

THIS MEMORANDUM OF AGREEMENT ("MOA") for the ecoENERGY /OSTHI PROGRAMS for Renewable Heat, made in duplicate, as of November 30, 2007.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of Natural Resources

(herein referred to as "NRCan")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Energy

(herein referred to as "the Ministry")

(with each referred to as "Party" or together as "the Parties")

WHEREAS NRCan's ecoENERGY program for Renewable Heat (hereinafter "ecoENERGY Program") was launched on April 1, 2007 to promote the generation and consumption of renewable energy in Canada for its sectors that include industrial, commercial and institutional ("ICI") sectors;

WHEREAS the Ministry is committed to providing incentives for solar water heating in the ICI sectors in Ontario through its *Ontario Solar Thermal Heating Initiative* ("OSTHI"), as part of its renewable energy program activities and wishes to have OSTHI be available to Applicants in the same manner and with the same incentives available under the ecoENERGY Program;

WHEREAS NRCan and the Ministry have agreed that it would be beneficial and efficient to coordinate OSTHI with the ecoENERGY Program, including utilizing the delivery support mechanism provided by NRCan, to further renewable energy initiatives within the ICI sectors in Ontario;

NOW THEREFORE, NRCan and the Ministry agree as follows:

1. Purpose and Definitions

1.1 The purpose of this MOA is to set out the manner in which the OSTHI Program will be coordinated with the ecoENERGY Program and how information will be shared between the Ministry and NRCan.

1.2 The following definitions shall apply in the Agreement, including the recitals:

"Applicant" means an industrial, commercial or institutional entity that has submitted its Proposal and Consent and Release Form to NRCan after the Effective Date;

“Consent and Release Form” refers to the consent and release form of the Ministry, to be posted on its website for OSTHI, for each Applicant to download, complete, sign and submit to NRCan with its Proposal:

- to confirm to the Ministry that the Applicant is an ICI entity situated in Ontario and the accuracy and veracity of the contents of its Proposal;
- to authorize information of the Applicant (and later as Recipient, if applicable), to be shared between NRCan and the Ministry as further described in this MOA; and
- to release both NRCan and the Ministry from any liability arising out of the sharing of such information of the Applicant (and later as Recipient, if applicable) between NRCan and the Ministry;

“ecoENERGY Program” refers to NRCan’s program for renewable heat for the ICI sector, the terms and conditions for which may be found at <http://www.ecoaction.gc.ca/ecoenergy-ecoenergie>;

“Effective Date” means November 30, 2007;

“Fiscal Year” means the period beginning on April 1st of any year and ending on March 31st in the next year, and the first Fiscal Year shall mean from the Effective Date to the following March 31;

“ICI” refers to the industrial, commercial and institutional sectors in Canada;

“OSTHI” refers to *Ontario Solar Thermal Heating Initiative*, the program of the Ministry to provide incentives for solar, water and air heating for the ICI sectors in Ontario, as part of its renewable energy program activities;

“Programs” refers to the ecoENERGY Program and OSTHI;

“Proposal” means a completed *ecoENERGY for Renewable Heat Program* application form from an Applicant, including a work description, results expected and budget;

“Recipient” means any Applicant that has entered into a contribution agreement with NRCan to receive funding under the ecoENERGY Program;

“Requirements of Law” mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to this MOA; and

“Term” means the period of time from the Effective Date of the MOA to its expiry, which is anticipated to be March 31, 2012, subject to early termination as contemplated by this MOA.

2. Responsibilities of NRCan

2.1 NRCan is responsible for:

- a. including on the website for the ecoENERGY Program, a link to the Ministry's website for OSTHI so that potential Applicants may among other things download the Consent and Release Form;
- b. receiving Proposals, including the signed Consent and Release Forms from the Applicants and forwarding copies thereof to the Ministry as soon as is practicable;
- c. undertaking the review of the Proposals in accordance with the terms and conditions of the ecoENERGY Program, including seeking and obtaining clarification and additional information from the Applicants where NRCan deems as necessary;
- d. advising the Ministry in each instance when NRCan has approved a Proposal under the ecoENERGY Program and forwarding to the Ministry
 - i. a Project Summary Report setting out key project information of the particular Proposal approved by NRCan; and
 - ii. confirmation of NRCan's intention to enter into a contribution agreement with the particular Applicant, which shall be deemed to be a warranty by NRCan to the Ministry that the Applicant has met the requirements of the ecoENERGY Program and that NRCan has exercised the requisite due diligence in its review and approval of the Proposal;
- e. forwarding to the Ministry copies of executed contribution agreements between the Recipient and NRCan, as soon as practicable after their execution;
- f. forwarding to the Ministry for those Recipients that NRCan has been notified by the Ministry as having been approved for funding under OSTHI,
 - i. confirmation of approval/rejection of the claims for payment of the Recipients; and
 - ii. copies of the reports, invoices, completed forms and other documentation of the Recipients required for payment of claims under the respective contribution agreements with NRCan, as soon as is practicable after approval/rejection by NRCan of the respective claims for payment of the Recipients, and notification to the Ministry of its approval shall be deemed to be a warranty by NRCan to the Ministry that NRCan has exercised due diligence therefore in its decision that the Recipient is entitled to payment under the particular contribution agreement;
- g. providing quarterly summaries to the Ministry, including number of received Proposals; number of approved Proposals, number of rejected Proposals, amount of funding under the ecoENERGY Program committed/expended in the quarter, Fiscal Year to date and the total amount of expenditures incurred by the Recipients for their projects referred to in their respective contribution agreements with NRCan;
- h. utilizing appropriate security measures to secure the confidentiality and integrity of information of the Applicants/Recipients and the Ministry, including using security software already acquired by NRCan for transmittal of information between the Ministry and NRCan;
- i. advising the Ministry of any material change, including any assignment thereof or any material default by a Recipient of its contribution agreement with NRCan, within a reasonable period of time of becoming aware of such change or default;
- j. advising the Ministry as soon as is practicable, whenever:
 - i. funding levels for the ecoENERGY Program have changed or are about to change for a particular Fiscal Year;
 - ii. the Fiscal Year allocation for the funding for the ecoENERGY Program is eighty percent expended/committed;

- iii. NRCan becomes aware that a Recipient has or will receive incentives totalling more than \$2 million under the ecoENERGY Program; and
- iv. NRCan anticipates that there is to be a material change to the ecoENERGY Program; and
- k. granting to the Ministry a non-exclusive, irrevocable, world-wide, royalty-free licence in perpetuity to use and modify any of its documentation provided to the Ministry pursuant to this MOA.

3. Responsibilities of the Ministry

3.1. The Ministry is responsible for:

- 3.1.1. advising NRCan which Recipients have also been selected to receive funding under OSTHI, on a case by case basis;
- 3.1.2. utilizing appropriate security measures to secure the confidentiality and integrity of information of the Applicants/Recipients and NRCan, including using security software already acquired by the Ministry for transmittal of information between the Ministry and NRCan; and
- 3.1.3. abiding by the *Freedom of Information and Protection of Privacy Act* concerning information of the Applicants/Recipients provided to the Ministry by NRCan pursuant to this MOA.
- 3.1.4. **Disclaimer:** The objective of this Agreement is to help the Ministry to coordinate their OSTHI Program with the NRCan ecoENERGY Program. While NRCan shall make reasonable efforts to ensure that the information contained in the Reports is accurate at the time they are exchanged, NRCan shall not be liable whatsoever for any loss or damage caused by or resulting from any inaccuracies, errors or omissions in information exchanged following this Agreement.

4. Dispute Resolution

- 4.1 The Parties shall attempt to resolve any dispute arising out of or pursuant to this MOA by recourse to the dispute resolution methods identified in the following sequence, although steps may be by-passed by mutual consent.
 - 1) negotiations;
 - 2) non-binding mediation or conciliation;
 - 3) non-binding mini-trial, or
 - 3) binding arbitration.
- 4.2 If the Parties cannot agree on any of the foregoing dispute resolution mechanisms, either party may, at any time, elect to have such dispute resolved by litigation in the proper judicial forum in Canada.
- 4.3 Any party may within fifteen (15) days take the dispute to the next step if the Parties fail to agree on the appointment or procedure referred to in this Section.

4.4 When mediation or conciliation is selected by the Parties, they shall jointly appoint one impartial expert mediator or conciliator to undertake the process according to mutually agreed upon procedures.

4.5 If the Parties decide to submit a dispute to arbitration, it shall be carried out pursuant to the *Commercial Arbitration Act* of Canada. The arbitral award shall be in terms of money only, and shall not include punitive damages, costs or interim measures. The Parties shall attempt to appoint jointly one impartial expert arbitrator. If the Parties cannot agree within thirty (30) days on the choice of an arbitrator, each party shall appoint, at its own cost, one impartial expert arbitrator and those two arbitrators shall appoint an expert third arbitrator as chairperson of an arbitral tribunal.

4.6 When one of the above steps (s. 4(4)) or s. 4(5)) is selected to resolve a dispute, the Parties shall jointly enter into a contract with the required mediator or conciliator, third party, arbitrator or arbitrators, as the case may be, to pay the costs for the desired services and to bear their own costs of participating in the process involved. The contracts referred to and contemplated by this Article shall be in the form and content as agreed to by the Parties.

5. Communications Protocol

5.1 The Parties agree that any communication, press release or publication that pertains to both Programs shall require the prior consultation of the Parties, with any reasonable request of a Party to be given due consideration by the other Party.

5.2 Each Party shall also obtain the consent of the other Party for the use of any of the official marks, logos or trade-marks of the other Party or associated with the other Party's Programs in any of the Party's written communication, press release or publication pertaining to both Programs or the Party's Program.

6. Legal Relationship

6.1 Nothing contained in this MOA shall create the relationship of principal and agent, employer and employee, partnership or joint venture between the Parties.

6.2 Neither Party shall make any representation that:

a) it is an agent of the other Party; or

b) could reasonably lead any member of the public to believe that it or its contractors are agents of the other Party.

7. General

7.1 Each Party is solely responsible for costs and expenses incurred or payable in meeting its responsibilities set out in this MOA and in administering and delivering its Program.

7.2 This MOA shall be interpreted according to the laws in effect in the province of Ontario.

7.3 The Parties shall conform to all Requirements of Law that are applicable to their responsibilities under this MOA and the delivery of their respective Programs.

7.4 Nothing in this MOA obligates any Party to expend funds or to enter into any contract, contribution agreement, or other financial obligation with an Applicant. Any endeavour of a Recipient involving reimbursement or contribution of funds by either of the Parties is to be handled in accordance with the applicable contribution agreement and applicable laws, regulations and procedures.

7.5 This MOA can be terminated by either Party upon thirty (30) days written notice to the other Party.

7.6 All headings are inserted for convenience of reference only and shall not affect the construction or interpretation of this MOA.

7.7 Time is of the essence under this MOA.

8. Members of Parliament

8.1 No member of the House of Commons or of the Senate shall be admitted to any share or part of this MOA, or derive any benefit from it.

9. Conflict of interest

9.1 No person who is not in compliance with the provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders (Canada) or the Values and Ethics Code for the Public Service (Canada) shall derive any direct benefit from this MOA.

10. Assignment

10.1 Neither party may assign this MOA in whole or in part, without the written consent of the other.

10.2 Any assignment of this MOA does not relieve the assigning Party of its obligations, and does not impose any further responsibility on the other Party, unless otherwise agreed to in writing.

10.3 Notwithstanding the foregoing, the Ministry may direct the Ontario Power Authority to assume responsibility for this MOA pursuant to s. 25.32 of the *Electricity Act*.

11. Amendment

11.1 No amendment or waiver of any of the terms and conditions of this MOA shall be valid unless effected by a written amendment signed by the Parties.

12. Appropriation

12.1 Notwithstanding any other provision of this MOA, either Party may terminate this MOA upon written notice to the other Party in the event that the funding levels for the

respective Programs are materially reduced by Parliament, in the case of NRCan or the Ontario Legislature, in the case of the Ministry during the term of this MOA.

13. Successors or assigns

13.1 This MOA shall enure to the benefit of and be binding on the Parties and their respective representatives, successors and permitted assigns.

14. Entire Agreement

14.1. This MOA constitutes the entire agreement between the Parties with respect to the subject matter of this MOA and supersedes all previous negotiations, communications, and other agreements, whether written or verbal between the Parties.

15. Notices

15.1 Any notices and the other documents that either Party is to provide the other Party is to be submitted in writing and sent by registered mail, facsimile, electronic mail or delivered personally at the following addresses:

For NRCan:

Renewable and Electrical Energy Division
Natural Resources Canada
615 Booth Street, Rm 150
Ottawa, ON
K1A 0E9

Attention: Mr. Al Clark
Telephone No.: (613) 943-2215
Facsimile No.: (613) 943-6517
E-mail: aclark@nrcan.gc.ca

For the Ministry:

Office of Conservation and Strategic Policy
Ministry of Energy
880 Bay Street, 6th Floor
Toronto, ON M7A 2C1

Attention: Mr. Barry Beale, Director
Conservation and Distributed Energy Branch
Telephone No.: (416) 326-4551
Facsimile No.: (416) 325-6972
Email: barry.beale@ontario.ca

Notices or other documents are deemed to have been received by the other Party, if sent by registered mail, when the postal receipt is acknowledged by the other Party; if sent by fax or electronic mail, on the next business day; and if sent by messenger or courier, when delivered. Any Party may from time to time change its address or contact

information by written notice to the other Party given in accordance with the provisions of this Section 15.1.

IN WITNESS WHEREOF, this MOA was has been executed as of the Effective Date.

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| HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Natural Resources | HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Energy |
| Per: _____ Thomas Wallace Director General Electricity Resources Branch Natural Resources Canada | Per: _____ Tony Rockingham Assistant Deputy Minister Office of Conservation and Strategic Policy Ontario Ministry of Energy |