project Benefits: \$[•]
Preliminary Engineering Incentive (if any): \$[•]
Detailed Engineering Incentive (if any): \$[•]

1.3 **Approved Project Incentive**

(a) The Project Incentive for the Project is based upon the parameters below, as found in the Participant's Project Incentive Application, Preliminary Engineering Study and Detailed Engineering Study, as applicable:

Project Incentive Parameters	Estimate
Estimated Eligible Costs	\$[•]
Estimated Annualized Electricity Savings	[•] MWh
One-Year Project Payback (estimated)	\$[•]

(b) Subject to adjustment in accordance with Schedule "C", the Project Incentive is an amount equal to the lowest of the following calculated using the parameters in Section 1.3(a) of Schedule "B":

- (i) 70% of the Estimated Eligible Costs of the Project (including a WER Project) or, in the case of a CCHP Project, 40% of such Eligible Costs;
- (ii) the product of the Estimated Annualized Electricity Savings multiplied by \$200/MWh; and
- (iii) where (A) the Expected Life is 5 years or greater, the One-Year Project Payback (estimated), or (B) the Expected Life is less than 5 years, the One-Year Project Payback (estimated) multiplied by the number of years in the Expected Life divided by 5;

to a maximum of \$1,000,000.00.

(c) The Project Incentive is \$[•].

(d) The estimated Net Project Incentive is \$[•].

SCHEDULE "C"

Adjustments to the Project Incentive

1.1 Adjustments to Project Incentive.

- (a) If, based on the Invoice Reconciliation Form, the Technical Reviewer determines that the Actual Eligible Costs for the Project are less than the Estimated Eligible Costs, the Project Incentive will be adjusted by the LDC based on the Actual Eligible Costs for the Project and the Net Project Incentive will be adjusted accordingly, pursuant to Section 1.2 of this Schedule "C". For greater clarity, if the Actual Eligible Costs for the Project are greater than the Estimated Eligible Costs, the Project Incentive will not be adjusted.
- (b) If, based on the M&V Plan and any M&V Report, the Technical Reviewer determines that the actual Annualized Electricity Savings for the Project are less than 80% of the Anticipated Electricity Savings, the Project Incentive will be adjusted by the LDC based on the actual Annualized Electricity Savings for the Project, and the Net Project Incentive will be adjusted accordingly, pursuant to Section 1.2 of this Schedule "C".
- (c) If the Project Incentive is adjusted in accordance with Section 1.1(a) and/or (b) herein, the amount that would provide a Project Payback of one year for the Project will be recalculated by the Technical Reviewer or the LDC.
- (d) If the adjusted Project Incentive is less than the Project Incentive set out in Schedule "B", then the LDC will promptly notify the Participant of the amount of the adjusted Project Incentive and such adjusted Project Incentive will be binding upon the Parties. For greater certainty, if the adjusted Net Project Incentive is less than the Initial NPI Payment, the Participant will repay to the LDC within 10 Business Days of such notice, an amount (for greater certainty, plus Applicable Taxes) equal to the difference between Initial NPI Payment and the adjusted Net Project Incentive.

1.2 Recalculation of the Final NPI Payment.

- (a) If an adjustment to the Project Incentive is required pursuant to Section 1.1 of this Schedule "C", then the Final NPI Payment shall be recalculated. The Final NPI Payment is based on the Project Incentive for the Project, as adjusted, which is an amount equal to the lowest of the following:
 - (i) 70% of the Actual Eligible Costs of the Project (including a WER Project) or, in the case of a CCHP Project, 40% of such Eligible Costs;
 - (ii) the product of the actual Annualized Electricity Savings multiplied by \$200/MWh; and
 - (iii) where (A) the Expected Life is 5 years or greater, the actual One-Year Project Payback, or (B) the Expected Life is less than 5 years, the actual One-Year Project Payback multiplied by the number of years in the Expected Life divided by 5.

1.3 Eligible Costs. Costs eligible to be included in the calculation of a Project Incentive ("Eligible Costs") must be directly related to design, selection, purchase and installation of the Measure or Measures included in a Project and are limited to the following costs or those costs incurred in respect of the following:

- (a) capital expenses;
- (b) equipment and products, including, without limitation, diagnostic and testing tools and instruments, and associated software;
- (c) data collection services, including, without limitation, processing, analysis and data management;
- (d) meter purchase, design, installation and configuration costs associated with implementing the M&V Plan;
- (e) salaries and benefits of employees directly involved in the design, selection, purchase and installation of the Measure or Measures included in the Project;
- (f) professional, engineering, scientific, technical, management and contracting services, including, without limitation, those required for training employees in the proper operation of the Project;
- (g) travel, including, without limitation, accommodation but excluding meals;
- (h) printing services;
- (i) permit and licence fees;
- (j) costs associated with environmental assessments;
- (k) technical audits and studies associated with the Project (excluding the Participant's Preliminary Engineering Study and Detailed Engineering Study expenses not funded by the LDC), including, without limitation, a study of energy consumption before or after the Project implementation, in each case, as approved in writing in advance by the LDC; and
- (l) such additional category of costs as may be consented to by the LDC in writing in advance of such expenses being incurred.

1.4 Ineligible Costs. For certainty, the following costs are not Eligible Costs:

- (a) the cost of preparing or amending the Project Incentive Application, reviewing or responding to the LDC's or the Technical Reviewer's questions regarding the Project Incentive Application, or reviewing the provisions of this Agreement;
- (b) the cost of collecting and submitting information required by an M&V Plan;
- (c) HST; or
- (d) a portion of the costs that have been or will be received from Third Party Contributions.

SCHEDULE "D"

M&V Plan

[NTD: to be attached]

EXHIBIT 1

Statement of In-Service



Statement of In-Service

Please deliver this completed Statement of In-Service to the address and in the manner set out in Section 13.3 of the Small Capital Project Agreement. Capitalized terms not defined in this Statement of In-Service are defined in the Small Capital Project Agreement.

Participant Information

• Name of Participant: _____

Project Information

• Project Name: _____
• Municipal Address of the Facility: _____
• Date of In-Service: _____

Participant's Statement	
I, the undersigned, declare that on the date given above, and to the best of my knowledge, the Project described above is fully installed in accordance with the terms of the Small Capital Project Agreement between the Participant and the LDC.	
Name (please print)	Title
Signature	Signature Date (yyyy/mm/dd)

✂

EXHIBIT 2

Invoice Reconciliation Form

Please refer to Section 6.2 and the definition of "Invoice Reconciliation Form" in the Small Capital Project Agreement for additional information.

✂



Invoice Reconciliation Form

Please complete the table set out below by listing each invoice for the Project described in Schedule "B" of the Small Capital Project Agreement between you (the Participant) and the LDC and attach copies of all invoices listed below.

Invoice Date	Invoice Reference Number	Contractor or Supplier Name	Amount of Invoice (Less HST)	HST	Description of Product or Service
Total Eligible Costs:					

The LDC reserves the right to request copies of the supporting documents, including, without limitation, proof of payment, at any time. Capitalized terms not defined in this Invoice Reconciliation Form are defined in the Small Capital Project Agreement.

Participant's Declaration	
I, the undersigned, declare that the information contained in this Invoice Reconciliation Form is accurate and complete and all invoices pertaining to the Project have been paid in full.	
Name (please print)	Title
Signature	Signature Date (yyyy/mm/dd)

✂