

PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014

Project Incentive Contract

Between

[Name of LDC]

- and -

[Name of Participant]

DATED as of the ● day of ●, 20●

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PROJECT INCENTIVE CONTRACT

This Project Incentive Contract is made as of the ● day of ●, 20●,

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:

1. The “Process and System Upgrades Initiatives” are initiatives designed to assist with the achievement of Ontario’s conservation and demand management targets and include a number of sub-initiatives, including the Project Incentive Initiative. The Project Incentive Initiative is being offered by the LDC to eligible distribution-connected electricity consumers of the LDC in order to implement certain electricity efficiency Measures (as defined below) that require capital expenditures.
2. The Participant submitted a Project Incentive Application (as defined below) for a Project or Portfolio (as such terms are defined below), as the case may be, that was accepted by the LDC.
3. The Parties wish to execute this Agreement (as defined below) in order to formalize the contractual arrangements with respect to the Participant’s participation in the Project Incentive Initiative (as defined below) on the terms and conditions hereinafter set out.

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

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings ascribed to them in Schedule “A”.

1.2 Currency

Unless otherwise indicated, all dollar amounts referred to in this Agreement are expressed in Canadian funds.

1.3 Headings

The insertion of headings and a table of contents is for convenience of reference only and will not affect the interpretation of this Agreement. The terms “hereof”, “hereunder”, and similar expressions refer to this Agreement and not to any particular Article, Section, Schedule or other part hereof. Unless otherwise indicated, any reference in this Agreement to an Article, Section or Schedule refers to the specified article or section of, or schedule to, this Agreement.

1.4 Number and Gender

In this Agreement, words importing the singular number only will include the plural and vice versa and words importing gender will include all genders. The word “including” means “including without limitation”, and the words “include” and “includes” have a corresponding meaning.

1.5 Entire Agreement

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.

1.6 Governing Law and Attornment

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. For the purpose of all legal proceedings, this Agreement will be deemed to have been made and performed in the Province of Ontario and the courts of the Province of Ontario will have exclusive jurisdiction to entertain any action arising under this Agreement. The LDC and the Participant each hereby attorns to the jurisdiction of the courts of the Province of Ontario.

1.7 Amendments

This Agreement will not be amended or supplemented except by mutual written agreement that: (a) is entered into by the authorized signing officers of each of the Parties; and (b) expressly states that it is intended to amend or supplement, as the case may be, this Agreement.

1.8 Waivers

No waiver of any obligation or any remedy for breach of any provision of this Agreement will be effective or binding unless made in writing and agreed to by an authorized signing officer of the Party purporting to give the same and, unless otherwise provided, will be limited to the specific obligation or breach waived. 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.

1.9 Consent

Whenever a provision requires an approval or consent and the approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required will be conclusively deemed to have withheld its approval or consent.

1.10 Time

Time is of the essence of this Agreement.

1.11 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted on behalf of the LDC, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of this Agreement will not be construed or interpreted against the LDC or in favour of the Participant when interpreting such term or provision, by virtue of such fact.

1.12 Conflicts

In the event of any conflict between any provision of this Agreement and the Project Incentive Application, the provisions of this Agreement will prevail.

1.13 Statutory References

Unless otherwise provided, any reference in this Agreement to any statute will be a reference to that statute as now enacted or as the same may be amended, restated, re-enacted or replaced from time to time and includes any regulation made thereunder.

1.14 Description of Project, or Portfolio

Attached as Schedule “K” is an M&V Plan which includes a detailed description of the Project or Portfolio, as the case may be, in respect of which this Agreement has been entered into. If the subject matter of this Agreement is a Project, all references to Portfolio will be disregarded, and vice versa.

1.15 Schedules

The following Schedules are attached to and will form part of this Agreement:

Schedule “A”	-	Definitions
Schedule “B”	-	Commercial Terms
Schedule “C”	-	Form of Request for Payment
Schedule “D”	-	Form of Letter of Credit
Schedule “E”	-	Eligibility Criteria
Schedule “F”	-	Form of Status Report/Final Status Report
Schedule “G”	-	Form of Energy Management Plan
Schedule “H”	-	Form of Solvency Certificate
Schedule “I”	-	Liquidated Damages Calculations
Schedule “J”		Engineering Study
Schedule “K”		M&V Plan

ARTICLE II

TERM

2.1 Term and Survival

- (a) Depending on whether the subject matter of this Agreement is a Project or Portfolio, this Agreement will become effective upon the date hereof and will expire:
- (i) in respect of a Project, on the 10th anniversary of the In-Service Date of the Project; or
 - (ii) in respect of a Portfolio, on the 10th anniversary of the latest In-Service Date of the Projects in the Portfolio,

unless an Early Termination Date has occurred or if the Parties have otherwise agreed in writing.

- (b) Neither the expiration of the term of this Agreement nor the earlier termination of this Agreement will release either of the Parties from any obligation or liability that accrued prior to such expiration or termination.
- (c) Sections 1.6, 7.6, 16.1, and 16.6, and Article IX, Article XI, Article XII, Article XIII, and Article XV 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

ROLE OF TECHNICAL REVIEWER

3.1 Role of the Technical Reviewer

The Technical Reviewer is a Person retained by the IESO to provide independent technical expertise and administrative assistance in respect of the Project Incentive Initiative. The LDC has contracted with the IESO to permit the Technical Reviewer to assist the LDC with, among other things, the review of the documentation required herein, including pursuant to Article V.

3.2 Relationship with the Technical Reviewer

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.

ARTICLE IV

PROJECT INCENTIVE

4.1 Estimated Eligible Costs

The Parties agree that the Estimated Eligible Costs are as set out in Schedule “B” under the heading “Estimated Eligible Costs”.

4.2 Actual Eligible Costs

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

4.3 Project Incentive

- (a) As at the date hereof, the Parties agree that the Project Incentive for a Project or a Portfolio is as set out in Schedule “B” under the heading “Project Incentive” and is an amount determined pursuant to Section 4.3(b) or Section 4.3(c), as applicable.

- (b) The Project Incentive for a Project is an amount equal to the lowest of the following:
 - (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:
 - A. in the case of a Project that is not otherwise part of a Portfolio, multiplied by \$200/MWh; or
 - B. in the case of each Project within a Portfolio, multiplied by \$288/MWh; and
 - (iii) the amount that would provide a Project Payback of one year for a Project.
- (c) The Project Incentive for a Portfolio is an amount equal to the lowest of the following:
 - (i) the sum of the Project Incentives for each Project in the Portfolio as determined pursuant to Section 4.3(b);
 - (ii) 70% of the total Estimated Eligible Costs for all Projects within the Portfolio;
 - (iii) the total MWh of estimated Annualized Electricity Savings for all Projects within the Portfolio multiplied by \$200/MWh; or
 - (iv) an amount that would provide a Project Payback of one year for the Portfolio.
- (d) Estimated Eligible Costs, aggregate Annualized Electricity Savings and the calculation of Project Payback are as set out in Schedule “B” under the applicable heading. The Project Payback is calculated in accordance with the definition of Project Payback in Schedule “A”.

4.4 Adjustments to Project Incentive

- (a) In the event a Change Notice is delivered to and accepted by the LDC pursuant to Section 6.3(b) prior to the In-Service Date, the LDC and the Technical Reviewer will re-calculate, based on the best information available at the time, including any revised calculations arising from the information in the Change Notice, the Project Incentive pursuant to Section 4.3(b) or Section 4.3(c), as applicable.
- (b) At the date of the fourth submission of the Request for Payment pursuant to Section 7.1(a)(iv) or the submission of the Final Status Report pursuant to Section 5.3(b)(i)B, as the case may be, the LDC and the Technical Reviewer will re-

calculate, based on the best information available at the time, the Project Incentive pursuant to Section 4.4(c) or Section 4.4 (d), as applicable.

- (c) The Project Incentive for a Project shall be 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, incurred and paid by the Participant as of such date; provided, however, that this amount may not exceed 70% of the Estimated Eligible Costs of the Project (including a WER Project) or, in the case of a CCHP Project, 40% of such Estimated Eligible Costs;
 - (ii) the product of the estimated Annualized Electricity Savings:
 - A. in the case of a Project that is not otherwise part of a Portfolio, multiplied by \$200/MWh; or
 - B. in the case of each Project within a Portfolio, multiplied by \$288/MWh; and
 - (iii) the amount that would provide a Project Payback of one year for a Project.
- (d) The Project Incentive for a Portfolio shall be an amount equal to the lowest of the following:
 - (i) the sum of the Project Incentives for each Project in the Portfolio as determined pursuant to Section 4.4(c);
 - (ii) 70% of the total Actual Eligible Costs for all Projects within the Portfolio, provided, however, that this amount may not exceed 70% of the Estimated Eligible Costs of the Portfolio;
 - (iii) the total MWh of estimated Annualized Electricity Savings for all Projects within the Portfolio multiplied by \$200/MWh; or
 - (iv) an amount that would provide a Project Payback of one year for the Portfolio.
- (e) If the re-calculated Project Incentive pursuant to Section 4.4(a), 4.4(c) or 4.4(d) is greater than the Project Incentive determined pursuant to Section 4.3, no adjustments will be made to the Project Incentive and the Project Incentive for all purposes of this Agreement will be deemed to be the amount determined pursuant to Section 4.3.
- (f) If, however, the re-calculated Project Incentive pursuant to Section 4.4(a), 4.4(c) or 4.4(d) is less than the Project Incentive determined pursuant to Section 4.3, then the

LDC will notify the Participant in accordance with Section 4.4(g). In the case of the Advanced Incentive Payment Option where any portion of the Net Project Incentive has been paid to the Participant, the Participant will re-pay to the LDC within 10 Business Days of such notice, or, to the extent further amounts are payable to the Participant hereunder the LDC may set-off against future payments due and payable to the Participant, an amount (for greater certainty, plus Applicable Taxes) equal to the difference between the amount calculated in accordance with Section 4.3 and the amount calculated in accordance with Section 4.4 multiplied by the net cumulative percentage of Net Project Incentive (i.e., less the percentage of Net Project Incentive on account of hold-back pursuant to Section 7.1(a)) actually paid to the Participant up to such time pursuant to Section 7.1(a). To the extent the Participant is required to make a repayment to the LDC, the LDC will be permitted to draw on the Performance Security or demand payment under any Affiliate guarantee provided hereunder, in addition to any other remedies hereunder should the Participant fail to re-pay such amount. In this event, the Project Incentive, the Net Project Incentive and the Project Payback, including the corresponding amounts set out in Schedule "B", will henceforth be adjusted accordingly for all purposes of this Agreement.

- (g) If Section 4.4(f) is applicable, the LDC will deliver a notice to the Participant within 10 Business Days of the date of re-calculation setting out the calculation of the lowered Project Incentive and Net Project Incentive which will be binding upon the Parties absent manifest error on the face of such notice.

ARTICLE V

DATA AND REPORTING REQUIREMENTS

5.1 Energy Management Plan

- (a) The Participant will prepare, or cause to be prepared, and file an Energy Management Plan with the LDC, in form and substance acceptable to the LDC acting reasonably, no later than the In-Service Date, failing which, the LDC will be entitled to withhold a portion of the Net Project Incentive in accordance with Section 7.1(c) or 7.2(c).
- (b) Upon receipt of an Energy Management Plan from the LDC, the Technical Reviewer will review such Energy Management Plan.
- (c) During the review of the Energy Management Plan, the LDC will arrange for appropriate communication between the Technical Reviewer and the Participant or the Technical Reviewer will communicate directly with the Participant if clarification is required from the Participant on any aspect of the Energy Management Plan.
- (d) If the Technical Reviewer does not approve the Energy Management Plan and advises the LDC of same (including the reasons for the rejection), the LDC will

communicate the reasons for rejecting the Energy Management Plan to the Participant. The LDC will allow the Participant a reasonable period of time to address such deficiencies and re-submit an Energy Management Plan for further review and approval by the Technical Reviewer.

5.2 Requests for Payment and Solvency Certificates

The Participant will prepare and submit to the LDC, in form and substance acceptable to the LDC and the Technical Reviewer pursuant to Section 5.4, a Request for Payment, together with all related Receipts and Invoices, and a Solvency Certificate in respect of each of the requests for payment set out in Section 7.1(a) or Section 7.2(a), as applicable.

5.3 Status Reports and Final Status Report

- (a) If the Advanced Incentive Payment Option is applicable hereunder:
 - (i) the Participant will deliver to the LDC, in form and substance acceptable to the LDC and the Technical Reviewer pursuant to Section 5.4, in addition to any other documents required to be delivered hereunder:
 - A. in connection with the requests for payment set out in Sections 7.1(a)(ii) and (iii), the Status Reports related to the Participant having incurred and paid 25% and 50%, respectively, of Estimated Eligible Costs; and
 - B. in connection with the request for payment set out in Section 7.1(a)(iv), the Participant's Final Status Report related to the Participant having incurred and paid all of the claimed Actual Eligible Costs, which such Final Status Report will include a certificate signed by the Participant's Company Representative showing the claimed Actual Eligible Costs incurred by the Participant and attaching all related Receipts and Invoices therefor;
 - (ii) such Status Reports and Final Status Report must be delivered by the Participant to the LDC at the same time the related Request for Payment is delivered to the LDC pursuant to Section 7.1(a), and must be acceptable to the LDC and the Technical Reviewer pursuant to Section 5.4; and
 - (iii) the provisions of Section 5.3(b) will not be applicable.
- (b) If the Deferred Incentive Payment Option is applicable hereunder:
 - (i) the Participant will deliver to the LDC, in form and substance acceptable to the LDC and the Technical Reviewer pursuant to Section 5.4, in addition to any other documents required to be delivered hereunder:

- A. the Status Reports related to the Participant having incurred and paid 25% and 50%, respectively, of the Estimated Eligible Costs; and
 - B. the Participant's Final Status Report related to the Participant having incurred and paid all of the claimed Actual Eligible Costs, which such Final Status Report will include a certificate signed by the Participant's Company Representative showing the claimed Actual Eligible Costs incurred by the Participant and attaching all related Receipts and Invoices therefor;
- (ii) such Status Reports and Final Status Report must be delivered by the Participant to the LDC, and must be acceptable to the LDC and the Technical Reviewer pursuant to Section 5.4, prior to the Participant submitting the Requests for Payment set forth in Section 7.2(a); and
 - (iii) the provisions of Section 5.3(a) will not be applicable.

5.4 Review of Participant Documents

- (a) Upon receipt of each Participant Document, the LDC will deliver such Participant Document to the Technical Reviewer.
- (b) During the review of such Participant Document, the LDC will arrange for appropriate communication between the Technical Reviewer and the Participant or the Technical Reviewer will communicate directly with the Participant if clarification is required from the Participant on any aspect of such Participant Document.
- (c) Upon completion of the Technical Reviewer's review of such Participant Document and the LDC's review thereof:
 - (i) other than in the case of the Final Status Report:
 - A. if such Participant Document is acceptable to the Technical Reviewer and the LDC, the LDC will communicate such acceptance within 10 Business Days of such completion of the review to the Participant and make the related payment to the Participant in respect thereof within a reasonable period of time and, in any event, within 90 days; or
 - B. if such Participant Document is not acceptable to the Technical Reviewer or the LDC or both, the LDC will notify the Participant and will communicate the reasons for rejecting such Participant Document within 10 Business Days of such completion of the review. Subject to the time periods set out in Section 6.2(a), the LDC may allow the Participant a reasonable period of time to re-

submit a revised Participant Document to address the deficiencies of such Participant Document. The LDC will not make any further payments to the Participant hereunder unless and until such Participant Document is approved; and

- (ii) in the case of the Final Status Report:
 - A. if such Final Status Report is acceptable to the Technical Reviewer and the LDC, upon the LDC's receipt of a written confirmation from the Technical Reviewer confirming the Actual Eligible Costs claimed by the Participant, the LDC will communicate such acceptance to the Participant within 10 Business Days of such completion of the review and make the related payment to the Participant in respect thereof within a reasonable period of time and, in any event, within 90 days; or
 - B. if such Final Status Report is not acceptable to the Technical Reviewer or the LDC or both, the LDC will notify the Participant and will communicate the reasons for rejecting such Final Status Report within 10 Business Days of such completion of the review. The LDC may allow the Participant a reasonable period of time to re-submit a revised Final Status Report to address the deficiencies of such Final Status Report. The LDC will not make any further payments to the Participant hereunder unless and until such Final Status Report is approved.

5.5 M&V Reports

- (a) As more particularly described in Section 5.5(c) or 5.5(d), and 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 a M&V Report for each M&V Reporting Period specified in the M&V Plan within a reasonable period of time.
- (b) The Participant will fulfill all of its obligations as required pursuant to the M&V Plan, including (i) acquiring and installing metering equipment required by the M&V Plan; (ii) collecting and delivering to the LDC and the Technical Reviewer all relevant data and any other information required pursuant to the M&V Plan; and (iii) providing the LDC and the Technical Reviewer with all reasonable access to the Facilities and other related buildings, premises and lands owned or occupied by it related to the Project or Portfolio, as the case may be, in order for the Technical Reviewer to prepare the M&V Reports and/or to observe the installation of such metering equipment.
- (c) If the Advanced Incentive Payment Option is elected hereunder:

- (i) provided that the Participant has complied with Section 5.5(b), within 10 Business Days of receipt of all necessary information required for the preparation of a M&V Report, the LDC will request the Technical Reviewer to prepare and deliver to the LDC, in form and substance acceptable to the LDC and the Technical Reviewer:
 - A. in connection with the request for payment set out in Section 7.1(a)(v), the first M&V Report in respect of the first full year immediately following the In-Service Date; and
 - B. annual M&V Reports, immediately subsequent to the first M&V Report referred to in Section 5.5(c)(i)A in respect of each subsequent M&V Reporting Period; and
- (ii) the provisions of Section 5.5(d) will not be applicable.
- (d) If the Deferred Incentive Payment Option is elected hereunder:
 - (i) provided that the Participant has complied with Section 5.5(b), within 10 Business Days of receipt of all necessary information required for the preparation of a M&V Report, the LDC will request the Technical Reviewer to prepare and deliver to the LDC, in form and substance acceptable to the LDC and the Technical Reviewer:
 - A. in connection with the requests for payment set out in Section 7.2(a), consecutive quarterly M&V Reports commencing with the first quarter immediately following the In-Service Date and ending with the fourth quarter immediately following the In-Service Date, respectively; and
 - B. annual M&V Reports, immediately subsequent to the fourth quarterly M&V Report referred to in Section 5.5(d)(i)A in respect of each subsequent M&V Reporting Period; and
 - (ii) the provisions of Section 5.5(c) will not be applicable.
- (e) The Technical Reviewer will provide a copy of each M&V Report to the LDC, and the LDC will provide a copy of the M&V Report to the Participant, within 10 Business Days of receipt of all necessary information.
- (f) The actual 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 or Portfolio, as the case may be, has achieved at least 80% of the Anticipated Electricity Savings for such M&V Reporting Period.

ARTICLE VI
OPERATIONAL RESPONSIBILITIES OF PARTICIPANT

6.1 General Responsibilities of Participant

The Participant's responsibilities will include the following tasks and the Participant covenants to:

- (a) implement the Project or Portfolio and perform all of its other obligations hereunder in accordance with this Agreement, Good Engineering Practices and all Applicable Laws;
- (b) operate and maintain the Project or Portfolio, as the case may be, for a period of not less than the Expected Life, and during such time, use Commercially Reasonable Efforts to obtain 100% of the Anticipated Electricity Savings for each corresponding M&V Period;
- (c) ensure that the Project or Portfolio, as the case may be, actually achieves at least 80% of the Anticipated Electricity Savings for each corresponding M&V Period;
- (d) ensure that its relevant personnel are knowledgeable with the Project or the Portfolio, as the case may be, and are available to the LDC and the Technical Reviewer with respect to the M&V Plan and the IESO EM&V Protocols;
- (e) demonstrate leadership in the area of energy conservation, including electricity conservation, by, among other things, developing conservation policies and establishing employee, community and peer-to-peer awareness programs;
- (f) where specified herein or at the request of the LDC, provide a Solvency Certificate, audited or unaudited financial statements and/or a credit ratings report from a Rating Agency;
- (g) 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;
- (h) obtain and maintain all permits and approvals necessary for the installation, verification and operation of the Project or Projects;
- (i) 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 or the Portfolio, as the case may be, aggregated with other projects in a manner intended to report on the Project Incentive Initiative;
- (j) 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;

- (k) acknowledge the assistance provided by the LDC and the IESO in all Project Communications, provided that the LDC and the IESO will have the right to approve all such Project Communications in advance; and
- (l) at no time modify, vary or amend in any material respect any of the features or specifications of the Project or Portfolio (including, 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.

6.2 In-Service Date

- (a) Unless otherwise approved in writing by the LDC, the Participant will cause the Project or Portfolio, as the case may be, to achieve the requirements necessary to meet the In-Service Date on or before the earlier of: (i) the second anniversary of the date hereof and (ii) December 31, 2015.
- (b) The Participant will deliver to the LDC not less than 10 Business Days' prior written notice of the date of the commissioning of the Project or Portfolio, as the case may be, and of the proposed In-Service Date and will provide any data in electronic or written form relating thereto as may be reasonably requested by the LDC or the Technical Reviewer.
- (c) The process to confirm if a Project or Portfolio 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.
- (d) Upon confirmation of the occurrence of the In-Service Date as per Section 6.2(c) above, the LDC will notify the Participant of such confirmation.

6.3 Change Notice re Decrease in Anticipated Electricity Savings

- (a) The Participant will provide the LDC with 30 Business Days' prior written notice (a "**Change Notice**") of any change or proposed change in the Project, Portfolio, System or the Facility which will, or could reasonably be expected to, result in a decrease in Anticipated Electricity Savings.
- (b) If a Change Notice is delivered to the LDC before the In-Service Date and is acceptable to the LDC, after consulting with the Technical Reviewer, the Project Incentive will be re-calculated in accordance with Section 4.4(a).

- (c) If a Change Notice is delivered to the LDC on or after the In-Service Date, if the LDC, after consulting with the Technical Reviewer, confirms that a decrease in the Anticipated Electricity Savings from the Project will, or is reasonably likely to, result in a shortfall of Electricity Savings less than the Anticipated Electricity Savings as a result of such change or proposed change set out in such Change Notice, a Persistent Shortfall Event of Default pursuant to Section 11.2(d) will be deemed to have occurred and the LDC will be entitled to exercise all of its remedies hereunder, including pursuant to Section 11.2(d).

ARTICLE VII **PAYMENTS**

7.1 Advanced Incentive Payment Option

- (a) If the Participant has elected, as set out in Schedule “B”, to proceed by way of the Advanced Incentive Payment Option, Section 7.2 will not be applicable and, subject to the Participant not being in default hereunder and otherwise satisfying all of its obligations herein contained, other than as excepted in this Section, the LDC will pay the Participant, on a Project or Portfolio basis, as applicable, the Net Project Incentive as follows:
- (i) the first 25% of the Net Project Incentive, less 2.5% of the Net Project Incentive, will be paid within a reasonable period of time and, in any event, within 90 days of execution of this Agreement and acceptance by the LDC and the Technical Reviewer of a Request for Payment and a Solvency Certificate;
 - (ii) the second 25% of the Net Project Incentive, less 2.5% of the Net Project Incentive, will be paid within a reasonable period of time and, in any event, within 90 days of acceptance by the LDC of evidence satisfactory to the LDC and the Technical Reviewer that 25% of the Estimated Eligible Costs have been incurred and paid by the Participant and acceptance by the LDC and the Technical Reviewer of a Request for Payment, a Solvency Certificate and the first Status Report;
 - (iii) the third 25% of the Net Project Incentive, less 2.5% of the Net Project Incentive, will be paid within a reasonable period of time and, in any event, within 90 days of acceptance by the LDC of evidence satisfactory to the LDC and the Technical Reviewer that 50% of the Estimated Eligible Costs have been incurred and paid by the Participant and acceptance by the LDC and the Technical Reviewer of a Request for Payment, a Solvency Certificate and the second Status Report;
 - (iv) the fourth 25% of the Net Project Incentive, less 2.5% of the Net Project Incentive, will be paid within a reasonable period of time and, in any event, within 90 days of acceptance by the LDC of evidence satisfactory to the

LDC and the Technical Reviewer that the In-Service Date has occurred, that all of the Actual Eligible Costs have been incurred and paid by the Participant and acceptance by the LDC and the Technical Reviewer of a Request for Payment, a Solvency Certificate and the Final Status Report; and

- (v) following the first M&V Report following the In-Service Date, provided that the Project or Portfolio, as the case may be, has actually achieved at least 80% of the Anticipated Electricity Savings, as verified in the applicable M&V Report, the balance of the Net Project Incentive held back pursuant to Sections 7.1(a)(i), (ii), (iii) and (iv) will be paid within a reasonable period of time and, in any event, within 90 days following acceptance by the LDC and the Technical Reviewer of a Request for Payment and a Solvency Certificate from the Participant.
- (b) The LDC will not pay , and the Participant will not be entitled to, the applicable instalment of the Net Project Incentive unless the applicable Participant Documents in respect of such payment have been approved by the LDC and the Technical Reviewer.
- (c) Notwithstanding any other provision contained herein, if the Participant does not deliver an Energy Management Plan, in accordance with Section 5.1, acceptable to the LDC or the Technical Reviewer no later than the In-Service Date, the LDC may withhold the full amount set out in Section 7.1(a)(iv). If on or prior to the 1st anniversary of the In-Service Date the Participant has delivered an Energy Management Plan acceptable to the Technical Reviewer in accordance with Section 5.1, the LDC will pay within a reasonable period of time and, in any event, within 90 days following such acceptance the amount withheld in Section 7.1(a)(iv). If by the 1st anniversary of the In-Service Date the Participant still has not delivered an Energy Management Plan acceptable to the Technical Reviewer in accordance with Section 5.1, then, if payments due under Section 7.1(a)(iv) have been withheld, such payments will be released to the Participant within a reasonable time and the LDC will not pay the amounts set out in Section 7.1(a)(v) and the LDC's obligation to pay such amounts will terminate on such date and no payments will be payable to the Participant or made in respect of same.

7.2 Deferred Incentive Payment Option

- (a) If the Participant elects to proceed by way of the Deferred Incentive Payment Option, Section 7.1 will not be applicable and, subject to the Participant not being in default hereunder and otherwise satisfying all of its obligations herein contained, other than as excepted in this Section, the LDC will pay the Participant, on a Project or Portfolio basis, as applicable, the Net Project Incentive as follows:
 - (i) the first one-third of the Net Project Incentive, less 3.33% of the Net Project Incentive, will be paid within a reasonable period of time and, in any event,

within 90 days following approval by the LDC and the Technical Reviewer of the first quarterly M&V Report following the In-Service Date and acceptance by the LDC and the Technical Reviewer of the Final Status Report, a Request for Payment and a Solvency Certificate;

- (ii) the second one-third of the Net Project Incentive, less 3.33% of the Net Project Incentive, will be paid within a reasonable period of time and, in any event, within 90 days following approval by the LDC and the Technical Reviewer of the second quarterly M&V Report following the In-Service Date, and acceptance by the LDC and the Technical Reviewer of a Request for Payment and a Solvency Certificate;
 - (iii) the final one-third of the Net Project Incentive, less 3.33% of the Net Project Incentive, will be paid within a reasonable period of time and, in any event, within 90 days following approval by the LDC and the Technical Reviewer of the third quarterly M&V Report following the In-Service Date, and acceptance by the LDC and the Technical Reviewer of a Request for Payment and a Solvency Certificate; and
 - (iv) provided that the Project or Portfolio, as the case may be, has actually achieved at least 80% of the Anticipated Electricity Savings as verified in the fourth quarterly M&V Report, the balance of the Net Project Incentive held back pursuant to Sections 7.2(a)(i), (ii) and (iii) will be paid within a reasonable period of time and, in any event, within 90 days following acceptance by the LDC and the Technical Reviewer of a Request for Payment and a Solvency Certificate from the Participant.
- (b) The LDC will not pay, and the Participant will not be entitled to, the applicable instalment of the Net Project Incentive unless the applicable Participant Document and the M&V Report in respect of such payment have been approved by the LDC and the Technical Reviewer.
- (c) Notwithstanding any other provision contained herein, if the Participant does not deliver an Energy Management Plan, in accordance with Section 5.1, acceptable to the LDC or the Technical Reviewer on or prior to the In-Service Date, the LDC may withhold the full amount set out in Section 7.2(a)(i). If on or prior to the 1st anniversary of the In-Service Date the Participant has delivered an Energy Management Plan acceptable to the LDC or the Technical Reviewer in accordance with Section 5.1, the LDC will pay within a reasonable period of time and, in any event, within 90 days following such acceptance the amount withheld in Section 7.2(a)(i). If by the 1st anniversary of the In-Service Date the Participant still has not delivered an Energy Management Plan acceptable to the LDC or the Technical Reviewer in accordance with Section 5.1, then, if payments due under Section 7.2(a)(i) have been withheld, such payments will be released to the Participant within a reasonable time and the LDC will not pay the amounts set out in Section

7.2(a)(iv) and the LDC's obligation to pay such amounts will terminate on such date and no payments will be payable to the Participant or made in respect of same.

7.3 Method of Payment

Payments under Section 7.1 or 7.2, 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.

7.4 Request for Payment

A Request for Payment by the Participant 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 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.

7.5 Excess Electricity Savings

Notwithstanding anything to the contrary herein, no Project Incentive will be paid to the Participant in respect of or relating to Electricity Savings in excess of the Anticipated Electricity Savings of the Project or Portfolio, as the case may be.

7.6 Responsibility for Taxes

- (a) 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 the LDC's obligation to pay Applicable Taxes as provided hereunder, pending the outcome of any discussion, negotiation or challenge with a tax authority.
- (b) If any payment made under Section 11.2 or 12.3 is subject to Applicable Taxes or is deemed by Section 182 (or any other provision) of the Excise Tax Act (Canada) or any provision of any provincial legislation to be inclusive of Applicable Taxes, the Participant agrees to pay the LDC (under Section 11.2) and the Indemnifying Party agrees to pay to the Indemnified Party (under Section 12.3), in addition to the amount due by virtue of such Section of this Agreement, an additional amount equal to all Applicable Taxes payable or remittable in connection with such payment.

ARTICLE VIII
ADVANCED INCENTIVE PAYMENT OPTION

8.1 Performance Security

If the Participant has elected to proceed by way of the Advanced Incentive Payment Option, it will deliver to the LDC concurrently with the execution hereof, and maintain in accordance with this Section 8.1, a letter of credit substantially in the form set out in Schedule “D” (the “**Performance Security**”). The Performance Security will be, subject to Section 8.2, in the amount and for the periods as follows:

- (a) If, on the date hereof, the Net Project Incentive is equal to or less than \$1,000,000.00, the Performance Security will be delivered by the Participant to the LDC on the date hereof in an amount equal to the entire Net Project Incentive.
- (b) If, on the date hereof, the Net Project Incentive is greater than \$1,000,000.00, the Performance Security will be delivered in an initial amount equal to 25% of the Net Project Incentive and will increase as follows:
 - (i) first, upon submission of the Request for Payment in accordance with Section 7.1(a)(ii), by a further amount equal to 25% of the Net Project Incentive, such that the Performance Security is of an amount equal to 50% of the Net Project Incentive;
 - (ii) second, upon submission of the Request for Payment in accordance with Section 7.1(a)(iii), by a further amount equal to 25% of the Net Project Incentive, such that the Performance Security is of an amount equal to 75% of the Net Project Incentive; and
 - (iii) third, upon submission of the Request for Payment in accordance with Section 7.1(a)(iv), by a further amount equal to 25% of the Net Project Incentive, such that the Performance Security is of an amount equal to 100% of the Net Project Incentive.
- (c) Provided that the In-Service Date occurs and the Participant is not at the applicable anniversary date in breach of this Agreement, the Performance Security delivered pursuant to Section 8.1(a) or 8.1(b), or the guarantee delivered pursuant to Section 8.2(b)(i), as the case may be, may be decreased by the Participant as follows:
 - (i) upon the first anniversary of the In-Service Date, the Performance Security and the guaranteed obligations pursuant to the guarantee, as the case may be, may be decreased by an amount equal to 50% of the Net Project Incentive; and

- (ii) upon the second anniversary of the In-Service Date, the Performance Security and the guaranteed obligations pursuant to the guarantee, as the case may be, will be reduced to zero and returned by the LDC.

8.2 Composition of Security

- (a) The obligation of the Participant to post and maintain Performance Security as required by Section 8.1 may be satisfied by the Participant by one of the following methods:

- (i) Performance Security in an amount equal to the full amount of the Net Project Incentive; or
- (ii) at any time that the Participant has an Acceptable Credit Rating, Performance Security in an amount determined as follows:

$$\text{APS} = \text{FPS} \times \text{RF}$$

Where:

APS = acceptable Performance Security

FPS = the full amount of the Performance Security required pursuant to this Article VIII

RF = the reduction factor in the Credit Rating Table that corresponds to the Participant's Acceptable Credit Rating

- (b) “**Acceptable Credit Rating**” means, with respect to the Participant, a Credit Rating listed in any of the four (4) levels contained in the table below (the “**Credit Rating Table**”); provided however, that:
 - (i) in the case of a Participant that does not have the Superior Rating, if an Affiliate of the Participant does have such Superior Rating, the Participant's Affiliate's Superior Rating may be substituted as the Credit Rating for the Participant, provided such Affiliate provides a guarantee to the LDC, in form and substance acceptable to the LDC, of all of the Participant's obligations under this Agreement and otherwise complies with this Section;
 - (ii) where the Participant has Credit Ratings from more than one rating agency set out in the Credit Rating Table, then the lowest of such Credit Ratings, shall be used to determine whether the Participant has an Acceptable Credit Rating;
 - (iii) where the Participant has a Negative Outlook, then its Credit Rating will automatically be demoted by one row in the Credit Rating Table and, for

certainty, where the Participant's Credit Rating, or lowest Credit Rating, is listed in the 4th and lowest level of the Credit Rating Table and a Negative Outlook has been issued with respect to such Credit Rating, such Credit Rating will not constitute an Acceptable Credit Rating; and

- (iv) where the Participant's Credit Rating is upgraded or downgraded to any Credit Rating within the range of Acceptable Credit Ratings, then the amount of acceptable Performance Security will be recalculated in accordance with Section 8.2(a)(ii).

Credit Rating of Participant

S&P	DBRS	Moody's	Reduction Factor
At least A-	At least A low	At least A3	0
At least BBB+	At least BBB high	At least Baa1	0.25
At least BBB	At least BBB	At least Baa2	0.50
At least BBB-	At least BBB low	At least Baa3	0.75
	Below or Not Rated		1.0

8.3 Adequacy of Security; Replacement Security

- (a) The Participant shall advise the LDC of any change to any of its Credit Ratings within three Business Days of such change, and shall ensure that, at all times, the aggregate value of all posted Performance Security is at least equal to the then currently required amount of Performance Security and that the Performance Security is current, valid, enforceable and in an acceptable form, including:
- (i) increasing the amount of posted Performance Security pursuant to Section 8.1(b);
 - (ii) if Performance Security has been provided pursuant to Section 8.2(a)(ii), posting replacement Performance Security if the Participant ceases to have an Acceptable Credit Rating or its Acceptable Credit Rating changes as contemplated by Section 8.2(b);
 - (iii) following realization by the LDC of any amount of Performance Security, increasing the amount of posted Performance Security, by an amount equal to that realized by the LDC; and

- (iv) providing replacement security for any Performance Security (A) that expires, terminates or fails, or ceases to be in full force and effect for the purposes hereof; (B) which is disaffirmed, disclaimed, dishonoured, repudiated or rejected in whole or in part by the Participant or the issuer thereof; or (C) the validity of which is challenged.
- (b) All costs associated with the posting or replacement of Performance Security shall be borne by the Participant.
- (c) If the existing Performance Security is replaced with new Performance Security and provided the new Performance Security meets the requirements herein, the LDC shall return the existing Performance Security held by the LDC to the Participant, within 5 Business Days of the LDC's receipt of such new Performance Security.

ARTICLE IX

EVALUATION, MONITORING AND VERIFICATION

9.1 EM&V

The Project or Portfolio, as the case may be, and the performance and administration of this Agreement will be subject to the IESO EM&V Protocols, which will include evaluation of the effectiveness of this Agreement in meeting the objectives of the Project Incentive Initiative and achieving Anticipated Electricity Savings. In furtherance of the IESO EM&V Protocols, the Participant will cooperate with the LDC, the IESO and their respective designates and will make available such information in the form and with the frequency as may be reasonably prescribed, including with respect to historical electricity consumption.

9.2 Retention of Records and Audit 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 during the term of this Agreement and for the period of time thereafter which is the greater of seven years and the period of time specified under Applicable Law. The Participant will keep proper and accurate records relating to information collected by the M&V Plan and the environmental impact, if any, of the Project or Portfolio, as the case may be. On reasonable notice, at any time during normal business hours in respect of the Project or Portfolio, as the case may be, the Participant will provide reasonable access to the LDC, the IESO, and/or their respective designates to such books, accounts, records and other data and: (A) make available to the LDC, the IESO and/or their respective designates, a list of the personnel of the Participant and its subcontractors involved in the performance of such Project or Portfolio, as the case may be, and the maintenance of such books, accounts, records and data referred to above for the purposes of this Article IX; and (B) permit the LDC, the IESO and/or their respective designates to examine and audit and take copies and extracts from such documents.

9.3 Inspection

The Participant will on at least five Business Days' prior notice, during normal business hours, and at such frequency as the LDC or the IESO reasonably requires, provide reasonable access to the LDC, the IESO and/or their respective designates to its premises for purposes of performing an inspection or technical audit for purposes of the IESO EM&V Protocols or to confirm that the Participant and each of its subcontractors has performed its obligations in respect of the Project or the Portfolio, as the case may be, in accordance with this Agreement, which inspection or technical audit may include a review of financial and accounting controls, including with respect to the preparation and submission of Request for Payments. Any inspection under this Section 9.3 will not relieve the Participant of any of its obligations to comply with the terms of this Agreement. In no event will any inspection hereunder be an acknowledgement that there has been or will be compliance with this Agreement.

ARTICLE X REPRESENTATIONS AND WARRANTIES

10.1 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, in the case of the Participant, to implement the Project or Portfolio, as the case may be;
- (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.

10.2 Representations of the Participant

In addition to the representations set out in Section 10.1, 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) the Participant would not have undertaken the Project or Portfolio, as the case may be, without the Project Incentive;
- (b) the Project Incentive Application is complete and accurate in all material respects;
- (c) all of the information set out in this Agreement (including Schedule “B”) pertaining to the Participant, and the Project or Portfolio, is true and correct, or, prior to the In-Service Date to the extent it relates to a Project or Portfolio yet to be constructed or implemented, is an accurate representation of the Participant’s plans and designs for the construction of the Project or Portfolio;
- (d) 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;
- (e) 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;
- (f) all of the Participant’s necessary internal approvals have been obtained in order to proceed with the execution of this Agreement and the Project or the Portfolio, as the case may be;
- (g) all requirements for the Participant to make any declaration, filing or registration with, give any notice to or obtain any license, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied;
- (h) the Facility is electrically connected directly to the Distribution System of a Local Distribution Company and is within the LDC’s service area;
- (i) the Participant has not, prior to submitting the Project Incentive Application, entered into an agreement with any contractor or consultant, or ordered or purchased any equipment for use in relation to the Project or the Portfolio;
- (j) the Project or Portfolio 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;
- (k) a complete list of Third Party Contributions, showing the amount of each Third Party Contribution, is set out in Schedule “B” under the heading “Third Party Contributions”;
- (l) the Participant satisfies the eligibility requirements set out in Section 1.1 of Schedule “E”;

- (m) the Project or the Projects in the Portfolio, as the case may be, and each Facility in respect thereof, satisfies the applicable eligibility and other requirements set out in Sections 1.2 and 1.4, as applicable, of Schedule “E” as of the date hereof and does not fall into any of the types of Projects set out in Section 1.3 of Schedule “E”;
- (n) the Participant has executed the Release and Waiver, has not taken any actions to amend or suspend it or to terminate its existence and it continues to be in full force and effect as of the date hereof;
- (o) the Participant is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada);
- (p) the Participant shall not directly or indirectly assign, transfer or sell any electricity it generates from a Generation Project.
- (q) 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;
- (r) the Participant shall be a Distribution Consumer at all times during the term of this Agreement; and
- (s) the Participant’s facility shall be connected to the Distribution System at all times during the term of this Agreement.

10.3 Survival of Representations and Warranties

The representations and warranties provided in this Article X 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 XI **REMEDY FOR DEFAULT**

11.1 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 Project or Portfolio fails to achieve at least 80% of the Anticipated Electricity Savings in any M&V Reporting Period.
- (b) Where the Participant has so elected, the Participant fails to provide or maintain Performance Security in accordance with Article VIII, if such failure is not remedied within three Business Days after written notice of such failure from the LDC.

- (c) The Participant fails to perform any material covenant or obligation set forth in this Agreement, including any payments to be made by the Participant hereunder, if such failure is not remedied within 10 Business Days after written notice of such failure from the LDC, provided that such cure period will be extended by the LDC for a further 10 Business Days if the LDC is satisfied that the Participant is diligently remediating such failure and that such failure is capable of being cured during such extended cure period.
- (d) 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 10 Business Days after receipt by the Participant of written notice of such fact from the LDC, provided that such cure period will be extended by the LDC for a further 10 Business Days if the LDC is satisfied that the Participant is diligently correcting such breach and that such breach is capable of being corrected during such extended cure period.
- (e) The Participant fails or ceases to hold a valid license, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Participant or the Project or Portfolio and is not remedied within 10 Business Days after receipt by the Participant of written notice of such failure or cessation from the LDC, provided that such cure period will be extended by the LDC for a further 10 Business Days if the LDC is satisfied that the Participant is diligently remediating such failure or cessation and that such failure or cessation is capable of being corrected during such extended cure period.
- (f) 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, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Participant under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Participant's obligations under this Agreement.
- (g) Other than in accordance with Section 16.7, 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 and has, where applicable, delivered Performance Security in the same manner and to the same extent as the Participant in accordance with the requirements herein.
- (h) 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 or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not 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 Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within 30 days.

- (i) The Participant makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, 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 Insolvency Legislation.
- (j) The Participant has made a material amendment to a Project or Portfolio that has not first been consented to in writing by the LDC, acting reasonably.
- (k) The In-Service Date has not occurred in accordance with Section 6.2.

11.2 Remedies of the LDC

- (a) Before the In-Service Date, if any Participant Event of Default occurs and is continuing:
 - (i) upon written notice to the Participant, the LDC may terminate this Agreement; and
 - (ii) the LDC will be entitled to:
 - A. an amount equal to the Before In-Service Date Termination LD Amount, as liquidated damages and not as a penalty, payable as follows:
 - (1) where the Participant has provided Performance Security or an Affiliate guarantee, as the case may be, that has not been released hereunder, the LDC may draw on the Performance Security or demand payment under such Affiliate guarantee, as the case may be, in an amount equal to the Before In-Service Date Termination LD Amount; and

- (2) by the Participant or Affiliate providing a guarantee, as the case may be, including any shortfall as a result of drawing on the security as set out in Section 11.2(a)(ii)A(1), of an amount equal to the Before In-Service Date Termination LD Amount (less any amount drawn as set out in Section 11.2(a)(ii)A(1)) within 10 Business Days of notice to the Participant to terminate this Agreement.
- (b) After the In-Service Date, if any Participant Event of Default occurs and is continuing:
 - (i) upon written notice to the Participant, the LDC may terminate this Agreement; and
 - (ii) the LDC will be entitled to:
 - A. an amount equal to the After In-Service Date Termination LD Amount, as liquidated damages and not as a penalty, payable as follows:
 - (1) where the Participant has provided Performance Security or an Affiliate guarantee, as the case may be, that has not been released hereunder, the LDC may draw on the Performance Security or demand payment under such Affiliate guarantee, as the case may be, in an amount equal to the After In-Service Date Termination LD Amount; and
 - (2) by the Participant or Affiliate providing a guarantee, including any shortfall as a result of drawing on the security as set out in Section 11.2(b)(ii)A(1), of an amount equal to the After In-Service Date Termination LD Amount (less any amount drawn as set out in Section 11.2(b)(ii)A(1)) within 10 Business Days of notice to the Participant to terminate this Agreement.
- (c) If:
 - (i) in any 12-month period following the In-Service Date and ending on the last day of an M&V Reporting Period, a Participant Event of Default set out in Section 11.1(a) occurs as determined in the relevant M&V Report(s) (in this Section, each, a “**Shortfall Event of Default**”), in substitution of the remedies available to the LDC in Section 11.2(b), the LDC will be entitled to an amount equal to the Shortfall LD Amount, as liquidated damages and not as a penalty, payable as follows:

- A. where the Participant has provided Performance Security or an Affiliate guarantee, as the case may be, that has not been released hereunder, the LDC may draw on the Performance Security or demand payment under such Affiliate guarantee, as the case may be, in an amount equal to the Shortfall LD Amount;
 - B. set-off the Shortfall LD Amount against amounts owed or any future amounts owing to the Participant at any time; and
 - C. payment by the Participant or Affiliate providing a guarantee, including any shortfall as a result of drawing on the Performance Security as set out in Section 11.2(c)(i)A, of an amount equal to the Shortfall LD Amount (less any amount drawn as set out in Section 11.2(c)(i)A) within 10 Business Days of notice to the Participant of the occurrence of such Shortfall Event of Default; and
- (ii) prior to the 3rd anniversary of the In-Service Date and if the full amount of the Performance Security or guarantee (if any) have not been released hereunder, in any M&V Reporting Period following the In-Service Date, a Participant Event of Default set out in Section 11.1(a) occurs as determined in the relevant M&V Report (in this Section, each, a “**Shortfall Event of Default**”), in substitution of the remedies available to the LDC in Section 11.2(b) and in addition to the remedy available to the LDC in Section 11.2(c)(i):
- A. the LDC will be entitled to withhold payment or Performance Security or Affiliate guarantee release hereunder until it receives two subsequent consecutive M&V Reports that confirm that the Project or Portfolio has achieved at least 80% of the Anticipated Electricity Savings in each of the respective M&V Reporting Periods. Upon such occurrence, the LDC will pay such withheld payments related to such Shortfall Event of Default or return such Performance Security or Affiliate guarantee, in each case, less the aggregate of all other outstanding Shortfall LD Amounts (if any), Persistent Shortfall LD Amounts (if any) and amounts owed by the Participant pursuant to Section 4.4(f) (if any). Failure to achieve at least 80% of the Anticipated Electricity Savings in each of the respective M&V Reporting Periods will result in continued withholding, subject to Section 11.2(c)(ii)B; and
 - B. if on the 3rd anniversary of the In-Service Date any withholdings pursuant to Section 11.2(c)(ii)A persist, the withholdings shall be released to the Participant and LDC will deem this to be a Persistent Shortfall Event of Default and will return all withheld payments, less the aggregate of all outstanding Shortfall LD Amounts (if any), the resulting Persistent Shortfall LD Amount calculated in

accordance with Section 11.2(d) and amounts owed by the Participant pursuant to Section 4.4(f) (if any).

- (d) If after any event, act, omission, cause or condition the Project or Portfolio fails to achieve the Anticipated Electricity Savings in any 12-month period following the In-Service Date as evidenced by the relevant M&V Report(s) and the LDC or the Technical Reviewer reasonably determine that based on the information available to it, including the then current M&V Report(s) during such 12-month period, that such failure will result, or is reasonably likely to result, in a shortfall of Anticipated Electricity Savings that is likely to persist through more than two consecutive 12-month periods in the Electricity Savings Period (a “**Persistent Shortfall Event of Default**”), the LDC will be entitled to an amount equal to the Persistent Shortfall LD Amount, as liquidated damages and not as a penalty, and the payment provisions set out in Sections 11.2(c)(i) will apply to this Section, *mutatis mutandis*.
- (e) The Participant will forthwith pay, and will cause its Affiliate providing a guarantee hereunder to forthwith pay, to the LDC any liquidated damages amount set out in Section 11.2(a), (b), (c) or (d), as the case may be, or any amounts to be repaid pursuant to Section 4.4, plus interest on such amounts at the Prime Rate plus 4% from such date until the date that it is paid in full. With respect to the non-payment of any liquidated damages amount set out in Section 11.2(a), (b), (c) or (d), as the case may be, or any amounts to be repaid pursuant to Section 4.4, the LDC will be entitled to pursue a Claim for damages with respect to such amount or any portion of such amount, plus interest on such amount at the Prime Rate plus 4% from such date until the date that it is paid in full. Notwithstanding Section 11.4, the LDC’s remedies against the Participant or its Affiliate, as the case may be, set out in Section 11.2(a), (b), (c) or (d) will be limited to the amount of liquidated damages payable by the Participant or Affiliate pursuant to such sections plus interest on such amount at the Prime Rate plus 4% from such date until the date that it is paid in full.
- (f) Notwithstanding anything else in this Agreement, on the occurrence of a Participant Event of Default referred to in Sections 11.1(f), 11.1(h), 11.1(i) or 11.1(k), all of the LDC’s obligations hereunder will be deemed to terminate immediately before such Participant Event of Default.
- (g) Upon termination pursuant to this Section 11.2, the LDC will not be required to pay any amounts to the Participant pursuant to Section 7.1 or 7.2, as applicable, unless such amount has accrued and become due prior to the Early Termination Date subject to all rights of set-off of the LDC pursuant to this Agreement. For certainty, the foregoing will not relieve the Participant or its Affiliate, as the case may be, or the LDC of their respective responsibilities under this Agreement up to and including the Early Termination Date, including those related to liquidated damages or relating to the Project or Portfolio, as the case may be, and delivery of the Electricity Savings and Environmental Attributes.

- (h) To the extent that any damages required to be paid hereunder, including pursuant to Section 11.2(a), (b), (c) or (d), as the case may be, 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.
- (i) 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.

11.3 Netting Against Other Performance Security

Notwithstanding anything else in this Agreement, if at any time Performance Security in respect of a Project or Portfolio, as the case may be, is not required to be posted with the LDC pursuant to Section 8.2, but the Participant has provided Performance Security to the LDC in respect of another Project or Portfolio under another agreement between the Participant and the LDC in respect of the Project Incentive Initiative, the LDC will be entitled, with respect to any amounts owing from the Participant to it hereunder, to draw upon the full or partial amount of such other Performance Security and set-off or credit against such amounts any amounts due from the Participant to it hereunder. If, in such circumstances, on any date any amounts would be otherwise payable from the Participant to it hereunder, then, on such date, such obligations will be automatically satisfied by such actions.

11.4 Remedies Cumulative

For greater certainty, the express rights and remedies of the LDC set out in Sections 11.2 and 11.3 are in addition to and will not limit any other rights and remedies available to the LDC at law or in equity.

ARTICLE XII **LIMITATION OF LIABILITY AND INDEMNIFICATION**

12.1 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 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 hereunder 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.

12.2 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 SECTION 12.3 BELOW) 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 (AS DEFINED IN SECTION 12.3 BELOW) 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.

12.3 Indemnification by the Participant

The Participant (the “**Indemnifying Party**”) will indemnify, defend and hold the 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 contractors and their employees) (collectively, 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 the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including 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 Indemnified Party 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 Portfolio, as the case may be, 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. For greater certainty, in the event of contributory negligence or wilful misconduct of the Indemnified Party, then such Indemnified Party will not be indemnified hereunder in the proportion that the Indemnified Party’s negligence or wilful misconduct contributed to any Indemnifiable Loss.

12.4 Defence of Claims

- (a) Promptly after receipt by the Indemnified Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which an indemnity provided for in Section 12.3 may apply, the Indemnified Party will notify the Indemnifying Party in writing of such fact. The Indemnifying Party will assume the defence thereof with counsel designated by the Indemnifying Party and satisfactory to the affected Indemnified Party, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party has reasonably concluded that there may be legal defences available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party will have the right to select separate counsel satisfactory to the Indemnifying Party acting reasonably (at no additional cost to the Indemnified Party) to participate in the defence of such action on behalf of the Indemnified Party. The Indemnifying Party will promptly confirm that it is assuming the defence of the Indemnified Party by providing written notice to the Indemnified Party. Such notice will be provided no later than 10 days prior to the deadline for responding to any claim relating to any Indemnifiable Loss.
- (b) Should any Indemnified Party be entitled to indemnification under Section 12.3 as a result of a Claim by a third party, and the Indemnifying Party fails to assume the defence of such Claim (which failure will be assumed if the Indemnifying Party fails to provide the notice prescribed by subsection 12.4(a)), the Indemnified Party will, at the expense of the Indemnifying Party, contest (or, with the prior written consent of the Indemnifying Party, acting reasonably, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Indemnifying Party (with the Indemnifying Party remaining obligated to indemnify the Indemnified Party under Section 12.3), as the case may be, if, in the written opinion of an independent third party counsel chosen by the Parties, such Claim is meritorious. If the Indemnifying Party is obligated to indemnify any Indemnified Party under Section 12.3, the amount owing to the Indemnified Party will be the amount of such Indemnified Party's actual out-of-pocket loss net of any insurance proceeds received or other recovery.

ARTICLE XIII **CONFIDENTIALITY AND MFIPPA/FIPPA**

13.1 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 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
 - (ii) 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 the Receiving 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 13.1 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 13.1.

- (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 such 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 Persons 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 Article XIII;
 - (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;
 - (iii) 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;
 - (iv) 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 or Portfolio and type of Facility, historical energy use and consumption, aggregated with other Projects or Portfolios, as the case may be, in a manner intended to report on the Project Incentive Initiative;

- (v) 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 all such public communications in advance.

13.2 Injunctive Relief

Each Party acknowledges that any violation of the provisions of this Article XIII may cause irreparable damage or injury to the other Party (including, 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, in the case of the LDC, any of the other Indemnified Parties), such Party (including, in the case of the LDC, any of the other Indemnified Parties) is entitled to proceed immediately to court in order to obtain, and the other Party will consent to, interim, interlocutory, and final injunctive relief restraining the other Party from breaching, and requiring the other Party to comply with, its obligations under this Article XIII, without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made. Nothing in this Section 13.2 will be construed to limit the right of a Party (including, 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 such relief.

13.3 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 Section 13.1(a)(iii)):

- (a) to keep the Records in its possession secure;
- (b) 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
- (c) 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 XIV **FORCE MAJEURE**

14.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:

- (i) the Participant is unable to achieve at least 80% of the Anticipated Electricity Savings; or
- (ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment and Performance Security obligations) hereunder, including the Participant being unable to achieve the In-Service Date within two years from the date of this Agreement;

then the Party so affected by Force Majeure will be excused and relieved on a day for day basis from performing or complying with such obligations (other than payment and Performance Security obligations) 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 other Party in respect of or relating to such Force Majeure and such Party'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 Party will be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt written notice of Force Majeure, provided that such notice will be given within 10 Business Days of the later of (i) the commencement of the event or circumstances constituting Force Majeure or (ii) the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the development or operation of the Facility or Project or Portfolio. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such 10 Business Day period, the Party invoking Force Majeure will be allowed a further 10 Business Day period (or such longer period as the Parties may agree in writing) to provide such full particulars to the other Party.
- (c) The Party invoking Force Majeure will use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances will be deemed to be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure will give prompt written notice of the termination of the event of Force Majeure, provided that such notice will be given within 10 Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 14.1 will relieve a Party of its obligations to provide Performance Security or make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.

- (f) If an event of Force Majeure causes the Participant to not achieve the In-Service Date within two years from the date of this Agreement, then the time for achieving such date will be extended on a day for day basis for each day of delay directly resulting from such Force Majeure event and for all purposes of this Agreement the In-Service Date will be the In-Service Date as so extended, provided such extension does not result in the occurrence of an In-Service Date beyond December 31, 2015.
- (g) If, by reason of one or more events of Force Majeure, the In-Service Date has not occurred by the third anniversary of the date hereof or, in any event, on or before December 31, 2015, then notwithstanding anything in this Agreement to the contrary, the LDC may terminate this Agreement upon notice to the Participant or the Participant may terminate this Agreement upon notice to the LDC. Upon termination of this Agreement pursuant to this Section 14.1(g), the Participant will forthwith repay to the LDC any amounts paid to the Participant in accordance with Article VII which, as of the Early Termination Date have not been actually incurred by the Participant to pay Eligible Costs in accordance with the Project Schedule and the Project Budget, following which, all Performance Security will be returned to the Participant forthwith.

14.2 Exclusions

A Party will not be entitled to invoke Force Majeure under this Article XIV, nor will it be relieved of its obligations hereunder in any of the following circumstances:

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence;
- (b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which will be wholly within the discretion of the Party involved);
- (c) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach of or failure to comply with Applicable Law by such Party;
- (d) if the Force Majeure was caused by a lack of funds or other financial cause; or
- (e) if the Party invoking Force Majeure fails to comply with the notice provisions in Section 14.1(b) or 14.1(d).

14.3 Definition of Force Majeure

For the purposes of this Agreement, the term “**Force Majeure**” means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment and

Performance Security obligations) hereunder, that is beyond the affected Party's reasonable control, and will include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute);
- (e) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics; and
- (f) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction.

ARTICLE XV

DISPUTE RESOLUTION

15.1 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 10 Business Days following delivery of such notice, the Company Representative from each Party will meet, either in person or by telephone, to attempt to resolve the dispute. Each Company Representative 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 15.2.

15.2 Arbitration

Subject to and in accordance with the provisions of this Section, any and all differences, disputes, Claims or controversies arising out of or in any way connected with this Agreement, whether arising before or after the expiration or termination of this Agreement (including any dispute as to whether an issue is arbitrable) will be resolved by arbitration before a single arbitrator (the "**Arbitrator**") pursuant to the *Arbitration Act, 1991* (Ontario) and otherwise in accordance with the laws of the Province of Ontario.

15.3 Appointment and Powers of Arbitrator

A Party desiring arbitration hereunder will give written notice of arbitration to the other Party containing a concise description of the matter submitted for arbitration (“**Notice of Arbitration**”). If the Parties fail to jointly appoint an Arbitrator within 20 days thereafter, an Arbitrator will be designated by a judge of the Ontario Superior Court of Justice upon application by either Party. The Arbitrator may determine all questions of law, fact and jurisdiction with respect to the dispute or the arbitration (including questions as to whether a dispute is arbitrable) and all matters of procedure relating to the arbitration. The Arbitrator may grant legal and equitable relief (including injunctive relief), award costs (including legal fees and the costs of the arbitration), and award interest.

15.4 Arbitration Procedure

The arbitration will be conducted in English in the City of Toronto (unless otherwise agreed by the Parties) at such place therein and at such time as the Arbitrator may fix and, failing agreement thereto by the Parties, in accordance with such procedures as the Arbitrator will determine, in accordance with the principles of natural justice. The arbitration and all matters arising directly or indirectly therefrom will be kept strictly confidential by the Parties and will not be disclosed to any third party except as may be compelled by law.

15.5 Arbitrator’s Decision and Appeal

The Arbitrator’s written decision will be delivered to each of the Parties within 60 days following the conclusion of the arbitration hearing. The costs of any arbitration hereunder will be borne by the Parties in the manner specified by the Arbitrator in his or her decision. The decision of the Arbitrator will be final and binding upon the Parties in respect of all matters relating to the arbitration, the conduct of the Parties during the proceedings and the final determination of the issues in the arbitration. There will be no appeal from the decision of the Arbitrator to any court, except on the grounds that the conduct of the Arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario), or solely on a question of law as provided for in such act. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

15.6 Preclusion of Actions

Submission to arbitration under this Section is intended by the Parties to preclude any action in matters which may be arbitrated hereunder, save and except for enforcement of any arbitral award hereunder.

ARTICLE XVI
MISCELLANEOUS

16.1 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 16.1(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 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 16.1(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 16.1. The Participant will be entitled to reimbursement of the cost of complying with a direction under this Section 16.1(d), provided that the LDC or IESO, acting reasonably, approved such cost in writing prior to the cost being incurred by the Participant.

16.2 Relationship of the Parties

The Participant agrees that its relationship with the LDC is an independent business relationship 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 Parties.

16.3 Further Assurances

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.

16.4 Severability

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.

16.5 Binding Agreement

This Agreement will enure to the benefit of and will be binding on and enforceable by the Parties and, where the context so permits, their respective successors and permitted assigns.

16.6 Third Party Beneficiaries

Except as provided in Sections 6.1(i), 6.1(j), 6.1(k), 16.1(b), this Section 16.6 and 16.7, and Article IX, Article XII and Article XIII, this Agreement is solely for the benefit of :

- (a) the LDC and its successors and assigns, with respect to the obligations of the Participant under this Agreement, and
- (b) 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 and the other Indemnified Parties of the applicable provisions set out in this Agreement, including Sections 6.1(i), 6.1(k), this Section 16.6 and 16.7, and Article IX, Article XII and Article XIII, and including the covenants of indemnification with respect to the IESO and the Indemnified Parties as specified in this Agreement, and the LDC accepts such appointment. The LDC is the agent of the IESO for the purposes of Section 16.1.

16.7 Assignment

The Participant may not assign this Agreement, in whole or in part, other than to an Affiliate to whom the Participant's title to the Facility is also assigned and who has assumed all of the Participant's obligations hereunder and agrees to be bound by this Agreement and has agreed to deliver, where applicable, Performance Security in the same manner and to the same extent as the Participant, without the prior written consent of the LDC, which the LDC may decline in its sole discretion. 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 the IESO, without the prior written consent of the Participant.

16.8 Inspection Not Waiver

Failure by the LDC to inspect the Facility, Project or Portfolio, as the case may be, or any part thereof under this Agreement, including Article IX, or to exercise its audit rights under this Agreement, including Article IX, will not constitute a waiver of any of the rights of the LDC hereunder. An inspection or audit not followed by a notice of Participant Event of Default will not constitute or be deemed to constitute a waiver of any Participant Event of Default, nor will it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Participant with this Agreement.

16.9 Notices

- (a) Any notice to be given under this Agreement unless expressly provided otherwise herein must be in writing and will be given by facsimile or e-mail or other means of electronic communication or by hand-delivery as provided. Any notice, if sent by facsimile or e-mail or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received on the Business Day is delivered to the applicable address noted below. Either Party may, by notice of change of address to the other Party, change its address to which notices are to be sent. Notices and other communications must be addressed as follows:

If to the LDC [(for communications other than invoices)]:

-
- Attention: ●
- Fax: ●
- E-mail: ●

With a copy to:

-
- Attention: ●
- Fax: ●
- E-mail: ●

[If to the LDC for invoices for payment:

-
- Attention:** ●
- Fax:** ●
- E-mail:** ●]

If to the Participant:

To the Person(s), address and/or other details set out in Schedule “B” under the heading “Participant Contact Information”.

- (b) Any notices of a Participant Event of Default, a Shortfall Event of Default, a Persistent Shortfall Event of Default or termination of this Agreement will only be given by hand or courier delivery.

16.10 Project Communications

The Participant will obtain the LDC’s prior written approval for all Project Communications in advance of publication or release thereof. Such approval will be deemed to be granted if the LDC has not objected to the Project Communication within 10 Business Days of receipt by the LDC of the proposed Project Communication.

16.11 Company Representative

Each of the Parties hereby appoints its Company Representative and confirms that such Company Representative is duly authorized to act on behalf of the Party that has made the appointment. The Company Representative is an individual with whom the other Party may consult at all reasonable times, and whose instructions, requests and decisions, provided the same are in writing signed by the respective Company Representative, will be binding on the appointing Party as to all matters pertaining to this Agreement and the Project or Portfolio, but, for greater certainty, the Company Representative will not have the power or authority to amend this Agreement.

16.12 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts will together constitute one and the same Agreement. It will not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Either Party may deliver an executed copy of this Agreement by facsimile but such Party will promptly deliver to the other Party an originally executed copy of this Agreement.

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]**

Per: _____
Name:
Title:

[Per: _____
Name:
Title:]

[I/we] have authority to bind the LDC.

• **[LEGAL NAME OF PARTICIPANT]**

Per: _____
Name:
Title:

[Per: _____
Name:
Title:]

[I/we] have authority to bind the Participant.

SCHEDULE “A”

DEFINITIONS

In this Agreement, the following terms will have the following meanings:

“**Acceptable Credit Rating**” has the meaning given to it in Section 8.2(b).

“**Actual Eligible Costs**” means the Eligible Costs that are actually incurred by the Participant to complete the Project or Portfolio, as the case may be, as confirmed by the Technical Reviewer and the LDC in accordance with Section 5.4.

“**Advanced Incentive Payment Option**” means the Net Project Incentive payments (if any) to be received by the Participant from the LDC in advance of the In-Service Date secured by the Performance Security (if any) in an amount equal to the Performance Security amount, where the Participant elects, as set out in Schedule “B”, the advanced incentive payment option and paid to the Participant in accordance with Section 7.1.

“**Affiliate**” means any Person that: (a) Controls a Participant; (b) is Controlled by a Participant; or (c) is Controlled by the same Person that Controls a Participant.

“**After In-Service Date Termination LD Amount**” means, in respect of any Participant Event of Default that occurs and is continuing after the In-Service Date, the liquidated damages amount, as calculated pursuant to Section 1.2 of Schedule “I”.

“**Aggregate Anticipated Electricity Savings**” means the sum of all Anticipated Electricity Savings during each of the respective M&V Reporting Periods, as set out in Schedule “B”.

“**Agreement**” means this Project Incentive Contract, including 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 relevant Electricity Savings Period divided by the number of years in the relevant Electricity Savings Period.

“**Anticipated Electricity Savings**” means, in each M&V Reporting Period specified in the M&V Plan, the amount set opposite such period in Schedule “B” under the heading “Anticipated Electricity Savings”, 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 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.

“**Arbitrator**” has the meaning given to it in Section 15.2.

“**Before In-Service Date Termination LD Amount**” means, in respect of any Participant Event of Default that occurs and is continuing before the In-Service Date, the liquidated damages amount, as calculated pursuant to Section 1.1 of Schedule “I”.

“**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.

“**Change Notice**” has the meaning given to it in Section 6.3(a).

“**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.

“**Commercially Reasonable Efforts**” means all efforts which may be required to enable a Person, directly or indirectly, to satisfy, consummate, complete or achieve a condition, transaction, activity, obligation or undertaking contemplated by this Agreement and which do not require such Person to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the purpose of, and the condition, transaction, activity, obligation or undertaking contemplated by, this Agreement

“**Company Representative**” means, in respect of each Party, the respective individual identified in Schedule “B” under the heading “Company Representative”.

“**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 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 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.

“**Control**” means, with respect to any Person at any time, (a) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (b) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise, and “**Controlled**” has a corresponding meaning.

“**Costs**” means all costs and expenses reasonably incurred by the LDC either in terminating any arrangements relating to the transactions provided for under this Agreement and all reasonable legal fees and expenses incurred in connection with enforcing its rights under this Agreement.

“**Credit Rating**” means, (a) with respect to the Participant or an Affiliate (i) its long-term senior unsecured debt rating (not supported by third party credit enhancement) or (ii) the lower of its issuer or corporate credit rating, as applicable, in either case being the lower rating provided by S&P, Moody’s or DBRS or any other established and reputable debt rating agency agreed to by the Parties from time to time, each acting reasonably, as set out in Schedule B.

“**Credit Rating Table**” has the meaning given to it in Section 8.2(b).

“**DBRS**” means Dominion Bond Rating Service Limited or its successors.

“**Deferred Incentive Payment Option**” means the Net Project Incentive payments (if any) to be received by the Participant from the LDC after the In-Service Date where the Participant elects, as set out in Schedule “B”, the deferred incentive payment option and paid to the Participant in accordance with Section 7.2.

“**Demand Response**” means 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.

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

“**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 Application**” means an application by the Participant in order to participate in the Detailed Engineering Study Initiative.

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

“**Disclosing Party**” has the meaning given to it in the definition of “Confidential Information”.

“**Distribution Consumer**” means an electricity consumer in the LDC’s service area.

“**Distribution System**” means a system connected to the IESO-Controlled Grid for distributing electricity at voltages of 50 kilovolts or less and includes any structures, equipment or other thing used for that purpose.

“**Early Termination Date**” means the date this Agreement terminates as a result of an early termination of this Agreement in accordance with Section 11.2(a), (b) or (f), or 14.1(g).

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

“**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 or Eligible Portfolio measured under normal operating conditions.

“**Electricity Savings Environmental Attributes**” has the meaning given to it in Section 16.1(a).

“**Electricity Savings Period**” means the period commencing on the In-Service Date and ending on the 10th anniversary thereof in the case of a Project or Portfolio.

“**Eligible Costs**” means those costs that satisfy the requirements of Section 1.5 of Schedule “E”.

“**Eligible Person**” means, in respect of the Project Incentive Initiative, a Person that meets the eligibility criteria set out in Section 1.1 of Schedule “E”.

“Eligible Portfolio” means, in respect of the Project Incentive Initiative, a Portfolio that meets the eligibility criteria set out in Section 1.4 of Schedule “E”, and each of the Projects in respect of which meet the eligibility criteria set out in Section 1.2 of Schedule “E” and is not a type of Project as described in Section 1.3 of Schedule “E”.

“Eligible Project” means, in respect of the Project Incentive Initiative, a Project that meets the eligibility criteria set out in Section 1.2 of Schedule “E” and is not a type of Project as described in Section 1.3 of Schedule “E”.

“Energy Management Plan” means a document, substantially in the form of Schedule “G”, to be completed by a Participant describing the activities and plans required to reduce energy consumption, including electricity consumption, in such Participant’s Facilities and detailing how the Participant is demonstrating leadership in the area of energy conservation by, among other things, developing conservation policies and establishing employee, community and peer-to-peer awareness programs.

“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 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 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 Eligible Costs” means the amount set out in Schedule “B” under the heading “Estimated Eligible Costs”, which such amount is the aggregate estimated Eligible Costs necessary to complete the Project or Portfolio, as the case may be.

“Expected Life” means the number of years, as set out in Schedule “B”, a Project will deliver Electricity Savings, such period being equal to at least the relevant Minimum Expected Life.

“Facility” means the building(s), premises or lands, or part thereof, owned or occupied by the Participant and in which the System is located, the type of which is set out in Schedule “B” under the heading “Type of Facility”.

“**Final Status Report**” means the last Status Report to be filed with the LDC by the Participant, substantially in the form of Schedule “F”, which includes a certificate signed by the Participant’s Company Representative showing the claimed Actual Eligible Costs incurred and paid by the Participant and attaching all related Receipts and Invoices therefor.

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

“**Force Majeure**” has the meaning given to it in Section 14.3.

“**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 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.

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

“**Handle**” or “**Handling**” means to access, receive, collect, use, store, process, record, disclose, transfer, retain, dispose of, destroy, manage or otherwise handle.

“**HHV**” or “**Higher Heating Value**” means 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).

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

“**IESO-Controlled Grid**” has the meaning ascribed to it by the IESO Market Rules.

“**IESO EM&V Protocols**” means the methods and processes that the IESO develops for the evaluation, measurement and verification of 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.

“**Incentive**” means one or more of the Preliminary Engineering Incentive, the Detailed Engineering Incentive and the Project Incentive, as applicable.

“**Indemnifiable Loss**” has the meaning given to it in Section 12.3.

“**Indemnified Party**” has the meaning given to it in Section 12.3.

“**Indemnifying Party**” has the meaning given to it in Section 12.3.

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

“**Insolvency Legislation**” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada), the *Companies’ Creditor Arrangement Act* (Canada), or any analogous legislation, and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction or the competence of such law).

“**Insolvent**” means, in respect of a Person, a Person:

- (a) who is for any reason unable to meet its obligations as they generally become due or otherwise acknowledges its insolvency,
- (b) who has ceased paying its current obligations in the ordinary course of business as they generally become due,
- (c) who has ceased to carry on business in the ordinary course,
- (d) who institutes any proceeding, takes any corporate action, or executes any agreement to authorize its participation in or the commencement of any proceeding seeking: (a) to adjudicate it a bankrupt or insolvent; (b) liquidation, dissolution, winding-up, reorganization, arrangement, protection, relief or composition of it or any of its property or debts or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or (c) appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its properties and assets, or

- (e) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing due.

“**LDC**” has the meaning given to it in the first page of this Agreement.

“**Lighting**” means equipment and controls used to provide illumination through the use of electricity resulting in a load.

“**Liquidated Damages Amount**” means the amount as calculated in accordance with Schedule “I”.

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

“**MWh**” means a megawatt hour.

“**M&V Plan**” means the measurement and verification plan attached hereto in Schedule “K” outlining the methodology and activities to be undertaken to quantify and verify Electricity Savings from a Project or Portfolio, as the case may be, as further described in Section 5.5.

“**M&V Report**” means a measurement and verification document containing the analysis by the Technical Reviewer of the quantified Electricity Savings delivered by the Measure or Measures included in a Project or Portfolio, as the case may be, 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 5.5(c) or 5.5(d), as the case may be.

“**M&V Reporting Period**” will have the meaning ascribed thereto in the M&V Plan and as each such period is set out in Schedule “B” under the heading “M&V Reporting Periods”.

“**Material Adverse Effect**” means any change (or changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations under this Agreement.

“**Measure**” means: (i) any activity undertaken for the primary purpose of obtaining or effecting, directly or indirectly, CDM, including 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, as more specifically described in Schedule “B” under the heading “Measures”.

“**Minimum Expected Life**” means the number of years a Project or Portfolio is required to provide the Electricity Savings, being 10 years after the In-Service Date;

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

“**Moody’s**” means Moody’s Investors Service, Inc. or its successor.

“**MW**” means a megawatt.

“**MWh**” means a megawatt hour.

“**Negative Outlook**” means, with respect to any credit rating agency providing a Credit Rating for purposes of this Agreement, a potential or threatened downgrade to the Credit Rating of the Participant.

“**Net Project Incentive**” means the amount set out in Schedule “B” under the heading “Net Project Incentive”, such amount being the Project Incentive for a Project or Portfolio, as the case may be, 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 or Portfolio, subject to adjustment in accordance with Section 4.4.

“**Notice of Arbitration**” has the meaning given to it in Section 15.3.

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

“**Participant**” has the meaning given to it in the preamble of this Agreement.

“**Participant Documents**” means, collectively, Requests for Payment, Solvency Certificates, Status Reports and the Final Status Report and “**Participant Document**” shall mean any one of these documents.

“**Participant Event of Default**” has the meaning given to it in Section 11.1.

“**Party**” and “**Parties**” have the meanings given to them in the preamble of this Agreement.

“**Performance Security**” has the meaning given to it in Section 8.1.

“**Persistent Shortfall Event of Default**” has the meaning given to it in Section 11.2(d).

“**Persistent Shortfall LD Amount**” means, in respect of a Persistent Shortfall Event of Default, the persistent shortfall liquidated damages amount, as calculated pursuant to Section 1.4 of Schedule “I”.

“**Persistent Shortfall Reduction**” means an amount, expressed as a percentage, determined by the LDC and the Technical Reviewer of the expected persistent shortfall based, in the case of a Change Notice delivered after the In-Service Date in accordance with Section 6.3(c), on the information contained in the Change Notice, supporting evidence and the Technical Reviewer assessment, and, in the case of a Persistent Shortfall Event of Default, on the relevant M&V Report(s), supporting evidence and the Technical Reviewer assessment.

“**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.

“Personal Information” means information about an identifiable individual or other information that is subject to any Privacy Laws.

“Portfolio” means two or more Projects (excluding CCHP Projects) that are grouped together and that, individually, would each be an Eligible Project as set out in Section 1.4 of Schedule “E”, such Portfolio referred to in Schedule “B” attached hereto under the heading “Portfolio”.

“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 Application” means an application by the Participant in order to participate in the Preliminary Engineering Study Initiative.

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

“Prime Rate” means the annual rate of interest equal to the rate at which the Royal Bank of Canada establishes at its principal office in Toronto as the reference rate of interest to determine interest rates it will charge on such day for commercial loans in Canadian dollars made to its customers in Canada and which it refers to as its “prime rate of interest”.

“Privacy Laws” means all federal, provincial, state, municipal or other applicable statutes, laws or regulations of any Governmental Authority in any jurisdiction governing the Handling of information about an identifiable individual, including the *Personal Information and Protection of Electronic Documents Act* (Canada), FIPPA, MFIPPA and equivalent provincial legislation.

“Project” means one or more Measures, which, when implemented in respect of a single System, are expected to deliver Electricity Savings.

“Project Benefits” means the dollar amount as set out in Schedule “B” under the heading “Project Benefits”, which is the sum of all benefits projected to be generated from the implementation of the Project or Portfolio, as the case may be, during the Electricity Savings Period including Electricity Savings and benefits not related directly to Electricity Savings, including from reducing other energy consumption, use of alternative fuels, positive and negative differences in operating and maintenance costs and other avoided costs.

“Project Budget” means a summary, set out in Schedule “B” under the heading “Project Budget”, of the total budget for the capital, planning, engineering, design, construction and commissioning of the Project or Portfolio, including both Eligible Costs and ineligible costs, listing the budgeted

costs for each category of expense and at what stage of the project schedule such costs will be incurred.

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

“**Project Incentive**” means the dollar amount set out in Schedule “B” under the heading “Project Incentive”, subject to adjustment in accordance with Section 4.4.

“**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 or Portfolio to recover the Eligible Costs of such Project or Portfolio 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.

“**Project Schedule**” means a summary, set out in Schedule “B” under the heading “Project Schedule”, of the schedule for the planning, engineering, design, construction and commissioning of the Project or Portfolio, listing the timeline and significant dates for each such event.

“**Rating Agency**” means any one of DBRS, Moody’s or S&P.

“**Receipts and Invoices**” means detailed invoices 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, including 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.

“**Receiving Party**” has the meaning given to it in the definition of “Confidential Information”.

“**Records**” has the meaning given to it in Section 13.1(c)(ii).

“**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.

“**Request for Payment**” means a request for payment to the LDC from the Participant substantially in the form of Schedule “C”.

“**S & P**” means the Standard and Poor’s Rating Group (a division of McGraw-Hill Inc.) or its successor.

“**Shortfall Event of Default**” has the meaning given to it in Section 11.2(c)(i) or 11.2(c)(ii), as the case may be.

“**Shortfall LD Amount**” means, in respect of a Shortfall Event of Default, the shortfall liquidated damages amount, as calculated pursuant to Section 1.3 of Schedule “I”.

“**Small Capital Project**” means a stand-alone Project, which, when installed, is expected to deliver at least 100 MWh of Annualized Electricity Savings and which may be eligible to receive a Project Incentive up to a maximum of \$1,000,000.

“**Solvency Certificate**” means a solvency certificate to be executed by an officer of the Participant, substantially in the form of Schedule “H”.

“**Status Report**” means, in respect of a Project or Portfolio, a completed status report, substantially in the form of Schedule “F”.

“**Superior Rating**” means the Participant or Affiliate has a Credit Rating of at least A- from S&P, A low from DBRS or A3 from Moody’s.

“**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 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 the value of contributions in kind) towards the Eligible Costs of a Project or Portfolio 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”
COMMERCIAL TERMS

LDC Project Identification #: •

Participant Contact Information: •

**[INSERT ADDRESS, TELEPHONE NUMBER, FACSIMILE NUMBER AND
EMAIL CONTACT]**

Technical Reviewer: •

Company Representative:

i. LDC: •

ii. Participant: •

Overview of the Project or each Project in a Portfolio:

Project(s): [LIST ALL PROJECTS]

Measures: •

Comments and Clarification:

If the final Project is different in any respect from the proposal in the Engineering Study set out in Schedule “J” attached hereto, the difference must be described and explained here: •

Other comments: •

Municipal Address or Location: •

Type of Facility: •

Annual Hours of Operation: •

Project Incentive: •

Net Project Incentive: •

Project Incentive Payment Option: Advanced Deferred (please check)

Project Benefits: •

Preliminary Engineering Incentive: •

Detailed Engineering Incentive: •

Project Schedule: •

iii. [INSERT SCHEDULE OF CONSTRUCTION/COMMISSIONING OF THE PROJECT OR PORTFOLIO]

Project Budget: •

iv. [INSERT BUDGET OF ANTICIPATED EXPENSES IN CONNECTION WITH THE PROJECT OR PORTFOLIO AND AT WHAT STAGE OF THE PROJECT SCHEDULE SUCH EXPENSES WILL BE INCURRED]

Scheduled In-Service Date: •

Expected Life: •

Estimated Eligible Costs: •

Third Party Contributions: •

Project Payback: •

Project/Portfolio Milestones: •

v. [INSERT ANY MILESTONES IDENTIFIED IN THE PROJECT REVIEW]

M&V Reporting Periods: •

Annualized Electricity Savings: •

Aggregate Anticipated Electricity Savings: •

Anticipated Electricity Savings: •

vi. [INSERT A TABLE OF PERIODS AND THE ELECTRICITY SAVINGS ANTICIPATED TO HAVE BEEN ACHIEVED DURING SUCH PERIOD BY THE TECHNICAL REVIEWER AS CONTAINED IN THE PROJECT REVIEW OF THE PROJECT OR PORTFOLIO]

Current Participant Credit Rating: •

Performance Security: [INSERT MAXIMUM AMOUNT]

[If Performance Security is equal to or less than \$1,000,000:]

Table A (Increases)

Maximum Amount of Performance Security	Increase to L/C Amount in accordance with Section 8.2(b)
\$●	\$●

Table B (Decreases)

Aggregate L/C Amount (as per adjustments in Table A above)	1st 50% decrease of L/C Amount in accordance with Section 8.1(c)(i)	2nd 50% decrease of L/C Amount in accordance with Section 8.1(c)(ii)	100% decrease of L/C Amount in accordance with Section 11.2(c)(ii)B
\$●	[1ST ANNIVERSARY OF THE IN-SERVICE DATE]	[2ND ANNIVERSARY OF THE IN-SERVICE DATE]	●

[If Performance Security is greater than \$1,000,000:]

A letter of credit will be deposited with the LDC at the time the Participant executes this Agreement and will be increased and decreased in accordance with Tables A and B below, respectively.

Table A (Increases)

Maximum Amount of Performance Security	Initial Amount of Performance Security on the date hereof in accordance with Section 8.1(b)	1st Increase to Performance Security in accordance with Section 8.1(b)(i)	2nd Increase to Performance Security in accordance with Section 8.1(b)(ii)	3rd Increase to Performance Security in accordance with Section 8.1(b)(iii)	Increase to Performance Security in accordance with Section 8.2(b)
\$●	\$●	\$●	\$●	\$●	\$●

Table B (Decreases)

Aggregate Performance Security (as per adjustments in Table A above)	1st 50% decrease of Performance Security in accordance with Section 8.1(c)(i)	2nd 50% decrease of Performance Security in accordance with Section 8.1(c)(ii)	100% decrease of Performance Security in accordance with Section 11.2(c)(ii)B
\$●	[1ST ANNIVERSARY OF THE IN-SERVICE DATE]	[2ND ANNIVERSARY OF THE IN-SERVICE DATE]	●

Account Details: ●

SCHEDULE “C”
FORM OF REQUEST FOR PAYMENT

V.5.1 Process And System Upgrades Initiatives 2011-2014: (1) Preliminary Engineering Study Initiative; (2) Detailed Engineering Study Initiative; and (3) Project Incentive Initiative - Project Incentive Contract, April 23, 2015.
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Request for Payment

Date: _____

Company Name (Cheque Payable to):			
Address:			
City:	Province:	Postal Code:	Date (dd/mm/yy):
Contact Name:	Phone:	FAX:	
Project Number:	GST / HST #:		

Payment request for :	
<input type="checkbox"/> Preliminary Engineering Study <input type="checkbox"/> First half of payment <input type="checkbox"/> Second half of payment <input type="checkbox"/> Detailed Engineering Study <input type="checkbox"/> First half of payment <input type="checkbox"/> Second half of payment	<input type="checkbox"/> Project Incentive <input type="checkbox"/> Advance Payment <input type="checkbox"/> First 25% less 2.5 % <input type="checkbox"/> Second 25% less 2.5 % <input type="checkbox"/> Third 25% less 2.5 % <input type="checkbox"/> Fourth 25% less 2.5 % <input type="checkbox"/> Balance payment <input type="checkbox"/> Deferred Payment <input type="checkbox"/> First 1/3 less 10 % <input type="checkbox"/> Second 1/3 less 10 % <input type="checkbox"/> Third 1/3 less 10 % <input type="checkbox"/> Balance payment
<input type="checkbox"/> Energy Manager Incentive (EMI) <input type="checkbox"/> First payment (25% of EMI) <input type="checkbox"/> Second payment (50% of EMI) <input type="checkbox"/> Final payment (25 % of EMI)	<input type="checkbox"/> Project installation confirmed by _____ an employee of _____ <input type="checkbox"/> Monitoring and Targeting Incentive (MTI) <input type="checkbox"/> First payment (50% of MTI) <input type="checkbox"/> Second payment (50% of MTI)

INVOICING: List of supporting invoices from participant					
Vendor Invoice #	Invoice Date	Date invoice paid	Vendor	Description	Amount

Comments:	<input style="width: 300px; height: 40px;" type="text"/>	Sub Total:	<input style="width: 100px;" type="text"/>
Completed by:	_____	HST:	<input style="width: 100px;" type="text"/>
	(name)	(Company Name)	Grand Total:
	_____	(Date)	<input style="width: 100px;" type="text"/>
	(signature)		<input type="button" value="Print Form"/>

**SCHEDULE “D”
FORM OF LETTER OF CREDIT**

DATE OF ISSUE:	<*>
ISSUER:	<*> [INSERT LEGAL NAME OF ISSUING FINANCIAL INSTITUTION]
APPLICANT:	<*> (the “Applicant”)
BENEFICIARY:	<*> [INSERT LEGAL NAME OF LDC] and its successors and permitted assigns (the “Beneficiary”)
AMOUNT:	<*>
EXPIRY DATE:	<*>
EXPIRY PLACE:	Counters of the issuing financial institution in ●, Ontario
CREDIT RATING:	[Insert credit rating of issuing financial institution (which must be a Superior Rating) only if the issuer is not a financial institution listed in either Schedule I or II of the <i>Bank Act (Canada)</i> .]
TYPE:	Irrevocable and Unconditional Standby Letter of Credit Number : <*> (the “Credit”)

The Credit is issued in connection with the Participant Incentive Contract (the “Contract”) made as of <*> [INSERT DATE OF CONTRACT] between the Beneficiary and the Applicant. Capitalized terms used, but not otherwise defined herein, will have the respective meanings ascribed thereto in the Contract.

We hereby authorize the Beneficiary to draw on <*> [INSERT NAME OF ISSUING FINANCIAL INSTITUTION AND ADDRESS], in respect of the Credit, for the account of the Applicant, up to an aggregate amount of \$<*>, in lawful money of Canada, available by the Beneficiary's draft at sight.

Drafts drawn hereunder must bear the clause “Drawn under irrevocable and unconditional Standby Letter of Credit No. <*> issued by [INSERT NAME OF ISSUING FINANCIAL INSTITUTION] dated [INSERT ISSUE DATE].”

Partial drawings are permitted.

This letter of credit (as amended, this “Letter of Credit”) will automatically extend for additional, successive terms of one year each (each, an “Additional Term”), unless we provide the Beneficiary and the Applicant with written notice, at least 60 days prior to the expiration date of the then current term, that we do not wish to extend this Letter of Credit for an Additional Term.

We engage with you that all drafts drawn under and in compliance with the terms of the Credit will be duly honoured, if presented at the counters of <*> **[INSERT NAME OF ISSUING FINANCIAL INSTITUTION AND ADDRESS]** [(must be at the counters of the branch in the • of •)] at or before **[INSERT EXPIRY TIME]** (ET) on **[INSERT EXPIRY DATE]**, as extended.

The Credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce publication No. 590 and, as to matters not addressed by the ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

This Credit is transferable at the written request of the Beneficiary, without the consent of the Applicant, but, if the Beneficiary is transferring to a party (such party a “**Transferee**”) other than the Independent Electricity System Operator, subject to consent of the issuing financial institution, acting reasonably. All fees incurred by the issuing financial institution in relation to such transfer shall be on the account of the Applicant, but failure of the Applicant to pay such fees shall not restrict the ability of the Beneficiary to transfer the Credit.

In the event of a transfer of this Credit, as provided for above, the above name of the Beneficiary will be amended to reference the Transferee by way of an amendment hereto, without the consent of the Applicant, and upon receipt by the issuing financial institution of the Beneficiary's dated and signed letter addressed to <*> **[INSERT NAME OF ISSUING FINANCIAL INSTITUTION]** and completed as follows:

“We, the undersigned Beneficiary to <*> **[INSERT NAME OF ISSUING FINANCIAL INSTITUTION]** Letter of Credit No. <*>, hereby waive all our rights under the Letter of Credit and request that the current name and address of the Beneficiary thereunder be amended to read <*> **[INSERT NAME AND ADDRESS OF NEW BENEFICIARY]**. We have enclosed the original Letter of Credit and any amendments (if any) thereto. Please forward the original Letter of Credit and all amendments (if any), including the current amendment, to <*> **[INSERT NAME AND ADDRESS OF NEW BENEFICIARY]**.”

This letter of credit sets forth in full the terms of our undertaking. Reference in this letter of credit to other documents or instruments is for identification purposes only and such reference shall not modify or affect the terms hereof or cause such documents or instruments to be deemed incorporated herein.

[INSERT NAME OF ISSUING FINANCIAL INSTITUTION]

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE “E”

ELIGIBILITY CRITERIA

1.1 Participant Eligibility Criteria

To be an Eligible Person under this Initiative a person must:

- (a) be an electricity consumer; and
- (b) not be Insolvent.

1.2 Project Eligibility Criteria

To be an Eligible Project, 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 generate, based on a Detailed Engineering Study (and not just a Preliminary Engineering Study) approved by the Technical Reviewer and the LDC, Annualized Electricity Savings of greater than 350 MWh;
- (d) have achieved an actual In-Service Date no later than the second anniversary of the date of this Agreement and such In-Service Date must have been achieved on or before December 31, 2015;
- (e) not be project of a type described in Section 1.3 of this Schedule “E”; and.
- (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.

For certainty, Preliminary Engineering Studies are optional for Projects.

1.3 Ineligible Projects

None of the following types of Projects qualifies as an Eligible Project:

- (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) Lighting;
- (d) Demand Response;
- (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 achieve its Minimum Expected Life;
- (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 an Incentive), the Province of Ontario or any agency thereof;
- (i) prior to submitting a Preliminary Engineering Study Funding Application, a Detailed Engineering Study Funding Application or a Project Incentive Application, the Participant has approved the undertaking of a Preliminary

Engineering Study, a Detailed Engineering Study or a Project in respect of the Project Incentive Application, entered into an agreement with a contractor or consultant (except to prepare a Detailed 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.

1.4 Portfolio Criteria

- (a) An Eligible Project may be grouped with one or more other Eligible Projects and be a Portfolio, provided that:
 - (i) the sum of the expected Annualized Electricity Savings of all such Eligible Projects in the Portfolio is greater than 3,500 MWh of Annualized Electricity Savings, unless otherwise approved in writing by the LDC;
 - (ii) each such Eligible Project in the Portfolio must conform to the requirements of the applicable M&V Plan for the Portfolio;
 - (iii) each such Eligible Project in the Portfolio must have been the subject of a Detailed Engineering Study (and not only a Preliminary Engineering Study) as approved by the LDC and the Technical Reviewer;
 - (iv) no such Project in the Portfolio may be a Small Capital Project; and
 - (v) no such Project in the Portfolio may be a CCHP Project.

1.5 Eligible Costs for Project Incentive

- (a) 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.
- (b) Eligible Costs are limited to the following or those incurred in respect of the following:
 - (i) capital expenses;
 - (ii) equipment and products, including diagnostic and testing tools and instruments, and associated software;
 - (iii) data collection services, including processing, analysis and data management;

- (iv) meter purchase, design, installation and configuration costs associated with implementing the M&V Plan;
 - (v) salaries and benefits of employees directly involved in the design, selection, purchase and installation of the Measure or Measures included in the Project or Portfolio, as the case may be;
 - (vi) professional, engineering, scientific, technical, management and contracting services, including those required for training employees in the proper operation of the Project or Portfolio;
 - (vii) travel, including accommodation but excluding meals;
 - (viii) printing services;
 - (ix) permit and licence fees;
 - (x) costs associated with environmental assessments;
 - (xi) technical audits and studies associated with the Project or Portfolio (excluding the Participant's Preliminary Engineering Study and Detailed Engineering Study expenses not funded by the LDC), including a study of energy consumption before or after the Project implementation, in each case, as approved in writing in advance by the LDC; and
 - (xii) such additional category of costs as may be consented to by the LDC in writing in advance of such expenses being incurred.
- (c) For certainty, the following costs are not Eligible Costs:
- (i) 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;
 - (ii) the cost of collecting and submitting information required by an M&V Plan;
 - (iii) HST; or
 - (iv) a portion of the costs that have been or will be received from Third Party Contributions.
- (d) When calculating the Eligible Costs to be included in a Project Incentive, the calculation will be based upon the lower of:
- (i) the Estimated Eligible Costs, and

(ii) the Actual Eligible Costs.

SCHEDULE "F"

FORM OF STATUS REPORT/FINAL STATUS REPORT

Status Report

Participant Name:

Project Name:

Facility Location:

Contact Information:

Name:

Email:

Telephone:

Project Status Report Version Control

Report #	Date	Author
1.0		

Unless the context otherwise requires, capitalized terms used in this Status Report will have the meanings ascribed to them in the Project Incentive Contract between the Participant and the LDC.

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1. STATUS REPORT PURPOSE

The Status Report is a report completed by the Participant as required and described in the Project Incentive Contract. It will provide the Independent Electricity System Operator with a description and the status on the implementation activities for the Project or Portfolio as part of the Process and System Upgrades Initiative. Examples of descriptions included in the report are activities that have been started, completed, and planned for the Project. The report will also provide a more in depth description of the invoices and other identified costs that have been submitted with the Request for Payment, in the case of the Advanced Incentive Payment Option. The scope of this report will cover only the construction period for the Project or Portfolio. To provide evidence of the costs incurred, as presented in this report, all invoices must be provided.

2. STATUS REPORT

2.1. Project/Portfolio Status Summary

Project Name:

Prepared by:

Date:

Status Report Number:

Project/Portfolio Description:

Schedule:

[Discussion on status of Project/Portfolio schedule and any delays or slippage from the approved project schedule.]

Budget:

[Discussion on status of Project/Portfolio budget including major cost categories and any areas of variance.]

Scope:

[Discussion on status of Project/Portfolio scope, including any changes relative to the originally approved scope.]

Additional Items:

[Discussion of items such as resourcing, operational impacts within your facility, or other considerations that may impact the schedule, budget, or scope.]

2.2. Impact Analysis

Project In-Service Date Impacts:

[Overview of changes to the scope or other issues of the project implementation and how these changes affect the In-Service Date.]

Project Electricity Savings Impacts:

[Overview of the scope changes or other issues and how these changes affect the Electricity Savings.]

Project Budget Impacts:

[Overview of changes to the budget or other issues from project implementation and how these changes directly affect the budget.]

2.3. Additional Comments

- (a) Third Party Contributions received after the date of Project Incentive Application:
- (b) [List any Third Party Contributions to the Project/Portfolio received after the date of the Project Incentive Application, including name of contributor, date of contribution and amount of contribution.]
- (c) Energy Management Plan progress:
- (d) Other relevant comments:

I certify that this report provides a true representation of the status of the Project or Portfolio. The results in this report accurately reflect the paid costs and provide details on any potential activities that alter the originally approved Project or Portfolio.

Name:

Title:

Signature

Date:

COSTS INCURRED SUMMARY TO DATE

Status Report #	Date Status Report Submitted	Amount Incurred (\$)	% of Total Budget
TOTAL			

SCHEDULE "G"
FORM OF ENERGY MANAGEMENT PLAN

Energy Management Plan
<Template>

Prepared by: Name of Employee
 Department
 Company Name

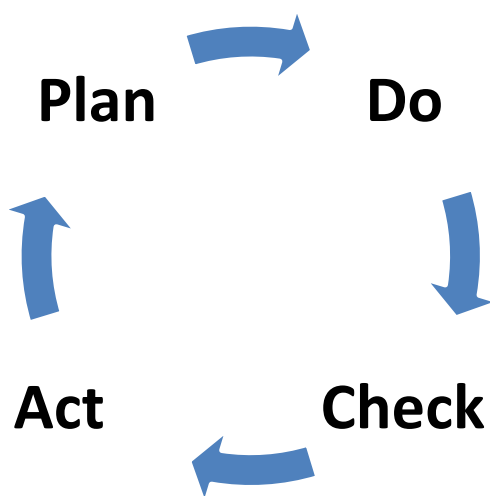
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PREFACE TO THE ENERGY MANAGEMENT PLAN TEMPLATE:

Environmental concerns and the need to be globally competitive are providing a driving force for local industry to change the way energy use and energy costs are viewed. Rather than being an inevitable cost of doing business, energy is now considered to be a manageable input to the process, much like any raw material or other resource cost.

The first step in managing energy costs is creating an energy management plan. This document contains a template that lays out a logical format for capturing information critical to energy management planning. It formalizes the thought process involved in understanding the relative magnitude of energy costs, the possible ways to reduce energy use, energy targets that are likely to be achievable, and other associated activities that need to occur. While stand-alone energy management projects are satisfying to complete, the energy management plan provides the “big picture” view as an ongoing framework for optimizing overall energy use and achieving success. Energy management planning is intended to be a process of “continuous improvement”. A closed-loop feedback approach is most effective in demonstrating results that will justify further investment in efficiency. The following diagram shows the circular steps that are recommended for adoption into the planning process:



Plan: Create the energy management plan ensuring budgets, resources, and timelines are established to meet the targets and objectives of the plan. Include tracking and monitoring processes within the plan to ensure effective reporting to management.

Do: Execute the plan by deploying the resources and budgets, prepare status reports, and implement the communication strategy.

Check: Measure and monitor performance of projects and programs against the desired outcomes as planned and report to management. with recommendations for improvements and course corrections.

Act: Analyse the variances to the plan and their causes. Recommend improvements, course

corrections, and modifications to the plan.

While IESO focuses on electrical energy efficiency, it is important that the scope of the plan includes all energy sources such as natural gas, coal, diesel, and biomass or other renewable fuels in order to have a complete understanding of opportunities for energy cost reduction and self-generation optimization.

EXECUTIVE SUMMARY:

<Provide an overview of the plan in a few paragraphs.>

<Ideas to include:

V.5.1 Process And System Upgrades Initiatives 2011-2014: (1) Preliminary Engineering Study Initiative; (2) Detailed Engineering Study Initiative; and (3) Project Incentive Initiative - Project Incentive Contract, April 23, 2015.

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1. *Specification of the energy plan targets and objectives over an appropriate planning time horizon.*
2. *The baseline energy usage and energy intensity of the plant compared to industry norms, energy flows of the facility energy use identifying major energy using equipment.*
3. *Top 3 to 5 high-potential energy conservation capital projects with estimated savings, incentives, capital costs and timelines.*
4. *A brief outline of medium term strategic energy management activities planned.*
5. *Communication strategy and employee awareness programs.*

Include summary table(s) of relevant numbers for current energy performance, targets, projects etc.>

ENERGY PLAN INFORMATION:

1. date of report
2. author
3. acknowledgement of key staff involved
4. facility name and location

BACKGROUND:

<Describe the plant operations and factors that affect energy use. Some ideas for inclusion here are:

1. *Business overview:*
 - a. *description of business history and current structure (at parent and local level, ownership, etc.); and*
 - b. *review of the industrial sector the business operates in with reference to the NAICS coding system and a summary of key business concerns facing the business and sector.*
2. *Process descriptions.*
3. *Physical location and access to resources.*
4. *List specifics of past conservation projects and successes.*
5. *Describe any existing metering/monitoring systems.*
6. *List past energy and feasibility studies.*
7. *Key challenges and constraints to achieving energy reduction goals (resources, capital, expertise, corporate commitment, data, etc.).>*

ENERGY MANAGEMENT POLICY & BEST PRACTICES:

<State your company's energy policy here, if one currently exists. An example energy management policy would be:

"The XYZ Co. will endeavour to reduce energy consumption through all available means so that by 2014 our total energy usage will be 15% less (or, for each unit of material produced) than 2010".

Otherwise, strive to use this plan to generate management acceptance of the importance of energy planning and create a formal energy policy. State a target timeline here for energy policy creation.>

Does the company:

- have broad awareness of the benefits of energy efficiency
- collect and utilise information to manage energy use
- integrate energy management into their overall management structure

- provide leadership on energy management through dedicated staff and a committed energy efficiency policy
- have an energy management plan for the short and long terms
- have a procurement policy that favours energy efficient equipment and materials

ENERGY TEAM:

<State here if there is an existing energy manager for the company and/or plant. If not, name an overall plant energy champion or one for each major section of the plant. Tabulate all individuals that have an impact on energy use and potential energy projects, identifying whether it is their basic job function or if they are co-champions for this effort (i.e. Dan in purchasing will need to be included in planning conservation projects, Rick in engineering is very interested in contributing to energy conservation projects and is a future energy champion).>

<List all personnel with Knowledge and experience in energy management from operations, maintenance, engineering, etc.>

<The importance of having a senior executive as a regular participant and sponsor of the energy team is highly recommended. This ensures that the executive management team is well informed of ongoing projects and progress toward energy management goals. If this person is or becomes an energy champion, the energy team is well on its way to achieving great success.>

The Energy Team at XYZ Co.

<i>Name</i>	<i>Position</i>	<i>Energy Champion?</i>	<i>Percent of Time on Energy Team</i>
Jane Doe	Energy Manager	Yes	80%
Name 2	VP – Production	Yes	5%
Name 3	Buyer	No	5%
Name 4	Foreman – Production	No	5%
Name 5	Engineering Team Leader	No	10%
Name 6	Engineer	No	20%

ENERGY BASELINE:

<This section requires some basic data gathering and thought about the best way to show how and where energy is used in the plant. The more detail that is presented in this section, the easier it will be to demonstrate success of the plan.>

Fuel source usage breakdown can be shown in a table such as this:

Fuel, Resource, Productivity	Total Annual Consumption/Production	Total Annual Cost/value	Percentage of Total Plant Energy Cost/production units
<i>Electricity</i>			
<i>Natural Gas</i>			
<i>Fuel Oil</i>			
<i>Other fuel</i>			
<i>Water</i>			
<i>Units of Production #1</i>			
<i>Units of Production #2</i>			

<It is best to slice the energy pie for each fuel source in as many ways as possible that are meaningful to you in order to identify the best approach to improving energy intensity. Two example tables are shown below to illustrate different ways to show the breakdown of electrical energy consumption. Other energy disaggregation methods may be more applicable to your specific situation.>

<It is important to identify the uncertainty associated with this activity and link back to energy information references listed in the Background section above.>

<It may be necessary to construct a table that shows the annual energy use profile by month if the plant operations vary greatly over the course of a year.>

One way of showing electrical energy use breakdown by system type:

Types of End-Uses	Number of Machines	MWh/yr	Operating Peak MW	% of Total	Uncertainty +/- %	Source of Energy Information
<i>Fans</i>						
<i>Pumps</i>						
<i>Compressed Air</i>						
<i>Material Handling</i>						
<i>Heating</i>						
<i>Lighting</i>						
<i>Process Equipment</i>						
<i>Other</i>						
Total:						

Another way of showing electrical energy use breakdown by process:

Unit Process	MWh/yr	Operating Peak MW	% of Total	Uncertainty +/- %	Source of Energy Information
<i>Saw Mill</i>					
<i>Planer Mill</i>					
<i>Lumber Drying</i>					
<i>Plywood Mill</i>					
<i>Chipper Mill</i>					
<i>Offices</i>					
Total:					

<Now pick a meaningful measure of plant throughput, or process throughput, and calculate energy intensity per unit of throughput by dividing total annual energy use of each fuel source by throughput. This will be the most important number for tracking and reporting energy management success to your executives. If possible, calculate energy intensity for 5 or more past years and show the trend.>

<Research typical energy intensity for your industry and compare to your findings.>

IDENTIFIED CONSERVATION CAPITAL PROJECTS:

<Create a table of known opportunities for energy savings projects involving capital investment. List the systems with identified savings along with their energy consumption, potential for savings, and next steps to achieving the savings. State the source of information for the energy savings potential. Use a separate table for each energy source.>

Electricity Savings Capital Projects:

System Name	Annual Energy Consumption	Operating Peak MW	Conservation Measure	Estimated Savings	Estimated Operating Peak MW Reduction	Source of Information	Date of Information
<i>Big Fan #1</i>	<i>40,000 MWh</i>		<i>VFD</i>	<i>5,000 MWh</i>		<i>Consultant Study</i>	<i>Oct. 2009</i>
<i>Air Compressor</i>	<i>20,000 MWh</i>		<i>Replace comp.</i>	<i>2,000 MWh</i>		<i>Internal Study</i>	<i>Jan. 2010</i>
<i>Melter #1</i>	<i>90,000 MWh</i>		<i>Heat recovery</i>	<i>10,000 MWh</i>		<i>Rough Estimate</i>	<i>Mar. 2010</i>

<List all known opportunities in the table above even if they are presently considered to be uneconomical or otherwise not currently feasible.>

OPERATIONAL SAVINGS AND EMPLOYEE AWARENESS PLAN:

<Opportunities to improve energy intensity and competitiveness through operational and employee awareness programs should not be overlooked. The IESO does not provide incentives for these conservation activities, but an energy management plan would not be complete without addressing these opportunities.>

<Operational savings are typically achieved through non-capital improvements to control systems. Optimizing the operation of a system from an energy perspective can often produce significant and measurable savings while maintaining or improving the system reliability and throughput.>

<Employee awareness programs identify and target everyday actions that employees can be encouraged to do, with the intent that the actions become second nature in order for the savings to persist well past the initial push for awareness. This type of activity dovetails well with operational savings. System operators will often have ideas for optimizing their system and eliminating wasteful idling or other unnecessary run time, but need the environment to encourage the development of these opportunities.>

<Investigate and document opportunities here for operational and employee awareness savings.>

ENERGY CONSERVATION TARGETS:

<Using the potential energy savings identified for each fuel source in the previous sections, set annual conservation targets for five years. Include stretch targets in high/medium/low scenarios for estimated savings>.

ELECTRICITY SAVINGS TARGETS:

Year	Savings High (MWh)	Savings Medium (MWh)	Savings Low (MWh)
1			
2			
3			
4			
5			

<Schedule time annually to update this plan and extend the conservation target for another year. This will produce a rolling 5 year target that when compared to results achieved, should continue to justify investment in conservation for years to come.>

ACTION PLAN:

<Turn the targets in the previous section into actionable tasks by tabulating projects, timelines, and accountabilities. The attached spreadsheet can be used as an action plan template for prioritization, tracking, and reporting.>

<Identify any barriers to the implementation of each capital project and think about what strategies could eliminate the barriers. Provide an assessment of the ease of implementing each identified project.>

<In addition to identified capital projects, list the approach and strategies to identify further conservation opportunities that may exist including those relating to:

- *behavioural;*
- *organisational;*
- *maintenance; and*
- *other.>*

<Resolve to bring the energy project team together on a regular basis to systematically work through approval and implementation of the action plan.>

OPPORTUNITY IDENTIFICATION & ANALYSIS:

<Potential projects identified by the Energy Manager/Key Account Manager in conducting a general energy assessment of a facility. >

Project Economics, Benefits & Risks for Identified Projects:

<i>Conservation Measure</i>	<i>Feasibility Study Complete?</i>	<i>Estimated Energy Savings (MWh)</i>	<i>Estimated Operating Peak MW reduction</i>	<i>Estimated Cost (\$)</i>	<i>Available Incentives (\$)</i>	<i>Project Payback (years)</i>	<i>Productivity, quality, or yield savings</i>	<i>Ease of implementation (easy, medium, hard)</i>	<i>Risk</i>
VFD on BF#1	Yes	5,000 MWh		1,000,000	625,000	1			
Replace Air Compressor	Yes	2,000 MWh		800,000	460,000	2.3			
Heat Recovery on Melter #1	No	10,000 MWh		5,000,000	2,300,000	3.6			
Total:	N/A	17.00 GWh		6.80 M	3.385 M	2.0			

V.5.1 Process And System Upgrades Initiatives 2011-2014: (1) Preliminary Engineering Study Initiative; (2) Detailed Engineering Study Initiative; and (3) Project Incentive Initiative - Project Incentive Contract, April 23, 2015.
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IMPLEMENTATION BUDGET

<This budget should include the cost of the Energy Manager, running the Energy Management team, projects, employee awareness and outreach activities, etc.>

FOR FURTHER READING:

There has been substantial work on the subject of energy management planning. For further more detailed reference, the ANSI MSE (management system for energy) is an excellent resource that can be found at <http://www.mse2000.net/>.

NRCan offers the comprehensive “Energy Efficiency Planning and Management Guide” available at <http://oee.nrcan.gc.ca/publications/infosource/pub/cipec/efficiency/index.cfm?attr=24>.

The International Standards Organization (ISO) is working on a draft energy management standard (ISO 50001) that will address energy management planning and should be available around the end of 2010 <http://www.iso.org>.

SCHEDULE “H”

FORM OF SOLVENCY CERTIFICATE

SOLVENCY CERTIFICATE

TO: [NAME OF LOCAL DISTRIBUTION COMPANY] (the “LDC”)

RE: [NAME OF PARTICIPANT] (the “Participant”)

This Certificate is delivered in connection with the Project Incentive Contract dated [●] between the LDC and the Participant (“**Project Incentive Contract**”). Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Project Incentive Contract.

1. I, [●], certify in my capacity as an officer of the Participant and not in my personal capacity, that I am the Chief Financial Officer of the Participant. My duties in that capacity are such that any matter relevant to the matters referred to herein would, in the ordinary course of business, come to my attention. I have made due inquiry to inform myself fully with respect to the matters herein certified.
2. I have reviewed the Project Incentive Contract and other documents as I have considered necessary, as well as having considered the projected impact of the Project Incentive Initiative.
3. For the purposes of giving this Certificate, I made such examinations, calculations and investigations and reviewed such documents and financial records of the Participant as are necessary to provide a reasonable basis for the conclusions in paragraph 4 below, including: (i) the **[audited]** financial statements of the Participant for the financial **[quarter][year]** ended _____; (ii) a calculation of the assets, liabilities and issued and paid-up share capital of the Participant; and (iii) such other financial or other information in respect of the Participant as I have considered necessary or appropriate. **[The [audited] financial statements of the Participant for the financial [quarter][year] ended _____][The most recent ratings report from a Rating Agency] are attached hereto as Exhibit “1”.**
4. I certify, in my aforesaid capacity only, that, as at the date of **[this Certificate][the Project Incentive Contract]**:
 - (a) there are no reasonable grounds to believe that the Participant:
 - (i) **[would be unable to post required Performance Security;]**
 - (ii) for any reason is unable to meet its obligations as they generally become due;

- (b) the Participant has not:
- (i) ceased paying its current obligations in the ordinary course of business as they generally become due;
 - (ii) ceased to carry on business in the ordinary course;
 - (iii) instituted any proceeding, taken any corporate action, or executed any agreement to authorize its participation in or the commencement of any proceeding seeking: (a) to adjudicate it a bankrupt or insolvent; (b) liquidation, dissolution, winding-up, reorganization, arrangement, protection, relief or composition of it or any of its property or debts or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or (c) appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its properties and assets;
 - (iv) received any notices or other communications in respect of any proceeding seeking: (a) to adjudicate it a bankrupt or insolvent; (b) liquidation, dissolution, winding-up, reorganization, arrangement, protection, relief or composition of it or any of its property or debts or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or (c) appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its properties and assets; and,
- (c) the aggregate of the Participant's property is, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would be sufficient to enable payment of all its obligations, due and accruing due.

This Certificate is delivered to you and may be relied upon by you in connection with the Participant Incentive Contract and all other documents and obligations associated with or contemplated by such agreement, and the execution, delivery and performance of all documents and instruments in connection therewith.

IN WITNESS WHEREOF, I have executed this Certificate this ____ day of [●].

Name: [Name]

Title: [Title]

EXHIBIT “1”

[The [audited] financial statements of the Participant for the financial [quarter][year] ended _____][Ratings report from a Rating Agency]

SCHEDULE “I”

LIQUIDATED DAMAGES CALCULATIONS

1.1 Before In-Service Date Termination LD Amount (in this calculation “LD”):

LD = Project Incentive paid to date + Costs

1.2 After In-Service Date Termination LD Amount (in this calculation “LD”):

LD = ((Aggregate Anticipated Electricity Savings) – actual Electricity Savings during the period between In-Service Date and the date of the Participant Event of Default) x (Project Incentive/Aggregate Anticipated Electricity Savings) + Costs

In the event the LD results in a negative value, the LD will be deemed to be nil.

1.3 Shortfall LD Amount (in this calculation “LD”):

LD = ((Annualized Electricity Savings during the relevant 12-month period x 0.8) – actual Electricity Savings as set out in the relevant M&V Report(s) for such 12-month period during the respective M&V Reporting Period(s)) x (Net Project Incentive/Aggregate Anticipated Electricity Savings)

In the event the LD results in a negative value, the LD will be deemed to be nil.

1.4 Persistent Shortfall LD Amount (in this calculation “LD”):

LD = ((Annualized Electricity Savings x Persistent Shortfall Reduction) x remaining Electricity Savings Period after the Persistent Shortfall Event of Default) x (Net Project Incentive/Aggregate Anticipated Electricity Savings)

SCHEDULE “J”
ENGINEERING STUDY

[NTD: To be attached.]

SCHEDULE “K”

M&V PLAN

[NTD: to be attached]