

Industrial Program

**Process and System Upgrades Initiatives Schedule "D-1"
to Master CDM Program Agreement**

PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014:

- (1) Preliminary Engineering Study Initiative;**
- (2) Detailed Engineering Study Initiative; and**
- (3) Project Incentive Initiative**

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**Initiative Schedule “D-1”
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PROCESS AND SYSTEM UPGRADES INITIATIVES 2011 – 2014:

- (1) Preliminary Engineering Study Initiative;
(2) Detailed Engineering Study Initiative; and
(3) Project Incentive Initiative**

RECITALS:

1. The “Process and System Upgrades Initiatives” are offered under the Industrial Program and incorporate the following Initiatives: (i) Preliminary Engineering Study Initiative; (ii) Detailed Engineering Study Initiative; (iii) Project Incentive Initiative; (iv) Monitoring & Targeting Initiative; (v) Metering and Instrumentation (enabling measure); (vi) Energy Manager Initiative; and (vii) Key Account Manager Initiative.
2. The Initiatives described in this Schedule are the Preliminary Engineering Study Initiative, the Detailed Engineering Study Initiative and the Project Incentive Initiative (collectively, the “**Initiatives**”), and this Schedule is an Initiative Schedule.
3. The LDC has Registered for the Industrial Program and each of the Initiatives in this Schedule is a Registered Initiative.
4. The Initiatives in this Schedule provide for Participant Incentives to Distribution Consumers for the purpose of conducting Preliminary Engineering Studies and Detailed Engineering Studies that will lead to Projects that will deliver Electricity Savings.
5. The Initiatives also provide for Participant Incentives to Distribution Consumers with Projects or Portfolios that are expected to generate, based on a Detailed Engineering Study, at least 350 MWh or 3,500 MWh, respectively, of Annualized Electricity Savings; or in the case of Micro-Projects, at least 100 MWh and no more than 700 MWh of Annualized Electricity Savings.
6. LDCs, through their relationship with Distribution Consumers, will have the ability to encourage and assist such Distribution Consumers to develop Projects and apply for Participant Incentives.
7. The objectives of the Initiatives included in this Schedule are to:
 - (a) offer Distribution Consumers capital incentives and enabling initiatives through their LDC to assist with the implementation of Projects and Portfolios;
 - (b) implement system optimization projects in Systems which are intrinsically complex and capital intensive; and

- (c) increase the capability of Distribution Consumers to implement energy management and system optimization projects.

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Schedule, capitalized terms that are not otherwise defined will have the respective meanings ascribed to them in the Master Agreement and the following terms will have the following meanings in this Schedule:

“Advanced Incentive Payment Option” means the net Project Incentive payment (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) as further described in the Project Incentive Contract;

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

“Anticipated Electricity Savings” means, in each M&V reporting period specified in the M&V Plan, the estimated Electricity Savings anticipated by the Technical Reviewer to be achieved during such period, or such other amount as approved by the OPA in writing pursuant to Exhibit C, as set out in the Project Incentive Contract.

“Applicant” means a Person submitting an Application;

“Detailed Engineering Incentive” means the Participant Incentive to be paid to the Participant pursuant to a Detailed Engineering Study Funding Contract;

“Detailed Engineering Study” means a detailed study of the consumption of electricity of a System within a Facility, or of a Facility, in order to assess and evaluate (i) Measures, or their implementation, that could give rise to Electricity Savings, or (ii) if approved by the OPA, electricity generation by the Participant that could reduce the electricity consumption by a Facility or a System within a Facility, or of a Facility, from a Distribution System, and expected to meet the Detailed Engineering Study Minimum Requirements;

“Detailed Engineering Study Funding Application” means an Application in order to participate in the Detailed Engineering Study Initiative;

“Detailed Engineering Study Funding Contract” means a contract between the LDC and a Distribution Consumer in accordance with Section 3.2(e), for funding of a Detailed Engineering Study;

“Detailed Engineering Study Initiative” means the Initiative designed to provide a financial incentive to a Participant for the purpose of obtaining a Detailed Engineering Study;

“Detailed Engineering Study Minimum Requirements” means the minimum requirements to be met with respect to the preparation and content of a Detailed Engineering Study, as further described in the form of the Detailed Engineering Study Funding Contract attached in Part B of Exhibit B;

“Detailed Engineering Study SOW” means the scope of work to be performed by an Independent Engineer in order to prepare a Detailed Engineering Study and to be attached to the applicable Detailed Engineering Study Funding Application;

“Draft Report” means a draft Preliminary Engineering Study or Detailed Engineering Study, as applicable, issued by an Independent Engineer;

“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 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 (other than a Micro-Project), or on the 5th anniversary thereof in the case of a Micro-Project;

“Eligibility Criteria” means the Eligibility Criteria that must be satisfied to qualify as an Eligible Person, an Eligible Project or an Eligible Portfolio to be eligible for a Participant Incentive, as further provided in the applicable Participant Agreement;

“Eligible Portfolio” means a Portfolio that meets the Eligibility Criteria set out in the applicable Participant Agreement;

“Eligible Project” means a Project that meets the Eligibility Criteria set out in the applicable Participant Agreement under the title “Project Eligibility Criteria” and is not a type of Project as described in the applicable Participant Agreement under the title “Ineligible Projects”;

“Energy Assessment Report” means a report completed by a LDC with a Distribution Consumer interested in participating in any Initiative included in this Schedule if requested by a LDC, substantially in the form of Exhibit F attached hereto;

“Energy Management Plan” means a document 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, substantially in the form of Exhibit I attached hereto;

“Energy Management Plan Review” means the form to be used by the LDC or the Technical Reviewer when reviewing an Energy Management Plan;

“Expected Life” means the number of years a Project will deliver Electricity Savings, such period being equal to at least the relevant Minimum Expected Life;

“Final Report” means a final Preliminary Engineering Study or Detailed Engineering Study, as applicable, issued by an Independent Engineer;

“Independent Engineer” means a registered professional engineer licensed to practice in Ontario who is not an employee of the Participant;

“In-Service Date” means the first day that a Project or Portfolio is fully installed in accordance with the Project Incentive Contract and delivers Electricity Savings;

“M&V Plan” means a measurement and verification plan outlining the methodology and activities to be undertaken to quantify and verify Electricity Savings from a Project or Portfolio, as prepared and approved pursuant to Sections 4.1(f) and (g);

“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;

“Master Payment Requisition” means an invoice to be completed by the Technical Reviewer or LDC in respect of a Participant and a particular Project, substantially in the form of Exhibit D attached hereto;

“Micro-Project” means a stand-alone Project, which, when installed, is expected to deliver at least 100 MWh of Annualized Electricity Savings and not more than 700 MWh of Annualized Electricity Savings;

“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, other than in the case of a Micro-Project in which case the Minimum Expected Life is 1 year after the In-Service Date;

“Performance Security” means the security provided by the Participant, or the guarantee provided by the Participant’s Affiliate (if applicable), to the LDC as further described in the Project Incentive Contract;

“Portfolio” means two or more Eligible Projects that are grouped together;

“Preliminary Engineering Incentive” means the Participant Incentive to be paid pursuant to a Preliminary Engineering Study Funding Contract;

“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 (i) Measures, or their implementation, that could give rise to Electricity Savings, or (ii) where approved by the OPA, electricity generation by the Participant that could reduce the electricity consumption by a Facility or

a System within a Facility, or of a Facility, from a Distribution System, and expected to meet the Preliminary Engineering Study Minimum Requirements;

“Preliminary Engineering Study Funding Application” means an Application to participate in the Preliminary Engineering Study Initiative;

“Preliminary Engineering Study Funding Contract” means a contract between the LDC and a Distribution Consumer in accordance with Section 3.2(e), for funding of a Preliminary Engineering Study;

“Preliminary Engineering Study Initiative” means the Initiative designed to provide a financial incentive to a Participant for the purpose of obtaining a Preliminary Engineering Study;

“Preliminary Engineering Study Minimum Requirements” means the minimum requirements to be met with respect to the preparation and content of a Preliminary Engineering Study, as further described in the form of the Preliminary Engineering Study Funding Contract attached in Part B of Exhibit A;

“Preliminary Engineering Study SOW” means the scope of work to be performed by an Independent Engineer in order to prepare a Preliminary Engineering Study and to be attached to the applicable Preliminary Engineering Study Funding Application;

“Project” means one or more Measures, which, when implemented in respect of a single System, are expected to deliver Electricity Savings and “Project”, where appropriate in accordance with the terms hereof, includes a Micro-Project;

“Project Incentive” means the Participant Incentive to be paid pursuant to a Project Incentive Contract;

“Project Incentive Application” means an Application to participate in the Project Incentive Initiative;

“Project Incentive Application Review” means a document prepared by the Technical Reviewer for purposes of reviewing a Project Incentive Application;

“Project Incentive Application Review Plan” means a document prepared by the Technical Reviewer setting out the method and timing of reviewing a Project Incentive Application;

“Project Incentive Contract” means a contract to be entered into by the LDC with a Participant in respect of the Project Incentive Initiative, in accordance with Section 4.1(i);

“Project Incentive Initiative” means the Initiative designed to provide a financial incentive to a Participant for the purpose of implementing a Project or Portfolio;

“Release and Waiver” means a release and waiver and consent form to be entered into by an Applicant, substantially in the form of Exhibit E attached hereto;

“Solvency Certificate” means a solvency certificate to be executed by an officer of the Participant, substantially in the form of Exhibit G attached hereto;

“Status Report” means a document prepared by the Participant for purposes of reporting on the status of a Project or Portfolio;

“Status Report Review” means a document prepared by the Technical Reviewer for purposes of reviewing a Status Report;

“Study Application Review” means a document prepared by the Technical Reviewer for purposes of reviewing a Preliminary Engineering Study Funding Application or a Detailed Engineering Study Funding Application;

“Study Application Review Plan” means a document prepared by the Technical Reviewer setting out the method and timing of reviewing a Preliminary Engineering Study Funding Application or a Detailed Engineering Study Funding Application;

“Study Report Review” means a document prepared by the Technical Reviewer for purposes of reviewing a Draft Report or Final Report;

“Study Report Review Plan” means a document prepared by the Technical Reviewer setting out the method and timing of reviewing a Draft Report or Final Report;

“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; and

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

1.2 Section References

Unless otherwise indicated herein, any reference in this Schedule to an article, Exhibit or section refers to the article, exhibit or section to this Schedule.

1.3 List of Exhibits

The following Exhibits are attached to and incorporated into and are to be read together with this Schedule and will form part of this Schedule:

Exhibit A	-	Part A – Minimum Requirements
		Part B - Preliminary Engineering Study Funding Contract

- Exhibit B - Part A - Instructions
 Part B - Detailed Engineering Study Funding Contract
- Exhibit C - Part A - Instructions
 Part B - Project Incentive Contract
- Exhibit D - Master Payment Requisition
- Exhibit E - Release and Waiver and Consent
- Exhibit F - Energy Assessment Report
- Exhibit G - Solvency Certificate
- Exhibit H - LDC Annual Report
- Exhibit I - Form of Energy Management Plan

ARTICLE 2

INITIATIVE IMPLEMENTATION

2.1 LDC Obligations

For the purposes of implementing and managing the Initiatives, in addition to the other obligations set forth in the Master Agreement and this Schedule, the LDC's obligations are as follows:

- (a) *Consumer Relationship*
 - (i) developing and managing consumer relationships for the purpose of facilitating and developing customer awareness of the Initiatives;
 - (ii) developing electricity consumer energy management and system optimization opportunities;
 - (iii) without limitation to Section 2.1(a)(ii), promoting and completing, if the LDC determines that an Energy Assessment Report is necessary in the circumstances, an Energy Assessment Report with the participation of each Distribution Consumer interested in participating in any of the Initiatives; and
 - (iv) responding to all inquiries and complaints received from the Distribution Consumers relating to or arising out of the Initiatives.
- (b) *Application Process and Contract Management*

- (i) interacting with the Technical Reviewer as required by this Schedule or a Participant Agreement;
- (ii) preparing and/or providing reports to the OPA and the OEB as required by this Initiative Schedule and Participant Agreements;
- (iii) managing all aspects of the application process with the Applicants;
- (iv) paying Participant Incentive payments to Participants in accordance with the Participant Agreements; and
- (v) advising Participants on the availability of the metering and instrumentation library in order to assist the Participants in developing opportunities for energy efficiencies and connecting interested Participants with the third party contractor responsible for the metering and instrumentation library.

2.2 OPA Obligations

For the purposes of implementing the Initiatives and supporting the LDC's obligations in respect of each Initiative, in addition to the other obligations set forth in the Master Agreement and this Schedule, the OPA's obligations are as follows:

- (a) retaining and managing the Technical Reviewer and providing guidelines for the functions to be performed by the Technical Reviewer;
- (b) ensuring that the Technical Reviewer completes, within a reasonable period of time, its obligations set forth in the Schedule and the Participant Agreements;
- (c) responding to all inquiries and complaints regarding the Technical Reviewer;
- (d) assisting the LDC, when requested by such LDC, in its response to the inquiries and complaints received from the Distribution Consumers relating to or arising out of the Initiatives;
- (e) directing all Distribution Consumer inquiries and complaints relating to or arising out of the Initiatives (except if such inquiries and complaints relate to the Technical Reviewer) to the LDC for resolution;
- (f) retaining and managing the third party contractor for purposes of making available the metering and instrumentation library to Participants; and
- (g) providing capability building training programs for Distribution Consumers and LDC staff.

ARTICLE 3

PRELIMINARY ENGINEERING AND DETAILED ENGINEERING INCENTIVES

3.1 Overview

The LDC will receive Preliminary Engineering Study Funding Applications and Detailed Engineering Study Funding Applications.

A Preliminary Engineering Study is not mandatory for any type of Project. A Detailed Engineering Study approved by the Technical Reviewer and the LDC is mandatory for a Project, excluding a Micro-Project, and Portfolio, and must be included with the Project Incentive Application.

3.2 Preliminary and Detailed Engineering Study Funding Applications

- (a) The LDC will assist Applicants in completing a Preliminary Engineering Study Funding Application or a Detailed Engineering Study Funding Application. Before providing a complete copy of any Preliminary Engineering Study Funding Application or Detailed Engineering Study Funding Application to the Technical Reviewer, the LDC will ensure that such Application is complete, includes a signed Release and Waiver in favour of, among others, the LDC and the OPA (provided that if the Applicant has previously provided a Release and Waiver in favour of such Persons, such requirement shall be satisfied if the Participant provides a copy of such previously-provided Release and Waiver with such Application), and that the Project or Portfolio proposed for study is likely to be an Eligible Project or an Eligible Portfolio, as applicable.
- (b) Upon receipt of a Preliminary Engineering Study Funding Application or a Detailed Engineering Study Funding Application, the Technical Reviewer will provide to the Participant, with a copy to the LDC, a Study Application Review Plan, which will include an estimate of the number of days that the Technical Reviewer requires to review the Application.
- (c) During the review of the Application, the LDC will arrange for appropriate communication between the Technical Reviewer and the Applicant, or the Technical Reviewer will communicate directly with the Applicant, if the Technical Reviewer requires contact with the Applicant on any aspect in relation to its review.
- (d) Upon the completion of the review contemplated by the Study Application Review Plan, the Technical Reviewer will provide to the LDC its Study Application Review. If the Technical Reviewer approves the Preliminary Engineering Study Funding Application or Detailed Engineering Study Funding Application, it will set forth in the Study Application Review the maximum amount of Participant Incentive that is payable to the Applicant pursuant to the Application and will create and provide to the LDC a Master Payment Requisition for the relevant study. Unless the LDC determines that it will reject such Application notwithstanding such approval of the Technical Reviewer, which the LDC will be entitled to do in its sole and absolute

discretion, the LDC will communicate such approval to the Applicant and will prepare and enter into either a Preliminary Engineering Study Funding Contract or a Detailed Engineering Study Funding Contract, as applicable, with the Applicant.

- (e) Each Preliminary Engineering Study Funding Contract and Detailed Engineering Study Funding Contract entered into by the LDC with a Distribution Consumer must contain, at a minimum, and without modification, (i) the provisions included in Part B of Exhibit A or Part B of Exhibit B, respectively, identified as minimum requirements in Part A of Exhibit A or Part A of Exhibit B, as applicable; (ii) the maximum amount of the Participant Incentive specified by the Technical Reviewer in the applicable Study Application Review; and (iii) the Preliminary Engineering Study SOW or the Detailed Engineering Study SOW as approved by the Technical Reviewer. In addition, the LDC will not approve any transactions, actions, or timeline, as further required under the sections of the Preliminary Engineering Study Funding Contract and Detailed Engineering Study Funding Contract identified as such in the minimum requirements found in Part A of each of Exhibit A and Exhibit B, as applicable, without having received the prior written consent from the OPA.
- (f) If the Technical Reviewer does not approve the Application, and advises the LDC of same (including the reasons for the rejection), or if the LDC rejects the Application, the LDC will not enter into a Preliminary Engineering Study Funding Contract or a Detailed Engineering Study Funding Contract, as applicable, with the Applicant. The LDC will notify the Applicant and will communicate the reasons for rejecting the Application within a reasonable period. The LDC may allow the Applicant a reasonable period of time to communicate with the Technical Reviewer to re-submit a revised Application to address the deficiencies of the Application, provided that such revised Application will be subject to the terms and conditions of the Initiative in effect at the time of the resubmission.

3.3 Draft Report and Final Report

- (a) *Draft Report*
 - (i) After entering into a Preliminary Engineering Study Funding Contract or a Detailed Engineering Study Funding Contract, and having regard to the requirement in such contract that a Draft Report be approved by the Technical Reviewer on or before the earlier of (A) eight months of the date of such contract, and (B) December 31, 2012 (unless the LDC agrees with the Participant to extend the deadline within which such Draft Report must be approved), the LDC will require that each Participant submit to the Technical Reviewer, with a copy to the LDC, a Draft Report.
 - (ii) Upon receipt of the Draft Report, the Technical Reviewer will provide a Study Report Review Plan to the Participant, with a copy to the LDC, which will include an estimate of the number of days it will require to review the Draft Report.

- (iii) During the review of the Draft Report, 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 the Technical Reviewer requires contact with the Participant on any aspect in relation to its review.
- (iv) The Technical Reviewer will determine if the Draft Report reflects the scope of the study as originally determined and as set out in the Preliminary Engineering Study Funding Contract or Detailed Engineering Study Funding Contract. If the Technical Reviewer approves the Draft Report it will provide a Study Report Review to the LDC together with an updated Master Payment Requisition which will include the amount of the first instalment of the Participant Incentive payment, which will represent 50% of the Participant Incentive payment specified in the Preliminary Engineering Study Funding Contract or Detailed Engineering Study Funding Contract. If the Draft Report is approved by the Technical Reviewer, then unless the LDC determines that it will reject the Draft Report notwithstanding such approval of the Technical Reviewer, the LDC will communicate the results of the Study Report Review to the Participant, together with a notification of the amount of the first instalment of the Participant Incentive payment pursuant to the Participant Agreement.
- (v) If the Draft Report is not approved by the Technical Reviewer it will provide a Study Report Review to the LDC, which will include the reasons for not approving such report. If the Technical Reviewer or the LDC rejects the Draft Report, the LDC will not pay the Participant Incentive to the Participant and will communicate the reasons for rejecting the Draft Report. The LDC may allow the Participant a reasonable period of time to re-submit a Draft Report to address the deficiencies of the Draft Report, provided that such revised Draft Report will remain subject to the terms and conditions of the Preliminary Engineering Study Funding Contract or the Detailed Engineering Study Funding Contract.

(b) *Final Report*

- (i) Upon receipt of the Final Report and supporting receipts or invoices evidencing the actual cost incurred by the Participant to complete the Final Report submitted in compliance with the Preliminary Engineering Study Funding Contract or Detailed Engineering Study Funding Contract, the LDC will provide the Final Report and supporting invoices to the Technical Reviewer. If the Technical Reviewer or the LDC disputes that such receipts or invoices reflect the actual costs incurred by the Participant thereof, the actual costs incurred will be deemed for the purpose of the Participant Agreement to be such amount determined by the Technical Reviewer or the LDC based upon either of their audits of such receipts and invoices.

- (ii) Upon receipt of the Final Report, the Technical Reviewer will provide a Study Report Review Plan to the Participant, with a copy to the LDC, which will include an estimate of the number of days it will require to review the Final Report.
- (iii) During the review of the Final Report, 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 the Technical Reviewer requires contact with the Participant on any aspect in relation to its review.
- (iv) The Technical Reviewer will determine if the Final Report reflects the scope of the study, as originally determined and as set out in the Preliminary Engineering Study Funding Contract or Detailed Engineering Study Funding Contract, and the comments of the Technical Reviewer on the Draft Report, as set out in the previously delivered Study Report Review. If the Technical Reviewer approves the Final Report it will provide the Study Report Review to the LDC together with an updated Master Payment Requisition which will specify the final Participant Incentive payment owing to the Applicant. The final Participant Incentive payment will be the difference between (A) the lesser of (i) the Participant Incentive payment specified in the Preliminary Engineering Study Funding Contract or Detailed Engineering Study Funding Contract, and (ii) the actual cost incurred by the Participant to complete the Final Report, as evidenced by the invoices submitted by the Participant; and (B) the first instalment Participant Incentive payment paid by the LDC pursuant to Section 3.3(a)(iv). If the Final Report is approved by the Technical Reviewer, then unless the LDC determines that it will reject the Final Report notwithstanding such approval of the Technical Reviewer, the LDC will communicate the results of the Study Report Review to the Participant, together with a notification of the final Participant Incentive payment to be paid to the Participant pursuant to the Participant Agreement.
- (v) If the Final Report is not approved by the Technical Reviewer it will provide a Study Report Review to the LDC, which will include the reasons for not approving such report. If the Technical Reviewer or the LDC rejects the Final Report, the LDC will not pay the final Participant Incentive to the Participant and will communicate the reasons for rejecting the Final Report. The LDC may allow the Participant a reasonable period of time to re-submit a Final Report to address the deficiencies, provided that such revised Final Report will remain subject to the terms and conditions of the Preliminary Engineering Study Funding Contract or the Detailed Engineering Study Funding Contract.

3.4 Payment - Preliminary Engineering Incentive and Detailed Engineering Incentive

- (a) The maximum amount that the LDC may approve or pay as a Preliminary Engineering Incentive for any one Project is \$10,000 (for certainty, exclusive of

Applicable Taxes) and the maximum amount that the LDC may approve or pay as a Detailed Engineering Incentive for any one Project is \$50,000 (for certainty, exclusive of Applicable Taxes); provided, however, no Preliminary Engineering Incentive or Detailed Engineering Incentive will exceed the amount approved by the Technical Reviewer.

- (b) Subject to the terms and conditions of the applicable Participant Agreements and to the limits included in Section 3.4(a), the LDC will pay the Participant the amount approved by the Technical Reviewer in relation to the Draft Report or Final Report, as applicable, in accordance with the terms and conditions of the Master Agreement after receipt of the amount from the OPA.

ARTICLE 4

PROJECT INCENTIVE

4.1 Project Incentive Application

- (a) The LDC will assist Applicants in completing a Project Incentive Application. Before providing a completed copy of the Application to the Technical Reviewer, the LDC will ensure that (i) the Applicant and the Project or Portfolio meet all of the Eligibility Criteria set out in the Project Incentive Contract; (ii) the Application is complete and includes (A) a signed Release and Waiver in favour of, among others, the LDC and the OPA (provided that if the Applicant has previously provided a Release and Waiver in favour of such Persons with respect to another CDM Program or Initiative, such requirement shall be satisfied if the Participant provides a copy of such previously-provided Release and Waiver with such Application), (B) a copy of the Final Report approved by the Technical Reviewer and issued by the Applicant pursuant to the Preliminary Engineering Study Initiative and Detailed Engineering Study Initiative, if applicable, or a copy of a Detailed Engineering Study not funded by the OPA and obtained by the Applicant from an Independent Engineer or a registered professional engineer licensed to practice in Ontario who is an employee of the Applicant, and (C) a Solvency Certificate. The LDC will also ensure that the Applicant has indicated in the Project Incentive Application whether it elects to proceed by way of an Advanced Incentive Payment Option or Deferred Incentive Payment Option as further defined in the Project Incentive Contract. If an Application is received for an electricity generation project, the LDC will not provide such Application to the Technical Reviewer without obtaining prior written consent from the OPA.
- (b) Upon receipt of the Project Incentive Application, the Release and Waiver, the copy of the Final Report(s), and the Solvency Certificate, the Technical Reviewer will provide to the Applicant, with a copy to the LDC, a Project Incentive Application Review Plan, which will include an estimate of the number of days it requires to review the Application.

- (c) During the review of the Project Incentive Application, the LDC will arrange for appropriate communication between the Technical Reviewer and the Applicant, or the Technical Reviewer will communicate directly with the Applicant, if the Technical Reviewer requires contact with the Applicant on any aspect in relation to its review.
- (d) The Technical Reviewer will provide to the LDC a Project Incentive Application Review, which will include, among other things: (i) any deficiencies in, or proposed variations to, the Project Incentive Application; (ii) the Technical Reviewer's recommendation to approve or reject the Project Incentive Application; (iii) the maximum Project Incentive amount, if any; and (iv) the amount of required Performance Security, if applicable. The Technical Reviewer shall provide the reasons for not approving a Project Incentive Application in the Project Incentive Application Review.
- (e) If the Project Incentive Application is not approved by the Technical Reviewer and the Technical Reviewer advises the LDC of same (including the reasons for the rejection), or if the LDC rejects the Application, the LDC will communicate to the Participant the reasons for rejecting the Project Incentive Application. The LDC may allow the Applicant a reasonable period of time to re-submit a revised Project Incentive Application to address the deficiencies of the Application, provided that such revised Application will be subject to the terms and conditions of the Project Incentive Initiative in effect at the time of the resubmission.
- (f) If the Technical Reviewer approves the Application, then unless the LDC determines that it will reject such Application notwithstanding such approval of the Technical Reviewer, the LDC will communicate such approval to the Applicant and the Technical Reviewer, following which the Technical Reviewer will develop an M&V Plan.
- (g) Upon completion of the M&V Plan, the Technical Reviewer will provide the M&V Plan and Master Payment Requisition to the LDC. The LDC will in turn provide the M&V Plan to the Applicant for review and comment. If the Applicant does not agree with the M&V Plan, the LDC will coordinate a discussion between the Applicant and the Technical Reviewer to resolve areas of disagreement. The Technical Reviewer shall act reasonably in developing the M&V Plan and in its discussions with the Applicant to resolve areas of disagreement. If the Applicant and the Technical Reviewer are not able to agree upon the M&V Plan within 60 days of the provision of the M&V Plan to the Applicant, the LDC will reject such Application.
- (h) If the Applicant agrees with the M&V Plan, the LDC will offer to enter into a Project Incentive Contract with the Applicant and will prepare the Project Incentive Contract.
- (i) Each Project Incentive Contract entered into by an LDC with a Distribution Consumer must contain, at a minimum, and without modification, (i) the provisions included in Part B of Exhibit C identified as minimum requirements in Part A of

Exhibit C (provided that such requirement in respect of Schedule D in Part B of Exhibit C shall be satisfied if the form of letter of credit included in the Project Incentive Contract is substantially in the form of Schedule D in Part B of Exhibit C), and (ii) the maximum amount of the Project Incentive specified by the Technical Reviewer. For greater certainty, the LDC will ensure that the information from the Project Incentive Application Review and required to accurately describe the Project or Portfolio, as applicable, is included in the Project Incentive Contract. In addition, the LDC will not approve any transactions, actions, or timeline, as further required under the sections of the Project Incentive Contract identified as such in the minimum requirements found in Part A of Exhibit C, without having received the prior written consent from the OPA.

- (j) Upon receipt by the LDC of a fully executed Project Incentive Contract from a Participant, the LDC will provide an actual copy or an electronic copy (in a format that may be electronically read) of such contract to the OPA.

4.2 Reporting Obligations

The LDC will ensure that each Participant fulfills in a timely manner the reporting obligations specified in the Project Incentive Contract and the LDC will transmit to the OPA the information received from each Participant. The reporting obligations of the Participant will include, among other things, the filing of the following with the LDC:

- (a) Energy Management Plan;
- (b) Status Reports (including the final Status Report) and requests for payment; and
- (c) M&V data required by the M&V Plan.

The LDC shall submit to the OPA an Annual Report in the form set out in Exhibit H by March 31st of each year summarizing the Initiative activities from the previous calendar year.

4.3 LDC and Technical Reviewer Review Obligations

- (a) *Energy Management Plan Review*
 - (i) Upon the receipt of the Energy Management Plan from the Participant pursuant to the reporting obligations specified in the Project Incentive Contract, the Technical Reviewer will complete an Energy Management Plan Review.
 - (ii) During the review of the Energy Management Plan, the LDC will arrange for appropriate communication with the Participant or the Technical Reviewer will communicate directly with the Participant on any aspect of the Energy Management Plan.

- (iii) 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. Upon completion of its review, the Technical Reviewer will complete the Energy Management Plan Review.

(b) *Status Report Review*

- (i) Upon receipt of a Status Report and request for payment from a Participant, the LDC will provide such Status Report with supporting information, if any, to the Technical Reviewer to permit the Technical Reviewer to verify such Status Report and each request for payment the LDC receives from each Participant pursuant to the reporting obligations specified in the Project Incentive Contract.
- (ii) During the review of the Status Reports and the requests for payment, the LDC will arrange for appropriate communication between the Technical Reviewer and the Participant if the Technical Reviewer requires contact with the Participant or the Technical Reviewer will contact the Participant directly in relation to its review.
- (iii) Upon completion of the review of the documents and if the Technical Reviewer approves a Status Report and related request for payment (if any), the Technical Reviewer will complete a Status Report Review and will provide an updated Master Payment Requisition to the LDC.
- (iv) If the Technical Reviewer does not approve a Status Report that is a condition precedent to payment of a Participant Incentive and advises the LDC of same (including the reasons for the rejection), the LDC will not pay the Participant Incentive to the Participant and will communicate the reasons for not approving such payment. The LDC will determine the appropriate further course of action pursuant to the Project Incentive Contract. The LDC may, in its discretion, allow the Participant time to address such deficiencies and re-submit the Status Report and request for payment to the LDC for further review and approval by the Technical Reviewer. If the Technical Reviewer approves a Status Report re-submitted by the Participant, the Technical Reviewer will complete and issue the documents as further provided in Section 4.3(b)(iii).

(c) *M&V Report*

- (i) Upon receipt of the M&V data from the Participant, the LDC will provide the same to the Technical Reviewer. The Technical Reviewer will verify the M&V data received by the LDC from the Participant pursuant to the

reporting obligations specified in the Project Incentive Contract and as required pursuant to the M&V Plan. The Technical Reviewer will complete a M&V Report for each M&V reporting period specified in the M&V Plan within a reasonable period of time.

- (ii) During the review of the M&V data, 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 the Technical Reviewer requires contact with the Participant on any aspect of the data or documents or wishes to obtain access to the Participant's Facility for the purpose of creating the M&V Report.
- (iii) Upon completion of the M&V Report, the Technical Reviewer will provide the M&V Report and Master Payment Requisition to the LDC.
- (iv) The LDC will provide each M&V Report to the Participant. If any M&V Report that is a condition precedent to payment of a Participant Incentive indicates that the Project or Portfolio has failed to achieve 80% of the Anticipated Electricity Savings (as defined in the Project Incentive Contract) for such period, then the LDC will enforce its rights and remedies under the Project Incentive Contract in respect of such failure.

4.4 Completion of Project

- (a) Upon the LDC's receipt of notice from the Participant of a proposed In-Service Date, the LDC shall promptly notify the Technical Reviewer in order to allow the Technical Reviewer to confirm the In-Service Date of the Project or Portfolio as provided in the review process set out in the M&V Plan. 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, will be as set out in the M&V Plan and may involve one of the following options: (1) on-site review by the Technical Reviewer; (2) on-site review by the LDC; or (3) written confirmation by a registered professional engineer licensed to practice in Ontario. The Technical Reviewer will make the determination of the level of review necessary when it prepares the M&V Plan.
- (b) Upon confirmation of the In-Service Date in accordance with the Project Incentive Contract, the Technical Reviewer will update the Master Payment Requisition to reflect the confirmation of the In-Service Date of the Project or Portfolio and the LDC will notify the Participant of such confirmation.

ARTICLE 5 PERFORMANCE SECURITY

If a Participant has elected the Advanced Incentive Payment Option and provides Performance Security in respect of a Project Incentive Contract, the LDC will administer and maintain such

Performance Security in accordance with the terms of the Project Incentive Contract. The LDC will use reasonable care in the custody and preservation of any Performance Security that it receives.

ARTICLE 6 PAYMENT TO LDC

Upon receipt from the LDC of the applicable documentation from a Participant in accordance with the Participant Agreement, the Technical Reviewer will update the Master Payment Requisition for such Participant accordingly and will provide such updated Master Payment Requisition to the LDC with a copy to the OPA. The LDC will issue an invoice to the OPA, with the Master Payment Requisition attached, requesting the payment of the Participant Incentives. Concurrently with the provision by the LDC of an invoice, subject to the invoicing provisions in Section 4.6 of the Master Agreement, *mutatis mutandis*, the OPA will pay the applicable Participant Incentives to the LDC. Upon receipt, the LDC will pay the Participant Incentives to the applicable Participant in accordance with the terms and conditions of the Master Agreement and in accordance with the terms of the respective Participant Agreement.

EXHIBIT A
PART A – MINIMUM REQUIREMENTS
PART B - PRELIMINARY ENGINEERING STUDY FUNDING CONTRACT

Part A – Minimum Requirements

Part B - Preliminary Engineering Study Funding Contract

Part A – Minimum Requirements

The following minimum requirements of the attached form of Preliminary Engineering Study Funding Contract shall be included, without modification, in each Preliminary Engineering Study Funding Contract.

<u>Minimum Requirements</u>	<u>Description</u>
Section 1	Defined Terms
Section 2	Preliminary Engineering Study
Sections 3 (a), (b) and (c)	Payment
Section 4	Reports
Section 5	Communication with Technical Reviewer
Section 6	Term
Section 7	Environmental Attributes
Section 8	Representations and Warranties
Section 9	Evaluation, Monitoring and Verification; Audit
Section 10	No Warranty
Section 11	Limitation of Liability
Section 12	Indemnification by the Participant
Section 13	Confidentiality
Section 14	Injunctive Relief
Section 15	MFIPPA and FIPPA Compliance
Section 19	Entire Agreement

<u>Minimum Requirements</u>	<u>Description</u>
Section 21	Governing Law and Attornment
Section 22	Successors and Assigns
Section 25	Third Party Beneficiaries
Schedule A	Definitions
Schedule B	Preliminary Engineering Study Report Minimum Requirements
Schedule C	Preliminary Engineering Study SOW
Schedule D	Eligibility Criteria
Schedule F	Form of Release and Waiver

The following sections of the attached form of Preliminary Engineering Study Funding Contract shall require the prior written consent of the OPA before the LDC may approve or undertake a transaction, an action or timeline included in the Preliminary Engineering Study Funding Contract.

<u>Sections where the OPA prior written consent is required</u>	<u>Description</u>
Schedule D –Section 2 (e)	Study Eligibility Criteria (scheduled in-service date)
Schedule D – Section 3 (h)	Approval of a study of a Project for which any financial incentive has been, is being or may be received from the OPA (other than a Participant Incentive), the Province of Ontario or any agency thereof
Schedule D – Section 3 (j)	Approval of a study of an electricity generation Project as an Eligible Study
Schedule D – Section 3 (k)	Approval of a study of a fuel-switching Project as an Eligible Study

PART B - Preliminary Engineering Study Funding Contract

See attached Contract

PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014

PRELIMINARY ENGINEERING STUDY FUNDING CONTRACT

THIS AGREEMENT made as of the [DAY] day of [MONTH], [YEAR],

BETWEEN:

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

(the "LDC")

- and -

[LEGAL NAME OF THE PARTICIPANT], a [LEGAL FORM OF THE PARTICIPANT] governed by the laws of [JURISDICTION OF THE PARTICIPANT],

(the "Participant")

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

WHEREAS the Participant has submitted a Preliminary Engineering Study Funding Application to the LDC;

AND WHEREAS the Participant reasonably expects that the Preliminary Engineering Study will identify Measures that will generate Electricity Savings;

AND WHEREAS the LDC has approved the Preliminary Engineering Study Funding Application;

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

1. Defined Terms.

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

2. Preliminary Engineering Study.

The Participant agrees to complete the Preliminary Engineering Study and prepare a Draft Report and a Final Report as set out in Section 4 on the results of such Preliminary Engineering Study in accordance with the Preliminary Engineering Study Report Minimum Requirements and the Preliminary Engineering Study SOW attached hereto in Schedule "B" and Schedule "C", respectively.

3. Payment.

- (a) The Participant Incentive approved by the LDC is \$_____ (the "Approved Amount").
- (b) Subject to the Participant satisfying all of its obligations herein contained, the LDC agrees to pay the Participant Incentive to the Participant as follows:
 - (i) 50% of the Approved Amount, within 60 days after the approval of the Draft Report, as set out in Section 4(a)(ii); and
 - (ii) the difference between (A) the lesser of (i) the Approved Amount and (ii) the actual costs incurred by the Participant to complete the Preliminary Engineering Study (as set out in the invoices provided by the Participant in accordance with Section 4(b)(i), and (B) the first instalment payment received by the Participant pursuant to Section 3(b)(i), within 60 days after the approval of the Final Report, as set out in Section 4(b)(ii).
- (c) All payments hereunder will be made in Canadian dollars by cheque or by electronic funds transfer to the Participant's account or such other mode of payment at the sole discretion of the LDC.
- (d) All payments hereunder are conditional on the Participant providing an invoice to the LDC together with sufficient documentation to support and substantiate the Participant Incentive payments.

- (e) In addition to the Participant Incentive, the LDC will pay any Applicable Taxes on the Participant 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 Participant 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 Participant 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.

4. Reports.

(a) Draft Report

- (i) The Participant will submit a Draft Report to the Technical Reviewer, with a copy (in hard or searchable electronic format) to the LDC. The Technical Reviewer will communicate to the Participant how many days it will take the Technical Reviewer to review the Draft Report.
- (ii) If the Technical Reviewer determines that the Draft Report reflects the Preliminary Engineering Study Report Minimum Requirements and the Preliminary Engineering Study SOW, the LDC will communicate the approval of the Draft Report to the Participant.
- (iii) If the Draft Report is not approved by the Technical Reviewer, the LDC will not pay any part of the Participant Incentive to the Participant and will communicate to the Participant the reasons (if and as provided by the Technical Reviewer) for not approving the Draft Report. The LDC may allow the Participant a reasonable period of time to address such deficiencies and to re-submit a Draft Report, provided that such revised Draft Report will remain subject to the terms and conditions of this Agreement. If such revised Draft Report does not address such deficiencies to the satisfaction of the LDC and the Technical Reviewer on or before the earlier of (A) eight months of the date hereof and (B) December 31, 2012, unless otherwise agreed to by the LDC; this Agreement will terminate, the Participant will not be entitled to receive the Participant Incentive and the Participant will need to re-submit a new Preliminary Engineering Study Funding Application to the LDC in order to participate in the Preliminary Engineering Study Initiative.

(b) Final Report

- (i) The Participant will submit to the Technical Reviewer, with a copy (in hard or searchable electronic format) to the LDC, the Final Report and all supporting receipts and invoices evidencing the cost incurred by the Participant to complete the Final Report within 60 days of the communication by the LDC of the approval of the Draft Report, unless otherwise agreed by the LDC. The Technical Reviewer will communicate to the Participant the estimated number of days it will take the Technical Reviewer to review the Final Report.
- (ii) If the Technical Reviewer determines that the Final Report (A) reflects the scope of the study as originally determined and as set out in the Preliminary Engineering Study Funding Application and the Preliminary Engineering Study SOW and (B) incorporates the comments made with respect to the Draft Report, the LDC will communicate the approval of the Final Report and the confirmation of the amount of the final instalment of the Participant Incentive payable to the Participant pursuant to Section 3(b)(ii).
- (iii) If the Technical Reviewer or the LDC disputes that the receipts or invoices submitted by the Participant reflect the actual costs incurred by the Participant, the actual costs incurred will be deemed for all purposes of this Agreement to be such amount determined by the Technical Reviewer or the LDC, as may be applicable, based upon their audit of such receipts and invoices.
- (iv) If the Final Report is not approved by the Technical Reviewer, the LDC will not pay any remaining Participant Incentive to the Participant and will communicate to the Participant the reasons (if and as provided by the Technical Reviewer) for not approving the Final Report. If such revised Final Report does not address such deficiencies to the satisfaction of the LDC and the Technical Reviewer within 30 days of the communication by the LDC of the reasons (if and as provided by the Technical Reviewer) for not approving the Final Report, this Agreement will terminate, the Participant will not be entitled to receive the remaining Participant Incentive and the Participant will need to re-submit a new Preliminary Engineering Study Funding Application to the LDC in order to participate in the Preliminary Engineering Study Initiative.
- (v) If the System that is the subject of a Preliminary Engineering Study is changed or altered after completion of the Draft Report but prior to the acceptance by the LDC of the Final Report, the Participant will update the Final Report to account for such changes or alterations and submit same to the LDC immediately.

5. Communication with Technical Reviewer

The Participant will cooperate and provide on a timely basis any requested information to the LDC or the Technical Reviewer should the LDC or the Technical Reviewer, respectively, require clarification from the Participant when reviewing the Draft Report or the Final Report. The Participant shall, at the same time as it provides information to the Technical Reviewer, provide a copy of such information to the LDC.

6. Term.

This Agreement will terminate on the earliest of:

- (a) on or before the date by which the Draft Report is required to be approved, as provided in Section 4(a)(iii);
- (b) 60 days from the date the LDC communicates the approval of the Draft Report to the Participant if the Participant has not submitted a Final Report by such date, as provided in Section 4(b)(i);
- (c) 30 days from the date the LDC communicates the reasons for not approving the Final Report if the Participant has not submitted a revised Final Report by such time that is approved by the LDC, as provided in Section 4(b)(iv);
- (d) the date of the payment of the final instalment of the Participant Incentive pursuant to Section 3(b)(ii); and
- (e) December 31, 2014.

Sections 3(e), 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 21 and 25, 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 termination of this Agreement.

7. Environmental Attributes.

All right, title and interest in and to all benefits or entitlements associated with Environmental Attributes are hereby unconditionally and absolutely transferred and assigned, or to the extent transfer or assignment is not permitted, held in trust for, by the Participant to, or in favour of, the LDC in its capacity as agent for and on behalf of the OPA, and not for the LDC's own benefit. Until the OPA notifies the Participant otherwise, the LDC, in its capacity as agent, shall be entitled, unilaterally and without the consent of the Participant, to deal with such Environmental Attributes on behalf of the OPA in any manner the LDC determines. The Participant acknowledges that the OPA may direct the Participant in the same manner as the LDC and that until the OPA notifies the Participant otherwise the LDC may direct the Participant to take such actions and do all such things necessary to certify, obtain, qualify and register with the relevant authorities or agencies such Environmental Attributes for the purpose of transferring, assigning, or holding in trust, such Environmental Attributes to and for the OPA and the Participant shall comply with such directions, and the Participant will be entitled to reimbursement of the cost of complying with such direction, provided that the LDC, acting reasonably, has approved such cost in writing prior to the cost being incurred by the Participant.

8. Representations and Warranties.

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 Preliminary Engineering Study without the Participant Incentive;
- (b) each of the Participant and the proposed Project satisfies the eligibility requirements set out in Sections 1 to 3, as applicable, of Schedule "D" as of the date hereof;
- (c) the Preliminary Engineering Study to be performed relates to a Project that satisfies the applicable eligibility and other requirements set out in Section 2 of Schedule "D" as of the date hereof and does not relate to any Ineligible Project set out in Section 3 of Schedule "D";
- (d) the Participant has executed and delivered 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; and
- (e) the Participant has the authority to implement the studied Project.

9. Evaluation, Monitoring and Verification; Audit.

- (a) The performance and administration of this Agreement will be subject to the OPA EM&V Protocols, which will include evaluation of the effectiveness of this Agreement in meeting the objectives of the Preliminary Engineering Study Initiative. In furtherance of the

OPA EM&V Protocols, the Participant will cooperate with the LDC, the OPA 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.

- (b) The Participant and the LDC will both keep complete and accurate books, accounts and records and all other data required by each of them respectively 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. On reasonable notice, at any time during normal business hours in respect of the subject matter of the Preliminary Engineering Study, the Participant will provide reasonable access to the LDC, the OPA, and/or their respective designates to such books, accounts, records and other data and: (A) at the reasonable request of the LDC and/or OPA, make available to the LDC, the OPA and/or their respective designates, the personnel of the Participant and its subcontractors involved in the Preliminary Engineering Study and the maintenance of such books, accounts, records and data referred to above for the purpose of this Section 9; and (B) permit the LDC, the OPA or their respective designates to examine and audit and take copies and extracts from such documents.

10. 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 Preliminary Engineering Study Initiative hereunder is based on its own assessment of the Preliminary Engineering Study 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.

11. 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 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 LAWYERS' AND ADVISORS' FEES SUFFERED OR INCURRED BY THE PARTICIPANT AND IN ANY EVENT LIMITED TO THE PARTICIPANT INCENTIVE PAYMENTS 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 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. Indemnification by the Participant.

The Participant (the "**Indemnifying Party**") will indemnify, defend and hold the LDC, the OPA, 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 Eligible Study or Project or this Agreement; and/or (ii) the negligence or wilful misconduct of the Participant, except in either case to the extent that any injury or damage related to such Claim, occurrence or event is attributable to the negligence or wilful misconduct of the Indemnified Party. 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. The LDC will hold the benefit the Participant's obligations under this Section 12 in the LDC's own right and, in trust, for the benefit of any other Indemnified Party.

13. Confidentiality.

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

provided that any such Person is aware of the provisions of this Section 13 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.

- (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 OPA on an ongoing basis as part of its participation in the Preliminary Engineering Study Initiative or other CDM initiatives offered by the OPA and may do so without further notice to or further consent of the Participant; and the LDC and OPA may disclose and provide reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, to the OEB, the Ontario Ministry of Energy and the Ontario Environmental Commissioner for Handling by such entities provided that the LDC or the OPA, as the case may be, has in place with any such Person a written agreement that includes confidentiality obligations in respect of such Confidential Information that are comparable to those contained in this Section 13;
 - (ii) this Agreement and all Confidential Information in the possession or control of the LDC, the OPA 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 OPA 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 OPA, respectively, or its Representatives to the Participant or provided by the Participant to the LDC or the OPA, 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 OPA, 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 OPA may at any time make public the Participant's participation in the Preliminary Engineering Study Initiative and data relating to the Preliminary Engineering Study, including a description of the Project and type of Facility, historical energy use and consumption, aggregated with other studies in a manner intended to report on the Preliminary Engineering Study Initiative; and
 - (v) the Participant may acknowledge the assistance provided by the LDC and the OPA in all public communications, provided that the LDC and the OPA will have the right to approve in writing all such public communications in advance.

14. Injunctive Relief.

Each Party acknowledges that any violation of the provisions of Section 13 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 Section 13, without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made. Nothing in this Section 14 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.

15. MFIPPA and FIPPA Compliance.

To the extent that the LDC or the OPA, 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):

- (a) to keep the Records in its possession secure;
- (b) to provide the Records to the LDC or the OPA, as the case may be, within seven calendar days of being directed to do so by the LDC or the OPA, 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 OPA, 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.

16. Dispute Resolution.

If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties will promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, a senior representative from each Party will meet, either in person or by telephone, to attempt to resolve the dispute. Each senior 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 Schedule "E" of this Agreement.

17. Schedules.

The following schedules are hereby incorporated in and form part of this Agreement:

Schedule "A" — Definitions

Schedule "B" — Preliminary Engineering Study Report Minimum Requirements

Schedule "C" — Preliminary Engineering Study SOW

Schedule "D" — Eligibility Criteria

Schedule "E" — Arbitration Provisions

Schedule "F" — Form of Release and Waiver

18. Headings.

The insertion of headings 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.

19. Entire Agreement.

Except as otherwise provided, 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.

20. **Amendments.**

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by both of the Parties.

21. **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 exclusive jurisdiction of the courts of the Province of Ontario.

22. **Successors and Assigns.**

This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and assigns. This Agreement may not be assigned by the Participant to another Person other than an affiliate except with the prior written consent of the LDC, which consent may be unreasonably withheld or delayed.

23. **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.

24. **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.

25. **Third Party Beneficiaries.**

Except as provided in Sections 7, 9, 11, 12, 13, 14, 15 and this Section 25, 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 OPA of the applicable provisions set out in this Agreement, including Sections 9, 11, 12, 13, 14, 15 and this Section 25, and the LDC accepts such appointment. The LDC is the agent of the OPA for the purpose of Section 7.

26. **No Partnership, etc.**

Nothing in this Agreement will be deemed to constitute a partnership or joint venture or create any fiduciary relationship between the LDC and the Participant.

27. **Force Majeure**

The LDC shall not be in default and shall not be deemed to be in default of its obligations in this Agreement by reason of delay or of failure or inability to perform its obligations hereunder where the said delay, failure or inability is due solely to any cause which is unavoidable or beyond the reasonable control of the LDC, including without limitation any act of God or other cause which frustrates the performance of the LDC's obligations in this Agreement.

28. **Notices**

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:

●
Attention: ●
Fax: ●
E-mail: ●

With a copy to:

●
Attention: ●
Fax: ●
E-mail: ●

If to the Participant:

Attention: ●
Fax: ●
E-mail: ●

With a copy to:

●
Attention: ●
Fax: ●
E-mail: ●

29. **Counterparts.**

This Agreement may be executed in any number of counterparts and all such counterparts will, for all purposes, constitute one agreement binding on both Parties provided that each Party has signed at least one counterpart.

30. **Facsimile/Electronic Signatures.**

This Agreement may be executed and delivered by facsimile transmission or by any other method of electronic transmission and the Parties may rely upon all such signatures as though such signatures were original signatures.

[Remainder of page intentionally left blank.]

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

[LEGAL NAME OF LDC]

[LEGAL NAME OF PARTICIPANT]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Per: _____
Name:
Title:

[I/We] have authority to bind the LDC

[I/We] have authority to bind the Participant

SCHEDULE "A" DEFINITIONS

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

"Agreement" means this Preliminary Engineering Study Funding 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. Where the Expected Life of a Micro-Project is less than 5 years, then, in the case of a Micro-Project, Electricity Savings during the period between the end of the Expected Life and the 5th anniversary of the in-service date will be deemed to be nil.

"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.

"Approved Amount" has the meaning given to it in Section 3(a).

"Arbitrator" has the meaning given to it in Section (a) of Schedule "E".

"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.

"CDM" means electricity conservation and demand management.

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

"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.

"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 Preliminary Engineering Study Funding Application, and, in the case of the LDC, includes the OPA 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 OPA, (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.

"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.

"Disclosing Party" has the meaning given to it in the definition of "Confidential Information".

"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.

"Draft Report" means a draft Preliminary Engineering Study issued by an Independent Engineer.

"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 Study measured under normal operating conditions.

"Electricity Savings Period" means the period commencing on the in-service date of the Project and ending on the 10th anniversary thereof in the case of a Project (other than a Micro-Project), or on the 5th anniversary thereof in the case of a Micro-Project.

“Eligible Person” means, in respect of the Preliminary Engineering Study Initiative, a person that satisfies the eligibility criteria set out in Section 1 of Schedule “D”.

“Eligible Study” means a Project to be studied that meets the eligibility criteria set out in Section 2 of Schedule “D” and is not a type of Project to be studied as described in Section 3 of Schedule “D”.

“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 a 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 the interaction of a 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.

“Expected Life” means the number of years a Project will deliver Electricity Savings, such period at least being equal to the 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.

“Final Report” means a final Preliminary Engineering Study prepared by an Independent Engineer.

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

“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 IESO, the OEB, the Electrical Safety Authority, the Ontario Environmental Commissioner, and any Person acting under the authority of any of the foregoing, but excluding the OPA.

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

“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 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.

“Indemnifiable Loss” has the meaning given to it in Section 12.

“Indemnified Party” has the meaning given to it in Section 12.

“Indemnifying Party” has the meaning given to it in Section 12.

“Independent Engineer” means a registered professional engineer licensed to practice in Ontario who is not an employee of the Participant.

“Ineligible Project” has the meaning given to it in Section 3 of Schedule “D”.

“Insolvent”, in respect of a Person, means 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 preamble of this Agreement.

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

“M&V Plan” means a measurement and verification document outlining the methodology and activities to be undertaken to quantify and verify Electricity Savings from a Project.

“Measures” 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.

“**Micro-Project**” means a stand-alone Project, which, when installed, is expected to deliver at least 100 MWh of Annualized Electricity Savings and not more than 700 MWh of Annualized Electricity Savings.

“**Minimum Expected Life**” means the number of years a Project is required to provide the Electricity Savings, being 10 years after the in-service date, other than in the case of a Micro-Project in which case the Minimum Expected Life is 1 year after the in-service date.

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

“**MW**” means a megawatt.

“**MWh**” means a megawatt hour.

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

“**OPA**” means the Ontario Power Authority or its successor.

“**OPA EM&V Protocols**” means the methods and processes that the OPA develops for the evaluation, measurement and verification of CDM programs and initiatives, as such methods and processes may be amended from time to time.

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

“**Participant Incentive**” means funding that may be paid by the LDC to the Participant pursuant to this Agreement.

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

“**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 identifiable individual or other information that is subject to any Privacy Laws.

“**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 (i) Measures, or their implementation, that could give rise to Electricity Savings, or (ii) if approved by the LDC, electricity generation by the Eligible Person that could reduce the electricity consumption by a System within a Facility, or of a Facility, from the Distribution System, and expected to meet the Preliminary Engineering Study Report Minimum Requirements.

“**Preliminary Engineering Study Funding Application**” means an application (File Number ●, dated ● and confirmed by the LDC on ●) by the Participant for a Participant Incentive from the LDC prepared in accordance with instructions posted on the Website from time to time.

“**Preliminary Engineering Study Initiative**” means the OPA-designed initiative under the OPA’s Process and System Upgrades Initiatives

designed to provide a Participant Incentive to a Participant for the purpose of obtaining a Preliminary Engineering Study.

“**Preliminary Engineering Study Report Minimum Requirements**” means the minimum requirements to be met with respect to the preparation and content of Draft Reports and Final Reports as set out in Schedule “B”.

“**Preliminary Engineering Study SOW**” means the scope of work, attached hereto as Schedule “C” to be performed by an Independent Engineer in order to prepare a Preliminary Engineering Study and to be attached to the applicable Preliminary Engineering Study Funding Application.

“**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 and “Project”, where appropriate in accordance with the terms hereof, includes a Micro-Project.

“**Project Incentive Initiative**” means the Initiative designed to provide a financial incentive to a Participant for the purpose of implementing a Project.

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

“**Records**” has the meaning given to it in Section 13(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 Preliminary Engineering Study Funding Application, in the form attached hereto as Schedule “F”.

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

“**System**” will be defined broadly and means an integrated or interdependent combination of installed equipment and processes that: (a) may be used for (i) manufacturing or other industrial or commercial processes, or (ii) circulating or distributing inside, outside or between Facilities commodities, goods or utilities (including heating, cooling, air or other gases, water or other liquids); and (b) consumes electricity.

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

“**Third Party Contributions**” means any financial or other contribution (including the value of contributions in kind) towards the eligible costs of the Project (as such costs are defined pursuant to the Project Incentive Initiative) from or by any Person other than the Participant or the LDC.

“**Website**” means the website located at the address: <https://saveonenergy.ca/>.

SCHEDULE "B"

PRELIMINARY ENGINEERING STUDY REPORT MINIMUM REQUIREMENTS

Purpose:

This Schedule contains the minimum requirements for a Draft Report or a Final Report (in this Schedule, the "**Reports**"). Such Reports must meet the technical, financial and economic analysis, and overall quality and completeness requirements as outlined below. Such Reports will also recommend opportunities for further study of potentially cost-effective electricity opportunities (in this Schedule, "**Opportunities**").

For the purposes of the Preliminary Engineering Study Initiative, the Reports must provide energy and demand savings estimates to an accuracy of +/- 30% and Project cost estimates to an accuracy of +/- 50%. The Reports must be prepared or reviewed by, and signed by an Independent Engineer.

Preliminary Engineering Study Report Submission Requirements:

In order to complete a satisfactory Report, Participants should prepare a Report submission package containing:

- one original copy of the Preliminary Engineering Study (bound) signed by the Independent Engineer,
- one hard copy of the Preliminary Engineering Study Report (bound), and
- one electronic copy of the Preliminary Engineering Study Report, in Portable Document Format (PDF).

Participants should submit the prepared submission package to:

•

with a copy to:

[LDC]

In the event of a conflict or inconsistency between the hard copy and the electronic copy of the Report, the original bound copy of the Report will prevail.

Amending Reports:

At any time until the final day for submitting a Report, a Participant may amend a submitted Report. The right of Participants to amend includes amendments or withdrawals wholly initiated by Participants and amendments or withdrawals in response to subsequent information that becomes available to the Participant. Following acceptance of the Report by the LDC and the Technical Reviewer, all amendments thereto proposed by the Participant will require the written approval of the LDC.

Any amendment should clearly indicate what part of the Preliminary Engineering Study the amendment is intending to replace. A notice of amendment should be sent to the LDC as soon as possible and should be signed by a senior representative of the Participant and by an Independent Engineer.

Report to be Retained by the LDC:

The LDC will not return any Reports or any accompanying documentation submitted by a Participant.

Form and Content:

The following are the required components of a Report:

1.0 Executive Summary:

- 1.1 Facility name and location.
- 1.2 Dates of study start and completion.
- 1.3 A brief background and description of the System studied.
- 1.4 A brief description of Measures recommended for further study, with estimates of:
 - 1.4.1 Annualized Electricity Savings,
 - 1.4.2 Annual average electricity demand reduction,
 - 1.4.3 Project benefits that contribute to cost-effectiveness of the Project,
 - 1.4.4 Simple payback for the recommended Measures based on total eligible costs (as such costs are defined pursuant to the Project Incentive Initiative) excluding any Participant Incentives or Third Party Contributions, and
 - 1.4.5 Project payback for the recommended Measures including any Participant Incentives or Third Party Contributions.
- 1.5 Author of report with acknowledgement of key personnel involved including titles.
- 1.6 Acknowledgement of Facility personnel involved in the study with titles.

2.0 Base Case and System Studied:

- 2.1 Description of the System studied:

- 2.1.1 Type of System and areas of plant/process served,
- 2.1.2 Annual hours of operation,
- 2.1.3 Existing equipment efficiency and base case baseline,
- 2.1.4 How does the System interact with other systems in the plant,
- 2.1.5 Explanation of why this System was chosen for study, and
- 2.1.6 Age of system or major System components.

3.0 Opportunity Analysis:

Analyze all reasonable electricity conservation Measures that could be applicable to the System studied. Complete the technical, financial, and economic information requirements listed below for each Measure analyzed.

3.1 Technical:

- 3.1.1 Technical description of each identified Measure.
- 3.1.2 Methodology and calculations used to arrive at energy and demand savings estimates for each Measure.
- 3.1.3 Identification and specification of any software tools used in the analysis.
- 3.1.4 Results of analysis including uncertainty ranges for:
 - 3.1.4.1 Annualized Electricity Savings, and
 - 3.1.4.2 Average seasonal electrical demand reduction profile for each week day.
- 3.1.5 Indication of “interactive effects” between Systems and the Measure (i.e. a reduction in energy use in one area may cause an increase in another).
- 3.1.6 Indication of any “other benefits” that may result from implementation of each Measure. Methodology must be shown. Examples of “other benefits” are:
 - Changes in fossil fuel consumption,
 - Changes in product quality or productivity, or
 - Changes in operating and maintenance costs.

3.2 Economic and Financial:

- 3.2.1 Itemized cost of each identified Measure that should include considerations for: detailed design and engineering, project management, equipment, installation labour, demolition, scrap value recovery, and commissioning.
- 3.2.2 Simple payback for each identified Measure without Participant Incentives or any Third Party Contributions.
- 3.2.3 Project payback for each identified Measure including any Participant Incentives or Third Party Contributions

4.0 Recommendations:

- 4.1 Discussion of Measures recommended for further study based on results of technical and economic analysis.
- 4.2 Discussion of expected lifetime of recommended Measures with an indication of any special maintenance practices required to realize continued savings.

SCHEDULE "C"

PRELIMINARY ENGINEERING STUDY SOW

See attached document

SCHEDULE "D"
ELIGIBILITY CRITERIA

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.

2. Study Eligibility Criteria

To be an Eligible Study, the proposed Project to be studied 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) (i) in the case of a proposed Micro-Project, be expected to generate Annualized Electricity Savings of greater than 100 MWh but less than 700 MWh; or (ii) in the case of a Project, 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; and
- (d) not be an Ineligible Project.

Pursuant to the terms and conditions of the Preliminary Engineering Study Initiative,

- (e) the scheduled in-service date of a Project may not occur any later than two years following the date of execution of an agreement for the Project Incentive Initiative or any later than December 31, 2014, unless otherwise approved by the LDC.

3. Ineligible Projects

None of the following types of Projects qualifies to be studied (each, an "**Ineligible Project**");

- (a) a Project that the LDC determines is more appropriately funded by another OPA 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 OPA (other than a Participant Incentive), the Province of Ontario or any agency thereof;
- (i) prior to submitting a Preliminary Engineering Study Funding Application, the Participant has approved the undertaking of a Preliminary Engineering Study or entered into an agreement with a contractor or consultant or ordered or purchased any equipment for use in relation to the Project;
- (j) an electricity generation Project, unless otherwise approved in writing by the LDC; or

- (k) a fuel-switching Project, unless otherwise approved in writing by the LDC,

SCHEDULE "E"

ARBITRATION PROVISIONS

- (a) Subject to and in accordance with the provisions of this Schedule "E", 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.
- (b) 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.
- (c) The arbitration will be conducted in English in the City of Toronto (unless otherwise agreed to by the Parties) at such place therein and 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.
- (d) 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.
- (e) Submission to arbitration under this Schedule "E" 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.

SCHEDULE "F"

FORM OF RELEASE AND WAIVER

RELEASE AND WAIVER AND CONSENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby, for itself and its successors and assigns:

- A. releases and forever discharges each of [NAME OF LDC] ("LDC"), the Ontario Power Authority ("OPA") and their respective representatives, affiliates, third party service providers and agents (collectively, the "**Program Operators**") and all of the respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns of the Program Operators (collectively, the "**Representatives**") (the Program Operators and the Representatives hereinafter collectively referred to as "**Releasees**") from any and all actions, causes of action, suits, complaints, disputes, debts, liabilities, obligations, damages, legal fees, costs, disbursements, expenses, claims and demands of every nature or kind whatsoever and howsoever arising, at law or in equity, or under any statute, including without limitation, claims for property damage, business interruption and personal injury of the undersigned's employees, officers, directors or licencees, which it can, will or may have by reason of any matter, cause or thing arising as a result of, in relation to or in connection with the attendance on one or more occasions by one or more of the employees, officers, directors, representatives, third party service providers or agents of any or all of the Program Operators (collectively, "**Persons**") at any and all facilities owned or occupied by the undersigned in connection with, arising out of or relating to the initiatives designed by the OPA for electricity conservation and demand management and directed at one of the commercial and institutional, industrial, low-income or residential electricity consumer groups (collectively referred to as the "**CDM Program**"), other than in the case of the gross negligence or willful misconduct of such Persons during such attendances;
- B. agrees that the undersigned will not make any claim or take any proceedings against any other person or entity with respect to any matter released and discharged in Section 1 above which may result in any claim arising against any of the Releasees for contribution or indemnity or other relief;
- C. without limiting the foregoing, the undersigned acknowledges, agrees and consents that by submitting an application ("**Application**") to participate in a CDM Program or any initiative thereof, whether or not its Application is ultimately accepted:
- (a) it hereby consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators, including all reports, data, personal information, records showing historical energy use and consumption, and other information of the undersigned or its subcontractors or representatives (collectively, the "**Applicant Information**") by the Program Operators for purposes relating to the operation, administration or assessment of the CDM Program, any initiative thereof or the Application, and in connection with any reporting activities relating to the CDM Program, which shall include, without limitation: (i) sharing of Applicant Information among the Program Operators; (ii) use by the Program Operators of the Applicant Information provided by the Participant to process any of the undersigned's Applications and to conduct, analyze and report on the results of surveys and modify the CDM Program based on such surveys; and (iii) disclosure to the Ontario Energy Board, the Independent Electricity System Operator, the Ontario Ministry of Energy or the Ontario Environmental Commissioner or their respective successors;
 - (b) it hereby consents to the disclosure by the OPA to the LDC of information regarding the Participant's past participation in other OPA funded conservation and demand management programs for the purpose of processing the Participant's Application; and
 - (c) this Release and Waiver and Consent and all Applicant Information, in the possession or control of the LDC and/or the OPA are subject to applicable laws that include the access provisions of the Municipal Freedom of Information and Protection of Privacy Act (Ontario) ("**MFIPPA**") or the Freedom of Information and Protection of Privacy Act (Ontario) ("**FIPPA**"), as the case may be, and that as a result, third parties may obtain access to the Applicant Information;
- D. the foregoing Release and Waiver and Consent will continue in full force and effect for the benefit of the Releasees and will apply to each Application submitted by the undersigned to the LDC and to the extent of any conflict between this Release and Waiver and Consent and the terms of any agreement or other document entered into by the undersigned and one or more of the Program Operators pursuant to or in connection with the CDM Program or any part thereof, or any initiative under any CDM Program, the terms of this Release and Waiver and Consent will prevail; and
- E. this Release and Waiver and Consent will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed this Release and Waiver and Consent by its duly authorized representative(s) as of the date below written.

Dated: [DATE]

[LEGAL NAME OF PERSON MAKING APPLICATION]

Name:
Title:

Name:
Title:

[I/We] have the authority to bind the corporation.

EXHIBIT B
PART A – MINIMUM REQUIREMENTS
PART B - DETAILED ENGINEERING STUDY FUNDING CONTRACT

Part A – Minimum Requirements

Part B - Detailed Engineering Study Funding Contract

Part A – Minimum Requirements

The following minimum requirements of the attached form of Detailed Engineering Study Funding Contract shall be included, without modification, in each Detailed Engineering Study Funding Contract.

<u>Minimum Requirements</u>	<u>Description</u>
Section 1	Defined Terms
Section 2	Detailed Engineering Study
Sections 3 (a), (b) and (c)	Payment
Section 4	Reports
Section 5	Communication with Technical Reviewer
Section 6	Term
Section 7	Environmental Attributes
Section 8	Representations and Warranties
Section 9	Evaluation, Monitoring and Verification; Audit
Section 10	No Warranty
Section 11	Limitation of Liability
Section 12	Indemnification by the Participant
Section 13	Confidentiality
Section 14	Injunctive Relief
Section 15	MFIPPA and FIPPA Compliance
Section 19	Entire Agreement

<u>Minimum Requirements</u>	<u>Description</u>
Section 21	Governing Law and Attornment
Section 22	Successors and Assigns
Section 25	Third Party Beneficiaries
Schedule A	Definitions
Schedule B	Detailed Engineering Study Report Minimum Requirements
Schedule C	Detailed Engineering Study SOW
Schedule D	Eligibility Criteria
Schedule F	Form of Release and Waiver

The following sections of the attached form of Detailed Engineering Study Funding Contract shall require the prior written consent of the OPA before the LDC may approve or undertake a transaction, an action or timeline included in the Detailed Engineering Study Funding Contract.

<u>Sections where the OPA prior written consent is required</u>	<u>Description</u>
Schedule D –Section 2 (e)	Study Eligibility Criteria (scheduled in-service date)
Schedule D – Section 3 (h)	Approval of a study of a Project for which any financial incentive has been, is being or may be received from the OPA (other than a Participant Incentive), the Province of Ontario or any agency thereof
Schedule D – Section 3 (j)	Approval of a study of an electricity generation Project as an Eligible Study
Schedule D – Section 3 (k)	Approval of a study of a fuel-switching Project as an Eligible Study

PART B – Detailed Engineering Study Funding Contract

See attached Contract

PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014

DETAILED ENGINEERING STUDY FUNDING CONTRACT

THIS AGREEMENT made as of the [DAY] day of [MONTH], [YEAR],

BETWEEN:

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

(the "LDC")

- and -

[LEGAL NAME OF THE PARTICIPANT], a [LEGAL FORM OF THE PARTICIPANT] governed by the laws of [JURISDICTION OF THE PARTICIPANT],

(the "Participant")

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

WHEREAS the Participant has submitted a Detailed Engineering Study Funding Application to the LDC;

AND WHEREAS the Participant reasonably expects that the Detailed Engineering Study will identify Measures that will generate Electricity Savings;

AND WHEREAS the LDC has approved the Detailed Engineering Study Funding Application;

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

1. Defined Terms.

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

2. Detailed Engineering Study.

The Participant agrees to complete the Detailed Engineering Study and prepare a Draft Report and a Final Report as set out in Section 4 on the results of such Detailed Engineering Study in accordance with the Detailed Engineering Study Report Minimum Requirements and the Detailed Engineering Study SOW attached hereto in Schedule "B" and Schedule "C", respectively.

3. Payment.

- (a) The Participant Incentive approved by the LDC is \$ _____ (the "Approved Amount").
- (b) Subject to the Participant satisfying all of its obligations herein contained, the LDC agrees to pay the Participant Incentive to the Participant as follows:
 - (i) 50% of the Approved Amount, within 60 days after the approval of the Draft Report, as set out in Section 4(a)(ii); and
 - (ii) the difference between (A) the lesser of (i) the Approved Amount and (ii) the actual costs incurred by the Participant to complete the Detailed Engineering Study (as set out in the invoices provided by the Participant in accordance with Section 4(b)(ii)), and (B) the first instalment payment received by the Participant pursuant to Section 3(b)(i), within 60 days after the approval of the Final Report, as set out in Section 4(b)(ii).
- (c) All payments hereunder will be made in Canadian dollars by cheque or by electronic funds transfer to the Participant's account or such other mode of payment at the sole discretion of the LDC.
- (d) All payments hereunder are conditional on the Participant providing an invoice to the LDC together with sufficient documentation to support and substantiate the Participant Incentive payments.

- (e) In addition to the Participant Incentive, the LDC will pay any Applicable Taxes on the Participant 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 Participant 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 Participant 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.

4. Reports.

- (a) Draft Report
 - (i) The Participant will submit a Draft Report to the Technical Reviewer, with a copy (in hard or searchable electronic format) to the LDC. The Technical Reviewer will communicate to the Participant how many days it will take the Technical Reviewer to review the Draft Report.
 - (ii) If the Technical Reviewer determines that the Draft Report reflects the Detailed Engineering Study Report Minimum Requirements and the Detailed Engineering Study SOW, the LDC will communicate the approval of the Draft Report to the Participant.
 - (iii) If the Draft Report is not approved by the Technical Reviewer, the LDC will not pay any part of the Participant Incentive to the Participant and will communicate to the Participant the reasons (if and as provided by the Technical Reviewer) for not approving the Draft Report. The LDC may allow the Participant a reasonable period of time to address such deficiencies and to re-submit a Draft Report, provided that such revised Draft Report will remain subject to the terms and conditions of this Agreement. If such revised Draft Report does not address such deficiencies to the satisfaction of the LDC and the Technical Reviewer on or before the earlier of (A) eight months of the date hereof and (B) December 31, 2012, unless otherwise agreed to by the LDC; this Agreement will terminate, the Participant will not be entitled to receive the Participant Incentive and the Participant will need to re-submit a new Detailed Engineering Study Funding Application to the LDC in order to participate in the Detailed Engineering Study Initiative.
- (b) Final Report
 - (i) The Participant will submit to the Technical Reviewer, with a copy (in hard or searchable electronic format) to the LDC, the Final Report and all supporting receipts and invoices evidencing the cost incurred by the Participant to complete the Final Report within 60 days of the communication by the LDC of the approval of the Draft Report, unless otherwise agreed by the LDC. The Technical Reviewer will communicate to the Participant the estimated number of days it will take the Technical Reviewer to review the Final Report.
 - (ii) If the Technical Reviewer determines that the Final Report (A) reflects the scope of the study as originally determined and as set out in the Detailed Engineering Study Funding Application and the Detailed Engineering Study SOW and (B) incorporates the comments made with respect to the Draft Report, the LDC will communicate the approval of the Final Report and the confirmation of the amount of the final instalment of the Participant Incentive payable to the Participant pursuant to Section 3(b)(ii).
 - (iii) If the Technical Reviewer or the LDC disputes that the receipts or invoices submitted by the Participant reflect the actual costs incurred by the Participant, the actual costs incurred will be deemed for all purposes of this Agreement to be such amount determined by the Technical Reviewer or the LDC, as may be applicable, based upon their audit of such receipts and invoices.
 - (iv) If the Final Report is not approved by the Technical Reviewer, the LDC will not pay any remaining Participant Incentive to the Participant and will communicate to the Participant the reasons (if and as provided by the Technical Reviewer) for not approving the Final Report. If such revised Final Report does not address such deficiencies to the satisfaction of the LDC and the Technical Reviewer within 30 days of the communication by the LDC of the reasons (if and as provided by the Technical Reviewer) for not approving the Final Report, this Agreement will terminate, the Participant will not be entitled to receive the remaining Participant Incentive and the Participant will need to re-submit a new Detailed Engineering Study Funding Application to the LDC in order to participate in the Detailed Engineering Study Initiative.
 - (v) If the System that is the subject of a Detailed Engineering Study is changed or altered after completion of the Draft Report but prior to the acceptance by the LDC of the Final Report, the Participant will update the Final Report to account for such changes or alterations and submit same to the LDC immediately.

5. Communication with Technical Reviewer

The Participant will cooperate and provide on a timely basis any requested information to the LDC or the Technical Reviewer should the LDC or the Technical Reviewer, respectively, require clarification from the Participant when reviewing the Draft Report or the Final Report. The Participant shall, at the same time as it provides information to the Technical Reviewer, provide a copy of such information to the LDC.

6. Term.

This Agreement will terminate on the earliest of:

- (a) on or before the date by which the Draft Report is required to be approved, as provided in Section 4(a)(iii);
- (b) 60 days from the date the LDC communicates the approval of the Draft Report to the Participant if the Participant has not submitted a Final Report by such date, as provided in Section 4(b)(i);
- (c) 30 days from the date the LDC communicates the reasons for not approving the Final Report if the Participant has not submitted a revised Final Report by such time that is approved by the LDC, as provided in Section 4(b)(iv);
- (d) the date of the payment of the final instalment of the Participant Incentive pursuant to Section 3(b)(ii); and
- (e) December 31, 2014.

Sections 3(e), 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 21 and 25, 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 termination of this Agreement.

7. Environmental Attributes.

All right, title and interest in and to all benefits or entitlements associated with Environmental Attributes are hereby unconditionally and absolutely transferred and assigned, or to the extent transfer or assignment is not permitted, held in trust for, by the Participant to, or in favour of, the LDC in its capacity as agent for and on behalf of the OPA, and not for the LDC's own benefit. Until the OPA notifies the Participant otherwise, the LDC, in its capacity as agent, shall be entitled, unilaterally and without the consent of the Participant, to deal with such Environmental Attributes on behalf of the OPA in any manner the LDC determines. The Participant acknowledges that the OPA may direct the Participant in the same manner as the LDC and that until the OPA notifies the Participant otherwise the LDC may direct the Participant to take such actions and do all such things necessary to certify, obtain, qualify and register with the relevant authorities or agencies such Environmental Attributes for the purpose of transferring, assigning, or holding in trust, such Environmental Attributes to and for the OPA and the Participant shall comply with such directions, and the Participant will be entitled to reimbursement of the cost of complying with such direction, provided that the LDC, acting reasonably, has approved such cost in writing prior to the cost being incurred by the Participant.

8. Representations and Warranties.

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 Detailed Engineering Study without the Participant Incentive;
- (b) each of the Participant and the proposed Project satisfies the eligibility requirements set out in Sections 1 to 3, as applicable, of Schedule "D" as of the date hereof;
- (c) the Detailed Engineering Study to be performed relates to a Project that satisfies the applicable eligibility and other requirements set out in Section 2 of Schedule "D" as of the date hereof and does not relate to any Ineligible Project set out in Section 3 of Schedule "D"
- (d) the Participant has executed and delivered 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; and
- (e) the Participant has the authority to implement the studied Project.

9. Evaluation, Monitoring and Verification; Audit.

- (a) The performance and administration of this Agreement will be subject to the OPA EM&V Protocols, which will include evaluation of the effectiveness of this Agreement in meeting the objectives of the Detailed Engineering Study Initiative. In furtherance of the OPA EM&V Protocols, the Participant will cooperate with the LDC, the OPA 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.

- (b) The Participant and the LDC will both keep complete and accurate books, accounts and records and all other data required by each of them respectively 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. On reasonable notice, at any time during normal business hours in respect of the subject matter of the Detailed Engineering Study, the Participant will provide reasonable access to the LDC, the OPA, and/or their respective designates to such books, accounts, records and other data and: (A) at the reasonable request of the LDC and/or OPA, make available to the LDC, the OPA and/or their respective designates, the personnel of the Participant and its subcontractors involved in the Detailed Engineering Study and the maintenance of such books, accounts, records and data referred to above for purposes of this Section 9; and (B) permit the LDC, the OPA or their respective designates to examine and audit and take copies and extracts from such documents.

10. 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 Detailed Engineering Study Initiative hereunder is based on its own assessment of the Detailed Engineering Study 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.

11. 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 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 LAWYERS' AND ADVISORS' FEES SUFFERED OR INCURRED BY THE PARTICIPANT AND IN ANY EVENT LIMITED TO THE PARTICIPANT INCENTIVE PAYMENTS 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 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. Indemnification by the Participant.

The Participant (the "**Indemnifying Party**") will indemnify, defend and hold the LDC, the OPA, 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 Eligible Study or Project or this Agreement; and/or (ii) the negligence or wilful misconduct of the Participant, except in either case to the extent that any injury or damage related to such Claim, occurrence or event is attributable to the negligence or wilful misconduct of the Indemnified Party. 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. The LDC will hold the benefit the Participant's obligations under this Section 12 in the LDC's own right and, in trust, for the benefit of any other Indemnified Party.

13. Confidentiality.

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

provided that any such Person is aware of the provisions of this Section 13 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.
- (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 OPA on an ongoing basis as part of its participation in the Detailed Engineering Study Initiative or other CDM initiatives offered by the OPA and may do so without further notice to or further consent of the Participant; and the LDC and OPA may disclose and provide reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, to the OEB, the Ontario Ministry of Energy and the Ontario Environmental Commissioner for Handling by such entities provided that the LDC or the OPA, as the case may be, has in place with any such Person a written agreement that includes confidentiality obligations in respect of such Confidential Information that are comparable to those contained in this Section 13;
 - (ii) this Agreement and all Confidential Information in the possession or control of the LDC, the OPA 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 OPA 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 OPA, respectively, or its Representatives to the Participant or provided by the Participant to the LDC or the OPA, 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 OPA, 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 OPA may at any time make public the Participant's participation in the Detailed Engineering Study Initiative and data relating to the Detailed Engineering Study, including a description of the Project and type of Facility, historical energy use and consumption, aggregated with other studies in a manner intended to report on the Detailed Engineering Study Initiative; and
 - (v) the Participant may acknowledge the assistance provided by the LDC and the OPA in all public communications, provided that the LDC and the OPA will have the right to approve in writing all such public communications in advance.

14. Injunctive Relief.

Each Party acknowledges that any violation of the provisions of Section 13 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 Section 13, without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made. Nothing in this Section 14 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.

15. MFIPPA and FIPPA Compliance.

To the extent that the LDC or the OPA, 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):

- (a) to keep the Records in its possession secure;
- (b) to provide the Records to the LDC or the OPA, as the case may be, within seven calendar days of being directed to do so by the LDC or the OPA, 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 OPA, 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.

16. Dispute Resolution.

If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties will promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, a senior representative from each Party will meet, either in person or by telephone, to attempt to resolve the dispute. Each senior 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 Schedule "E" of this Agreement.

17. Schedules.

The following schedules are hereby incorporated in and form part of this Agreement:

Schedule "A" — Definitions

Schedule "B" — Detailed Engineering Study Report Minimum Requirements

Schedule "C" — Detailed Engineering Study SOW

Schedule "D" — Eligibility Criteria

Schedule "E" — Arbitration Provisions

Schedule "F" — Form of Release and Waiver

18. Headings.

The insertion of headings 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.

19. Entire Agreement.

Except as otherwise provided, 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.

20. Amendments.

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by both of the Parties.

21. 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 exclusive jurisdiction of the courts of the Province of Ontario.

22. Successors and Assigns.

This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and assigns. This Agreement may not be assigned by the Participant to another Person other than an affiliate except with the prior written consent of the LDC, which consent may be unreasonably withheld or delayed.

23. 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.

24. 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.

25. Third Party Beneficiaries.

Except as provided in Sections 7, 9, 11, 12, 13, 14, 15 and this Section 25, 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 OPA of the applicable provisions set out in this Agreement, including Sections 9, 11, 12, 13, 14, 15 and this Section 25, and the LDC accepts such appointment. The LDC is the agent of the OPA for the purpose of Section 7.

26. No Partnership, etc.

Nothing in this Agreement will be deemed to constitute a partnership or joint venture or create any fiduciary relationship between the LDC and the Participant.

27. Force Majeure

The LDC shall not be in default and shall not be deemed to be in default of its obligations in this Agreement by reason of delay or of failure or inability to perform its obligations hereunder where the said delay, failure or inability is due solely to any cause which is unavoidable or beyond the reasonable control of the LDC, including without limitation any act of God or other cause which frustrates the performance of the LDC's obligations in this Agreement.

28. Notices

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:

•
Attention: •
Fax: •
E-mail: •

With a copy to:

•
Attention: •
Fax: •
E-mail: •

If to the Participant:

Attention: •
Fax: •
E-mail: •

With a copy to:

•
Attention: •
Fax: •
E-mail: •

29. **Counterparts.**

This Agreement may be executed in any number of counterparts and all such counterparts will, for all purposes, constitute one agreement binding on both Parties provided that each Party has signed at least one counterpart.

30. **Facsimile/Electronic Signatures.**

This Agreement may be executed and delivered by facsimile transmission or by any other method of electronic transmission and the Parties may rely upon all such signatures as though such signatures were original signatures.

[Remainder of page intentionally left blank.]

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

[LEGAL NAME OF LDC]

[LEGAL NAME OF PARTICIPANT]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Per: _____
Name:
Title:

[I/We] have authority to bind the LDC

[I/We] have authority to bind the Participant

SCHEDULE "A"

DEFINITIONS

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

"Agreement" means this Detailed Engineering Study Funding 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. Where the Expected Life of a Micro-Project is less than 5 years, then, in the case of a Micro-Project, Electricity Savings during the period between the end of the Expected Life and the 5th anniversary of the in-service date will be deemed to be nil.

"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.

"Approved Amount" has the meaning given to it in Section 3(a).

"Arbitrator" has the meaning given to it in Section (a) of Schedule "E".

"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.

"CDM" means electricity conservation and demand management.

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

"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.

"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 Detailed Engineering Study Funding Application, and, in the case of the LDC, includes the OPA 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 OPA, (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.

"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 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 (i) Measures, or their implementation, that could give rise to Electricity Savings, or (ii) if approved by the OPA, electricity generation by the Eligible Person that could reduce the electricity consumption by a System within a Facility, or of a Facility, from the Distribution System, and expected to meet the Detailed Engineering Study Report Minimum Requirements.

"Detailed Engineering Study Funding Application" means an application (File Number ●, dated ● and confirmed by the LDC on ●) by the Participant for a Participant Incentive from the LDC prepared in accordance with instructions posted on the Website from time to time.

"Detailed Engineering Study Initiative" means the OPA-designed initiative under the OPA's Process and System Upgrades Initiatives designed to provide a Participant Incentive to a Participant for the purpose of obtaining a Detailed Engineering Study.

"Detailed Engineering Study Report Minimum Requirements" means the minimum requirements to be met with respect to the preparation and content of Draft Reports and Final Reports as set out in Schedule "B".

"Detailed Engineering Study SOW" means the scope of work, attached hereto in Schedule "C", to be performed by an Independent

Engineer in order to prepare a Detailed Engineering Study and to be attached to the applicable Detailed Engineering Study Funding Application.

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

“**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.

“**Draft Report**” means a draft Detailed Engineering Study prepared by an Independent Engineer.

“**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 Study measured under normal operating conditions.

“**Electricity Savings Period**” means the period commencing on the in-service date of the Project and ending on the 10th anniversary thereof in the case of a Project (other than a Micro-Project), or on the 5th anniversary thereof in the case of a Micro-Project.

“**Eligible Person**” means, in respect of the Detailed Engineering Study Initiative, a person that satisfies the eligibility criteria set out in Section 1 of Schedule “D”.

“**Eligible Study**” means a Project to be studied that meets the eligibility criteria set out in Section 2 of Schedule “D” and is not a type of Project to be studied as described in Section 3 of Schedule “D”.

“**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 a 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 the interaction of a 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.

“**Expected Life**” means the number of years a Project will deliver Electricity Savings, such period at least being equal to the 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.

“**Final Report**” means a final Detailed Engineering Study issued by an Independent Engineer.

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

“**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 IESO, the OEB, the Electrical Safety Authority, the Ontario Environmental Commissioner, and any Person acting under the authority of any of the foregoing, but excluding the OPA.

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

“**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 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.

“**Indemnifiable Loss**” has the meaning given to it in Section 12.

“**Indemnified Party**” has the meaning given to it in Section 12.

“**Indemnifying Party**” has the meaning given to it in Section 12.

“**Independent Engineer**” means a registered professional engineer licensed to practice in Ontario who is not an employee of the Participant.

“**Ineligible Project**” has the meaning given to it in Section 3 of Schedule “D”.

“**Insolvent**”, in respect of a Person, means 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 preamble of this Agreement.

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

“**M&V Plan**” means a measurement and verification document outlining the methodology and activities to be undertaken to quantify and verify Electricity Savings from a Project.

“**Measures**” 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..

“**Micro-Project**” means a stand-alone Project, which, when installed, is expected to deliver at least 100 MWh of Annualized Electricity Savings and not more than 700 MWh of Annualized Electricity Savings.

“**Minimum Expected Life**” means the number of years a Project is required to provide the Electricity Savings, being 10 years after the in-service date, other than in the case of a Micro-Project in which case the Minimum Expected Life is 1 year after the in-service date.

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

“**MW**” means a megawatt.

“**MWh**” means a megawatt hour.

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

“**OPA**” means the Ontario Power Authority or its successor.

“**OPA EM&V Protocols**” means the methods and processes that the OPA develops for the evaluation, measurement and verification of CDM programs and initiatives, as such methods and processes may be amended from time to time.

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

“**Participant Incentive**” means funding that may be paid by the LDC to the Participant pursuant to this Agreement.

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

“**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 identifiable individual or other information that is subject to any Privacy Laws.

“**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 and “**Project**”, where appropriate in accordance with the terms hereof, includes a Micro-Project.

“**Project Incentive Initiative**” means the Initiative designed to provide a financial incentive to a Participant for the purpose of implementing a Project.

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

“**Records**” has the meaning given to it in Section 13(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 Detailed Engineering Study Funding Application, in the form attached hereto as Schedule “F”.

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

“**System**” will be defined broadly and means an integrated or interdependent combination of installed equipment and processes that: (a) may be used for (i) manufacturing or other industrial or commercial processes, or (ii) circulating or distributing inside, outside or between Facilities commodities, goods or utilities (including heating, cooling, air or other gases, water or other liquids); and (b) consumes electricity.

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

“**Third Party Contributions**” means any financial or other contribution (including the value of contributions in kind) towards the eligible costs of the Project (as such costs are defined pursuant to the Project Incentive Initiative) from or by any Person other than the Participant or the LDC.

“**Website**” means the website located at the address: <https://saveconenergy.ca/>.

SCHEDULE "B"

DETAILED ENGINEERING STUDY REPORT MINIMUM REQUIREMENTS

Purpose:

This Schedule contains the minimum requirements for a Draft Report or a Final Report (in this Schedule, the “**Reports**”). Such Reports must meet the technical, financial and economic analysis, and overall quality and completeness requirements as outlined below. Such Reports will also recommend opportunities for further study of potentially cost-effective electricity opportunities (in this Schedule, “**Opportunities**”).

For the purposes of the Detailed Engineering Study Initiative, the Reports must provide energy and demand savings estimates to an accuracy of +/- 10% and Project cost estimates to an accuracy of +/- 25%. The Reports must be prepared or reviewed by, and signed by an Independent Engineer.

Detailed Engineering Study Report Submission Requirements:

In order to complete a satisfactory Report, Participants should prepare a Report submission package containing:

- one original copy of the Detailed Engineering Study (bound and drawings) signed by the Independent Engineer,
- one hard copy of the Detailed Engineering Study Report (bound and drawings), and
- one electronic copy of the Detailed Engineering Study Report, in Portable Document Format (PDF) and the “Measures Summary Template”, as found on the website for the Detailed Engineering Study Initiative.

Participants should submit the prepared submission package to:

-

with a copy to:

[LDC]

In the event of a conflict or inconsistency between the hard copy and the electronic copy of the Report, the original bound copy of the Report will prevail.

Amending Reports:

At any time until the final day for submitting a Report, a Participant may amend a submitted Report. The right of Participants to amend includes amendments or withdrawals wholly initiated by Participants and amendments or withdrawals in response to subsequent information that becomes available to the Participant. Following acceptance of the Report by the LDC and the Technical Reviewer, all amendments thereto proposed by the Participant will require the written approval of the LDC.

Any amendment should clearly indicate what part of the Detailed Engineering Study the amendment is intending to replace. A notice of amendment should be sent to the LDC as soon as possible and should be signed by a senior representative of the Participant and by an Independent Engineer.

Report to be Retained by the LDC:

The LDC will not return any Reports or any accompanying documentation submitted by a Participant.

Form and Content:

The following are the required components of a Report:

1.0 Executive Summary:

- 1.1 Facility name and location.
- 1.2 Dates of study start and completion.
- 1.3 A brief background and description of the System studied.
- 1.4 A brief description of Measures recommended for further study, with estimates of:
 - 1.4.1 Annualized Electricity Savings,
 - 1.4.2 Annual average electricity demand reduction,
 - 1.4.3 Project benefits that contribute to cost-effectiveness of the Project,
 - 1.4.4 Any costs directly related to the Project which are not included in eligible costs,
 - 1.4.5 Simple payback for the recommended Measures based on total eligible costs (as such costs are defined pursuant to the Project Incentive Initiative) excluding any Participant Incentives or Third Party Contributions,
 - 1.4.6 Project payback for the recommended Measures including any Participant Incentives or Third Party Contributions, and
 - 1.4.7 Estimated Participant Incentive.
- 1.5 Author of report with acknowledgement of key personnel involved including titles.
- 1.6 Acknowledgement of Facility personnel involved in the study with titles.

2.0 Base Case and System Studied:

2.1 Description of the System studied:

- 2.1.1 Type of System and areas of plant/process served,
- 2.1.2 Explanation of why the System was chosen for study
- 2.1.3 Process flow diagram, indicating measurement boundary, and how the System interacts with the remaining plant,
- 2.1.4 Relevant electrical single line diagrams,
- 2.1.5 Process and instrumentation drawings (P&ID),
- 2.1.6 Equipment data sheets or existing equipment efficiency,
- 2.1.7 Preliminary base case baseline (subject to review and acceptance by the Technical Reviewer during baseline data collection);
 - 2.1.7.1 Annualized electricity energy consumption,
 - 2.1.7.2 Daily and seasonable electrical load profile,
 - 2.1.7.3 Load duration curve or table indicating annual hours of operation at significant capacity points,
 - 2.1.7.4 Production and throughput as it relates to the electricity consumption of the System
- 2.1.8 Operating and maintenance costs for the System,
- 2.1.9 Product quality from the existing System,
- 2.1.10 Reliability of the existing System,
- 2.1.11 Age of the System or major System components and analysis of remaining life,
- 2.1.12 Standard commercially available replacement equipment cost and energy use (at least the cost of new equipment that meets the System requirements).
- 2.2 Measured electrical, process and operating data collected during the Detailed Engineering Study provided in MS Excel spreadsheet format.
- 2.3 The most recent electric utility bills received for a single billing period at the location of the nearest utility revenue metering point.

3.0 Opportunity Analysis:

Analyze all reasonable electricity conservation Measures that could be applicable to the System studied. Complete the technical, financial, and economic information requirements listed below for each Measure analyzed.

3.1 Technical:

- 3.1.1 Technical description of each identified Measure.
- 3.1.2 Methodology and calculations used to arrive at electricity and demand savings estimates for each Measure.
- 3.1.3 Identification and specification of any software tools used in the analysis.
- 3.1.4 Results of analysis including uncertainty ranges and assumptions for operating conditions for the life of the Measure:
 - 3.1.4.1 Annualized Electricity Savings,
 - 3.1.4.2 Monthly average electrical demand reduction, and
 - 3.1.4.3 Daily electrical demand reduction profile by season.
- 3.1.5 Analysis of “interactive effects” between Systems and the Measure (i.e. a reduction in electricity use in one area may cause an increase in another).
- 3.1.6 Quantification of “other benefits” with dollar savings estimate that may result from implementation of each Measure. Methodology must be shown. Examples of “other benefits” are:
 - Changes in fossil fuel consumption,
 - Changes in product quality or productivity, or
 - Changes in operating and maintenance costs.
- 3.1.7 Description of measurement techniques that would aid in ongoing evaluation of electricity savings for each Measure.

3.2 Economic and Financial:

- 3.2.1 Itemized implementation costs of each Measure including:
 - 3.2.1.1 Detailed design and engineering,
 - 3.2.1.2 Project management,
 - 3.2.1.3 Equipment,
 - 3.2.1.4 Installation labour,
 - 3.2.1.5 Demolition,
 - 3.2.1.6 Scrap value recovery, and
 - 3.2.1.7 Commissioning.
- 3.2.2 Simple payback for each identified Measure without Participant Incentives or any Third Party Contributions.
- 3.2.3 Project payback for each identified Measure including any Participant Incentives or Third Party Contributions

4.0 Recommendations:

- 4.1 Provide recommendations by Measure and at the Project level;

- 4.1.1 Discussion of recommended and non-recommended Measures using results of technical and economic analysis,
- 4.1.2 Simple payback for each recommended Measure and for the aggregate of all recommended Measures based on total eligible costs with no Participant Incentives or Third Party Contributions,
- 4.1.3 Project payback for each recommended Measure and for the aggregate of all recommended Measures,
- 4.1.4 Discussion of expected lifetime of recommended Measures with a description of any special maintenance practices required to realize continued savings,
- 4.1.5 Discussion of risks associated with performance of recommended Measures.

5.0 Implementation Action Plan:

- 5.1 Detailed technical description for implementation of each recommended Measure:
 - 5.1.1 Specifications suitable for procurement of bids for the Project construction and commissioning. Include sample manufacturers data sheets if applicable,
 - 5.1.2 List of existing equipment to be de-commissioned,
 - 5.1.3 Proposed operating parameters including mode and sequence of operation and programming of process control systems.
- 5.2 Provide a schedule for implementation:
 - 5.2.1 Overall time to complete Project broken down by major tasks and time required for each,
 - 5.2.2 Detail any known timeline risks and critical tasks.

SCHEDULE "C"

DETAILED ENGINEERING STUDY SOW

See attached document

SCHEDULE "D"
ELIGIBILITY CRITERIA

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.

2. Study Eligibility Criteria

To be an Eligible Study, the proposed Project to be studied 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) (i) in the case of a proposed Micro-Project, be expected to generate Annualized Electricity Savings of greater than 100 MWh but less than 700 MWh; or (ii) in the case of a Project, be expected to generate, based on a Detailed Engineering Study approved by the Technical Reviewer and the LDC, Annualized Electricity Savings of greater than 350 MWh; and
- (d) not be an Ineligible Project.

Pursuant to the terms and conditions of the Detailed Engineering Study Initiative,

- (e) the scheduled in-service date of a Project may not occur any later than two years following the date of execution of an agreement for the Project Incentive Initiative or any later than December 31, 2014, unless otherwise approved by the LDC.

3. Ineligible Projects

None of the following types of Projects qualifies to be studied (each, an "**Ineligible Project**"):

- (a) a Project that the LDC determines is more appropriately funded by another OPA 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 OPA (other than a Participant Incentive), the Province of Ontario or any agency thereof;
- (i) prior to submitting a Detailed Engineering Study Funding Application, the Participant has approved the undertaking of a Detailed Engineering Study or entered into an agreement with a contractor or consultant or ordered or purchased any equipment for use in relation to the Project;
- (j) an electricity generation Project, unless otherwise approved in writing by the LDC; or
- (k) a fuel-switching Project, unless otherwise approved in writing by the LDC.

SCHEDULE "E"

ARBITRATION PROVISIONS

- (a) Subject to and in accordance with the provisions of this Schedule "E", 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.
- (b) 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.
- (c) The arbitration will be conducted in English in the City of Toronto (or as otherwise agreed to by the Parties) at such place therein and 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.
- (d) 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.
- (e) Submission to arbitration under this Schedule "E" 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.

SCHEDULE "F"

FORM OF RELEASE AND WAIVER

RELEASE AND WAIVER AND CONSENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby, for itself and its successors and assigns:

- A. releases and forever discharges each of [NAME OF LDC] ("LDC"), the Ontario Power Authority ("OPA") and their respective representatives, affiliates, third party service providers and agents (collectively, the "Program Operators") and all of the respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns of the Program Operators (collectively, the "Representatives") (the Program Operators and the Representatives hereinafter collectively referred to as "Releasees") from any and all actions, causes of action, suits, complaints, disputes, debts, liabilities, obligations, damages, legal fees, costs, disbursements, expenses, claims and demands of every nature or kind whatsoever and howsoever arising, at law or in equity, or under any statute, including without limitation, claims for property damage, business interruption and personal injury of the undersigned's employees, officers, directors or licencees, which it can, will or may have by reason of any matter, cause or thing arising as a result of, in relation to or in connection with the attendance on one or more occasions by one or more of the employees, officers, directors, representatives, third party service providers or agents of any or all of the Program Operators (collectively, "Persons") at any and all facilities owned or occupied by the undersigned in connection with, arising out of or relating to the initiatives designed by the OPA for electricity conservation and demand management and directed at one of the commercial and institutional, industrial, low-income or residential electricity consumer groups (collectively referred to as the "CDM Program"), other than in the case of the gross negligence or willful misconduct of such Persons during such attendances;
- B. agrees that the undersigned will not make any claim or take any proceedings against any other person or entity with respect to any matter released and discharged in Section 1 above which may result in any claim arising against any of the Releasees for contribution or indemnity or other relief;
- C. without limiting the foregoing, the undersigned acknowledges, agrees and consents that by submitting an application ("Application") to participate in a CDM Program or any initiative thereof, whether or not its Application is ultimately accepted:
- (a) it hereby consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators, including all reports, data, personal information, records showing historical energy use and consumption, and other information of the undersigned or its subcontractors or representatives (collectively, the "Applicant Information") by the Program Operators for purposes relating to the operation, administration or assessment of the CDM Program, any initiative thereof or the Application, and in connection with any reporting activities relating to the CDM Program, which shall include, without limitation: (i) sharing of Applicant Information among the Program Operators; (ii) use by the Program Operators of the Applicant Information provided by the Participant to process any of the undersigned's Applications and to conduct, analyze and report on the results of surveys and modify the CDM Program based on such surveys; and (iii) disclosure to the Ontario Energy Board, the Independent Electricity System Operator, the Ontario Ministry of Energy or the Ontario Environmental Commissioner or their respective successors;
 - (b) it hereby consents to the disclosure by the OPA to the LDC of information regarding the Participant's past participation in other OPA funded conservation and demand management programs for the purpose of processing the Participant's Application; and
 - (c) this Release and Waiver and Consent and all Applicant Information, in the possession or control of the LDC and/or the OPA are subject to applicable laws that include the access provisions of the Municipal Freedom of Information and Protection of Privacy Act (Ontario) ("MFIPPA") or the Freedom of Information and Protection of Privacy Act (Ontario) ("FIPPA"), as the case may be, and that as a result, third parties may obtain access to the Applicant Information;
- D. the foregoing Release and Waiver and Consent will continue in full force and effect for the benefit of the Releasees and will apply to each Application submitted by the undersigned to the LDC and to the extent of any conflict between this Release and Waiver and Consent and the terms of any agreement or other document entered into by the undersigned and one or more of the Program Operators pursuant to or in connection with the CDM Program or any part thereof, or any initiative under any CDM Program, the terms of this Release and Waiver and Consent will prevail; and
- E. this Release and Waiver and Consent will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed this Release and Waiver and Consent by its duly authorized representative(s) as of the date below written.

Dated: [DATE]

[LEGAL NAME OF PERSON MAKING APPLICATION]

Name:

Title:

Name:

Title:

[I/We] have the authority to bind the corporation.

EXHIBIT C
PART A – MINIMUM REQUIREMENTS
PART B - PROJECT INCENTIVE CONTRACT

Part A – Minimum Requirements

The following minimum requirements of the attached form of Project Incentive Contract shall be included, without modification, in each Project Incentive Contract.

<u>Minimum Requirements</u>	<u>Description</u>
Section 1.1	Definitions
Section 1.2	Currency
Section 1.5	Entire Agreement
Section 1.6	Governing Law and Attornment
Section 2.1	Term and Survival
Section 3.1	Role of the Technical Reviewer
Section 3.2	Relationship with the Technical Reviewer
Section 4.1	Estimated Eligible Costs
Section 4.2	Actual Eligible Costs
Section 4.3	Project Incentive
Section 4.4	Adjustments to Project Incentive
Section 5.1	Energy Management Plan
Section 5.2	Requests for Payment and Solvency Certificates
Section 5.3	Status Reports and Final Status Report
Section 5.4	Review of Participant Documents
Section 5.5	M&V Reports
Section 6.1	General Responsibilities of Participant

<u>Minimum Requirements</u>	<u>Description</u>
Section 6.2	In-Service Date
Section 6.3	Change Notice re Decrease in Anticipated Electricity Savings
Section 7.1	Advanced Incentive Payment Option
Section 7.2	Deferred Incentive Payment Option
Section 7.3	Method of Payment
Section 7.4	Request for Payment
Section 7.5	Excess Electricity Savings
Section 8.1	Performance Security
Section 8.2	Composition of Security
Section 8.3	Adequacy of Security; Replacement Security
Section 9.1	EM&V
Section 9.2	Retention of Records and Audit Rights
Section 9.3	Inspection
Section 10.2	Representations of the Participant
Section 10.3	Survival of Representations and Warranties
Section 11.1	Participant Breach
Section 11.2	Remedies of the LDC
Section 11.3	Netting Against Other Performance Security
Section 11.4	Remedies Cumulative
Section 12.1	No Warranty
Section 12.2	Limitation of Liability
Section 12.3	Indemnification by the Participant
Section 13.1	Confidentiality Covenant

<u>Minimum Requirements</u>	<u>Description</u>
Section 13.2	Injunctive Relief
Section 13.4	MFIPPA and FIPPA Compliance
Section 14.1 (f)	No extension of the In-Service Date beyond December 31, 2014 in the event of Force Majeure
Section 16.1	Environmental Attributes
Section 16.6	Third Party Beneficiaries
Section 16.7	Assignment
Section 16.8	Inspection Not Waiver
Section 16.10	Project Communications
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 I	Liquidated Damages Calculations
Schedule J	Engineering Study
Schedule K	M&V Plan

The following sections or actions included in the attached form of Project Incentive Contract shall require the prior written consent of the OPA before the LDC may approve or undertake a transaction, an action or timeline included in the Project Incentive Contract.

<u>Sections or actions where the OPA prior written consent is required</u>	<u>Description</u>
Anticipated Electricity Savings	Calculation of Anticipated Electricity Savings or any changes to the Anticipated Electricity Savings to be approved by the LDC
Section 6.2(a)	In-Service Date
Section 11.1(j)	Consent to a material amendment to a Project or Portfolio
Schedule E – Section 1.3 (h)	Approval of a Project for which any financial incentive has been, is being or may be received from the OPA (other than an Incentive), the Province of Ontario or any agency thereof
Schedule E – Section 1.3 (j)	Approval of a Generation Project as an Eligible Project
Schedule E – Section 1.3 (k)	Approval of a fuel-switching Project as an Eligible Project

PART B – Project Incentive Contract

See attached Contract

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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SCHEDULE "J" ENGINEERING STUDY		1
SCHEDULE "K" M&V PLAN		2

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, Micro-Project or Portfolio

Attached as Schedule "K" is an M&V Plan which includes a detailed description of the Project, Micro-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 or Micro-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, Micro-Project or Portfolio, this Agreement will become effective upon the date hereof and will expire:
 - (i) in respect of a Project (other than a Micro-Project), on the 10th anniversary of the In-Service Date of the Project;
 - (ii) in respect of a Portfolio, on the 10th anniversary of the latest In-Service Date of the Projects in the Portfolio; or
 - (iii) in respect of a Micro-Project, on the earlier of: (i) the last day of the Expected Life of such Micro-Project; or (ii) the 5th anniversary of the In-Service Date of the Micro-Project,

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 OPA to provide independent technical expertise and administrative assistance in respect of the Project Incentive Initiative. The LDC has contracted with the OPA 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;
 - (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 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;
 - (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 OPA 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 OPA 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 OPA 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 OPA in writing that such information is confidential;
- (k) acknowledge the assistance provided by the LDC and the OPA in all Project Communications, provided that the LDC and the OPA 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, 2014.
- (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, which such election is not available in the case of a Micro-Project, 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:

$$APS = FPS \times RF$$

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 OPA 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 OPA EM&V Protocols, the Participant will cooperate with the LDC, the OPA 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 OPA, and/or their respective designates to such books, accounts, records and other data and: (A) make available to the LDC, the OPA 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 OPA 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 OPA reasonably requires, provide reasonable access to the LDC, the OPA and/or their respective designates to its premises for purposes of performing an inspection or technical audit for purposes of the OPA 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; and
- (o) the Participant is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

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 remedying 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 remedying 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.

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 OPA, 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 OPA on an ongoing basis as part of its participation in the Project Incentive Initiative or other CDM initiatives offered by the OPA and may do so without further notice to or further consent of the Participant; and the LDC and OPA 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 OPA, 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 OPA 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 OPA 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 OPA, respectively, or its Representatives to the Participant or provided by the Participant to the LDC or the OPA, 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 OPA, 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 OPA 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; and
- (v) the Participant may acknowledge the assistance provided by the LDC and the OPA in all public communications, provided that the LDC and the OPA 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 OPA, 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 OPA, as the case may be, within seven calendar days of being directed to do so by the LDC or the OPA, 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 OPA, 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, 2014.
- (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, 2014, 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 OPA 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 OPA 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 OPA, and not for the LDC's own benefit, free and clear of all liens, claims and encumbrances other than those in favour of the OPA, all of the Participant's right, title, benefit and interest in and to all Electricity Savings Environmental Attributes, and the OPA 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 OPA, 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 OPA, 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 OPA, 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 OPA 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 OPA, 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 OPA 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 OPA and the Indemnified Parties as specified in this Agreement, and the LDC accepts such appointment. The LDC is the agent of the OPA 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 OPA, 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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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. Where the Expected Life of a Micro-Project is less than 5 years, then, in the case of a Micro-Project, Electricity Savings during the period between the end of the Expected Life and the 5th anniversary of the In-Service Date will be deemed to be nil.

“Anticipated Electricity Savings” means, in each M&V Reporting Period specified in the M&V Plan, 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.

“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 OPA 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 OPA, (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 OPA, 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 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 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 (other than a Micro-Project), or on the 5th anniversary thereof in the case of a Micro-Project.

“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.

“Generation” means a process used to produce energy in the form of electricity.

“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 IESO, the OEB, the Electrical Safety Authority, the Environmental Commissioner’s Office, and any Person acting under the authority of any of the foregoing, but excluding the OPA.

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

“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 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.

“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”.

“Micro-Project” means a stand-alone Project, which, when installed, is expected to deliver at least 100 MWh of Annualized Electricity Savings and not more than 700 MWh of Annualized Electricity Savings.

“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, other than in the case of a Micro-Project in which case the Minimum Expected Life is 1 year 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.

“OPA” means the Ontario Power Authority or its successor.

“OPA EM&V Protocols” means the methods and processes that the OPA develops for the evaluation, measurement and verification of CDM programs and initiatives, as such methods and processes may be amended from time to time.

“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 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 OPA, 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 and “Project”, where appropriate in accordance with the terms hereof, includes a Micro-Project, as such Project is described in the M&V Plan.

“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. In determining the Project Payback of a Micro-

Project where the Expected Life for the Micro-Project is less than 5 years, the annualized Project Benefits shall be calculated using only the period of Expected Life with the resulting amount of Project Incentive multiplied by the number of years in the Expected Life then divided by 5.

“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”.

“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.

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

“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.

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	1st 50% decrease of	2nd 50% decrease of	100% decrease of
------------------	----------------------------	----------------------------	-------------------------

Performance Security (as per adjustments in Table A above)	Performance Security in accordance with Section 8.1(c)(i)	Performance Security in accordance with Section 8.1(c)(ii)	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

version 1.3 2010-11-12 15:25:53

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"/> Thlrd 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:

Sub Total:

Completed by:

HST:

(name)

(Company Name)

Grand Total:

(signature)

(Date)

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</i> (Canada).]
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 [REDACTED] **[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 Ontario Power Authority, 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 [REDACTED] **[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) (i) in the case of a proposed Micro-Project, be expected to generate Annualized Electricity Savings of greater than 100 MWh but less than 700 MWh; or (ii) in the case of a Project, 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, 2014; and
- (e) not be project of a type described in Section 1.3 of this Schedule “E”.

For certainty, Preliminary Engineering Studies are optional for Micro-Projects and Projects and Detailed Engineering Studies are optional for Micro-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 OPA 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 OPA (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; 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; and
 - (iv) no such Project in the Portfolio may be a Micro-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 Ontario Power Authority 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

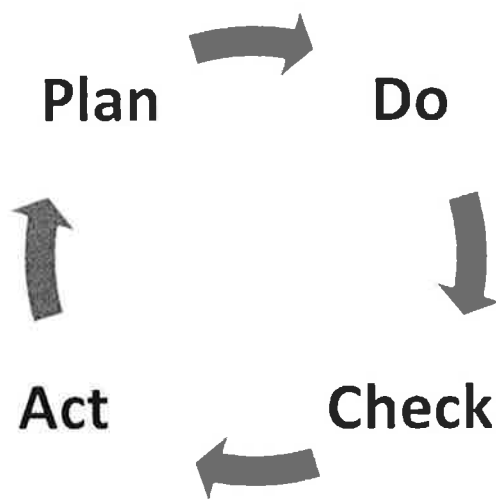
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PREFACE TO THE ENERGY MANAGEMENT PLAN TEMPLATE:

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 OPA 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:>

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
Electricity			
Natural Gas			
Fuel Oil			
Other fuel			
Water			
Units of Production #1			
Units of Production #2			

<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
Fans						
Pumps						
Compressed Air						
Material Handling						
Heating						
Lighting						
Process Equipment						
Other						
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 OPA 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:

<i>Year</i>	<i>Savings High (MWh)</i>	<i>Savings Medium (MWh)</i>	<i>Savings Low (MWh)</i>
<i>1</i>			
<i>2</i>			
<i>3</i>			
<i>4</i>			
<i>5</i>			

<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			

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>.

Energy Conservation Projects Tracking

[illegible]

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”):

$$\text{LD} = \text{Project Incentive paid to date} + \text{Costs}$$

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

$$\text{LD} = ((\text{Aggregate Anticipated Electricity Savings}) - \text{actual Electricity Savings during the period between In-Service Date and the date of the Participant Event of Default}) \times (\text{Project Incentive/Aggregate Anticipated Electricity Savings}) + \text{Costs}$$

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”):

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

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”):

$$\text{LD} = ((\text{Annualized Electricity Savings} \times \text{Persistent Shortfall Reduction}) \times \text{remaining Electricity Savings Period after the Persistent Shortfall Event of Default}) \times (\text{Net Project Incentive/Aggregate Anticipated Electricity Savings})$$

SCHEDULE "J"
ENGINEERING STUDY

[NTD: To be attached.]

SCHEDULE “K”

M&V PLAN

[NTD: to be attached]

MASTER PAYMENT REQUISITION

Date: _____

Company Name (Cheque Payable to):			
Address:			
City:	Province:	Postal Code:	Date (dd/mm/yy):
Contact Name:	Phone:	FAX:	
Participant Invoice #:	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 <div> <input type="checkbox"/> Advance Payment <div> <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 </div> </div> <div> <input type="checkbox"/> Deferred Payment <div> <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 </div> </div>	
<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)	

		Incentive Breakdown			
Total eligible incentive		Payments	Amount	Recommended by	Employer of recommende
Incentives Paid to date		First			
Amount this payment:		Second			
Balance due:		Third			
		Fourth			
Add Logic		Balance			
		TOTAL			

INVOICING: List of supporting invoices from customer

Vendor Invoice #	Invoice Date	Date invoice paid	Vendor	Description	Amount

Comments:

Sub Total:

HST:

Grand Totals:

(Date)

EXHIBIT E
RELEASE AND WAIVER AND CONSENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby, for itself and its successors and assigns:

1. releases and forever discharges each of [NAME OF LDC] (“**LDC**”), the Ontario Power Authority (“**OPA**”) and their respective representatives, affiliates, third party service providers and agents (collectively, the “**Program Operators**”) and all of the respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns of the Program Operators (collectively, the “**Representatives**”) (the Program Operators and the Representatives hereinafter collectively referred to as “**Releasees**”) from any and all actions, causes of action, suits, complaints, disputes, debts, liabilities, obligations, damages, legal fees, costs, disbursements, expenses, claims and demands of every nature or kind whatsoever and howsoever arising, at law or in equity, or under any statute, including without limitation, claims for property damage, business interruption and personal injury of the undersigned’s employees, officers, directors or licencees, which it can, will or may have by reason of any matter, cause or thing arising as a result of, in relation to or in connection with the attendance on one or more occasions by one or more of the employees, officers, directors, representatives, third party service providers or agents of any or all of the Program Operators (collectively, “**Persons**”) at any and all facilities owned or occupied by the undersigned in connection with, arising out of or relating to the initiatives designed by the OPA for electricity conservation and demand management and directed at one of the commercial and institutional, industrial, low-income or residential electricity consumer groups (collectively referred to as the “**CDM Program**”), other than in the case of the gross negligence or willful misconduct of such Persons during such attendances;
2. agrees that the undersigned will not make any claim or take any proceedings against any other person or entity with respect to any matter released and discharged in Section 1 above which may result in any claim arising against any of the Releasees for contribution or indemnity or other relief;
3. without limiting the foregoing, the undersigned acknowledges, agrees and consents that by submitting an application (“**Application**”) to participate in a CDM Program or any initiative thereof, whether or not its Application is ultimately accepted:
 - (a) it hereby consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators, including all reports, data, personal information, records showing historical energy use and consumption, and other information of the undersigned or its subcontractors or representatives (collectively, the “**Applicant Information**”) by the Program Operators for purposes relating to the operation, administration or assessment of the CDM Program, any initiative thereof or the Application, and in connection with any reporting activities relating to the CDM Program, which shall include, without limitation: (i) sharing of Applicant Information among the Program Operators; (ii) use by the Program Operators of the Applicant Information provided by the Participant to process any of the undersigned’s Applications and to conduct, analyze and report on the results of

surveys and modify the CDM Program based on such surveys; and (iii) disclosure to the Ontario Energy Board, the Independent Electricity System Operator, the Ontario Ministry of Energy or the Ontario Environmental Commissioner or their respective successors;

- (b) it hereby consents to the disclosure by the OPA to the LDC of information regarding the Participant's past participation in other OPA funded conservation and demand management programs for the purpose of processing the Participant's Application; and
 - (c) this Release and Waiver and Consent and all Applicant Information, in the possession or control of the LDC and/or the OPA are subject to applicable laws that include the access provisions of the Municipal Freedom of Information and Protection of Privacy Act (Ontario) ("MFIPPA") or the Freedom of Information and Protection of Privacy Act (Ontario) ("FIPPA"), as the case may be, and that as a result, third parties may obtain access to the Applicant Information;
4. the foregoing Release and Waiver and Consent will continue in full force and effect for the benefit of the Releasees and will apply to each Application submitted by the undersigned to the LDC and to the extent of any conflict between this Release and Waiver and Consent and the terms of any agreement or other document entered into by the undersigned and one or more of the Program Operators pursuant to or in connection with the CDM Program or any part thereof, or any initiative under any CDM Program, the terms of this Release and Waiver and Consent will prevail; and
5. this Release and Waiver and Consent will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed this Release and Waiver and Consent by its duly authorized representative(s) as of the date below written.

Dated: **[DATE]** _____

[LEGAL NAME OF PERSON MAKING APPLICATION]

Name:
Title:

Name:
Title:

[I/We] have the authority to bind the corporation.

EXHIBIT F
ENERGY ASSESSMENT REPORT

Energy Assessment Report
<Template>

Prepared by: Name of Employee
 Department
 Company Name

TABLE OF CONTENTS:

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ENERGY CONSERVATION TARGETS:	6
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Purpose

The Energy Assessment Report is to be prepared by an LDC Key Account Manager ("KAM") for and/or with a customer. The Report can be used for a variety of purposes including: 1) help the KAM and the customer identify energy management opportunities, 2) support an application for an Energy Manager, M&T system etc; or 3) be used as the basis for an Energy Management Plan.

Executive Summary:

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

<Ideas to include:

1. *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*
2. *Top 3 to 5 high-potential energy conservation capital projects with estimated savings, incentives, capital costs and timelines,*

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

Energy Assessment Report 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)*
 - 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. *Hours of operation and number of shifts (identify any recent changes or anticipated changes to hours of operation and shifts)*
4. *Physical location and access to resources,*
5. *List specifics of past conservation projects and successes.*
6. *Describe any existing Metering/monitoring systems,*
7. *List past energy and feasibility studies,*
8. *Key challenges and constraints to achieving energy reduction goals (resources, capital, expertise, corporate commitment, data, etc.>*

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 identify energy management opportunities.>

Fuel source usage and productivity 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
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Natural Gas			
Fuel Oil			
Other fuel			
Water			
Units of Production #1			
Units of Production #2			

<It is best to slice the energy pie for each fuel source in as many ways as possible that are meaningful to the customer 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
Fans						
Pumps						
Compressed Air						
Material Handling						
Heating						
Lighting						
Process Equipment						
Other						
Total:						

Another way of showing electrical energy use breakdown by process:

Unit Process	MWh/yr	Operating	% of Total	Uncertainty	Source of Energy
---------------------	---------------	------------------	-------------------	--------------------	-------------------------

		Peak MW		+/-%	Information
Saw Mill					
Planer Mill					
Lumber Drying					
Plywood Mill					
Chipper Mill					
Offices					
Total:					

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

<Research typical energy intensity for the 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
Big Fan #1	40,000 MWh		VFD	5,000 MWh		Consultant Study	Oct. 2009
Air Compressor	20,000 MWh		Replace comp.	2,000 MWh		Internal Study	Jan. 2010
Melter #1	90,000 MWh		Heat recovery	10,000 MWh		Rough Estimate	Mar. 2010

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

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			

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:

(complete on a best efforts basis)

Conservation Measure	Feasibility Study Complete?	Estimated Energy Savings (MWh)	Estimated Operating Peak MW reduction	Estimated Cost (\$)	Available Incentives (\$)	Project Payback (years)	Productivity, quality, or yield savings	Ease of implementation (easy, medium, hard)	Risk
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			

EXHIBIT G
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]

EXHIBIT H
LDC ANNUAL REPORT

LDC Name:

LDC Contact Person:

Note: this report is cumulative, and should include all projects from January 1, 2011

Energy Manager and KAM Reporting

	# of FTE at the Time of Reporting	Training (please provide a summary of training received in the preceding year for KAMs and REMs)
Energy Managers -- Industrial Employed		
Energy Managers - Roving		
Key Account Managers		

Project Reporting

	Date of application	Project ID	Project Description	NAICS	Facility MW	Facility Annual MWh	Project MW	Project Annualized MWh	Cost of Project	Incentive Amount	Project Originator: KAM, Industrial EM, Roving EM, Other	Status update*
Incented Capital Projects (separate line for each individual project)												
Total Capital Projects												
Non-incented projects that are attributable to the funded Energy Manager (separate line for each individual project)												

	Date of application	Project ID	Project Description	NAICS	Facility MW	Facility Annual MWh	Project MW	Project Annualized MWh	Cost of Project	Incentive Amount	Project Originator: KAM, Industrial EM, Roving EM, Other	Status update*
Total non-incented projects												
Total PES & DES												
M&T Systems (separate line for each individual project)												
Total M&T Systems												

Status update should cover:

- Status of application
- Status of commissioning
- In-service date
- Status of contract management

EXHIBIT I
FORM OF ENERGY MANAGEMENT PLAN

Energy Management Plan

<Template>

Prepared by: Name of Employee
 Department
 Company Name

Table of Contents:

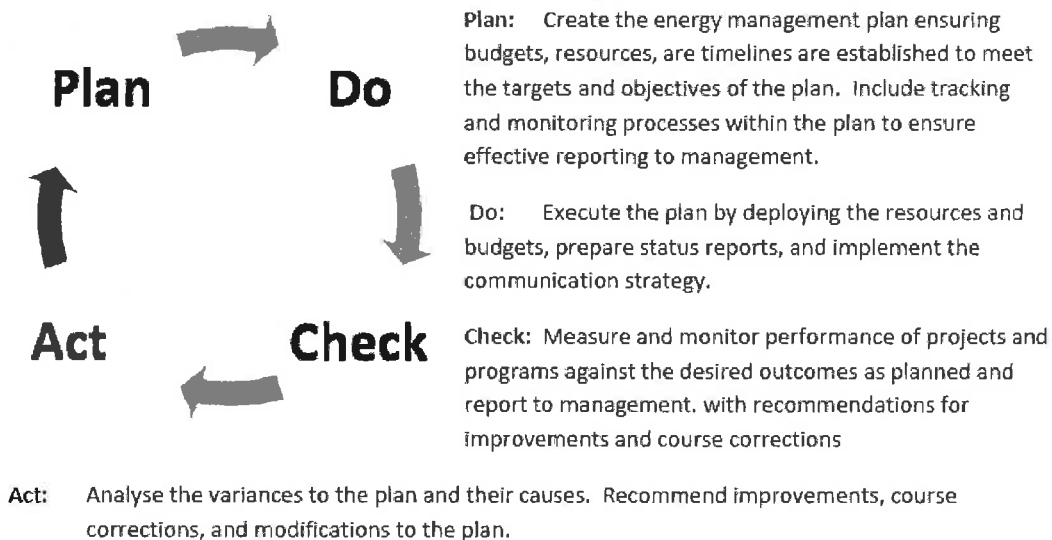
Preface to the Energy Management Plan Template:.....	3
Executive Summary:.....	4
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Energy Team:	6
Energy Baseline:.....	6
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Energy Conservation Targets:	10
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Preface 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:



While OPA 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:

- 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 and operational change initiatives 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)*
 - 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.

Name	Position	Energy Champion?	Percent of Time on Energy Team
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
Electricity			
Natural Gas			
Fuel Oil			
Other fuel			
Water			
Units of Production #1			
Units of Production #2			

<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
Fans						
Pumps						
Compressed Air						

Material Handling						
Heating						
Lighting						
Process Equipment						
Other						
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
Saw Mill					
Planer Mill					
Lumber Drying					
Plywood Mill					
Chipper Mill					
Offices					
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:

<i>System Name</i>	<i>Annual Energy Consumption</i>	<i>Operating Peak MW</i>	<i>Conservation Measure</i>	<i>Estimated Savings</i>	<i>Estimated Operating Peak MW Reduction</i>	<i>Source of Information</i>	<i>Date of Information</i>
<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>

Demand Response Opportunities:

<i>Equipment or process name providing DR</i>	<i>Peak MW Load</i>	<i>Potential average MW load during DR event.</i>	<i>Average MW of DR potential</i>	<i>Potential number of continuous hours available for providing DR</i>	<i>Restrictions with providing DR.</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 OPA 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:

<i>Year</i>	<i>Savings High (MWh)</i>	<i>Savings Medium (MWh)</i>	<i>Savings Low (MWh)</i>
<i>1</i>			
<i>2</i>			
<i>3</i>			
<i>4</i>			
<i>5</i>			

<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*
- *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:

Conservation Measure	Feasibility Study Complete?	Estimated Energy Savings (MWh)	Estimated Operating Peak MW reduction	Estimated Cost (\$)	Available Incentives (\$)	Project Payback (years)	Productivity, or quality, or yield savings	Ease of implementation (easy, medium, hard)	Risk
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			

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>.

Industrial Program

**Process and System Upgrades Initiatives Schedule “D-2”
to Master CDM Program Agreement**

**PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014:
MONITORING AND TARGETING INITIATIVE**

**Initiative Schedule “D-2”
to Master CDM Program Agreement**

**PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014:
MONITORING AND TARGETING INITIATIVE**

PREREQUISITE

Only LDCs who have Registered for the Process and System Upgrades Initiatives 2011 – 2014: (1) Preliminary Engineering Study Initiative, (2) Detailed Engineering Study Initiative, and (3) Project Incentive Initiative Schedule “D-1” (the “**Schedule D-1**”) may participate in this Initiative.

RECITALS:

1. The “Process and System Upgrades Initiatives” are offered under the Industrial Program and incorporate the following Initiatives: (i) Preliminary Engineering Study Initiative; (ii) Detailed Engineering Study Initiative; (iii) Project Incentive Initiative; (iv) Monitoring & Targeting Initiative; (v) Metering and Instrumentation Library (enabling measure); (vi) Energy Manager Initiative; and (vii) Key Account Manager Initiative.
2. The Initiative described in this Schedule is the Monitoring & Targeting Initiative and this Schedule is an Initiative Schedule. The Initiative offers Distribution Consumers the opportunity to access funding for the installation of M&T Systems in order to deliver at the end of 24 months and sustain for the term of the M&T Agreement at a minimum the Savings Target.
3. The LDC has Registered for the Industrial Program and this Initiative is a Registered Initiative.
4. The Initiative in this Schedule is available to Distribution Consumers that employ an Energy Manager (as defined in Schedule D-3) or a staff person in an equivalent position and provides Participant Incentives for the installation and use of M&T Systems.
5. LDCs, through their relationship with Distribution Consumers, will encourage and assist such consumers to apply for this Initiative.

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Schedule, capitalized terms that are not otherwise defined will have the respective meanings ascribed to them in the Master Agreement and the following terms will have the following meanings in this Schedule:

“**Applicant**” has the meaning ascribed thereto in the Schedule D-1.

“Eligibility Criteria” means the Eligibility Criteria that must be satisfied to qualify as Eligible Costs, an Eligible Person or an Eligible Project for this Initiative or for the M&T System to be eligible for a Participant Incentive, as further provided in the M&T Agreement.

“Eligible Costs” means the costs that meet the Eligibility Criteria set out in the M&T Agreement under the title “Eligible Costs”, which costs include Installation Costs.

“Eligible Person” means a Person that meets the Eligibility Criteria set out in the M&T Agreement under the title “Participant Eligibility Criteria”.

“Eligible Project” means a Project that meets the Eligibility Criteria set out in the M&T Agreement under the title “M&T Project Eligibility Criteria”.

“Energy Assessment Report” has the meaning ascribed thereto in the Schedule D-1.

“Facility Load Factor” (“FLF”) means the actual annual electricity consumption of a Facility expressed in MWh (“AA”) divided by the product of the one hour period in any calendar year of greatest electricity consumption of the Facility expressed in MW (“FAP”) multiplied by 8760 hours (FLF = AA/(FAP x 8760 hours)).

“Installation Costs” means the total installation costs to be incurred by an Applicant in connection with the design, selection, purchase and installation of an M&T System.

“Master Payment Requisition” has the meaning ascribed thereto in the Schedule D-1.

“M&T Agreement” means a contract to be entered into by the LDC with a Participant in accordance with section 3.1(f), for funding of an M&T System, which contract shall have a term of 5 years, subject to earlier termination pursuant to the provisions thereof.

“M&T Annual Report” means a document prepared by the Participant for purposes of fulfilling its annual reporting obligations specified in the M&T Agreement and as further provided in the M&T annual report requirements attached to the M&T Agreement.

“M&T Annual Report Review Form” means a document prepared by the LDC for purposes of reviewing the M&T Annual Report and assessing the performance of the M&T System, the form and substance of which may be modified, supplemented or replaced by the OPA from time to time.

“M&T Application Review Form” means a document prepared by the Technical Reviewer for purposes of reviewing an Application, the form and substance of which may be modified, supplemented or replaced by the OPA from time to time.

“M&T System” means a system that monitors the energy performance (including electricity performance) of a System relative to the production of such System, for purposes which include setting targets for future energy performance, and assisting with the implementation of saving targets through continuous feedback obtained or received from the M&T System.

“Release and Waiver” has the meaning ascribed thereto in Schedule D-1.

“**Savings Target**” means savings achieved at the end of 24 months and sustained for the term of the M&T Agreement and are a minimum of 0.2 MW of Peak Demand Savings, as well as MWh savings equal to the product of 0.2 MW, the Facility Load Factor and 8760 hours ($MWh = 0.2 \text{ MW} \times \text{FLF} \times 8760 \text{ hours}$).

“**Schedule D-1**” has the meaning ascribed thereto in the Prerequisite section.

“**System**” has the meaning ascribed thereto in Schedule D-1.

“**Technical Reviewer**” has the meaning ascribed thereto in Schedule D-1.

“**Third Party Contributions**” means any financial or other contribution (including the value of contributions in kind) towards the Eligible Costs in respect of the M&T System from or by any Person other than the Participant or the LDC.

1.2 Section References

Unless otherwise indicated herein, any reference in this Schedule to an article, Exhibit or section refers to the article, exhibit or section to this Schedule.

1.3 List of Exhibits

The following Exhibit is to be attached to and incorporated into and is to be read together with this Schedule and shall form part of this Schedule:

Exhibit A	-	Part A – Minimum Requirements
		Part B - M&T Agreement

ARTICLE 2 OPA AND LDC OBLIGATIONS

All of the respective obligations of the LDC and the OPA set out in sections 2.1 and 2.2 of the Schedule D-1 apply to, and are incorporated by reference in, this Schedule, *mutatis mutandis*, in addition to the further obligations set forth in this Schedule.

ARTICLE 3 PARTICIPANT INCENTIVE

3.1 Application Review

- (a) The LDC will assist Applicants in completing an Application. The LDC may use an Energy Assessment Report, or similar document, as a supporting document to the Application to be submitted by the Applicant in order to verify the potential of such Applicant in reaching the Savings Target. Before providing a complete copy of the Application to the Technical Reviewer, the LDC will ensure (i) that such Application

is complete, includes a signed Release and Waiver in favour of, among others, the LDC, the Technical Reviewer, and the OPA (provided that if the Applicant has previously provided a Release and Waiver in favour of such Persons with respect to another CDM Program or Initiative, such requirement shall be satisfied if the Participant provides a copy of such previously-provided Release and Waiver with such Application), and (ii) that the Applicant is an Eligible Person.

- (b) During the review of the Application, the LDC, where necessary, will arrange for appropriate communication between the Technical Reviewer and the Applicant, or the Technical Reviewer will communicate directly with the Applicant, if clarification on any aspect of the Application is required.
- (c) Upon the completion of its review of an Application provided by the LDC, the Technical Reviewer will provide to the LDC an M&T Application Review Form, which will include, among other things, the Technical Reviewer's recommendation to approve or reject such Application and the Applicant's estimated Participant Incentive amount, if any. The Technical Reviewer will also create and provide to the LDC a Master Payment Requisition for the M&T System.
- (d) If the Technical Reviewer does not recommend approval of an Application, or if the LDC rejects an Application notwithstanding the Technical Reviewer's recommendation for approval, the LDC will not enter into an M&T Agreement with the Applicant. The LDC will notify the Applicant and will communicate the reasons for rejecting the Application within a reasonable period. The LDC may allow the Applicant a reasonable period of time to re-submit a revised Application to address the deficiencies of the Application, provided that such revised Application will be subject to the terms and conditions of the Initiative in effect at the time of the resubmission.
- (e) If the Technical Reviewer recommends the approval of the Application, with or without amendment, then upon receipt of the M&T Application Review Form, the LDC will, if it decides to approve the Application and the estimated Participant Incentive amount recommended by the Technical Reviewer, communicate the approval of the Application. The LDC will also offer to enter into an M&T Agreement with the Applicant.
- (f) Each M&T Agreement entered into by an LDC with an Applicant must contain, at a minimum, and without modification, (i) the provisions included in Part B of Exhibit A identified as minimum requirements in Part A of Exhibit A, as applicable; (ii) an amount for the estimated Participant Incentive up to the maximum amount specified by the Technical Reviewer in the applicable M&T System Application Review; and (iii) a description of the M&T System as approved by the Technical Reviewer.
- (g) Upon receipt by the LDC of a fully executed M&T Agreement from a Participant, the LDC will provide an actual copy or an electronic copy (in a format that may be electronically read) of such contract to the OPA and the Technical Reviewer.

- (h) Upon the LDC's receipt of written notification from a Participant that the installation and commissioning of the M&T System has been completed, the LDC shall confirm that a registered professional engineer licensed to practice in Ontario has provided written confirmation that the M&T System has been installed as per the description set out in Schedule B of the M&T Agreement. Such registered professional engineer may be an employee of a Participant.

3.2 Payment – Participant Incentive

- (a) The LDC may approve, as the Approved Amount (as that term is defined in the M&T Agreement), 80% of the amount calculated by subtracting any Third Party Contributions received, or that will be received, by a Participant from the estimated Eligible Costs to be incurred by such Participant in respect of the M&T System that is the subject of the M&T Agreement; provided, however, that in no event shall such Approved Amount exceed the lesser of \$75,000 and the amount specified by the Technical Reviewer in the applicable M&T Application Review Form. For greater certainty, each amount referred to in this Section 3.2(a) is exclusive of Applicable Taxes.
- (b) The LDC will pay the Participant Incentives to the applicable Participants in accordance with the terms of their respective M&T Agreement.

3.3 Reporting Obligations

- (a) The LDC will ensure that each Participant fulfills in a timely manner the reporting obligations specified in its respective M&T Agreement. If the Participant fails to report in a timely manner, then the LDC shall take appropriate remedial action as outlined in the M&T Agreement. The LDC will provide the reports and information provided by each Participant to the OPA when received. The reporting obligations of each Participant will include the annual filing of an M&T Annual Report with the LDC for a period of five years following the installation of its respective M&T System.
- (b) The LDC will review the M&T Annual Report received from each Participant using the M&T Annual Report Review Form. If the LDC has any questions about a specific M&T Annual Report, it may request such Participant to have access to the Participant's site or System to review and inspect the M&T System and its operation.
- (c) The LDC shall submit to the OPA an Annual Report in the form set out in Exhibit H of Schedule D-1 by March 31st of each year summarizing the Initiative activities from the previous calendar year.

3.4 Defining Peak Demand Savings in Early M&T Agreements

The LDC acknowledges that, pursuant to the Master Agreement, the definition of Peak Demand Savings is to be determined pursuant to the OPA EM&V Protocols, which remain to be issued as of the date this Initiative is first made available for Registration. Upon the issuance by the OPA of these initial OPA EM&V Protocols pursuant to the Master Agreement, the OPA shall, by written

notice to the LDC, provide the definition of Peak Demand Savings determined pursuant to such OPA EM&V Protocols, which notice may also include an amended and restated form of the M&T Agreement set out in Part B of Exhibit A to reflect such definition. Upon the LDC's receipt of such notice, the definition of Peak Demand Savings in the form of M&T Agreement set out in Part B of Exhibit A shall be deemed to be amended to reflect such definition, or, if the OPA includes in such notice an amended and restated form of M&T Agreement to reflect such amended definition, Part B of Exhibit A shall be deemed to be amended accordingly, such that the form of M&T Agreement therein shall be deemed to be replaced by such amended and restated form of M&T Agreement.

ARTICLE 4 PAYMENT TO LDC

Upon receipt from the LDC of the applicable documentation from a Participant in accordance with the M&T Agreement, the Technical Reviewer will update the Master Payment Requisition for such Participant accordingly and will provide such updated Master Payment Requisition to the LDC with a copy to the OPA. The LDC will issue an invoice to the OPA, with the Master Payment Requisition attached, requesting the payment of the Participant Incentives. Concurrently with the provision by the LDC of an invoice, subject to the invoicing provisions in Section 4.6 of the Master Agreement, *mutatis mutandis*, the OPA will pay the applicable Participant Incentives to the LDC. Upon receipt, the LDC will pay the Participant Incentives to the applicable Participant, in accordance with the terms and conditions of the Master Agreement and in accordance with the terms of its respective M&T Agreement.

EXHIBIT A

Part A – Minimum Requirements

Part B - M&T Agreement

Part A – Minimum Requirements

The following minimum requirements of the attached form of M&T Agreement shall be included, without modification, in each M&T Agreement.

<u>Minimum Requirements</u>	<u>Description</u>
Section 1	Defined Terms
Section 2	M&T System
Sections 3 (a), (b), (c), (d) and (e)	Payment
Section 4	Participant's Obligations
Section 5	M&T Annual Report
Section 6	Communication with Technical Reviewer
Section 7	Term
Section 8	Environmental Attributes
Section 9	Representations and Warranties
Section 10	Evaluation, Monitoring and Verification; Audit
Section 11	No Warranty
Section 12	Limitation of Liability and Indemnity
Section 13	Confidentiality
Section 14	Injunctive Relief
Section 15	MFIPPA and FIPPA Compliance
Section 19	Entire Agreement
Section 20	Amendments
Section 21	Governing Law and Attornment

<u>Minimum Requirements</u>	<u>Description</u>
Section 22	Successors and Assigns
Section 25	Third Party Beneficiaries
Schedule A	Definitions
Schedule B	Description of M&T System
Schedule C	Eligibility Criteria
Schedule D	M&T Annual Report Requirements
Schedule F	Form of Release and Waiver

Part B – M&T Agreement

See attached Agreement

PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014

MONITORING AND TARGETING AGREEMENT

THIS AGREEMENT made as of the [DAY] day of [MONTH], [YEAR],

BETWEEN:

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

(the "LDC")

- and -

[LEGAL NAME OF THE PARTICIPANT], a [LEGAL FORM OF THE PARTICIPANT] governed by the laws of [JURISDICTION OF THE PARTICIPANT],

(the "Participant")

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

WHEREAS the Participant has submitted an M&T Application to the LDC to access funding for the installation of an M&T System;

AND WHEREAS the Participant reasonably expects that the M&T System will generate at a minimum the Savings Target;

AND WHEREAS the LDC has approved the M&T Application;

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

1. **Defined Terms.**

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

2. **M&T System.**

The Participant agrees to install an M&T System as described in Schedule "B", and prepare and file the M&T Annual Report as set out in Section 5.

3. **Payment.**

(a) The approved Participant Incentive is \$_____ (the "Approved Amount").

(b) Subject to the Participant satisfying all of its obligations herein contained, the LDC agrees to pay the Participant Incentive to the Participant as follows:

(i) 50% of the Approved Amount, within 60 days after the execution of this Agreement by the LDC and the Participant;

(ii) subject to Section 3(b)(iii), the difference between:

(A) the lesser of (i) the Approved Amount and (ii) 80% of the amount calculated by subtracting any Third Party Contributions received by the Participant from the actual Eligible Costs incurred by the Participant in respect of the M&T System (as set out in the invoices provided by the Participant), and

(B) the first instalment payment received by the Participant pursuant to Section 3(b)(i),

will be paid, within 60 days after receipt of the second M&T Annual Report from the Participant confirming that the Savings Target has been achieved and is sustainable; and

- (iii) if the Participant has not achieved the Savings Target as per Section 3(b)(ii), the LDC will pay to the Participant a *prorata* of the payment calculated pursuant to Section 3(b)(ii) which will be calculated on the MWh savings generated by the M&T System relative to the MWh savings component of the Savings Target that the Participant expected to achieve as set out in Schedule "B".
- (c) All payments hereunder will be made in Canadian dollars by cheque or by electronic funds transfer to the Participant's account or such other mode of payment at the sole discretion of the LDC.
- (d) All payments hereunder are conditional on the Participant providing an invoice to the LDC together with sufficient documentation to support and substantiate the Participant Incentive payments. The Participant represents and warrants to the LDC each time it provides an invoice to the LDC that the actual costs set out in invoices as Eligible Costs by the Participant to support the calculation of the Participant Incentive qualify as Eligible Costs as provided in Schedule "C";
- (e) In addition to the Participant Incentive, the LDC will pay any Applicable Taxes on the Participant 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 Participant 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 Participant 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.

4. Participant's Obligations

In addition to the other obligations contained in this Agreement, the Participant will fulfill the following obligations:

- (a) develop actionable recommendations to achieve the Savings Target based on the data obtained from the M&T System within 12 months of the installation of the M&T System;
- (b) implement any Project identified by the Participant with a Project Payback of less than 12 months within 12 months of identifying such Project in the M&T Annual Report;
- (c) achieve the Savings Target within 24 months of the installation of the M&T System and sustain such Savings Target during the term of this Agreement;
- (d) notify the LDC upon the completion of the installation and commissioning of the M&T System and provide the LDC with written confirmation of the installation from a registered professional engineer licensed to practice in Ontario, who may be an employee of the Participant; and
- (e) commission the M&T System within six months of the date of this Agreement.

5. M&T Annual Report.

- (a) The Participant will prepare and file with the LDC a M&T Annual Report for each 12 month period following the completion of the installation of the M&T System for a period of 5 years. Each M&T Annual Reports is due one month following the end of the 12 month period that is the subject of the report.
- (b) The LDC will review each M&T Annual Report based on reporting criteria agreed upon by the LDC and the Participant, which must meet the minimum requirements set out in Schedule "D". Incomplete M&T Annual Reports will be returned by the LDC to the Participant for remedial action.

6. Communication with Technical Reviewer.

The Participant will cooperate and provide on a timely basis the requested information to the LDC or the Technical Reviewer should the LDC or the Technical Reviewer, respectively, require clarification from the Participant when reviewing the M&T Annual Report or require access to the Participant's Facility or System to review and inspect the M&T System and its operation. The Participant shall, at the same time as it provides information to the Technical Reviewer, provide a copy of such information to the LDC.

7. Term.

This Agreement will terminate on the earliest of:

- (a) the Participant's failure to observe or perform any obligation required to be observed or performed under this Agreement and such failure continues for a period of thirty (30) calendar days after delivery of written notice by the LDC to cure such failure;
- (b) the Participant becomes or is declared Insolvent, becomes the subject of any proceeding related to its liquidation or insolvency which is not dismissed within ninety (90) calendar days, or makes an assignment for the benefit of creditors;
- (c) six months and one day after the date hereof if the M&T System has not been commissioned; and
- (d) 5 years after the date the M&T System was installed and in-service.

Sections 3(e), 7, 8, 10, 11, 12, 13, 14, 15, 16, 21 and 25, 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 termination of this Agreement.

8. Environmental Attributes.

All right, title and interest in and to all benefits or entitlements associated with Environmental Attributes are hereby unconditionally and absolutely transferred and assigned, or to the extent transfer or assignment is not permitted, held in trust for, by the Participant to, or in favour of, the LDC in its capacity as agent for and on behalf of the OPA, and not for the LDC's own benefit. Until the OPA notifies the Participant otherwise, the LDC, in its capacity as agent, shall be entitled, unilaterally and without the consent of the Participant, to deal with such Environmental Attributes on behalf of the OPA in any manner the LDC determines. The Participant acknowledges that the OPA may direct the Participant in the same manner as the LDC and that until the OPA notifies the Participant otherwise the LDC may direct the Participant to take such actions and do all such things necessary to certify, obtain, qualify and register with the relevant authorities or agencies such Environmental Attributes for the purpose of transferring, assigning, or holding in trust, such Environmental Attributes to and for the OPA and the Participant shall comply with such directions, and the Participant will be entitled to reimbursement of the cost of complying with such direction, provided that the LDC, acting reasonably, has approved such cost in writing prior to the cost being incurred by the Participant.

9. Representations and Warranties.

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 purchase and installation of a M&T System without the Participant Incentive;
- (b) the Participant will contribute a minimum of 20% of the Eligible Costs incurred for the purchase and installation of the M&T System;
- (c) as of the date hereof, the Participant satisfies the Participant Eligibility Criteria provided in Schedule "C", and the estimated costs relating to the M&T System qualify as Eligible Costs as provided in Schedule "C";
- (d) the Participant has executed and delivered the Release and Waiver, and has not taken any actions to amend or suspend it or to terminate its existence and it continues in full force and effect as of the date hereof; and
- (e) the Participant has not entered into an agreement with a contractor or a consultant and has not ordered or purchased any equipment for use in relation to the M&T System.

10. Evaluation, Monitoring and Verification; Audit.

- (a) The performance and administration of this Agreement will be subject to the OPA EM&V Protocols, which will include evaluation of the effectiveness of this Agreement in meeting the objectives of the M&T Initiative. In furtherance of the OPA EM&V Protocols, the Participant will cooperate with the LDC, the OPA 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.
- (b) The Participant and the LDC will both keep complete and accurate books, accounts and records and all other data required by each of them respectively 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. On reasonable notice, at any time during normal business hours, the Participant will provide reasonable access to the LDC, the OPA, and/or their respective designates to such books, accounts, records and other data and: (A) at the reasonable request of the LDC and/or OPA, make available to the LDC, the OPA and/or their respective designates, the personnel of the Participant and its subcontractors involved in the installation, the commissioning and the operation of the M&T System and the maintenance of such books, accounts, records and data referred to above for the purpose of this Section 10; and (B) permit the LDC, the OPA and/or their respective designates to examine and audit and take copies and extracts from such documents.

11. **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 M&T Initiative hereunder is based on its own assessment of the M&T 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, demand savings or the achievement of the Savings Target, which is expressly disclaimed by the Participant.

12. **Limitation of Liability and Indemnity.**

(a) 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(b) 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 LAWYERS' AND ADVISORS' FEES SUFFERED OR INCURRED BY THE PARTICIPANT AND IN ANY EVENT LIMITED TO THE PARTICIPANT INCENTIVE PAYMENTS AMOUNT 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 THE OTHER INDEMNIFIED PARTIES (AS DEFINED IN SECTION 12(b) 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.

(b) The Participant (the "**Indemnifying Party**") will indemnify, defend and hold the LDC, the OPA, 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 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. The LDC will hold the benefit of the Participant's obligations under this Section 12 in the LDC's own right and, in trust, for the benefit of any other Indemnified Party.

13. **Confidentiality.**

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

provided that any such Person is aware of the provisions of this Section 13 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.

(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 OPA on an ongoing basis as part of its participation in the M&T Initiative or other CDM initiatives offered by the OPA and may do so without further notice to or further consent of the Participant; and the LDC and OPA may disclose and provide reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, to the OEB, the Ontario Ministry of Energy and the Ontario Environmental Commissioner for Handling by such entities provided that the LDC or the OPA, as the case may be, has in place with any such Person a written agreement that includes confidentiality obligations in respect of such Confidential Information that are comparable to those contained in this Section 13;
- (ii) this Agreement and all Confidential Information in the possession or control of the LDC, the OPA 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 OPA 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 OPA, respectively, or its Representatives to the Participant or provided by the Participant to the LDC or the OPA, 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 OPA, 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 OPA may at any time make public the Participant's participation in the M&T Initiative and data relating to the M&T System, including a description of the Project and type of Facility, historical energy use and consumption, aggregated with other studies in a manner intended to report on the M&T Initiative; and
- (v) the Participant may acknowledge the assistance provided by the LDC and the OPA in all public communications, provided that the LDC and the OPA will have the right to approve in writing all such public communications in advance.

14. Injunctive Relief.

Each Party acknowledges that any violation of the provisions of Section 13 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 Section 13, without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made. Nothing in this Section 14 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.

15. MFIPPA and FIPPA Compliance.

To the extent that the LDC or the OPA, 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):

- (a) to keep the Records in its possession secure;

- (b) to provide the Records to the LDC or the OPA, as the case may be, within seven calendar days of being directed to do so by the LDC or the OPA, 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 OPA, 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.

16. Dispute Resolution.

If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties will promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, a senior representative from each Party will meet, either in person or by telephone, to attempt to resolve the dispute. Each senior 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 Schedule "E" of this Agreement.

17. Schedules.

The following schedules are hereby incorporated in and form part of this Agreement:

Schedule "A" - Definitions

Schedule "B" – Description of M&T System

Schedule "C" - Eligibility Criteria

Schedule "D" – M&T Annual Report Requirements

Schedule "E" - Arbitration Provisions

Schedule "F" – Form of Release and Waiver

18. Headings.

The insertion of headings 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.

19. Entire Agreement.

Except as otherwise provided, this Agreement, together with the Release and Waiver, constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

20. Amendments.

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by both of the Parties.

21. 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 exclusive jurisdiction of the courts of the Province of Ontario.

22. Successors and Assigns.

This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and assigns. This Agreement may not be assigned by the Participant to another Person other than an affiliate except with the prior written consent of the LDC, which consent may be unreasonably withheld or delayed.

23. **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.

24. **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.

25. **Third Party Beneficiaries.**

Except as provided in Sections 8, 10, 12, 13, 14, 15 and this Section 25, this Agreement is solely for the benefit of:

- (a) the LDC, and 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 OPA of the applicable provisions set out in this Agreement, including Sections 10, 12, 13, 14, 15 and this Section 25, and the LDC accepts such appointment. The LDC is the agent of the OPA for the purpose of Section 8.

26. **No Partnership, etc.**

Nothing in this Agreement will be deemed to constitute a partnership or joint venture or create any fiduciary relationship between the LDC and the Participant.

27. **Force Majeure**

The LDC shall not be in default and shall not be deemed to be in default, of its obligations in this Agreement by reason of delay or of failure or inability to perform its obligations hereunder where the said delay, failure or inability is due solely to any cause which is unavoidable or beyond the reasonable control of the LDC, including without limitation any act of God or other cause which frustrates the performance of the LDC's obligations in this Agreement.

28. **Notices**

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:

●
Attention: ●
Fax: ●
E-mail: ●

With a copy to:

●
Attention: ●
Fax: ●
E-mail: ●

If to the Participant:

Attention: ●
Fax: ●
E-mail: ●

With a copy to:

●
Attention: ●
Fax: ●
E-mail: ●

29. **Counterparts.**

This Agreement may be executed in any number of counterparts and all such counterparts will, for all purposes, constitute one agreement binding on both Parties provided that each Party has signed at least one counterpart.

30. **Facsimile/Electronic Signatures.**

This Agreement may be executed and delivered by facsimile transmission or by any other method of electronic transmission and the Parties may rely upon all such signatures as though such signatures were original signatures.

[Remainder of page intentionally left blank.]

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:

"Agreement" means this Monitoring and Targeting Agreement, including all recitals and Schedules, as it or they may be amended, restated or supplemented from time to time.

"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.

"Approved Amount" has the meaning given to it in Section 3(a).

"Arbitrator" has the meaning given to it in Section (a) of Schedule "E".

"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.

"CDM" means electricity conservation and demand management.

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

"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.

"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 M&T Application, and, in the case of the LDC, includes the OPA 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 OPA, (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.

"Disclosing Party" has the meaning given to it in the definition of "Confidential Information".

"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.

"Eligible Costs" means the costs that meet the eligibility criteria set out in Section 2 of Schedule "C".

"Eligible Person" means a Person that satisfies the eligibility criteria set out in Section 1 of Schedule "C".

"Eligible M&T Project" means a Project that meets the eligibility criteria set out in Section 3 of Schedule "C".

"Energy Manager" means a person engaged by a Participant whose primary responsibility is to propose and lead methodologies and processes to reduce energy consumption in a Facility or a System.

"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, including:

- (a) all rights to any fungible or non-fungible attributes, whether arising from a Facility itself, from the interaction of a Facility with a Distribution System or the IESO-Controlled Grid or because of applicable Laws and Regulations 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

Laws and Regulations or voluntary programs; and specific Environmental Attributes include ownership rights to any applicable credits, entitlements or other instruments resulting from the interaction of a Facility or a Measure with a Distribution System or the IESO-Controlled Grid or as specified by applicable Laws and Regulations 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.

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

“Facility Load Factor” (“FLF”) means the actual annual electricity consumption of a Facility expressed in MWh (“AA”) divided by the product of the one hour period in any calendar year of greatest electricity consumption of the Facility expressed in MW (“FAP”) multiplied by 8760 hours (FLF = AA/(FAP x 8760 hours)).

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

“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 IESO, the OEB, the Electrical Safety Authority, the Ontario Environmental Commissioner, and any Person acting under the authority of any of the foregoing, but excluding the OPA.

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

“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 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.

“Indemnifiable Loss” has the meaning given to it in Section 12(b).

“Indemnified Party” has the meaning given to it in Section 12(b).

“Indemnifying Party” has the meaning given to it in Section 12(b).

“Insolvent”, in respect of a Person, means 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.

“Laws and Regulations” means:

- (a) applicable multi-national, international, federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- (b) applicable orders, decisions, codes, manuals, interpretation bulletins, judgments, injunctions, decrees, awards, directives and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority; and
- (d) any requirements under or prescribed by applicable common law.

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

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

“Measures” 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.

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

“**MW**” means a megawatt.

“**MWh**” means a megawatt hour.

“**M&T Annual Report**” means a document prepared by the Participant relating to the opportunities implemented due to the installation of the M&T System which meets the M&T Annual Report Requirements.

“**M&T Annual Report Requirements**” means the requirements set out in Schedule “D”.

“**M&T Application**” means an application (File Number ●, dated ● and confirmed by the LDC on ●) submitted by the Participant to the LDC for a Participant Incentive from the LDC prepared in accordance with instructions posted on the Website from time to time.

“**M&T Initiative**” means the OPA-designed initiative under the OPA’s Process and System Upgrades Initiatives designed to provide a Participant Incentive to a Participant for the purpose of installing a M&T System.

“**M&T System**” means a System that monitors the energy performance (including electricity performance) of a System relative to the production of such System, for purposes which include setting targets for future energy performance, and assisting with the implementation of savings targets through continuous feedback obtained or received from the M&T System.

“**M&V Plan**” means a measurement and verification plan outlining the methodology and activities to be undertaken to quantify and verify electricity savings from a Project.

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

“**OPA**” means the Ontario Power Authority or its successor.

“**OPA EM&V Protocols**” means the methods and processes that the OPA develops for the evaluation, measurement and verification of CDM programs and initiatives, as such methods and processes may be amended from time to time.

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

“**Participant Incentive**” means funding that may be paid by the LDC to the Participant pursuant to this Agreement.

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

“**Peak Demand Savings**” means [●] [Note to finalization: definition to be included in this form of agreement upon notice issued by the OPA pursuant to the Process and System Upgrades Initiatives 2011-2014: Monitoring and Targeting Initiative Schedule “D-2”].

“**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 identifiable individual or other information that is subject to any Privacy Laws.

“**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 or Facility, are expected to deliver the Savings Target.

“**Project Benefits**” means the annual electricity savings and benefits not related 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 Payback**” means estimated Project costs divided by Project Benefits.

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

“**Records**” has the meaning given to it in Section 13(c)(ii).

“**Release and Waiver**” means the release and waiver and consent in the form attached hereto at Schedule “F” executed by the Participant in favour of the LDC, among others, and submitted by the Participant with its M&T 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.

“**Savings Target**” means savings achieved at the end of 24 months and sustained for the term of this Agreement and are a minimum of 0.2 MW of Peak Demand Savings, as well as MWh savings equal to the product of 0.2 MW, the Facility Load Factor and 8760 hours ($MWh = 0.2 \text{ MW} \times FLF \times 8760 \text{ hours}$).

“**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.

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

“**Third Party Contributions**” means any financial or other contribution (including the value of contributions in kind) towards the Eligible Costs of the M&T System from or by any Person other than the Participant or the LDC.

“**Website**” means the website located at the address: <https://saveonenergy.ca/>.

SCHEDULE "B"
DESCRIPTION OF M&T SYSTEM

LDC Project Identification #: •

Participant Contact Information: •

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

Technical Reviewer: •

Company Representative:

i. **LDC:** •

ii. **Participant:** •

Municipal Address or Location: •

Type of Facility: •

Annual Hours of Operation: •

Description of the M&T System

- include a schematic of the proposed installation on the system
- location of installed meters
- attach vendors equipment capital cost and installation proposal

Energy Savings Justification

- Baseline of production, demand and energy consumption for the system/facility that will be monitored (based on the previous 12 months)
- List of action items/ projects/ plan to capture required savings of at least 0.2 MW and 0.2 MW x Facility Load Factor x 8760 hours.
- Details on proposed action items / projects such as costs, timeline, payback, potential savings
- M&V Plan, using International Performance Measurement and Verification Protocol, for proposed action items/project notes above.

Savings Target: 0.2 MW and _____ MWh

Participant Incentive: •

• **Project Budget:** •

Scheduled In-Service Date: •

Estimated Eligible Costs: •

Third Party Contributions: •

SCHEDULE "C"
ELIGIBILITY CRITERIA

1. Participant Eligibility Criteria

To be an Eligible Person under this M&T Initiative a Person must:

- (a) be an electricity consumer, whether or not a customer of the LDC, that is directly connected to, or behind the meter of another electricity consumer connected to, a Local Distribution Company's Distribution System and is in the LDC's service area;
- (b) not be Insolvent;
- (c) have a minimum annual electricity consumption for a Facility of at least 15,000 MWh for the previous calendar year; and
- (d) engage an Energy Manager or similar person for the duration of the term to manage the installation and operation of the M&T System.

2. Eligible Costs

The Eligible Costs that qualify for funding under this M&T Initiative include, but are not limited to, the following costs:

- (a) cost of the M&T System software;
- (b) cost of the M&T System sub-metering to collect electricity and process data;
- (c) installation costs;
- (d) cost of the training relating to the M&T System for Participant personnel; and
- (e) cost of commissioning the M&T System installation.

3. M&T Project Eligibility Criteria

To be an Eligible M&T Project, the proposed project must:

- (a) 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 within the LDC's service area; and
- (b) be in respect of a System or a Facility that has the potential to achieve the Savings Target.

Pursuant to the terms and conditions of the M&T Initiative,

- (c) no M&T Application may be submitted to the LDC later than December 31, 2012, unless otherwise approved by the LDC.

SCHEDULE "D"
M&T ANNUAL REPORT REQUIREMENTS

1. The M&T Annual Report must include:
 - (a) the First M&T Annual Report must include:
 - (i) a schematic of the system and the location of the installed meters;
 - (ii) confirmation of installation and proper operation;
 - (iii) consumption data for 12 months;
 - (iv) list of action items/ projects/ plan to capture required savings of at least 0.2 MW and $0.2 \text{ MW} \times \text{Facility Load Factor} \times 8760$ hours;
 - (v) details on proposed action items / projects such as costs, timeline, payback, potential savings;
 - (vi) project plan and Estimated Savings for implementation of identified projects with a pay back of less than one year; and
 - (vii) partial or major equipment or operational changes to the process within the last year.
 - (b) Subsequent M&T Annual Reports must include:
 - (i) consumption and applicable energy data of previous 12 months;
 - (ii) demonstrate, following the International Performance Measurement and Verification Protocol, that required savings are achieved/maintained;
 - (iii) partial or major equipment or operational changes to the process within the last year; and
 - (iv) update on Project plan and Estimated Savings for implementation of identified projects with a pay back of less than one year.
2. Additional guidance regarding reporting may be found in the OPA's "EMV Protocols & Requirements" and at the Efficiency Valuation Organisation website (www.evo-world.org)

SCHEDULE "E"

ARBITRATION PROVISIONS

- (a) Subject to and in accordance with the provisions of this Schedule "E", 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.
- (b) 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.
- (c) The arbitration will be conducted in English in the City of Toronto (unless otherwise agreed to by the Parties) at such place therein and 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.
- (d) 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.
- (e) Submission to arbitration under this Schedule "E" 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.

SCHEDULE "F"

FORM OF RELEASE AND WAIVER

RELEASE AND WAIVER AND CONSENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby, for itself and its successors and assigns:

- A. releases and forever discharges each of **[NAME OF LDC]** ("**LDC**"), the Ontario Power Authority ("**OPA**") and their respective representatives, affiliates, third party service providers and agents (collectively, the "**Program Operators**") and all of the respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns of the Program Operators (collectively, the "**Representatives**") (the Program Operators and the Representatives hereinafter collectively referred to as "**Releasees**") from any and all actions, causes of action, suits, complaints, disputes, debts, liabilities, obligations, damages, legal fees, costs, disbursements, expenses, claims and demands of every nature or kind whatsoever and howsoever arising, at law or in equity, or under any statute, including without limitation, claims for property damage, business interruption and personal injury of the undersigned's employees, officers, directors or licencees, which it can, will or may have by reason of any matter, cause or thing arising as a result of, in relation to or in connection with the attendance on one or more occasions by one or more of the employees, officers, directors, representatives, third party service providers or agents of any or all of the Program Operators (collectively, "**Persons**") at any and all facilities owned or occupied by the undersigned in connection with, arising out of or relating to the initiatives designed by the OPA for electricity conservation and demand management and directed at one of the commercial and institutional, industrial, low-income or residential electricity consumer groups (collectively referred to as the "**CDM Program**"), other than in the case of the gross negligence or willful misconduct of such Persons during such attendances;
- B. agrees that the undersigned will not make any claim or take any proceedings against any other person or entity with respect to any matter released and discharged in Section 1 above which may result in any claim arising against any of the Releasees for contribution or indemnity or other relief;
- C. without limiting the foregoing, the undersigned acknowledges, agrees and consents that by submitting an application ("**Application**") to participate in a CDM Program or any initiative thereof, whether or not its Application is ultimately accepted:
- (a) it hereby consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators, including all reports, data, personal information, records showing historical energy use and consumption, and other information of the undersigned or its subcontractors or representatives (collectively, the "**Applicant Information**") by the Program Operators for purposes relating to the operation, administration or assessment of the CDM Program, any initiative thereof or the Application, and in connection with any reporting activities relating to the CDM Program, which shall include, without limitation: (i) sharing of Applicant Information among the Program Operators; (ii) use by the Program Operators of the Applicant Information provided by the Participant to process any of the undersigned's Applications and to conduct, analyze and report on the results of surveys and modify the CDM Program based on such surveys; and (iii) disclosure to the Ontario Energy Board, the Independent Electricity System Operator, the Ontario Ministry of Energy or the Ontario Environmental Commissioner or their respective successors;
 - (b) it hereby consents to the disclosure by the OPA to the LDC of information regarding the Participant's past participation in other OPA funded conservation and demand management programs for the purpose of processing the Participant's Application; and
 - (c) this Release and Waiver and Consent and all Applicant Information, in the possession or control of the LDC and/or the OPA are subject to applicable laws that include the access provisions of the Municipal Freedom of Information and Protection of Privacy Act (Ontario) ("**MFIPPA**") or the Freedom of Information and Protection of Privacy Act (Ontario) ("**FIPPA**"), as the case may be, and that as a result, third parties may obtain access to the Applicant Information;
- D. the foregoing Release and Waiver and Consent will continue in full force and effect for the benefit of the Releasees and will apply to each Application submitted by the undersigned to the LDC and to the extent of any conflict between this Release and Waiver and Consent and the terms of any agreement or other document entered into by the undersigned and one or more of the Program Operators pursuant to or in connection with the CDM Program or any part thereof, or any initiative under any CDM Program, the terms of this Release and Waiver and Consent will prevail; and
- E. this Release and Waiver and Consent will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed this Release and Waiver and Consent by its duly authorized representative(s) as of the date below written.

Dated: **[DATE]** _____

[LEGAL NAME OF PERSON MAKING APPLICATION]

Name:
Title:

Name:
Title:

[I/We] have the authority to bind the corporation.

Industrial Program

**Process and System Upgrades Initiatives Schedule “D-3”
to Master CDM Program Agreement**

**PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014:
ENERGY MANAGER INITIATIVE 2011-2014**

**Initiative Schedule “D-3”
to Master CDM Program Agreement**

**PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014:
ENERGY MANAGER INITIATIVE 2011-2014**

PREREQUISITE

Only LDCs who have Registered for the Process and System Upgrades Initiatives 2011 – 2014: (1) Preliminary Engineering Study Initiative, (2) Detailed Engineering Study Initiative, and (3) Project Incentive Initiative Schedule “D-1” (the “**Schedule D-1**”) may participate in this Initiative.

RECITALS:

1. The “Process and System Upgrades Initiatives” are offered under the Industrial Program and incorporate the following Initiatives: (i) Preliminary Engineering Study Initiative; (ii) Detailed Engineering Study Initiative; (iii) Project Incentive Initiative; (iv) Monitoring & Targeting Initiative; (v) Metering and Instrumentation Library (enabling measure); (vi) Energy Manager Initiative; and (vii) Key Account Manager Initiative.
2. The Initiative in this Schedule is the Energy Manager Initiative and this Schedule is an Initiative Schedule. The Initiative offers Participants and LDCs the opportunity to access funding for the engagement of Energy Managers in order to deliver at a minimum the Annual Savings Target.
3. The LDC has Registered for the Industrial Program and the Energy Manager Initiative is a Registered Initiative.
4. The Initiative consists of two options through which financial support may be received for the engagement of Energy Managers:
 - (a) Capability Building Funding Amounts to enable a Distribution Consumer to engage an Energy Manager (an “**Embedded Energy Manager**”) at one or more of its Facilities; and
 - (b) Capability Building Funding Amounts to enable a LDC or group of LDCs to engage an Energy Manager (a “**Roving Energy Manager**”) to provide services to Distribution Consumers.

ARTICLE 1 INTERPRETATION

1.1 Definitions

Subject to Section 1.2, in this Schedule, capitalized terms that are not otherwise defined will have the respective meanings ascribed to them in the Master Agreement and the following terms will have the following meanings in this Schedule:

“Annual Savings Target” means savings arising in the applicable 12 month period commencing on the Energy Manager’s employment start date or an anniversary thereof, as the case may be, from the activities of an Energy Manager which are a minimum of 0.3 MW of Peak Demand Savings and MWh savings equal to the product of 0.3 MW, the Facility Load Factor and 8760 hours (MWh = 0.3 MW x FLF x 8760 hours) and which are sustained over the term of the engagement of the Energy Manager.

“Applicant” has the meaning ascribed thereto in the Schedule D-1.

“Electricity Savings” has the meaning ascribed thereto in the Schedule D-1.

“Eligibility Criteria” means the Eligibility Criteria that must be satisfied for a Participant or an LDC to qualify for financial support for the engagement of an Energy Manager, as further provided in the Embedded Energy Manager Agreement or in this Schedule.

“Embedded Energy Manager” has the meaning ascribed thereto in the recitals to this Schedule.

“Embedded Energy Manager Agreement” means a contract between the LDC and a Participant in accordance with Section 3.1(e), in respect of funding for the engagement of an Embedded Energy Manager by such Participant.

“Energy Assessment Report” has the meaning ascribed thereto in the Schedule D-1.

“Energy Management Plan” has the meaning ascribed thereto in the Schedule D-1.

“Energy Manager” means a person engaged by a Participant, an LDC or a Representative LDC whose primary responsibility is to propose and lead methodologies and processes to reduce energy consumption in a Facility or a System, and “Energy Manager” includes both an Embedded Energy Manager and a Roving Energy Manager.

“Energy Manager Application Review” means a document prepared by the Technical Reviewer for the purposes of reviewing an Application completed for the purpose of engaging an Energy Manager.

“Energy Manager Duties” means the minimum duties of the Energy Manager, substantially in the form of Exhibit B attached hereto, to be used by the Participant or the LDC when developing the Energy Manager’s job description.

“Energy Manager Initiative” means the Initiative designed to provide a financial incentive for the purpose of engaging an Energy Manager.

“Facility Load Factor” (“FLF”) means the actual annual MWh of a Facility (“AA”) divided by the product of the Facility annual peak MW (“FAP”) multiplied by 8760 hours (FLF = AA/(FAP x 8760 hours)).

“Installation Costs” means the total installation costs incurred by a Participant or a Distribution Consumer in connection with the design, selection, purchase and installation and implementation of a Project identified by an Energy Manager.

“Lead LDC” has the meaning described in Section 3.2(a).

“M&T System” means a system that monitors the energy performance (including electricity performance) of a System relative to the production of such system, for purposes which include setting targets for future energy performance, and assisting with the implementation of savings targets through continuous feedback obtained or received from the M&T System, as further defined in the Process and System Upgrades Initiatives 2011-2014: Monitoring & Targeting Initiative.

“Master Payment Requisition” has the meaning ascribed thereto in the Schedule D-1.

“Project” has the meaning ascribed thereto in the Schedule D-1.

“Quarterly Reports” means the report of energy management activities of a Participant or Distribution Consumers completed by an Energy Manager responsible for providing services to such Participant or Distribution Consumers, as the case may be, on a quarterly basis substantially in the Form of Exhibit D attached hereto, the form and substance of which may be modified, supplemented or replaced by the OPA from time to time.

“Release and Waiver” has the meaning ascribed thereto in the Schedule D-1.

“REM LDCs” has the meaning ascribed thereto in Section 4.1(a).

“Representative LDC” means the LDC representing a group of LDCs when making an Application.

“Roving Energy Manager” has the meaning ascribed thereto in the recitals to this Schedule.

“Satellite LDC” has the meaning ascribed thereto in Section 3.2(a).

“Simple Payback” means the calculation of the expected number of years it will take to recover the Installation Costs, and is calculated by (a) subtracting from the Installation Costs the sum of any Third Party Contributions and Participant Incentives, if any, and (b) dividing the difference thereof by the annualized benefits projected to be generated from the implementation of the Project.

“System” has the meaning ascribed thereto in the Schedule D-1.

“Technical Reviewer” has the meaning ascribed thereto in the Schedule D-1.

“Third Party Contribution” means any financial or other contribution (including the value of contributions in kind) towards the Installation Costs from or by any Person other than the Participant, the Distribution Consumer or the LDC.

1.2 Other Definitions

Notwithstanding the provisions of Section 1.1 of the Master Agreement, for the purposes of this Schedule, the term “Participant” means a Distribution Consumer who engages an Embedded Energy Manager and “Distribution Consumer” means those Distribution Consumers (as defined in the Master Agreement) to whom services are provided by a Roving Energy Manager.

1.3 Section References

Unless otherwise indicated herein, any reference in this Schedule to an article or section refers to the article or section in this Schedule.

1.4 List of Exhibits

The following exhibits are attached to and incorporated into and are to be read together with this Schedule and shall form part of this Schedule:

Exhibit A	-	Part A – Minimum Requirements
		Part B - Embedded Energy Manager Agreement
Exhibit B	-	Energy Manager Duties
Exhibit C	-	Evaluation, Measurement and Verification - Information
Exhibit D	-	Form of Quarterly Report

ARTICLE 2 OPA AND LDC OBLIGATIONS

All of the respective obligations of the LDC and the OPA set out in sections 2.1 and 2.2 of the Schedule D-1 apply to, and are incorporated by reference in, this Schedule, *mutatis mutandis*, in addition to the further obligations set forth in this Schedule.

ARTICLE 3 EMBEDDED ENERGY MANAGER

3.1 Application Review

- (a) The LDC will assist Applicants in completing an Application for an Embedded Energy Manager. An Energy Assessment Report, or similar document, may be used

by the LDC as a support document when verifying the potential of the Applicant in reaching the Annual Savings Target. Before accepting the Application, the LDC will ensure that (A) the Applicant meets all the Eligibility Criteria; and (B) the Application is complete and includes a copy of the Energy Assessment Report and a copy of the Release and Waiver (provided that if the Applicant has previously provided a Release and Waiver in favour of such Persons with respect to another CDM Program or Initiative, such requirement shall be satisfied if the Participant provides a copy of such previously-provided Release and Waiver with such Application). The LDC will have the option of reviewing the Application in-house or requesting the assistance of the Technical Reviewer to review the Application.

- (b) During the review of the Application, the LDC, where necessary, will arrange for appropriate communication between the Technical Reviewer and the Applicant, or the Technical Reviewer will communicate directly with the Applicant if clarification on any aspect of the Application is required.
- (c) Upon the completion of the review, the Technical Reviewer or the LDC will produce an Energy Manager Application Review and process a Master Payment Requisition.
- (d) Before approving the Application, the LDC will obtain the confirmation from the OPA that the total annual provincial budget allocated for this Initiative is sufficient to support the requested Capability Building Funding Amount.
- (e) If the LDC approves the Application or if the LDC accepts the Technical Reviewer's recommendation to approve the Application, the LDC will communicate the approval to the Applicant and will prepare and enter into an Embedded Energy Manager Agreement with the Applicant. Each Embedded Energy Manager Agreement entered into by an LDC with a Participant must contain, at a minimum and without modification, the provisions included in Part B of Exhibit A identified as minimum requirements in Part A of Exhibit A.
- (f) If the Technical Reviewer does not recommend the approval of an Application or if the LDC does not approve an Application, the LDC will not enter into an Embedded Energy Manager Agreement and will notify the Applicant and communicate the reasons for rejecting the Application within a reasonable period. The LDC may allow the Applicant a reasonable period of time to re-submit a revised Application to address the deficiencies of the Application, provided that such revised Application will be subject to the terms and conditions of the Initiative at the time of the resubmission.

3.2 Facilities in Multiple Service Areas

- (a) Where an Applicant has Facilities located in the service area of the LDC and of one or more other Local Distribution Companies (the "**Satellite LDCs**"), the Applicant is entitled to select the Local Distribution Company (the "**Lead LDC**") to which it will submit the Application provided that the Lead LDC has Registered for either or both of the Industrial Program and the C&I Program.

- (b) If the LDC is the Lead LDC, it will enter into the Embedded Energy Manager Agreement and will enter into other necessary and desirable arrangements with the Satellite LDCs in order to administer and perform the Embedded Energy Management Agreement or to allocate the obligations and responsibilities of the Lead LDC and the Satellite LDCs thereunder. The Lead LDC will also ensure that the Release and Waiver executed by the Applicant is in favour of the Satellite LDCs.
- (c) Any Annual Savings Targets arising from any Project implemented by a Participant will be attributed to the Local Distribution Company in whose service area such Project is implemented.

3.3 Reporting Obligations

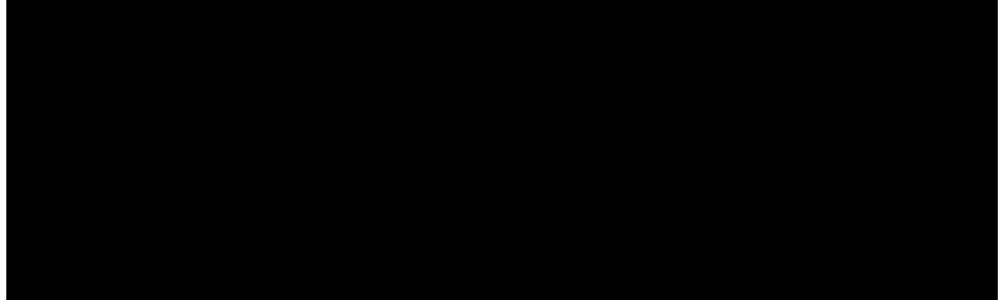
The LDC will ensure that each Participant fulfills in a timely manner the reporting obligations specified in the Embedded Energy Manager Agreement and will promptly provide copies of all reports received from the Participant to the OPA. The reporting obligations of the Participant will include, among other things, the filing of the following documents with the LDC:

- (a) *Energy Management Plan*
 - (i) Subject to the terms and conditions of the Embedded Energy Manager Agreement, the LDC will promptly review the Energy Management Plan submitted by each Participant. The LDC may request, but is not required to request, that the Technical Reviewer review a Participant's Energy Management Plan.
 - (ii) If the LDC has not approved the Energy Management Plan, the LDC will notify the Participant of the deficiencies and will advise the Participant that it may submit a revised Energy Management Plan if it believes such plan can address such deficiencies and thereby be accepted.
- (b) *Quarterly Reports*
 - (i) Subject to the terms and conditions of the Embedded Energy Manager Agreement, the LDC will promptly review each Quarterly Report submitted by a Participant.
 - (ii) If the LDC has not approved a Quarterly Report, the LDC will notify the Participant of the deficiencies and will advise the Participant that it shall submit a revised report that addresses such deficiencies and seek the LDC's approval of such revised report.
 - (iii) The LDC will ensure that each Quarterly Report submitted by a Participant is approved before making any payment of Capability Building Funding Amount.
 - (iv) The LDC shall update the Master Payment Requisition following receipt and approval of invoices and Quarterly Reports from the Participant.

3.4 Payment

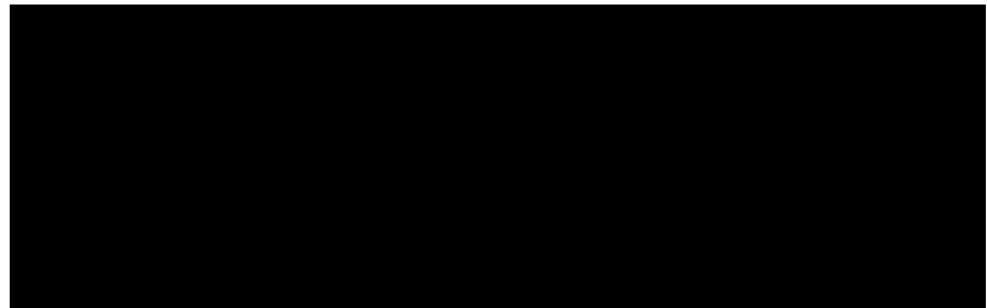
- (a) The maximum Capability Building Funding Amount that the LDC may approve or pay annually to a Participant for any one Embedded Energy Manager is the sum of:

(i)



plus,

(ii)



For greater certainty, each amount referred to in this Section 3.4(a) is exclusive of Applicable Taxes.

- (b) Upon receipt by the LDC of the applicable documentation from a Participant in accordance with the Embedded Energy Manager Agreement, the LDC will update the Master Payment Requisition for such Participant and will provide such updated Master Payment Requisition to the OPA along with the LDC's own invoice. Concurrently with the provision by the LDC of an updated Master Payment Requisition, and subject to the invoicing provisions in Section 4.6 of the Master Agreement, *mutatis mutandis*, the OPA will pay the applicable Capability Building Funding Amount to the LDC. Upon receipt from the OPA, the LDC will pay the Capability Building Funding Amount to the applicable Participant, in accordance with the terms and conditions of the Master Agreement and in accordance with the terms of the respective Embedded Energy Manager Agreement.

3.5 Defining Peak Demand Savings in Early Embedded Energy Manager Agreements

The LDC acknowledges that, pursuant to the Master Agreement, the definition of Peak Demand Savings is to be determined pursuant to the OPA EM&V Protocols, which remain to be issued as of the date this Initiative is first made available for Registration. Upon the issuance by the OPA of these initial OPA EM&V Protocols pursuant to the Master Agreement, the OPA shall, by written notice to the LDC, provide the definition of Peak Demand Savings determined pursuant to such OPA EM&V Protocols, which notice may also include an amended and restated form of the Embedded

Energy Manager Agreement set out in Part B of Exhibit A to reflect such definition. Upon the LDC's receipt of such notice, the definition of Peak Demand Savings in the form of Embedded Energy Manager Agreement set out in Part B of Exhibit A shall be deemed to be amended to reflect such definition, or, if the OPA includes in such notice an amended and restated form of Embedded Energy Manager Agreement to reflect such amended definition, Part B of Exhibit A shall be deemed to be amended accordingly, such that the form of Embedded Energy Manager Agreement therein shall be deemed to be replaced by such amended and restated form of Embedded Energy Manager Agreement.

ARTICLE 4

ROVING ENERGY MANAGER

4.1 Application Review

- (a) An LDC may participate in the Initiative by engaging a Roving Energy Manager itself or as a Representative LDC on behalf of one or more Local Distribution Companies that wish to collectively engage a Roving Energy Manager with the Representative LDC (collectively, the "**REM LDCs**"). If the LDC is the Representative LDC that acts on behalf of REM LDCs, it will notify the OPA that it is undertaking the role of the Representative LDC and the names of the REM LDCs in the group it represents. For the purpose of Article 4, "LDC" will refer either to the LDC by itself, or the LDC in its role as Representative LDC, as the case may be.
- (b) If the LDC wishes to engage a Roving Energy Manager itself or on behalf of itself and the REM LDCs, it must confirm and satisfy itself that the following criteria are met and that the following documents are included in a file prepared specifically for the purpose of participating in the Initiative (for the purposes of Article 4, such internal file, including all the supporting documents, is referred to as the "Application"): (i) the demonstration that the delivery of the Annual Savings Target can be achieved; (ii) a written commitment from a senior officer of each Distribution Consumer intended to be served by the Roving Energy Manager to document and undertake the Projects identified by the Roving Energy Manager with a Simple Payback of less than one year; and (iii) a copy of all of the Energy Assessment Reports. The Application will be reviewed and approved internally by the LDC or the LDC may request the assistance of the Technical Reviewer to review the Application. The LDC may complete, with the participation of each Distribution Consumer intended to be served by the Roving Energy Manager, an Energy Assessment Report and use it as a supporting document to the Application when verifying its potential in reaching the Annual Savings Target.
- (c) If the LDC is satisfied that it has the potential to achieve the Annual Savings Target and that the Application has been internally approved, the LDC will send a request for funding to the OPA and such request will include a copy of the Application. Upon approval of the funding request, the OPA will communicate the approval to the LDC and the LDC will engage a Roving Energy Manager. If the OPA does not approve the funding request, the LDC will notify the REM LDCs, if any, and the Distribution Consumers involved with the Application.

- (d) Requests for funding for a Roving Energy Manager to start in 2011 should be submitted to the OPA no later than June 1, 2011.

4.2 Engagement of Roving Energy Manager

- (a) If the LDC engages a Roving Energy Manager, the LDC (i) will enter into an employment contract with the Roving Energy Manager, (ii) will ensure that such Roving Energy Manager fulfills its responsibilities under such contract, (iii) will pay the Roving Energy Manager its salary in accordance with the terms of the contract, and (iv) will enter into a contract with each Distribution Consumer, which will include a Release and Waiver, before the Roving Energy Manager prepares an Energy Management Plan for such Distribution Consumer.
- (b) The LDC will ensure that the Roving Energy Manager it engages is professionally designated at all times during such engagement as a certified engineering technician, certified energy manager, or a licensed professional engineer in the province of Ontario, with a strong background in industrial energy use and energy management.
- (c) The LDC shall ensure that the Roving Energy Manager it engages does not provide services or seek to provide services to Participants who have engaged an Embedded Energy Manager.
- (d) The employment contract with the Roving Energy Manager shall include a copy of the Energy Manager Duties.

4.3 Reporting Requirements

- (a) The LDC will ensure that the Roving Energy Manager it engages develops an Energy Management Plan for each proposed Facility of each Distribution Consumer served by the Roving Energy Manager in order to achieve the Annual Savings Target.
- (b) The LDC will ensure that the Roving Energy Manager it engages delivers Quarterly Reports to the LDC and the OPA on the following terms:
 - (i) Quarterly Reports will be delivered within 30 days of the end of each quarter, subject to the following instructions:
 - (A) the first Quarterly Report due by the Roving Energy Manager shall be delivered in respect of the first full calendar quarter following the Roving Energy Manager's employment start date; and
 - (B) the last Quarterly Report for each twelve month period should provide a summary of the Electricity Savings achieved during such year and should include information as to whether or not the required minimum Annual Savings Target has been achieved.

- (ii) If the LDC has not approved a Quarterly Report, such reports will need to be revised in order to address the noted deficiencies and obtain the LDC's approval of such revised reports.

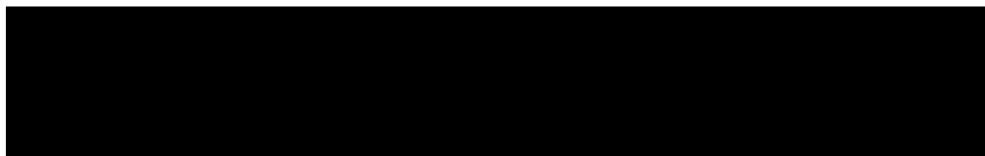
4.4 Facilities in Multiple Service Areas

- (a) Where one or more REM LDCs wish to collectively engage a Roving Energy Manager, the Representative LDC will enter into the necessary and desirable arrangements with the REM LDCs in order to allocate the obligations and responsibilities of the Representative LDC and the REM LDCs.
- (b) Any Annual Savings Targets arising from any Project implemented by a Distribution Consumer serviced by a Roving Energy Manager will be attributed to the Local Distribution Company in whose service area such Project was implemented.

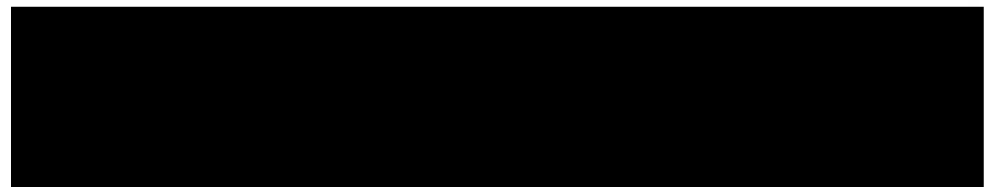
4.5 Payment

- (a) Pursuant to a request for funding made pursuant to Section 4.1(c), the OPA will pay a Capability Building Funding amount to the LDC determined in accordance with this Section. The maximum Capability Building Funding Amount that the OPA will pay to the LDC for the Roving Energy Manager is:

(i)



(ii)



provided that such amounts shall, for greater certainty, be prorated for any funding period that, pursuant to Section 5.1 is less than 12 months. For greater certainty, each amount referred to in this Section 4.5(a) is exclusive of Applicable Taxes.

- (b) The Capability Building Funding Amount for each Roving Energy Manager will be provided by the OPA to the LDC in a lump sum upon notification by the LDC to the OPA that the Roving Energy Manager has been engaged, pursuant to the approval of the Application.
- (c) Subject to the provisions of Section 5.1, the Capability Building Funding Amount for a Roving Energy Manager will be provided by the OPA to the LDC annually for each period of 12 months (or if applicable in the final year such shorter period of time), but not ending later than December 31, 2014.

- (d) Upon completion of each 12 month period (or such shorter period if applicable), the LDC shall reconcile, based on invoices provided by the LDC and/or the Roving Energy Manager, the actual expenditures, including salary and benefits of the Roving Energy Manager and contributions, assessments and taxes incurred by the LDC on such amounts, against the payment received from the OPA, and the difference shall, subject to the OPA's instructions, either be applied to future Roving Energy Manager Capability Building Funding Amounts or be reimbursed to the OPA.

ARTICLE 5 TERM OF FUNDING

5.1 Term and Extension

- (a) Subject to Sections 5.1(b) and 5.1(c), the term of the OPA's funding commitment for the Capability Building Funding Amount for the engagement of an Energy Manager will:
 - (i) for a Roving Energy Manager, be the period commencing on such Roving Energy Manager's employment start date and ending on December 31, 2014; or
 - (ii) for an Embedded Energy Manager, be an initial term of 12 months, provided that the Participant will have the option to request an extension of the initial term for a maximum of three additional terms equal to 12 months each (or less, if applicable, for the final period), but which shall end not later than December 31, 2014.

For greater certainty, the OPA will not pay any Capability Building Funding Amount in respect of any period of engagement of an Energy Manager after December 31, 2014.

- (b) Before approving a request from a Participant to extend the Capability Building Funding Amount for an Energy Manager, the LDC will obtain the confirmation from the OPA that the total provincial budget allocated for Energy Managers is sufficient to support such requested extension, and requests for such extension will take precedence over new Applications.
- (c) The funding commitment for an Energy Manager under this Initiative will terminate on the earliest to occur of any of the following:
 - (i) the LDC or the Participant does not replace a Roving Energy Manager or Embedded Energy Manager, as applicable, within four months of such position becoming vacant;
 - (ii) the annual report submitted by an LDC pursuant to Article 7 highlights performance or results from the Initiative activities that the OPA does not consider as meeting the Energy Manager's Duties as set out in Exhibit A when assessing such annual report reasonably; or

- (iii) the end of the 12 month (or shorter) period commencing on the Energy Manager's employment start date or an anniversary thereof, as applicable, during which any of the following events occurs:
 - (A) the Energy Manager fails to participate in and successfully complete the mandatory training programs pursuant to Article 8;
 - (B) the OPA determines that the Participant or the LDC failed to achieve the Annual Savings Target for the most recently completed 12 month period, as evidenced by implemented Projects or issuance of purchase orders for Projects to be implemented and as verified using the International Performance Measurement and Verification Protocol (IPMVP) as a guideline;
 - (C) the OPA determines that less than 30% of the Annual Savings Target for the most recently completed 12 month period was attributable to Projects not financed by any incentives or funding received from the OPA or an LDC; or
 - (D) the LDC or Participant, as applicable, fails or ceases to satisfy any other Eligibility Criteria set out in this Schedule or in the Embedded Energy Manager Agreement, as applicable.
- (d) For greater certainty, termination of the funding commitment provided by the OPA to an LDC pursuant to Section 5.1(a) or Section 5.1(c) shall not prejudice the entitlement of such Participant or LDC, respectively, to the Capability Building Funding Amount in respect of costs properly reimbursable pursuant to the provisions of this Schedule in respect of the period of the Energy Manager's employment up to the date of such termination, but in no event shall termination or severance payments or other costs related to termination of the employment of an Energy Manager for any reason be funded by the OPA.
- (e) With respect to the Eligibility Criteria set out in Section 5.1(c)(iii)(B), the OPA will include the unverified or estimated Electricity Savings and Peak Demand Savings arising from Projects located within the LDC's service area that are not financed by any incentives or funding received from the OPA or LDC in the reports provided by the OPA pursuant to Section 8.2 of the Master Agreement.

ARTICLE 6

PAYMENT TO LDC – ADMINISTRATION COSTS

In addition to the Capability Building Funding Amount received and payable to the Participant pursuant to Section 3.4 or to the Capability Building Funding Amount received by an LDC pursuant to Section 4.5, the OPA will pay to the LDC a Capability Building Funding Amount equal to 14.2% of the total Capability Building Funding Amounts (for greater certainty, exclusive of Applicable Taxes) received by such LDC in accordance with Sections 3.4 and 4.5 to compensate for a portion of the administration costs incurred by the LDC pursuant to the Initiative.

ARTICLE 7
LDC REPORTING OBLIGATIONS

The LDC shall submit to the OPA an annual report in the form set out in Exhibit H of Schedule D-1 by March 31st of each year summarizing the Initiative activities from the previous calendar year. The annual report shall also include all Projects that resulted from an Energy Manager's activities whether or not a Distribution Consumer received a Participant Incentive under the Process and System Upgrades Initiatives 2011 – 2014.

ARTICLE 8
ENERGY MANAGER TRAINING

Energy Managers will be required to participate in training programs, which may change from time to time. The LDC will ensure that the Embedded Energy Manager Agreements to which the LDC is a party and the Roving Energy Manager employment contract to which the LDC is a party provide that each Energy Manager attends such programs. Such training programs shall include the following mandatory training programs:

- (a) Detailed End-use program
- (b) Basic Energy Manager program (unless the Energy Manager can provide satisfactory evidence that the Energy Manager has already completed a similar program or has equivalent experience) and
- (c) Certified Energy Manager program (unless the Energy Manager is already designated as a Certified Energy Manager by the Association of Energy Engineers).

EXHIBIT A
PART A - MINIMUM REQUIREMENTS
AND
PART B - EMBEDDED ENERGY MANAGER AGREEMENT

Part A – Minimum Requirements

The following minimum requirements of the attached form of Embedded Energy Manager Agreement shall be included, without modification, in each Embedded Energy Manager Agreement.

<u>Minimum Requirements</u>	<u>Description</u>
Section 1	Defined Terms
Sections 2 (a), (b), (c) and (d)	Payment
Section 3	Participant’s Obligations
Section 4	EEM Training
Section 5	Reporting Obligations
Section 6	Communication with Technical Reviewer
Section 7	Term
Section 8	Environmental Attributes
Section 9	Representations and Warranties
Section 10	Evaluation, Monitoring and Verification; Audit
Section 11	No Warranty
Section 12	Limitation of Liability and Indemnity
Section 13	Confidentiality
Section 14	Injunctive Relief
Section 15	MFIPPA and FIPPA Compliance
Section 19	Entire Agreement
Section 21	Governing Law and Attornment

<u>Minimum Requirements</u>	<u>Description</u>
Section 22	Successors and Assigns
Section 25	Third Party Beneficiaries
Schedule “A”	Definitions
Schedule “B”	EEM Duties
Schedule “C”	Eligibility Criteria
Schedule “E”	Quarterly Report Template
Schedule “F”	Energy Management Plan Template
Schedule “G”	Incremental Annual Savings Target for Additional Term
Schedule “H”	Form of Release and Waiver

PART B – Embedded Energy Manager Agreement

See attached Agreement

PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014

EMBEDDED ENERGY MANAGER AGREEMENT

THIS AGREEMENT made as of the [DAY] day of [MONTH], [YEAR],

BETWEEN:

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

(the "LDC")

- and -

[LEGAL NAME OF THE PARTICIPANT], a [LEGAL FORM OF THE PARTICIPANT] governed by the laws of [JURISDICTION OF THE PARTICIPANT],

(the "Participant")

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

WHEREAS the Participant has submitted an Embedded Energy Manager (EEM) Application to the LDC to access funding for the employment of an EEM;

AND WHEREAS the Participant reasonably expects that it can deliver at a minimum the Annual Savings Target;

AND WHEREAS the LDC has approved the EEM Application;

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

1. Defined Terms.

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

2. Payment.

- (a) The approved Capability Building Funding Amount is \$_____ (the "Approved Amount") for a 12 month period.
- (b) Subject to Section 5(iv) and to the Participant satisfying all of its obligations herein contained, the LDC agrees to pay the Capability Building Funding Amount to the Participant as follows:
 - (i) 25% of the Approved Amount will be paid within 60 days of the LDC's acceptance of the first Quarterly Report,
 - (ii) 50% of the Approved Amount will be paid within 60 days of the LDC's acceptance of the second Quarterly Report and the Energy Management Plan, and
 - (iii) the difference between:
 - (A) the lesser of (i) the Approved Amount and (ii) the sum of:
 - a) 80% of the total payroll costs of the EEM per 12 month period including salary, wages and benefits, and contributions, assessments and taxes (for greater certainty, the term "taxes" does not include Applicable Taxes, if any) incurred in respect of such amounts to a maximum of \$100,000 per 12 month period, which amount shall, for greater certainty, be prorated for any funding period that is less than 12 months, and
 - b) 80% of the annual travel and appropriate related expenses incurred by the EEM per 12 month period (excluding, for greater certainty, the tuition cost of the EEM training required pursuant to section 4) to

a maximum of \$8,000 per 12 month period, which amount shall, for greater certainty, be prorated for any funding period that is less than 12 months; and

(B) the total of the amounts paid pursuant to Sections 2(b)(i) and (ii),

will be paid within 60 days of the LDC's acceptance of the fourth Quarterly Report (provided that the third Quarterly Report for the initial term or the additional term, as the case may be, was previously accepted by the LDC). For greater certainty, each amount referred to in this Section 2(b)(iii) is exclusive of Applicable Taxes.

- (c) All payments hereunder will be made in Canadian dollars by cheque or by electronic funds transfer to the Participant's account or such other mode of payment at the sole discretion of the LDC.
- (d) All payments hereunder are conditional on the Participant providing an invoice to the LDC together with sufficient documentation to support and substantiate the Capability Building Funding Amounts payments.
- (e) In addition to the Capability Building Funding Amount, the LDC will pay any Applicable Taxes on the Capability Building Funding Amount. 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 Capability Building Funding Amount. 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 Capability Building Funding Amount, 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.

3. Participant's Obligations.

In addition to the other obligations contained in this Agreement, the Participant will fulfill the following obligations:

- (a) enter into an employment agreement with the EEM, which will contain, at a minimum, the EEM duties attached hereto in Schedule "B" and respect the terms and conditions of such employment agreement;
- (b) the Participant will employ the EEM on a full time basis and will ensure that the EEM is professionally designated as a certified engineering technician or technologist, certified energy manager, or a licensed professional engineer in the province of Ontario, with a strong background in industrial energy use and energy management;
- (c) if the EEM is a current employee of the Participant, the Participant will provide to the LDC a written commitment from a senior officer that such employee's previous job will be filled by another employee;
- (d) no later than the tenth (10) Business Day prior to the 90th day of the commencement of the EEM's employment, the Participant will deliver a written notice to the LDC confirming that the Participant will continue to employ the EEM for the balance of the term of the EEM's employment agreement;
- (e) provide suitable operational support and work supplies to the EEM to allow the EEM to perform their duties under the employment agreement;
- (f) provide the LDC with a written commitment from the Participant signed by a senior officer of the Participant that it will document and undertake the Projects identified by the EEM with a Simple Payback Period of less than one year;
- (g) implement any Project identified by the EEM with a Simple Payback Period of less than one year within 12 months of identifying such Project in a Report;
- (h) achieve the Annual Savings Target within 12 months of entering into this Agreement as evidenced by implemented Projects or issuance of purchase orders for Projects to be implemented and as verified using the International Performance Measurement and Verification Protocol (IPMVP) as a guideline. For each additional 12 month term of this Agreement, if extended pursuant to Section 7, the Participant must maintain the Annual Savings Target and achieve an additional Annual Savings Target as further illustrated in the attached Schedule "G"; and
- (i) ensure that at least 30% of the Annual Savings Target is attributed to Projects not financed by any incentives received from the OPA or an LDC.

4. EEM Training.

The EEM will be required to participate in training programs, which may change from time to time, and the Participant will ensure that the EEM attends such programs. Mandatory training programs will include the following:

- (a) End-use program providing detailed information on electricity use by mechanical and electrical equipment and developed for the OPA;
- (b) Basic Energy Manager program (unless the EEM can provide satisfactory evidence that the EEM has already completed a similar program or has a similar experience);
- (c) Certified Energy Manager program (unless the EEM is already designated as a Certified Energy Manager by the Association of Energy Engineers).

5. Reporting Obligations.

The Participant will ensure that the EEM prepares and delivers to the LDC, for its approval, the following documents:

- (i) Energy Management Plan for each Facility occupied by the Participant, no later than 6 months after the EEM is hired, in order to achieve the Annual Savings Target, unless an Energy Management Plan already exists.
- (ii) Quarterly Reports will be delivered within 30 days of the end of each quarter of the term, subject to the following instructions:
 - A. the last Quarterly Report must indicate whether or not the required minimum Annual Savings Target has been achieved; and
 - B. all Reports must include reference to (x) all Projects identified by the EEM with a Simple Payback Period of less than one year and (y) all Projects that resulted from an EEM's activities whether or not the Project(s) received an incentive from the OPA or LDC.
- (iii) The LDC will review the Reports to ensure timely filing, completeness and progress from the previous Reports. If the LDC does not approve the Reports, such documents will need to be revised by the Participant in order to address the noted deficiencies and obtain the LDC's approval of such revised reports.
- (iv) The LDC will not make any Capability Building Funding Amount payment until it approves each Report required to be submitted by the Participant.

6. Communication with Technical Reviewer.

The Participant will cooperate and provide on a timely basis the requested information to the LDC or the Technical Reviewer should the LDC or the Technical Reviewer require clarification from the Participant when reviewing the Reports. The Participant shall, at the same time as it provides information to the Technical Reviewer, provide a copy of such information to the LDC.

7. Term.

- (a) This Agreement is for a term not greater than 12 months, but may be extended for incremental equivalent terms of up to 12 months at the discretion of the LDC subject to the Participant being in compliance with its obligations herein including in Section 3 and provided the EEM Initiative remains available. No more than three extensions will be granted. The Participant acknowledges that no term may extend past December 31, 2014.
- (b) This Agreement will terminate on the expiry of the term as provided in Section 7(a) or earlier as a result of:
 - (i) the Participant's failure to observe or perform any obligation required to be observed or performed under this Agreement and such failure continues for a period of thirty (30) calendar days after delivery of written notice by the LDC to cure such failure; or
 - (ii) the Participant becomes or is declared Insolvent, becomes the subject of any proceeding related to its liquidation or insolvency which is not dismissed within ninety (90) calendar days, or makes an assignment for the benefit of creditors.

Sections 2(c), 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 21 and 25, 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 termination of this Agreement.

8. Environmental Attributes.

All right, title and interest in and to all benefits or entitlements associated with Environmental Attributes are hereby unconditionally and absolutely transferred and assigned, or to the extent transfer or assignment is not permitted, held in trust for, by the Participant to, or in favour of, the LDC in its capacity as agent for and on behalf of the OPA, and not for the LDC's own benefit. Until the OPA notifies the Participant otherwise, the LDC, in its capacity as agent, shall be entitled, unilaterally and without the consent of the Participant, to deal with such Environmental Attributes on behalf of the OPA in any manner the LDC determines. The Participant acknowledges that the OPA may direct the Participant in the same manner as the LDC and that until the OPA notifies the Participant otherwise the LDC may direct the Participant to take such actions and do all such things necessary to certify, obtain, qualify and register with the relevant authorities or agencies such Environmental Attributes for the purpose of transferring, assigning, or holding in trust, such Environmental Attributes to and for the OPA and the Participant shall comply with such directions, and the Participant will be entitled to reimbursement of the cost of complying with such direction, provided that the LDC, acting reasonably, has approved such cost in writing prior to the cost being incurred by the Participant.

9. Representations and Warranties.

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 employment of an EEM without the Capability Building Funding Amount;
- (b) the Participant satisfies the eligibility criteria set out in Schedule "C" as of the date hereof, and
- (c) the Participant has executed and delivered the Release and Waiver, and has not taken any actions to amend or suspend it or to terminate its existence and it continues in full force and effect as of the date hereof.

10. Evaluation, Monitoring and Verification; Audit.

- (a) The performance and administration of this Agreement will be subject to the OPA EM&V Protocols, which will include evaluation of the effectiveness of this Agreement in meeting the objectives of the EEM Initiative. In furtherance of the OPA EM&V Protocols, the Participant will cooperate with the LDC, the OPA 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.
- (b) The Participant and the LDC will both keep complete and accurate books, accounts and records and all other data required by each of them respectively 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. On reasonable notice, at any time during normal business hours, the Participant will provide reasonable access to the LDC, the OPA, and/or their respective designates to such books, accounts, records and data and: (A) at the reasonable request of the LDC and/or the OPA, make available to the LDC, the OPA and/or their respective designates, the personnel of the Participant and its subcontractors involved in the operation of the Participant's business and the maintenance of such books, accounts, records and data referred to above for the purposes of this Section 10; and (B) permit the LDC, the OPA and/or their respective designates to examine and audit and take copies and extracts from such documents.

11. 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 EEM Initiative hereunder is based on its own assessment of the EEM 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 or demand savings, which is expressly disclaimed by the Participant.

12. Limitation of Liability and Indemnity.

(a) 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(b) 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 LAWYERS' AND OTHER ADVISORS' FEES SUFFERED OR INCURRED BY THE PARTICIPANT AND IN ANY EVENT LIMITED TO THE CAPABILITY BUILDING FUNDING AMOUNT 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 THE INDEMNIFIED PARTIES (AS DEFINED IN SECTION 12(b) 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.

(b) The Participant (the “**Indemnifying Party**”) will indemnify, defend and hold the LDC, the OPA, 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 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. The LDC will hold the benefit the Participant’s obligations under this Section 12 in the LDC’s own right and, in trust, for the benefit of any other Indemnified Party.

13. **Confidentiality.**

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

provided that any such Person is aware of the provisions of this Section 13 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.

(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 OPA on an ongoing basis as part of its participation in the EEM Initiative or other CDM initiatives offered by the OPA and may do so without further notice to or further consent of the Participant; and the LDC and OPA may disclose and provide reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, to the OEB, the Ontario Ministry of Energy and the Ontario Environmental Commissioner for Handling by such entities provided that the LDC or the OPA, as the case may be, has in place with any such Person a written agreement that includes confidentiality obligations in respect of such Confidential Information that are comparable to those contained in this Section 13;
- (ii) this Agreement and all Confidential Information in the possession or control of the LDC, the OPA 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 OPA 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 OPA, respectively, or its Representatives to the Participant or provided by the Participant to the LDC or the OPA, 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 OPA, 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 OPA may at any time make public the Participant's participation in the EEM Initiative and data relating to the EEM, including the achievement of electricity savings and demand savings including the Annual Savings Target, a description of the Projects identified by the EEM and the implementation of such Projects by the Participant, aggregated with other studies in a manner intended to report on the EEM Initiative; and
- (v) the Participant may acknowledge the assistance provided by the LDC and the OPA in all public communications, provided that the LDC and the OPA will have the right to approve in writing all such public communications in advance.

14. **Injunctive Relief.**

Each Party acknowledges that any violation of the provisions of Section 13 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 Section 13, without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made. Nothing in this Section 14 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.

15. **MFIPPA and FIPPA Compliance.**

To the extent that the LDC or the OPA, 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):

- (a) to keep the Records in its possession secure;
- (b) to provide the Records to the LDC or the OPA, as the case may be, within seven calendar days of being directed to do so by the LDC or the OPA, 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 OPA, 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.

16. **Dispute Resolution.**

If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties will promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, a senior representative from each Party will meet, either in person or by telephone, to attempt to resolve the dispute. Each senior 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 Schedule "D" of this Agreement.

17. **Schedules.**

The following schedules are hereby incorporated in and form part of this Agreement:

Schedule "A" - Definitions

Schedule "B" – EEM Duties

Schedule "C" - Eligibility Criteria

Schedule "D" - Arbitration Provisions

Schedule "E" – Quarterly Report Template

Schedule "F" – Energy Management Plan Template

Schedule "G" – Incremental Annual Savings Target for Additional Term

Schedule "H" – Form of Release and Waiver

18. **Headings.**

The insertion of headings 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.

19. **Entire Agreement.**

Except as otherwise provided, this Agreement, together with the Release and Waiver, constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

20. **Amendments.**

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by both of the Parties.

21. **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 exclusive jurisdiction of the courts of the Province of Ontario.

22. **Successors and Assigns.**

This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and assigns. This Agreement may not be assigned by the Participant except with the prior written consent of the LDC, which consent may be unreasonably withheld or delayed.

23. **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.

24. **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.

25. **Third Party Beneficiaries.**

Except as provided in Sections 8, 10, 12, 13, 14, 15 and this Section 25, 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 OPA of the applicable provisions set out in this Agreement, including Sections 10, 12, 13, 14, 15 and this Section 25, and the LDC accepts such appointment. The LDC is the agent of the OPA for the purpose of Section 8.

26. No Partnership, etc.

Nothing in this Agreement will be deemed to constitute a partnership or joint venture or create any fiduciary relationship between the LDC and the Participant.

27. Force Majeure

The LDC shall not be in default and shall not be deemed to be in default, of its obligations in this Agreement by reason of delay or of failure or inability to perform its obligations hereunder where the said delay, failure or inability is due solely to any cause which is unavoidable or beyond the reasonable control of the LDC, including without limitation any act of God or other cause which frustrates the performance of the LDC's obligations in this Agreement.

28. Notices

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:

-
- Attention: ●
- Fax: ●
- E-mail: ●

With a copy to:

-
- Attention: ●
- Fax: ●
- E-mail: ●

If to the Participant:

-
- Attention: ●
- Fax: ●
- E-mail: ●

With a copy to:

-
- Attention: ●
- Fax: ●
- E-mail: ●

29. Counterparts.

This Agreement may be executed in any number of counterparts and all such counterparts will, for all purposes, constitute one agreement binding on both Parties provided that each Party has signed at least one counterpart.

30. **Facsimile/Electronic Signatures.**

This Agreement may be executed and delivered by facsimile transmission or by any other method of electronic transmission and the Parties may rely upon all such signatures as though such signatures were original signatures.

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:

"Agreement" means this Embedded Energy Manager Agreement, including all recitals and Schedules, as it or they may be amended, restated or supplemented from time to time.

"Annual Savings Target" means savings arising in a 12 month period commencing on the EEM's employment start date or anniversary thereof, as the case may be, from the activities of an EEM which are a minimum of 0.3 MW of Peak Demand Savings and MWh savings equal to the product of 0.3 MW, the Facility Load Factor and 8760 hours ($\text{MWh} = 0.3 \text{ MW} \times \text{FLF} \times 8760 \text{ hours}$) and which are sustained over the term of the employment of the EEM.

"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.

"Approved Amount" has the meaning given to it in Section 2(a).

"Arbitrator" has the meaning given to it in Section (a) of Schedule "D".

"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.

"Capability Building Funding Amount" means funding paid by the LDC to the Participant pursuant to this Agreement.

"CDM" means electricity conservation and demand management.

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

"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.

"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 EEM Application, and, in the case of the LDC, includes the OPA 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 OPA, (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.

"Disclosing Party" has the meaning given to it in the definition of "Confidential Information".

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

"EEM" means an embedded energy manager engaged by a Participant whose primary responsibility is to propose and lead methodologies and processes to reduce energy consumption in a Facility or a System.

"EEM Application" means an application submitted by the Participant to access funding for the employment of an EEM and prepared in accordance with instructions posted on the Website from time to time.

"EEM Initiative" means the OPA-designed initiative under the OPA's Process and System Upgrades Initiatives designed to provide a Capability Building Funding Amount to a Participant for the purpose of engaging an EEM.

"Energy Management Plan" means a document, substantially in the form of Schedule "F", completed by the EEM 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 employment of an EEM, including:

- (a) all rights to any fungible or non-fungible attributes, whether arising from a Facility itself, from the interaction of a Facility with a Distribution System or the IESO-Controlled Grid or because of applicable Laws and Regulations 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 Laws and Regulations or voluntary programs; and specific Environmental Attributes include ownership rights to any applicable credits, entitlements or other instruments resulting from the interaction of a Facility or a Measure with a Distribution System or the IESO-Controlled Grid or as specified by applicable Laws and Regulations 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.

"Facility" means the building(s), premises or lands, or part thereof, owned or occupied by the Participant.

"Facility Load Factor" ("FLF") means the actual annual MWh ("AA") divided by the product of the facility annual peak MW ("FAP") multiplied by 8760 hours ($FLF = AA / (FAP \times 8760 \text{ hours})$).

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

"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 IESO, the OEB, the Electrical Safety Authority, the Ontario Environmental Commissioner, and any Person acting under the authority of any of the foregoing, but excluding the OPA.

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

"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 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.

"Indemnifiable Loss" has the meaning given to it in Section 12.

"Indemnified Party" has the meaning given to it in Section 12.

"Indemnifying Party" has the meaning given to it in Section 12.

"Insolvent", in respect of a Person, means 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.

"Laws and Regulations" means:

- (a) applicable multi-national, international, federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- (b) applicable orders, decisions, codes, manuals, interpretation bulletins, judgments, injunctions, decrees, awards, directives and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority; and

- (d) any requirements under or prescribed by applicable common law.

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

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

“**Measures**” 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.

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

“**MW**” means a megawatt.

“**MWh**” means a megawatt hour.

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

“**OPA**” means the Ontario Power Authority or its successor.

“**OPA EM&V Protocols**” means the methods and processes that the OPA develops for the evaluation, measurement and verification of CDM programs and initiatives, as such methods and processes may be amended from time to time.

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

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

“**Peak Demand Savings**” means [•] [Note to finalization: definition to be included in this form of agreement upon notice issued by the OPA pursuant to the Process and System Upgrades Initiatives 2011-2014: Energy Manager Initiative Schedule “D-3”]

“**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 identifiable individual or other information that is subject to any Privacy Laws.

“**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 or Facility, are expected to deliver the Annual Savings Target.

“**Project Benefits**” means the annual electricity savings and benefits not related 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.

“**Quarterly Report**” means the report of energy management activities of a Participant completed by an EEM on a quarterly basis in the form set out in Schedule “E”, the form and substance of which may be modified, supplemented or replaced by the OPA from time to time.

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

“**Records**” has the meaning given to it in Section 13(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 EEM Application.

“**Reports**” means, collectively, an Energy Management Plan and Quarterly Reports.

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

“**Simple Payback Period**” means the calculation of the expected number of years it will take to recover the installation costs, and as calculated by dividing the Project cost by the Project Benefits.

“**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.

“**Technical Reviewer**” means a Person retained by the OPA or LDC.

“**Website**” means the website located at the address: <https://saveonenergy.ca/>.

SCHEDULE "B"

EEM DUTIES

In connection with the identification, reporting, and implementation of energy saving opportunities, the minimum duties of the Energy Manager (EM) are expressed below. These duties, along with any other obligation set out in the Embedded Energy Manager or other initiative contracts, should be used to develop the Embedded Energy Manager's job description. Embedded Energy Managers may work with larger commercial and institutional and industrial electricity distribution consumers for the Initiatives offered under the Industrial Program and the C&I Program offered by the LDC.

EM Duties

- A. Energy Tracking & Monitoring - Provide a database and an energy tracking and monitoring system for each Facility / process that captures current monthly energy consumption and an electrical load inventory of major equipment. The EM will develop and deliver training to the Participant's staff on the energy tracking and monitoring system.
- B. Primary Assessment – Review existing energy study reports and perform a high-level assessment, including a walk through audit of each major process area of each site, to identify energy saving opportunities and to identify which systems will require more detailed evaluations.
- C. Maintenance and Operating Schedules - Review and provide a description of the control systems, operating schedules, and maintenance practices at each Facility / process to identify operational savings. Develop maintenance practices and programs to enhance energy efficiency. Examples would include: reprogramming controls to shutdown equipment and lighting when not required, developing a checklist to ensure that all shutdown procedures are properly implemented and followed.
- D. Energy Saving Opportunities & Action Plan - Identify, assess, prioritize and recommend to senior management energy-saving opportunity projects including both capital improvement projects and operational and maintenance changes. This will include the preparation of business cases to justify capital expenditures and the completion of applications to LDC CDM initiatives and to other agencies to maximize funding available for energy-saving projects.
- E. Project Implementation & Electrical Energy Savings – Coordinate the implementation of energy-saving projects, including the planning, budgeting, and scheduling for the design, installation, commissioning, and verification of energy efficiency projects. It is expected that a project manager (not the EM) would be assigned for large capital projects.
- F. Measurement & Verification Strategy – Work with the Participant to develop a strategy for the Measurement & Verification of energy-saving projects at a corporate level (i.e. not involved at project level).
- G. Energy Management Behaviour and Business Process Improvements – Work to create and foster a sustainable energy management culture at the Participant's facilities and provide an avenue for employees to recognize and report issues and ideas regarding energy conservation and efficiency.
- H. Employee Awareness Program - Implement an employee training and awareness program to promote energy conservation and communicate the energy efficiency initiatives undertaken.
- I. Assistance to LDC Projects – Coordinate and assist with site inspections by the LDC/ OPA from time to time of the various measures implemented at the sole discretion of the OPA or LDC, as the case may be. Collect relevant information regarding additional electrical energy use (equipment purchases, schedule changes, occupancy changes or construction).
- J. Reporting: Complete Quarterly Reports.

SCHEDULE "C"
ELIGIBILITY CRITERIA

Participant Eligibility Criteria

To be eligible to participate in this EEM Initiative the Participant must:

- (a) be an electricity consumer, whether or not a customer of the LDC, that is directly connected to, or behind the meter of another electricity consumer connected to, a Local Distribution Company's Distribution System and is in the LDC's service area;
- (b) not be Insolvent; and
- (c) have the potential to deliver at a minimum the Annual Savings Target.

SCHEDULE "D"
ARBITRATION PROVISIONS

- (a) Subject to and in accordance with the provisions of this Schedule "D", 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.
- (b) 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.
- (c) The arbitration will be conducted in English in the City of Toronto (unless otherwise agreed to by the Parties) at such place therein and 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.
- (d) 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.
- (e) Submission to arbitration under this Schedule "D" 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.

SCHEDULE "E"
QUARTERLY REPORT TEMPLATE

Name of Embedded Energy Manager:

Name of Employer:

Date of Report:

Facilities covered in this report:

Facility Served:

Energy Management Plan status update:

<State any developments on the company's energy management Plan, including initial completion and updates to the Plan>

PROJECT UPDATE:

<i>Project</i>	<i>Estimated Energy Savings (MWh)</i>	<i>Estimated Demand Savings (MW)</i>	<i>Estimated Cost (\$)</i>	<i>Project Payback (years)</i>	<i>Productivity, quality, or yield savings (\$)</i>	<i>Feasibility Study Complete?</i>	<i>(1) Project incentive (\$) applied for:</i>	<i>Project Forecasted completion date</i>	<i>Status & Commentary, including status of any incentive application and, project implementation</i>

NOTES:

(1) Non incentive based projects, and including those with a payback period of less than one year should be recorded, with comment from the Embedded Energy Manager indicating their involvement in the Project.

(2) Other Activities

SCHEDULE "F"
ENERGY MANAGEMENT PLAN TEMPLATE

Energy Management Plan
<Template>

Prepared by:

Name of Employee
Department
Company Name

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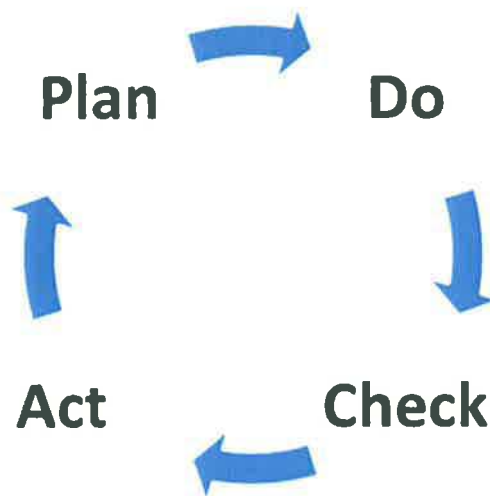
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PREFACE TO THE ENERGY MANAGEMENT PLAN TEMPLATE:

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, are 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 OPA 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:>

- 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:

<i>Fuel, Resource, Productivity</i>	<i>Total Annual Consumption/Production</i>	<i>Total Annual Cost/value</i>	<i>Percentage of Total Plant Energy Cost/production units</i>
<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
Fans						
Pumps						
Compressed Air						
Material Handling						
Heating						
Lighting						
Process Equipment						
Other						
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
Saw Mill					
Planer Mill					
Lumber Drying					
Plywood Mill					
Chipper Mill					
Offices					
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
Big Fan #1	40,000 MWh		VFD	5,000 MWh		Consultant Study	Oct. 2009

<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 OPA 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:

<i>Year</i>	<i>Savings High (MWh)</i>	<i>Savings Medium (MWh)</i>	<i>Savings Low (MWh)</i>
<i>1</i>			
<i>2</i>			
<i>3</i>			
<i>4</i>			
<i>5</i>			

<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			

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>.

Energy Conservation Projects Tracking

[illegible]

SCHEDULE "G"
INCREMENTAL ANNUAL SAVINGS TARGET FOR ADDITIONAL TERM

<u>MW portion of Annual Savings Target</u>	<u>Year 1 of Agreement</u>	<u>Year 2 of Agreement</u>	<u>Year 3 of Agreement</u>	<u>Year 4 of Agreement</u>
First Annual Savings Target	0.3 MW	0.3 MW	0.3 MW	0.3 MW
Second Annual Savings Target		0.3 MW	0.3 MW	0.3 MW
Third Annual Savings Target			0.3 MW	0.3 MW
Fourth Annual Savings Target				0.3 MW
Total in each year	0.3 MW	0.6 MW	0.9MW	1.2 MW

In the event the Participant achieves greater than 0.3 MW in any given year, each additional 12 month term of the Agreement will require an incremental 0.3 MW over and above the total savings achieved in prior years.

SCHEDULE "H"
FORM OF RELEASE AND WAIVER

RELEASE AND WAIVER AND CONSENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby, for itself and its successors and assigns:

- K. releases and forever discharges each of [NAME OF LDC] ("LDC"), the Ontario Power Authority ("OPA") and their respective representatives, affiliates, third party service providers and agents (collectively, the "**Program Operators**") and all of the respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns of the Program Operators (collectively, the "**Representatives**") (the Program Operators and the Representatives hereinafter collectively referred to as "**Releasees**") from any and all actions, causes of action, suits, complaints, disputes, debts, liabilities, obligations, damages, legal fees, costs, disbursements, expenses, claims and demands of every nature or kind whatsoever and howsoever arising, at law or in equity, or under any statute, including without limitation, claims for property damage, business interruption and personal injury of the undersigned's employees, officers, directors or licencees, which it can, will or may have by reason of any matter, cause or thing arising as a result of, in relation to or in connection with the attendance on one or more occasions by one or more of the employees, officers, directors, representatives, third party service providers or agents of any or all of the Program Operators (collectively, "**Persons**") at any and all facilities owned or occupied by the undersigned in connection with, arising out of or relating to the initiatives designed by the OPA for electricity conservation and demand management and directed at one of the commercial and institutional, industrial, low-income or residential electricity consumer groups (collectively referred to as the "**CDM Program**"), other than in the case of the gross negligence or willful misconduct of such Persons during such attendances;
- L. agrees that the undersigned will not make any claim or take any proceedings against any other person or entity with respect to any matter released and discharged in Section 1 above which may result in any claim arising against any of the Releasees for contribution or indemnity or other relief;
- M. without limiting the foregoing, the undersigned acknowledges, agrees and consents that by submitting an application ("**Application**") to participate in a CDM Program or any initiative thereof, whether or not its Application is ultimately accepted:
- (a) it hereby consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators, including all reports, data, personal information, records showing historical energy use and consumption, and other information of the undersigned or its subcontractors or representatives (collectively, the "**Applicant Information**") by the Program Operators for purposes relating to the operation, administration or assessment of the CDM Program, any initiative thereof or the Application, and in connection with any reporting activities relating to the CDM Program, which shall include, without limitation: (i) sharing of Applicant Information among the Program Operators; (ii) use by the Program Operators of the Applicant Information provided by the Participant to process any of the undersigned's Applications and to conduct, analyze and report on the results of surveys and modify the CDM Program based on such surveys; and (iii) disclosure to the Ontario Energy Board, the Independent Electricity System Operator, the Ontario Ministry of Energy or the Ontario Environmental Commissioner or their respective successors;
 - (b) it hereby consents to the disclosure by the OPA to the LDC of information regarding the Participant's past participation in other OPA funded conservation and demand management programs for the purpose of processing the Participant's Application; and
 - (c) this Release and Waiver and Consent and all Applicant Information, in the possession or control of the LDC and/or the OPA are subject to applicable laws that include the access provisions of the Municipal Freedom of Information and Protection of Privacy Act (Ontario) ("**MFIPPA**") or the Freedom of Information and Protection of Privacy Act (Ontario) ("**FIPPA**"), as the case may be, and that as a result, third parties may obtain access to the Applicant Information;
- N. the foregoing Release and Waiver and Consent will continue in full force and effect for the benefit of the Releasees and will apply to each Application submitted by the undersigned to the LDC and to the extent of any conflict between this Release and Waiver and Consent and the terms of any agreement or other document entered into by the undersigned and one or more of the Program Operators pursuant to or in connection with the CDM Program or any part thereof, or any initiative under any CDM Program, the terms of this Release and Waiver and Consent will prevail; and
- O. this Release and Waiver and Consent will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed this Release and Waiver and Consent by its duly authorized representative(s) as of the date below written.

Dated: [DATE]

[LEGAL NAME OF PERSON MAKING APPLICATION]

Name:

Title:

Name:

Title:

[I/We] have the authority to bind the corporation.

EXHIBIT B

ENERGY MANAGER DUTIES

In connection with the identification, reporting, and implementation of energy saving opportunities, the minimum duties of the Energy Manager (EM) are expressed below. These duties, along with any other obligation set out in the Energy Manager or other initiative contracts, should be used to develop the Energy Manager's job description. Energy Managers may work with larger C&I and Industrial Distribution Consumers for the Initiatives offered under the Industrial Program and the C&I Program.

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10. Reporting: Complete Quarterly Reports, and collect and maintain the information set out in Exhibit C.

EXHIBIT C
EVALUATION, MEASUREMENT AND VERIFICATION - INFORMATION

The information to be collected and maintained by the Energy Manager shall consist of:

1. in the case of a Roving Energy Manager, the number of Distribution Consumers served;
2. the number of Applications by type (preliminary engineering study and detailed engineering study, project incentive, energy manager, demand response, etc.) submitted by the Participant or Distribution Consumers served by the Energy Manager;
3. the number of employee awareness sessions given/activities undertaken by the Energy Manager; and
4. the number of training programs attended by the Energy Manager.

EXHIBIT D FORM OF QUARTERLY REPORT

Energy Manager Quarterly Report Template

Name of Energy Manager:

Name of Employer:

Date of Report:

Facilities covered in this report:

(Note: For Roving Energy Manager, please include an update for each site served including all topics noted below for each site.)

Facility Served:

Energy Management Plan status update:

<State any developments on the company's energy management Plan, including initial completion and updates to the Plan>

Project Update:

Project	Estimated Energy Savings (MWh)	Estimated Demand Savings (MW)	Estimated Cost (\$)	Project Payback (years)	Productivity, quality, or yield savings (\$)	Feasibility Study Complete?	(1) Capital Incentive (\$) applied for:	Project Forecasted completion date	Status & Commentary, including status of any incentive application and, project implementation

Notes:

- (1) Non incentive based projects, and including those with a payback period of less than one year should be recorded, with comment from the Energy Manager indicating their involvement in the project.**
- (2) Other Activities**

Industrial Program

**Process and System Upgrades Initiatives Schedule “D-4”
to Master CDM Program Agreement**

**PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014:
KEY ACCOUNT MANAGER**

**Initiative Schedule “D-4”
to Master CDM Program Agreement**

**PROCESS AND SYSTEM UPGRADES INITIATIVES 2011 - 2014
KEY ACCOUNT MANAGER**

PREREQUISITE

Only LDCs who have Registered for the Process and System Upgrades Initiatives 2011 – 2014: (1) Preliminary Engineering Study Initiative, (2) Detailed Engineering Study Initiative, and (3) Project Incentive Initiative Schedule “D-1” (the “**Schedule D-1**”) may participate in this Initiative.

RECITALS:

1. The “Process and System Upgrades Initiatives” are offered under the Industrial Program and incorporate the following Initiatives: (i) Preliminary Engineering Study Initiative; (ii) Detailed Engineering Study Initiative; (iii) Project Incentive Initiative; (iv) Monitoring & Targeting Initiative; (v) Metering and Instrumentation Library (enabling measure); (vi) Energy Manager Initiative; and (vii) Key Account Manager Initiative.
2. The Initiative described in this Schedule is the Key Account Manager Initiative and this Schedule is an Initiative Schedule. The Initiative offers LDCs the opportunity to access funding for the employment of a KAM in order to support them in fulfilling their obligations related to the Process and System Upgrades Initiatives. The KAM is considered to be a key element in assisting Distribution Consumers in overcoming traditional barriers related to energy management and help them achieve savings since the KAM can build relationships and become a significant resource of knowledge to the Distribution Consumers. From an administrative perspective, a KAM can also work with Distribution Consumers to minimise such consumers’ transaction costs associated with identifying opportunities and implementing conservation initiatives.
3. The funding will be available for an LDC or a group of LDCs servicing a minimum of five Distribution Consumers each having at least 5 MW of Annual Peak Demand. Funding for KAMs is allocated on the basis that a fully-employed KAM is one who is employed on a full-time basis servicing ten Distribution Consumers each having at least 5 MW of Annual Peak Demand.
4. The LDC has Registered for the Industrial Program and this Initiative is a Registered Initiative.

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Schedule, capitalized terms that are not otherwise defined will have the respective meanings ascribed to them in the Master Agreement and the following terms will have the following meanings in this Schedule:

“Annual Peak Demand” means a Distribution Consumer’s one hour of highest demand of electricity over the course of a calendar year.

“Energy Assessment Report” has the meaning ascribed thereto in the Schedule D-1.

“Full-Time KAM” means a KAM employed by an LDC on a full-time basis to service ten Distribution Consumers each having at least 5 MW of Annual Peak Demand.

“KAM” means a key account manager retained by the LDC who has the professional experience and qualifications necessary to perform the KAM Duties, and “KAM” collectively refers to a Full-Time KAM, and a Part-Time KAM.

“KAM Duties” means the minimum duties of the KAM, substantially in the form of Exhibit A attached hereto, to be used by the LDC when developing the KAM’s job description.

“KAM LDC” has the meaning ascribed thereto in Section 4.1(a).

“Part-Time KAM” means a KAM employed by an LDC or a Representative LDC on behalf of KAM LDCs, and working on a schedule determined by the KAM and the LDC or the KAM LDCs, collectively, as applicable, where such KAM works 50% or more of its time for such LDC or such KAM LDCs, collectively, as applicable, but less than full time.

“Representative LDC” means the LDC representing a group of LDCs when making an Application.

1.2 Section References

Unless otherwise indicated herein, any reference in this Schedule to an article, Exhibit or section refers to the article, exhibit or section to this Schedule.

1.3 List of Exhibits

The following Exhibits are attached to and incorporated into and are to be read together with this Schedule and shall form part of this Schedule:

Exhibit A	-	KAM Duties
Exhibit B	-	Evaluation, Measurement and Verification – Information

ARTICLE 2 ELIGIBILITY CRITERIA

2.1 Thresholds

An LDC or a Representative LDC, as the case may be, will be able to access a Capability Building Funding Amount per KAM, as further provided in Article 5, for the employment of the following category of KAM, provided that it reaches the specific thresholds applicable thereto:

- (a) Part-Time KAM if the LDC has within its service area, or if the KAM LDCs collectively have within their service areas, as applicable, at least five but less than ten Distribution Consumers each having at least 5 MW of Annual Peak Demand; and
- (b) Full-Time KAM if the LDC has within its service area, or if the KAM LDCs collectively have within their service areas, as applicable, ten Distribution Consumers each having at least 5 MW of Annual Peak Demand.

ARTICLE 3 LDC AND OPA OBLIGATIONS

All of the respective obligations of the LDC and the OPA set out in sections 2.1 and 2.2 of Schedule D-1 apply to, and are incorporated by reference in, this Schedule, *mutatis mutandis*, in addition to the further obligations set forth in this Schedule.

ARTICLE 4 IMPLEMENTATION

4.1 Application Review

- (a) An LDC may participate in the Initiative by engaging a KAM itself or as a Representative LDC on behalf of one or more Local Distribution Companies that wish to collectively engage a KAM with the Representative LDC (collectively, the “**KAM LDCs**”). If the LDC is the Representative LDC that acts on behalf of KAM LDCs, it will notify the OPA that it is undertaking the role of the Representative LDC and the names of the KAM LDCs in the group it represents. For the purpose of Article 4, “LDC” will refer either to the LDC by itself, or the LDC in its role as Representative LDC, as the case may be.
- (b) If the LDC wishes to engage a KAM itself or on behalf of itself and the KAM LDCs, it will complete and deliver a written request for a KAM to the OPA not later than May 1, 2011, which shall include (i) the number of Distribution Consumers to be served by the KAM and a written statement in form and substance reasonably acceptable to the OPA confirming that each of such Distribution Consumers has at least 5 MW of Annual Peak Demand and (ii) if the KAM is a current or previous employee of the LDC, a written commitment from a senior officer of the LDC that such employee’s previous job will be filled by another employee or that such job no longer needs to be performed.

- (c) Upon the completion of its review, the OPA will communicate with the LDC to confirm if the LDC is eligible to obtain the assistance of a KAM.
- (d) The LDC will be responsible for managing the activities and responsibilities of the KAM and should ensure that the KAM's responsibilities include the ones specified in the attached KAM Duties.

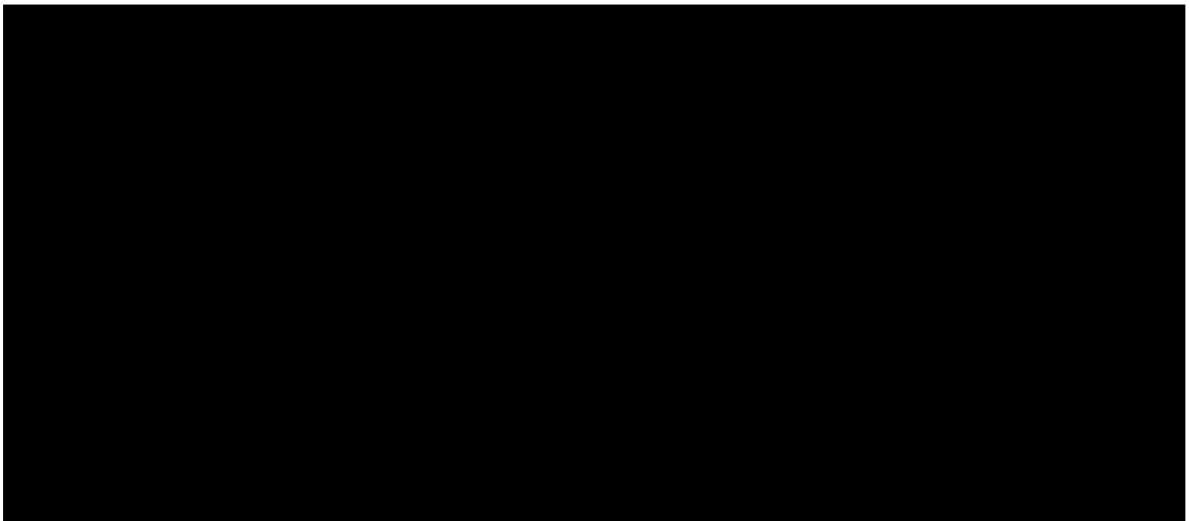
4.2 Facilities in Multiple Service Areas

- (a) Where one or more KAM LDCs wish to collectively engage a KAM, the Representative LDC will enter into the necessary and desirable arrangements with the KAM LDCs in order to allocate the obligations and responsibilities of the Representative LDC and the KAM LDCs.
- (b) Any Electricity Savings arising from any Project implemented by a Distribution Consumer which results from KAM activities will be attributed to the Local Distribution Company in whose service area such Project was implemented.

ARTICLE 5 PAYMENT TO LDC

5.1 Payments

(a)



- (b) In addition to the amount received by the LDC pursuant to Section 5.1(a), the OPA will pay to the LDC an administrative amount equal to 14.2% of the total Capability Building Funding Amounts (for greater certainty, exclusive of Applicable Taxes) payable to such LDC in accordance with Section 5.1(a) to compensate for a portion of the administration costs incurred by the LDC pursuant to the Initiative. For the purpose of this Schedule, the amounts received by the LDC pursuant to Section 5.1(a) and Section 5.1(b) are collectively referred as the "Capability Building Funding Amount".

- (c) The Capability Building Funding Amount will be provided by the OPA to the LDC in a lump sum upon notification by the LDC, with supporting invoice, that the KAM has been engaged, pursuant to the approval of the Application.
- (d) Subject to the provisions of Section 6.1, the Capability Building Funding Amount for a KAM will be provided by the OPA to the LDC annually for a period of 12 months (or if applicable in the final year such shorter period of time), but not ending later than December 31, 2014.
- (e) Upon completion of each 12 month period and upon the end of the term of the OPA's funding commitment pursuant to Section 6.1, the LDC shall reconcile, based on invoices provided by the LDC and/or the KAM, the actual expenditures against the payment received from the OPA, and the difference shall, subject to the OPA's instructions, either be applied to future Capability Building Funding Amounts, if applicable, or reimbursed to the OPA. For greater certainty, termination of the funding commitment provided by the OPA to an LDC for the Initiative pursuant to Section 6.1(a) or 6.1(b) shall not prejudice the LDC's entitlement to the Capability Building Funding Amount payable for costs properly reimbursable under Sections 5.1(a) and 5.1(b) in respect of the period of the KAM's employment up to the date of such termination, but in no event shall termination or severance payments or other costs related to termination of the employment of a KAM for any reason be funded by the OPA.

ARTICLE 6

TERM OF FUNDING

6.1 Term

- (a) Subject to Section 6.1(b), the funding commitment provided by the OPA to an LDC for the Initiative will end on December 31, 2014 unless otherwise agreed. For greater certainty, it is acknowledged that nothing in this Schedule requires the LDC to continue to provide funding for any KAM after December 31, 2014.
- (b) The funding commitment for the Initiative will terminate on the earliest to occur of the following:
 - (i) an LDC does not replace a KAM within four months of a KAM position becoming vacant;
 - (ii) the annual report submitted by an LDC pursuant to Article 7 highlights performance or results from the Initiative activities that the OPA does not consider as meeting the KAM's duties as set out in Exhibit A when assessing such annual report reasonably;
 - (iii) the KAM fails to participate in and successfully complete the mandatory training programs pursuant to Article 8; or

- (iv) the end of the applicable 12 month (or shorter) period described in Section 5.1(d) during which the number of Distribution Consumers serviced by a KAM is less than the minimum thresholds included in Article 2.

ARTICLE 7

LDC REPORTING OBLIGATIONS

The LDC shall submit to the OPA an annual report in the form set out in Exhibit H of Schedule D-1 by March 31st of each year summarizing the Initiative activities from the previous calendar year. Schedule D-1 should also include all Projects that resulted from a KAM's activities whether or not a Distribution Consumer received a Participant Incentive under the Process and System Upgrades Initiatives 2011-2014.

ARTICLE 8

KAM TRAINING

A KAM will be required to participate in training programs, which may change from time to time. The LDC will ensure that the employment agreement entered into with the KAM provides that each KAM must attend such programs. Such training programs shall include the following mandatory training programs:

- (a) Dollars to Sense program (unless the KAM can provide evidence that the KAM has already completed a similar program or has equivalent experience);
- (b) Detailed End-use program;
- (c) Basic Energy Manager program (unless the KAM can provide evidence that the KAM has already completed a similar program or has equivalent experience); and
- (d) Certified Energy Manager program (unless the KAM is already designated as a Certified Energy Manager by the Association of Energy Engineers).

EXHIBIT A KAM DUTIES

The Key Account Manager (KAM) will be accountable to maximize program results. The KAM duties will include the following:

1. Develop and implement a strategic account plan for each Distribution Consumer to be serviced by the KAM, which plan may include such matters as the following (provided that the LDC shall have no obligation to disclose to the OPA any confidential information of the Distribution Consumer contained therein):
 - a profile of the Distribution Consumer's operations;
 - a list of key decision makers within the Distribution Consumer's organization;
 - a list of the key drivers for success for the Distribution Consumer's operations; and
 - the Distribution Consumer's competitive position (product and financial) within its segment.
2. Proactively make sales calls.
3. Complete Energy Assessment Reports for interested Distribution Consumers.
4. Proactively seek out, and provide estimates of, energy savings opportunities through equipment changes, process modifications, productivity, product quality, etc. at the Distribution Consumer's sites.
5. Assist Distribution Consumers when applying for Initiatives offered under the Industrial Program and the C&I Program and assist the LDC in administering these Initiatives.
6. Act as the key relationship manager between the Distribution Consumers and the LDC.
7. Interface with the OPA systems and collaborate with technical reviewers or other third party hired by the OPA.
8. Ensure that all program documentation is filled out and complete and the administration process is fulfilled.
9. Complete the reporting obligations that the LDC is bound to pursuant to the Initiatives offered under the Industrial Program and the C&I Programs, including collecting and maintaining the information set out in Exhibit B.
10. Manage program and project applications within the LDC ensuring Distribution Consumers' needs and schedules are met.
11. Provide support to other departments of the LDC in communicating with and understanding the needs of the Distribution Consumers.

EXHIBIT B
EVALUATION, MEASUREMENT AND VERIFICATION - INFORMATION

Information to be collected and maintained by a KAM shall include, but will not be limited to, the following:

1. the number of customer outreach events;
2. the number of customer site visits;
3. the number of key accounts being managed by the KAM;
4. the number of Applications by type (preliminary engineering study and detailed engineering study, project incentive, energy manager, demand response, etc.);
5. the number of employee awareness sessions given/activities undertaken; and
6. the number of training programs attended by the KAM.

Industrial Program

**Demand Response 1 Initiative Schedule “D-5”
to Master CDM Program Agreement**

DEMAND RESPONSE 1 2011-2014

**Initiative Schedule “D-5”
to Master CDM Program Agreement**

DEMAND RESPONSE 1 2011-2014

RECITALS:

1. The Initiative described in this Schedule is the Demand Response 1 Initiative (the “**Initiative**”) and this Schedule is an Initiative Schedule.
2. The LDC has Registered for the Industrial Program and the Initiative in this Schedule is a Registered Initiative.
3. The Initiative is an initiative for Distribution Consumers to voluntarily reduce electricity demand during certain periods of the year pursuant to the DR1 Contract. Any Distribution Consumer that meets the Eligibility Criteria may participate in the Initiative.
4. The Initiative provides DR Payment for Service for the actual electricity reduction provided during a demand response event.
5. The LDCs, through their relationship with Distribution Consumers, will have the ability to encourage and assist Distribution Consumers in applying and participating in the Initiative.

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Schedule, capitalized terms that are not otherwise defined will have the respective meanings attributed to them in the Master Agreement and the following terms will have the following meanings in this Schedule:

“**Demand Response Provider**” means a Person who:

- (a) is not a DR1 Contributor;
- (b) has directly entered into an agreement with the OPA pursuant to which the Demand Response Provider will undertake obligations similar to those of the LDC in respect of the Initiative; and
- (c) registers more than one Distribution Consumer to participate in the Initiative pursuant to a binding contract between the Demand Response Provider and each such Distribution Consumer.

“**DR1 Contract**” means the Demand Response 1 Contract made between a Distribution Consumer and an LDC or Demand Response Provider in accordance with Section 3.1(b). For the purpose of the Master Agreement, the DR1 Contract is a Participant Agreement.

“DR1 Contributor” means a Distribution Consumer who has registered for the Initiative with an LDC or a Demand Response Provider. For the purpose of the Master Agreement, a DR1 Contributor is a Participant.

“DR Payment for Service” means an amount payable to a DR1 Contributor for providing actual electricity reduction during a demand response event pursuant to the applicable DR1 Contract. For the purpose of the Master Agreement, the DR Payment for Service is a Participant Incentive.

“Eligibility Criteria” means the Eligibility Criteria provided in Exhibit C of the DR1 Contract.

“Monthly DR1 Contributor Detailed Activation Performance” means the document to be completed by the OPA, substantially in the form of Exhibit B.

“Monthly DR1 Contributor Registration Summary Statements” means the document to be completed by the OPA, substantially in the form of Exhibit C.

“Monthly DR1 Contributor Activation Settlement Summary Statement” means the document to be completed by the OPA, substantially in the form of Exhibit D.

“Registration Form” means the document to be completed by the Participant and LDC, substantially in the form of Exhibit E.

“Registration Party” is the LDC or Demand Response Provider who registered the DR1 Contributor in the Initiative.

“Release and Waiver” has the meaning ascribed thereto in Schedule D-1.

“Third Party Service Provider” means a Person retained by the OPA to provide certain operational services for the Initiative.

1.2 Section References

Unless otherwise indicated herein, any reference in this Schedule to an article, Exhibit or section refers to the article, exhibit or section to this Schedule.

1.3 List of Exhibits

The following exhibits are attached to and incorporated into and are to be read together with this Schedule and shall form part of this Schedule:

Exhibit A	-	Part A - Minimum Requirements
		Part B - DR1 Contract
Exhibit B	-	Monthly DR1 Contributor Detailed Activation Performance
Exhibit C	-	Monthly DR1 Contributor Registration Summary Statements

- Exhibit D - Monthly DR1 Contributor Activation Settlement Summary Statement
- Exhibit E - Registration Form

ARTICLE 2

INITIATIVE IMPLEMENTATION

2.1 LDC Obligations

For the purposes of implementing and managing the Initiative, in addition to the other obligations set forth in the Master Agreement and this Schedule, the LDC's obligations are as follows:

- (a) when marketing the Initiative to Distribution Consumers, the LDC will not discourage Distribution Consumers from electing to participate through a Demand Response Provider;
- (b) answering questions received from Distribution Consumers or DR1 Contributors regarding the Initiative;
- (c) completing, managing and administering all DR1 Contributor Registration Forms, using Commercially Reasonable Efforts to verify the DR1 Contributor's demand response capacity as set forth therein, provided that such efforts shall not include the obligation to perform field checks;
- (d) completing and managing the de-registration process when required by a DR1 Contributor;
- (e) paying the DR Payment for Service to the DR1 Contributor in accordance with the DR1 Contract; and
- (f) taking appropriate steps to verify that a DR1 Contributor has met the Eligibility Criteria.

Notwithstanding the forgoing provisions of this Section 2.1, the obligations described in clauses (c), (d), (e) and (f) of this Section 2.1 do not apply to the extent that the DR1 Contributor has registered, or is seeking to register, as applicable, for the Initiative with a Demand Response Provider.

2.2 OPA Obligations

For the purposes of implementing the Initiative and supporting the LDC's obligations in respect of the Initiative, in addition to the other obligations set forth in the Master Agreement and this Schedule, the OPA's obligations are as follows:

- (a) retaining and managing the Third Party Service Provider;

- (b) providing registration and settlement services through its Third Party Service Provider;
- (c) providing access to the LDC to the following documents regarding each DR1 Contributor located in the LDC's service area and registered in this Initiative by such LDC:
 - (i) Monthly DR1 Contributor Detailed Activation Performance;
 - (ii) Monthly DR1 Contributor's Registration Summary Statements; and
 - (iii) Monthly DR1 Contributor Activation Settlement Summary Statement;
- (d) providing activation notices to DR1 Contributors and receiving confirmation notices from DR1 Contributors;
- (e) responding to all inquiries and complaints regarding the Third Party Service Provider;
- (f) providing and maintaining a password protected web based portal system for DR1 Contributors to view their respective latest baselines, which baselines will not have had an in-day adjustment made to them, for reference purposes during a demand response event; and
- (g) providing and maintaining a password protected web based portal system for the LDC to view the aggregate baseline of all DR1 Contributors located within the LDC's service area.

ARTICLE 3 REGISTRATION FORMS AND DR1 CONTRACT

3.1 Registration Forms

- (a) The LDC will assist any Distribution Consumer located in its service area in completing Registration Forms if such assistance is requested by such Distribution Consumer.
- (b) Before submitting the Registration Form to the Third Party Service Provider, the LDC will ensure that the Eligibility Criteria are met and that the Registration Form is accompanied by a signed Release and Waiver in favour of, among others, the LDC and the OPA (provided that if the Distribution Consumer has previously provided a Release and Waiver in favour of such Persons with respect to another CDM Program or Initiative, the requirement to deliver a Release and Waiver shall be satisfied if the Distribution Consumer provides a copy of such previously-provided Release and Waiver with the Registration Form), and prepare and enter into a DR1 Contract with the Distribution Consumer. Each DR1 Contract that the LDC enters into with a DR1 Contributor must contain, at a minimum, and without modification, the provisions included in Part B of Exhibit A identified as

minimum requirements in Part A of Exhibit A. The LDC will, subject to applicable Laws and Regulations, compile and provide to the Third Party Service Provider, when submitting the Registration Form, twelve months of hourly historical meter data obtained for the Distribution Consumer, unless the OPA consents in writing to the provision of such data for a period shorter than twelve months for such Distribution Consumer, as determined by the OPA in its sole and absolute discretion.

- (c) Upon receipt of a Registration Form and the historical meter data, the Third Party Service Provider will review the Registration Form to confirm whether the Distribution Consumer should be registered in the Initiative.
- (d) If the Third Party Service Provider approves the Registration Form and advises the LDC of same, the LDC will communicate such approval to the Distribution Consumer.
- (e) If the Third Party Service Provider rejects a Registration Form and advises the LDC of same (including the reasons for the rejection), the LDC will notify the Distribution Consumer and will communicate the reasons provided by the Third Party Service Provider for rejecting the Registration Form.

ARTICLE 4 PAYMENT TO LDC

4.1 Participant Based Funding

For each DR1 Contributor registered in the Initiative pursuant to a Registration Form submitted by the LDC and accepted by the Third Party Service Provider, the LDC will invoice, and the OPA will cause the Third Party Service Provider to pay on or before the twentieth day following receipt of such invoice, a Participant Based Funding Amount to the LDC in the amount of \$750 (for greater certainty, exclusive of Applicable Taxes).

4.2 DR Payment for Service

- (a) The DR Payment for Service payable to a DR1 Contributor in respect of the Initiative shall be an amount as determined pursuant to the DR1 Contract.
- (b) The OPA shall cause the Third Party Service Provider to pay the applicable DR Payment for Service to the LDC no later than the 20th day of the second month following the month in which a demand response event occurred. Upon receipt, the LDC will pay the DR Payment for Service, in a timely manner, to the applicable DR1 Contributor in accordance with the terms of its DR1 Contract. Notwithstanding Section 4.6 of the Master Agreement, the LDC is not required to submit an invoice with respect to the DR Payment for Service.

ARTICLE 5 REPORTING

5.1 Reporting of DR1 Results

The OPA will include the unverified and estimated Electricity Savings and Peak Demand Savings arising from the Initiative which occur within the LDC's service area in the reports provided by the OPA to the LDC pursuant to Section 8.2 of the Master Agreement.

Exhibit A
Part A – Minimum Requirements
and
Part B - DR1 Contract

Part A – Minimum Requirements

The following minimum requirements of the attached form of DR1 Contract shall be included, without modification, in each DR1 Contract.

<u>Minimum Requirements</u>	<u>Description</u>
Section 1	Compliance with DR1 Rules
Section 2	Exclusive Compensation
Section 3	Curtailment Payment
Section 4	Response to Activation Notices
Section 6	Dispute Resolution
Section 7	Participation in Activation Test
Section 9	Contributor Information
Section 10	Evaluation, Monitoring and Verification; Audit
Section 11	Term
Section 12	Environmental Attributes
Section 13	No Warranty
Section 14	Limitation of Liability
Section 15	Indemnity
Section 16	Canadian Currency
Section 17	Entire Agreement
Section 19	Governing Law
Section 20	Assignment
Section 24	Program Changes
Exhibit “A”	Curtailment Payment Calculation

<u>Minimum Requirements</u>	<u>Description</u>
Exhibit "B"	Confirmation Form
Exhibit "C"	Eligibility

PART B – DR1 Contract

See attached Contract

DEMAND RESPONSE 1 2011-2014
DR 1 CONTRACT

Local Electricity Distribution Company: _____ (the “LDC”)

Contributor: _____ (the “Contributor”)

Location of Project: _____, in the Province of Ontario (as described in the Registration Forms, the “**Project Location**”)

WHEREAS the Contributor, in collaboration with the LDC, completed the applicable registration form (the “**Registration Form**”) located on the Ontario Power Authority’s (the “**OPA**”) website and wishes to participate in the voluntary, market-based, demand response program (the “**DR1 Program**”) pursuant to this agreement and the DR1 Program rules (“**DR1 Rules**”) located on the OPA DR1 Program website as such DR1 Rules may be amended from time to time.

AND WHEREAS the LDC and the Contributor wish to execute this agreement in order to formalize the contractual arrangements for the Contributor to receive compensation for curtailing electricity consumption (“**Curtailment**”) at the Project Location in an amount equal to the difference between actual consumption of the Project Location and the Adjusted Baseline (as defined in the definition of MAP in Exhibit “A”), as posted and as calculated pursuant to the methodology on the OPA DR1 Program website, in response to activation notices (“**Activation Notices**”) provided to the Contributor under the DR1 Program.

AND WHEREAS the Contributor is offering to provide a maximum of _____ kW of demand response as further detailed in the Registration Form.

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 hereto agree as follows:

1. The Contributor agrees that its participation in the DR1 Program is governed by this agreement and the DR1 Rules.
2. The Contributor agrees that any Curtailment will be exclusively compensated for under the terms of this agreement subject to the changes as outlined in section 24, and that the Contributor will not use the same Curtailment, in whole or in part, to participate directly or indirectly in any other demand response program at the same time as any Curtailment under this agreement.
3. During the term of this agreement the Contributor will be entitled to receive from the LDC a monthly Curtailment payment in accordance with the DR1 Rules, the payment calculations attached to this agreement as Exhibit “A”, the Availability Rate (as defined in the definition of MAP in Exhibit “A”) and the Utilization Rate (as defined in the definition of MUP in Exhibit “A”) and the other terms and conditions of this agreement.
4. The Contributor will be entitled to a Curtailment payment in a month in which it receives one or more Activation Notices if: (i) it sends a confirmation to the confirmation email address using the form attached to this agreement as Exhibit “B” to confirm its response to such Activation Notice(s); (ii) such confirmation is sent within the timeframe indicated on the Activation Notice(s); and (iii) it actually implements and achieves the Curtailment in response to such Activation Notice(s).
5. In addition to the monthly Curtailment payment, the LDC will pay the taxes, if any, imposed under Part IX of the *Excise Tax Act* (Canada) on the Curtailment payment and any other applicable sales or use taxes if it is determined that such taxes are applicable (the “**Applicable Taxes**”). If it is determined that such taxes are payable, the Contributor 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 taxes paid on the Curtailment payment. 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 Curtailment payment, the Contributor 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.

6. If the Contributor is not satisfied with the Curtailment payment received in any month based on its response and activity level during such particular month, the Contributor will provide within sixty days of receipt of such payment, written notice to the LDC of any dispute regarding a Curtailment payment with a brief explanation and the LDC will provide such notice to the OPA for final determination of the issue. If it is subsequently determined or agreed that an adjustment is appropriate, any overpayment or underpayment in respect of such Curtailment payment will be either subtracted or added to the subsequent curtailment payment.
7. The Contributor will participate in the activation tests contemplated by the DR1 Rules when notified by an Activation Notice that such activation tests will take place in order to determine the kW demand response capacity of the Contributor and whether such demand response capacity is consistent with the information contained in the Registration Form.
8. The Contributor and the LDC will each comply, in all material respects, with all laws and regulations required to perform or comply with their respective obligations under this agreement.
9. The Contributor hereby consents to the collection, use, disclosure and other handling of any information, provided, or made available, at any time by the Contributor to the LDC, the LDC's service providers, the OPA or any other service provider contracted by the OPA to assist the OPA in performing some of the functions relating to the DR1 Program (collectively referred to as the "**Program Provider**"), including personal information and records showing historical energy use and consumption ("**Contributor Information**") for purposes relating to the operation, administration or assessment of the DR1 Program, and in connection with any reporting activities relating to the DR1 Program, which such use will include, without limitation: (i) sharing of Contributor Information; (ii) use by the Program Provider of the Contributor Information to conduct, analyze and report on the results of such surveys and modify the DR1 Program based on such surveys; and (iii) disclosure of Contributor Information to the Ontario Energy Board, the Independent Electricity System Operator, the Minister of Energy or the Environmental Commissioner's office or their respective successors provided such information is disclosed or handled on a confidential basis or pursuant to legal obligations. The Contributor acknowledges that the LDC and the OPA are subject to certain access to information legislation (*Freedom of Information and Protection of Privacy Act* (Ontario) or the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario)), and as a result, third parties may obtain access to the Contributor Information.
10. The Contributor represents, warrants and covenants that: (a) it has met the Eligibility Criteria set out in Schedule C attached hereto; (b) it will participate in any follow up surveys, studies, audits, evaluations or verifications conducted by any of the Program Provider in connection with the DR1 Program, including for the purpose of proper administration, monitoring and verification of this agreement or evaluation of the DR1 Program; and (c) it will provide to any of the Program Providers reasonable access to the Contributor's records and premises for such purposes.
11. This agreement will terminate on the earliest of (i) the date (if any) the LDC notifies the Contributor that the Registration Form has been rejected; (ii) the end of the month in which notification is received from the Contributor to the LDC that it wishes to de-register from the DR1 Program; (iii) the cancellation by the OPA of the DR1 Program; (iv) December 31, 2014, unless the LDC provides a notice extending the term beyond December 31, 2014; and (v) the effective date of bankruptcy, insolvency or reorganization of the Contributor. Following any termination of this agreement, the LDC's sole obligation for payment shall be for Curtailment payments that accrued prior to such date of termination and are payable pursuant to this agreement. Sections 5, 9, 10, 11, 12, 13, 14, 15 and 19, 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 termination of this agreement.
12. All right, title and interest in and to all benefits or entitlements associated with decreased environmental impacts now or in the future, direct or indirect, arising as a result of, relating to or in connection with the electricity savings or demand savings for which the Curtailment payment has been paid, and the right to quantify and register these, including without limitation, any energy efficiency certificate, renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance (collectively, the "**Environmental Attributes**") are hereby unconditionally and absolutely transferred and assigned, or to the extent transfer or assignment is not permitted, held in trust for, by the Contributor to, or in favour of, the LDC in its capacity as agent for and on behalf of the OPA, and not for the LDC's own benefit. Until the OPA notifies the Contributor otherwise, the LDC, in its capacity as agent, shall be entitled, unilaterally and without the consent of the Contributor, to deal with such Environmental Attributes on behalf of the OPA in any manner the LDC determines. The Contributor acknowledges that the OPA may direct the Contributor in the same manner as the LDC and that until the OPA notifies the Contributor otherwise the LDC may

direct the Contributor to take such actions and do all such things necessary to certify, obtain, qualify and register with the relevant authorities or agencies such Environmental Attributes for the purpose of transferring, assigning, or holding in trust, such Environmental Attributes to and for the OPA and the Contributor shall comply with such directions, and the Contributor will be entitled to reimbursement of the cost of complying with such direction, provided that the LDC, acting reasonably, has approved such cost in writing prior to the cost being incurred by the Contributor.

13. Except as specifically set forth or referenced in this agreement, there are no representations, warranties, or conditions of either party to this agreement, 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 Contributor acknowledges that its participation in the DR1 Program is based upon its own assessment of the DR1 Program and not on any reliance on anticipated or projected results, and that such participation may not result in the achievement of any electricity savings or demand savings, which is expressly disclaimed by the Contributor.
14. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY: (A) IN NO EVENT WILL THE CONTRIBUTOR BE ENTITLED TO RECOVER FROM THE LDC OR ANY OTHER INDEMNIFIED PARTY (AS DEFINED IN SECTION 15 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 LAWYERS' AND OTHER ADVISORS' FEES SUFFERED OR INCURRED BY THE CONTRIBUTOR AND IN ANY EVENT LIMITED TO THE CURTAILMENT PAYMENTS 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 OTHER INDEMNIFIED PARTIES (AS DEFINED IN SECTION 15 BELOW) WILL NOT BE LIABLE TO THE CONTRIBUTOR, 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.
15. The Contributor (the "**Indemnifying Party**") will indemnify, defend and hold the LDC, the OPA, 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 this Agreement; and/or (ii) the negligence or wilful misconduct of the Contributor, 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. The LDC will hold the benefit the Contributor's obligations under this Section 15 in the LDC's own right and, in trust, for the benefit of any other Indemnified Party.
16. All amounts in this agreement are stated and will be paid in Canadian dollars by cheque or by electronic funds transfer to the Contributor's account or such other mode of payment at the sole discretion of the LDC.
17. Except as otherwise provided, this agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this agreement.
18. This agreement may not be varied, amended or supplemented except by an agreement in writing signed by both of the parties.

19. This agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein. The courts of the Province of Ontario will have exclusive jurisdiction to entertain any action arising under this Agreement.
20. The Contributor may not assign this agreement or any of the benefits, rights or obligations or enter into any agreement with respect to the benefits under this agreement without the prior written consent of the LDC, which consent may be unreasonably withheld. This agreement will enure to the benefit and be binding upon the parties and their respective successors and permitted assigns.
21. 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.
22. The invalidity, unenforceability or illegality of any provision of 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.
23. Nothing in this agreement will be deemed to constitute a partnership or joint venture or create any fiduciary relationship between the LDC and the Contributor.
24. The LDC shall not be in default and shall not be deemed to be in default of its obligations in this agreement by reason of delay or of failure or inability to perform its obligations hereunder where the said delay, failure or inability is due solely to any cause which is unavoidable or beyond the reasonable control of the LDC, including without limitation any act of God or other cause which frustrates the performance of the LDC's obligations in this agreement.
25. 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:

●
Attention: ●
Fax: ●
E-mail: ●

With a copy to:

●
Attention: ●
Fax: ●
E-mail: ●

If to the Contributor:

Attention: ●
Fax: ●
E-mail: ●

With a copy to:

-
- Attention: ●
- Fax: ●
- E-mail: ●

26. The OPA may reset the Availability Rate and Utilization Rates, Adjusted Baseline formula, DR1 Rules, and general program structure on 90 days notice to be posted on the OPA DR1 Program website.
27. This agreement may be executed in two or more counterparts and all such counterparts will together constitute one and the same agreement. This agreement may be executed and delivered by facsimile transmission or by any other method of electronic transmission and the parties may rely upon all such signatures as though such signatures were original signatures.

By signing below, the Contributor and the LDC, by their duly authorized respective representative(s), each agrees to and acknowledges all of the above terms and conditions.

Dated: _____

[LDC]

[Contributor]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

EXHIBIT “A”
CURTAILMENT PAYMENT CALCULATION

The monthly Curtailment payment, if any, comprises two parts: (1) a Monthly Availability Payment and (2) a Monthly Utilization Payment. A Curtailment payment will only be paid in respect of a month if the Contributor has confirmed by email its participation in an Activation Notice and has provided a Curtailment.

Monthly Availability Payment

The Monthly Availability Payment (“MAP”) in a particular month is calculated as follows¹:

$$\text{MAP} = \text{Weighted Average of Actual Curtailment} * \text{Availability Rate}$$

Where:

Weighted Average of Actual Curtailment (kW) ²	=	ACA (kWh) ÷ Total Activation Hours
ACA (kWh)	=	the aggregate Confirmed Activation (kWh) for the Project Location in such month
Confirmed Activation (kWh) ³	=	the amount of Curtailment for an Activation Hour for which a Contributor has confirmed participation and actually achieved Curtailment, calculated as: Adjusted Baseline (kWh) – Actual Load (kWh)
Activation Hour	=	an hour specified in an Activation Notice for which Curtailment is requested
Total Activation Hours	=	the aggregate Activation Hours in such month
Adjusted Baseline (kWh) ⁴	=	A Contributor’s estimated electricity profile for a particular Activation Hour, expressed in kilowatt hours
Actual Load (kWh)	=	the actual electricity consumption of the Project Location for a particular Activation Hour, expressed in kilowatt hours
Availability Rate	=	the demand response payment availability rate for the DR1 Program published by the OPA on its DR1 Program website from time to time and expressed in dollars per kilowatt month (\$/kW-Month)

Monthly Utilization Payment

The Monthly Utilization Payment (“MUP”) in a particular month is the sum of each of the following hourly calculations:

$$\text{MUP} = \sum (\text{Confirmed Activation (kWh)} * \text{Utilization Rate})$$

Confirmed Activation (kWh)	=	the amount of Curtailment for an Activation Hour for which a Contributor has confirmed participation and actually achieved Curtailment, calculated as: Adjusted Baseline (kWh) – Actual Load (kWh)
Utilization Rate	=	the demand response payment utilization rate for the DR1 Program published by the OPA on its DR1 Program website from time to time and expressed in dollars per kilowatt hour (\$/kWh)

¹ MAP shall not be a negative value.

² Such number shall not be greater than:
contracted kW of demand response * Total Activation Hours

³ Confirmed Activation may be a positive or negative value.

⁴ Adjusted Baseline calculated pursuant to methodology on OPA website, as same may be amended from time to time.

EXHIBIT “B”

Confirmation email address: ●

Confirmation Form			
Meter ID#	Contributor Name	Confirm Curtailment	Expected kW of Demand Response Provided

Email address for Response: _____

EXHIBIT “C”

ELIGIBILITY CRITERIA

To be eligible to participate in DR 1, a Distribution Consumer must:

- register through an LDC or Aggregator and complete all Registration Forms
- enter into a DR1 contract in order to participate
- the demand response capacity cannot be greater than the average load during the 1500 hours over the year that fall on business days between noon and 6pm. Twelve months of historical hourly meter data is required to assess the maximum demand response capacity. Less than twelve months may be acceptable should the meter data available be enough to reasonably determine a limit.
- Contributors must have a minimum facility peak demand of 50 kW and have an interval meter providing hourly data
- the appropriate Certificate of Approval from the Ministry of Environment for generation equipment must have been obtained

Monthly Contributor Detailed Activation Performance Form

Schedule D-5 (Demand Response 1)

Monthly DR1 Contributor's Registration Summary Statement

Total Payment **Sum of Contributors x \$750**

Exhibit D

Monthly DR1 Contributor Activation Settlement Summary Statement

	Actual Curtailment kW	kW of DR Confirmed	Total Contracted kW
Activation 1			
Activation 2			
Activation 3			
Activation 4			
Activation 5			
Activation 6			
Activation 7			

Total Availability Payment for Month
Total Utilization Payment for Month
Total Payment for Month

[illegible]

**Exhibit E
Registration Form**

Registration Form - General Information

DR1 Contributor ID:

Contributor LDC Account#:

Registration Submission Date:

By submitting the Registration, the DR1 Contributor hereby declares that the information contained in this document and submitted by the DR1 Contributor is, to the best of the DR1 Contributor's knowledge, complete and accurate.

General Information

Contributor			
Business Name:	<input type="text"/>		
DR Site Address:	<input type="text"/>		
City/Town:	<input type="text"/>	Province:	<input type="text"/>
Postal Code:	<input type="text"/>	Country:	<input type="text"/>
URL:	<input type="text"/>		
Main Contact			
First Name:	<input type="text"/>	Last Name:	<input type="text"/>
Telephone No.:	<input type="text"/>	Fax No:	<input type="text"/>
Email Address:	<input type="text"/>	Title:	<input type="text"/>
Alternate Contact			
First Name:	<input type="text"/>	Last Name:	<input type="text"/>
Telephone No:	<input type="text"/>	Fax No:	<input type="text"/>
Email Address:	<input type="text"/>	Title:	<input type="text"/>

DR1 Contributor	
(LDC/Aggregator)	<input type="text"/>
Local Distribution Company	<input type="text"/>
Designated Settlement Area:	<input type="text"/>
A list of zones Please click here to check the map and boundary.	
Contributor Email Addresses for Activation Purposes	
Main Contact Email Address	<input type="text"/>
Alternate Contact Email Addresses	<input type="text"/>
	<input type="text"/>
	<input type="text"/>

Registration Form - Detail Information

Demand Response Capacity (kW)

Monthly Contracted kW

Month	Daily Schedule (Business Days)*	Contracted kW	Historical Average Hourly kWh for All Hours of Availability**
January	12 pm to 6 pm EPT		
February	12 pm to 6 pm EPT		
March	12 pm to 6 pm EPT		
April	12 pm to 6 pm EPT		
May	12 pm to 6 pm EPT		
June	12 pm to 6 pm EPT		
July	12 pm to 6 pm EPT		
August	12 pm to 6 pm EPT		
September	12 pm to 6 pm EPT		
October	12 pm to 6 pm EPT		
November	12 pm to 6 pm EPT		
December	12 pm to 6 pm EPT		

Attachment

Please attach the historical meter data of this contributor as a CSV file in EST in the following format "YYYY/MM/DD, HH, kWh"

Type of Load

Industrial	
Commercial	
Institutional	
Residential (multi units)	
Other	

The Applicant must declare its participation in other demand response programs with capacity payment

OPA's Clean Energy Supply Contracts (CES)	
OPA's DR3	
Others:	

Type of Demand Response Load (Choose all applicable)

Certificate of Approval

Load Interruption		
Behind the Meter Generation (Sub-Meter)		
Behind the Meter Generation (Non Sub-Meter)		

for behind the meter generation, a Certificate of Approval is required from the Ministry of Environment

Generator Nameplate (if applicable)

	Model Number	Nameplate Capacity (MW)	Fuel Type
1			
2			
3			
4			
5			
6			
Total			

* "EPT" means Eastern Prevailing Time, being either Eastern Standard Time or Eastern Daylight Saving Time, as applicable.

** Historical Average Hourly kWh = the sum of all kWh in the Daily Schedule during the Month, divided by the number of hours in the Daily Schedule during the Month

Industrial Program

**Demand Response 3 Initiative Schedule “D-6”
to Master CDM Program Agreement**

DEMAND RESPONSE 3 2011-2014

**Initiative Schedule “D-6”
to Master CDM Program Agreement**

DEMAND RESPONSE 3 2011-2014

RECITALS:

1. The Initiative described in this Schedule is the Demand Response 3 Initiative (the “**Initiative**”) and this Schedule is an Initiative Schedule.
2. This Schedule shall not apply to any LDC that is a Demand Response Provider or gives written notice to the OPA of its intention to become a Demand Response Provider before June 30, 2011.
3. The LDC is not a Demand Response Provider and has Registered for the Industrial Program and the Initiative in this Schedule is a Registered Initiative.
4. The Initiative in this Schedule provides for DR Payment for Service to DR3 Participants to compensate them for making available electricity demand response during a demand response event.
5. The Initiative requires DR3 Participants to reduce electricity use relative to a baseline when called upon. DR3 Participants must reduce electricity demand as provided in the applicable DR3 Contract.
6. Distribution Consumers capable of providing less than 5MW of demand response may only enter into a binding contract directly with a Demand Response Provider. Distribution Consumers capable of providing 5MW or more than 5MW of demand response may enter into a binding contract directly with the OPA or with a Demand Response Provider.
7. The LDCs, through their relationship with Distribution Consumers, will have the ability to encourage Distribution Consumers in applying and participating in the Initiative.

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Schedule, capitalized terms that are not otherwise defined will have the respective meanings attributed to them in the Master Agreement and the following terms shall have the following meanings in this Schedule:

“**Demand Response Provider**” means a Person who has entered into a DR3 Contract with the OPA for the primary purpose of aggregating the demand response capability of multiple Distribution Consumers pursuant to which the Demand Response Provider will deliver electricity reduction in respect of the Initiative.

“DR3 Contract” means a contract between a DR3 Participant and the OPA for the reduction of electricity during a demand response event, and, for greater certainty, a contract between a Demand Response Provider and a Distribution Consumer is not a DR3 Contract.

“DR3 Participant” means (a) a Demand Response Provider, or (b) a Distribution Consumer capable of providing 5MW or more than 5MW of demand response.

“DR Payment for Service” means an amount payable by the OPA to a DR3 Participant for providing actual electricity reduction during a demand response event pursuant to the applicable DR3 Contract.

1.2 Section References

Unless otherwise indicated herein, any reference in this Schedule to an article or section refers to the article or section to this Schedule.

ARTICLE 2 INITIATIVE IMPLEMENTATION

2.1 LDC Obligations

For the purposes of implementing and managing the Initiative, in addition to the other obligations set forth in the Master Agreement and this Schedule, the LDC’s obligations are as follows:

- (a) answering questions received from Distribution Consumers regarding the Initiative and referring the Distribution Consumers to the OPA or Demand Response Provider if the Distribution Consumers seek specific or technical information regarding the Initiative; and
- (b) contributing to the education effort undertaken by the Demand Response Providers by directly engaging with Distribution Consumers and explaining the terms and conditions of the Initiative.

2.2 OPA Obligations

For the purposes of implementing and managing the Initiative, in addition to the other obligations set forth in the Master Agreement and this Schedule, the OPA’s obligations are as follows:

- (a) entering into and managing all contractual relationships with Demand Response Providers;
- (b) entering into DR3 Contracts with Distribution Consumers capable of providing 5MW or more than 5MW of demand response;
- (c) providing to the LDC a monthly report including the total number of Distribution Consumers located in the LDC’s service area that are active DR3 Participants in

the Initiative, either under direct contract with the OPA or with a Demand Response Provider, and the total contracted megawatts registered through the Initiative within the LDC's service area;

- (d) managing the contract with the service provider responsible for demand response measurement and verification, notification, activation and settlement services; and
- (e) responding to all inquiries and complaints forwarded by the LDC or otherwise received from DR3 Participants or Distribution Consumers regarding the Initiative.

ARTICLE 3 LDC AS A DEMAND RESPONSE PROVIDER

3.1 LDC Request to Become a Demand Response Provider

An LDC may request to enter into a contract with the OPA to become a Demand Response Provider. This request must be made on or before June 30, 2011.

3.2 Program Administration Budget

If the LDC becomes a Demand Response Provider, then the LDC must return to the OPA the Program Administration Budget in respect of the Initiative.

ARTICLE 4 PAYMENT TO LDC

The Capability Building Funding Amount payable to the LDC in respect of the Initiative is the actual cost incurred by the LDC for legal advice, either from internal legal counsel or received from a third party service provider, up to a maximum amount of \$13,000 (for greater certainty, exclusive of Applicable Taxes), if the LDC decides to enter into a relationship agreement with one or more Demand Response Providers in order to co-promote the Initiative to the local community. For greater certainty, the LDC shall not be responsible for paying any DR Payment for Service to a DR3 Participant.

ARTICLE 5 REPORTING

The OPA will include the unverified and estimated Electricity Savings and Peak Demand Savings arising from the Initiative which occur within the LDC's service area in the reports provided by the OPA to the LDC pursuant to Section 8.2 of the Master Agreement.
