



INDUSTRIAL ACCELERATOR^{OM} PROGRAM

**Project Incentive Agreement
(June 24, 2010)**

Between

[name of Participant]

- and -

ONTARIO POWER AUTHORITY

DATED as of the • day of •, •

Contract Reference No. •

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PROJECT INCENTIVE AGREEMENT

This agreement is between ●, a ● [Note to Finalization: Set forth the name and legal form of the Participant] created under the laws of ● (the "Participant") and the Ontario Power Authority (the "OPA").

WHEREAS the OPA has implemented the Program to encourage Industrial entities in Ontario to implement industrial electricity efficiency initiatives that require capital expenditures;

AND WHEREAS the Participant submitted an Application for a Project or Portfolio that was accepted by the OPA pursuant to the Program Rules, and the Parties wish to execute this Agreement in order to formalize the contractual arrangements with respect to the Participant's participation in the Program 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 INTERPRETATION

1.1 Interpretation

- (a) **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 shall be conclusively deemed to have withheld its approval or consent.
- (b) **Currency.** Unless otherwise specified, all references to money amounts are to the lawful currency of Canada.
- (c) **Headings.** Headings of sections are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement. References to sections means sections of this Agreement, unless otherwise specified.
- (d) **Including.** Unless otherwise specified, where "including" is used in this Agreement, it means "including (or includes) without limitation".
- (e) **No Strict Construction.** Despite the fact that this Agreement was prepared on behalf of the OPA, each Participant acknowledges and agrees that any doubt or ambiguity in the meaning, application or enforceability of any term or provision in this Agreement shall not be construed against the OPA in favour of the Participant when interpreting such term or provision, by virtue of such fact.
- (f) **Number and Gender.** Unless the context otherwise requires, words importing the singular include the plural and *vice versa* and words importing gender include all genders.

- (g) **Severability.** If any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, the provision shall be ineffective only to the extent of the restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting its application to the other Party or circumstances.
- (h) **Conflicts.** In the event of any conflict between any provision of this Agreement and any provision of the Program Rules or any Application, the provisions of this Agreement will prevail.
- (i) **Statutory References.** A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.
- (j) **Time Periods.** Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.
- (k) **Governing Law.** This Agreement is made under and shall be governed by and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.
- (l) **Time.** Time is of the essence of this Agreement.

1.2 Non-Exclusivity of Contract

This Agreement is not an exclusive contract under the Program and the OPA may contract with others on the same or similar terms and by other means and on different terms.

1.3 Terms and Conditions

To the extent that any supplementary terms and conditions are required for any Project or Portfolio, such supplementary terms and conditions shall be attached as Schedule "B" hereto.

1.4 Projects and Portfolios

Attached as Schedule "C" is a description of the Project or Portfolio in respect of which this Agreement is being entered into including the Project or Portfolio identification number assigned by the OPA, the address of the Facility, Project Incentive, Net Project Incentive, scheduled In-Service Date, Eligible Costs, Project Payback, Electricity Savings, Anticipated Electricity Savings, Annualized Electricity Savings, Project Budget and Performance Security.

1.5 Schedules

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

- Schedule "A" – Defined Terms
- Schedule "B" – Supplementary Terms & Conditions
- Schedule "C" – Project/Portfolio Description
- Schedule "D" – Invoice Format
- Schedule "E" – Form of Letter of Credit

1.6 Entire Agreement

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

1.7 Amendments

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

1.8 Further Assurances

Each of the Parties shall, 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 or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement.

ARTICLE II TERM

2.1 Term

This Agreement shall become effective upon the date hereof and shall expire:

- (a) in respect of a Project, on the 10th anniversary of the In-Service Date of the Project; or
- (b) in respect of a Portfolio, on the 10th anniversary of the latest In-Service Date of the Projects in the Portfolio;

unless an Early Termination Date occurs or if the Parties otherwise agree in writing.

ARTICLE III
PROJECT INCENTIVE

3.1 Eligible Costs

- (a) The Parties agree that the projected Eligible Costs approved by the OPA are set out in Schedule "C" under the heading, "Eligible Costs".
- (b) The Participant shall, at the same time that the Participant delivers the Final Project Status Report, submit to the OPA a certificate signed by the Participant's Company Representative showing the Actual Eligible Costs incurred by the Participant and attaching all relevant receipts therefor. The OPA has the right to audit such a certificate of Actual Eligible Costs and shall, in its discretion, accept or reject all or part of such certificate of Actual Eligible Costs. The OPA may, within 30 days of receipt thereof, notify the Participant that the OPA intends to audit such certificate of Actual Eligible Costs. Upon receipt of such notice, the Participant shall use all Commercially Reasonable Efforts to assist the OPA in the course of the audit by making any information and personnel available to the OPA within 5 Business Days of any request therefor. At the conclusion of such an audit, the OPA shall, in its sole discretion, either: (i) accept the certificate of Actual Eligible Costs, or (ii) if the OPA does not accept such certificate of Actual Eligible Costs, determine the Actual Eligible Costs based upon the results of its audit and notify the Participant thereof, and the Actual Eligible Costs shall be deemed for all purposes of this Agreement to be such amount determined by the OPA.

3.2 Project Incentive

- (a) The Parties agree that the Project Incentive was determined using (a) Eligible Costs forecasts provided by the Participant that were reviewed and assessed by the Technical Reviewer following which the Technical Reviewer made its recommendations to the OPA and (b) the amount of Third Party Contributions identified by the Participant at the time of the Project Review. The Parties further agree that if Actual Eligible Costs are less than the Eligible Costs and/or the amount of Third Party Contributions increases after the date hereof, resulting in either:
 - (i) the Project Incentive being greater than 70% of the Actual Eligible Costs of the Project (including those Projects in a Portfolio);
 - (ii) the Project Payback being less than one year (including those Projects in a Portfolio); or
 - (iii) the Project Incentive being greater than \$230/MWh of Electricity Savings;
- the Project Incentive shall be automatically reduced by an amount such that the Project Incentive shall not be greater than 70% of the Actual Eligible Costs, the Project Payback shall not be less than one year and the Project Incentive shall not

be greater than \$230/MWh, and each of the Project Incentive and/or the Project Payback shall be deemed to be such lowered amount(s) for all purposes of this Agreement.

- (b) If the Project Incentive is revised in accordance with Section 3.2(a), the Net Project Incentive shall be revised accordingly and such revised amount shall be deemed, for all purposes of this Agreement, to be the Net Project Incentive.
- (c) If Section 3.2(a) is applicable, the OPA is entitled to deliver a notice to the Participant setting out the calculation of the lowered Project Incentive, Project Payback and Net Project Incentive which shall be binding upon the Parties absent manifest error on the face of such notice.

ARTICLE IV

PARTICIPANT RESPONSIBILITIES

4.1 General

The Participant covenants to:

- (a) implement the Project as described in and in accordance with the Project Incentive Application, the Project Schedule, this Agreement, the Program Rules, Good Engineering Practices and all Applicable Laws;
- (b) operate and maintain the Project or Portfolio for a period of not less than the term of this Agreement and during such time, use Commercially Reasonable Efforts to obtain the Electricity Savings identified in Schedule "C";
- (c) ensure that at any time during the term of this Agreement, the Project or Portfolio, as applicable, continues to achieve at least 90 % of the Anticipated Electricity Savings, as evidenced by the applicable M&V Report;
- (d) provide Project Status Reports on the milestones identified in the Project Review and listed in Schedule "C" under the heading "Project Milestones", comparing actual progress on and costs of the implementation of the Project compared to the Project Budget and the Project Schedule;
- (e) carry out the Participant's obligations as required pursuant to the M&V Plan such as, without limitation, installing metering equipment, data collection and delivering such data to the OPA;
- (f) throughout the term of this Agreement, provide the OPA and its Representatives with access, at reasonable times upon reasonable request, to the Facility in which the Project is installed and to any relevant data collection devices for the purposes of, among others, preparing M&V Reports, installing additional metering if required by the OPA as part of the OPA's evaluation of the Project, collecting data and/or for inspection of the operation of the Project;

- (g) ensure that its relevant personnel are familiar with the Project and available to the OPA evaluation, measurement and verification parties throughout the term of this Agreement;
- (h) inform the OPA in writing of all Third Party Contributions received after the date hereof;
- (i) demonstrate leadership in the area of energy conservation by, among other things, developing conservation policies and establishing employee, community and peer-to-peer awareness programs;
- (j) file an Energy Management Plan with the OPA within one year of the date of its Application in respect of the Project or Portfolio;
- (k) within 10 Business Days of a request by the OPA, provide updated evidence, satisfactory to the OPA, of the Participant's solvency or other measures of overall financial health, including, without limitation, a certificate of the Participant's chief financial officer with respect to the Participant's solvency and ability to post and maintain required performance security, if any, and to provide audited financial statements and/or a ratings report from a Rating Agency acceptable to the OPA;
- (l) acknowledge the assistance provided by the OPA in respect of the Project or Portfolio in all publications, publicity materials and other forms of release or communication pertaining to the Project ("**Project Communication**");
- (m) ensure that there is no material change to the Project or Portfolio without the prior written consent of the OPA;
- (n) ensure that all equipment being replaced in whole or in part by all or part of any Measure, when removed, is not sold for re-use and at the request of the OPA provide the Company Representative's written confirmation on behalf of the Participant;
- (o) obtain and maintain throughout the term of this Agreement, all permits and approvals required by Applicable Law for the installation, ownership and operation of the Project; and
- (p) have included in the Project Incentive Application a detailed description of the methodology by which the Participant determined the information set out on Schedule "C" attached hereto.

ARTICLE V
IN-SERVICE DATE

5.1 In-Service Date

Unless otherwise approved in writing by the OPA, the Participant shall cause the Project or Portfolio, as applicable, to achieve the requirements necessary to meet the In-Service Date on or before the second anniversary of the date hereof. Upon achieving the requirements necessary to meet the In-Service Date, the Participant shall deliver to the OPA not less than 10 Business Days prior written notice of the commissioning of the Project and of a proposed In-Service Date and provide any data in electronic or written form relating thereto as may be reasonable requested by the OPA. The OPA may request the Technical Reviewer attend at the Facility to confirm the In-Service Date requirements have been satisfied. Whether or not the Technical Reviewer attends at the Facility, the OPA will require a certification to it from the Technical Reviewer confirming the date upon which the In-Service Date occurred.

ARTICLE VI
PAYMENT

6.1 Net Project Incentive Payments (Performance Security)

Subject to the Participant not being in default hereunder and otherwise satisfying all of its obligations herein contained, where the Participant provides the Performance Security referred to in Section 7.1, the OPA shall pay the Participant, on a Project or Portfolio basis, as applicable:

- (a) 25 % of the Net Project Incentive, less 2.5 % of the Project Incentive, within 30 days of the later of (i) the date hereof and (ii) acceptance by the OPA of an Invoice;
- (b) 25 % of the Net Project Incentive, less 2.5 % of the Project Incentive, within 30 days of the later of acceptance by the OPA of (i) evidence satisfactory to the OPA that 25 % of the Eligible Costs have been incurred and paid by the Participant, (ii) of the most recent Project Status Report and (iii) an Invoice, and
- (c) 25 % of the Net Project Incentive, less 2.5 % of the Project Incentive, within 30 days of the later of acceptance by the OPA of (i) evidence satisfactory to the OPA that 50 % of the Eligible Costs have been incurred and paid by the Participant, (ii) the most recent Project Status Report and (iii) an Invoice;
- (d) 25 % of the Net Project Incentive, less 2.5 % of Project Incentive, within 60 days of the later of acceptance by the OPA of (i) evidence satisfactory to the OPA that 100 % of the Actual Eligible Costs have been incurred and paid by the Participant, (ii) the Final Project Status Report and (iii) an Invoice; and
- (e) the remaining balance of the Net Project Incentive, if any, within 60 days of acceptance by the OPA of (i) the M&V Report submitted by the CMVP for the first 365 days after the In-Service Date of the Project and (ii) an Invoice,

provided that the OPA shall have the right to withhold an amount equal to 25% of the Project Incentive until such time as the Participant files an Energy Management Plan with the OPA in respect of the Facility in accordance with Section 4.1(j) and, if the Participant does not deliver such Energy Management Plan prior to the In-Service Date, the OPA's obligation to pay such amount to the Participant shall terminate on the In-Service Date. Notwithstanding anything else in this Section 6.1, no amount shall be paid to the Participant under Section 6.1(e), unless the Project has successfully achieved at least 90 % of the Anticipated Electricity Savings arising during the first 365 days after the In-Service Date.

6.2 Net Project Incentive Payments (Incentive Security)

A Participant may elect in a Participant Security Election to provide Incentive Security, in which case Section 6.1 shall not be applicable and the Net Project Incentive shall, subject to Sections 7.3 and 7.4 hereof, be paid as set out herein. The Participant, as a condition of each and every payment hereinafter set out, shall deliver to the OPA the Project Status Reports identified in the Project Review for such Project corresponding to the date in the approved schedule that the Participant is projected to have incurred 25% of Eligible Costs, 50% of Eligible Costs and 100% of Actual Eligible Costs. Subject to the Participant not being in default hereunder and otherwise satisfying all of its obligations herein contained, where the Participant elects to provide Incentive Security, the OPA shall pay the Participant, on a Project or Portfolio basis, as applicable:

- (a) the first third of the Net Project Incentive, less ten percent of one third of the Project Incentive, within 30 days of the later of (i) approval by the OPA of the first quarterly M&V Report following the In-Service Date and (ii) acceptance by the OPA of an Invoice;
- (b) the second third of the Net Project Incentive, less ten percent of one third of the Project Incentive, within 30 days of the later of (i) approval by the OPA of the second quarterly M&V Report following the In-Service Date and (ii) acceptance by the OPA of an Invoice;
- (c) the final third of the Net Project Incentive, less ten percent of one third of the Project Incentive, within 30 days of the later of (i) approval by the OPA of the third quarterly M&V Report following the In-Service Date and (ii) acceptance by the OPA of an Invoice; and
- (d) the balance of the Net Project Incentive will be paid within 30 days of (i) approval by the OPA of the fourth quarterly M&V Report following the In-Service Date and (ii) acceptance by the OPA of an Invoice.

6.3 Method of Payment

Payments under Section 6.1 or Section 6.2, as applicable, shall be made either by cheque made out to the Participant or by electronic funds transfer to the account of the Participant specified in Schedule "C" under the heading "Account Details".

6.4 Invoice

An Invoice by the Participant shall be deemed to be a representation and warranty of the Participant to the OPA 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 OPA, unless otherwise agreed to in writing by the OPA.

6.5 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 those anticipated by the Technical Reviewer in the Project Review of the Project.

ARTICLE VII **PERFORMANCE AND INCENTIVE SECURITY**

7.1 Requirement to Post Performance Security

Where the Participant intends to be paid the Net Project Incentive pursuant to Section 6.1 hereof, the Participant agrees to provide the OPA with the Performance Security, by way of a letter of credit in the form set out in Schedule "E" hereto to be executed and delivered to the OPA on the date hereof, in order to secure its commitment to implement the Project or Portfolio in accordance with this Agreement, to ensure that the Project or Portfolio, at any time, continues to achieve at least 90% of the Anticipated Electricity Savings and to secure the Participant's performance of its obligations hereunder.

- (a) If the amount of the Performance Security is equal to or less than \$1,000,000.00, the Performance Security shall be delivered by way of letter of credit on the date hereof and released on the 2nd anniversary of the In-Service Date and the amount of such Performance Security shall not change, subject to Section 7.1(d) hereof.
- (b) If the maximum amount of the Performance Security specified in Schedule "C" is greater than \$1,000,000.00, the Performance Security shall be delivered by way of a letter of credit on the date hereof in an initial amount equal to [●] being 25% of the Performance Security Amount, and the amount of such Performance Security shall, in accordance with the terms of such letter of credit, automatically increase and decrease in accordance with this Section 7.1(b) and may decrease in accordance with Section 7.1(d). The amount of such Performance Security shall increase as follows;
 - (i) first, upon the Request for Payment in accordance with Section 6.1(b), by a further amount equal to [●] being 25% of the Performance Security Amount and cumulatively 50% of the Performance Security Amount;
 - (ii) second, upon the Request for Payment in accordance with Section 6.1(c), by a further amount equal to [●] being 25% of the Performance Security Amount and cumulatively 75% of the Performance Security Amount; and

- (iii) third, upon the Request for Payment in accordance with Section 6.1(d), by a further amount equal to [●] being 25% of the Performance Security Amount and cumulatively 100% of the Performance Security Amount.

Such Performance Security shall decrease as follows:

- (iv) upon the 1st anniversary of the In-Service Date, such Performance Security shall decrease by an amount equal to 50% of the total Performance Security outstanding at that time; and
- (v) upon the 2nd anniversary of the In-Service Date, such Performance Security shall be reduced to zero or otherwise released, and any outstanding letter of credit will be returned by the OPA.

The tables set out in Schedule "C" under the heading "Performance Security" show the schedule of increases and decreases to the Performance Security, but in the event of a conflict with this Section 7.1, this Section 7.1 shall govern.

- (c) Notwithstanding anything else in this Agreement, the Performance Security shall decrease or be released in accordance with Sections 7.1(b)(iv) and 7.1(b)(v) only if the Participant is not at that time in breach of this Agreement.
- (d) If a Participant has a Negative Outlook following the delivery of Performance Security that remains outstanding for 30 days and prior to the complete release of Performance Security in accordance with Sections 7.1(a) or 7.1(b), as applicable, then its Credit Rating will automatically be demoted by one row in the table set out in Schedule "C" under the heading "Credit Rating of the Participant" and the Participant shall within 10 Business Days thereof provide replacement Performance Security in the form of Schedule "E" in the amount required by such row to which the Participant has been demoted, failing which the OPA will be entitled to draw upon the full amount of any existing Performance Security. Upon receipt of such new Performance Security, the OPA will return any originally delivered Performance Security.

7.2 Requirement Waived

Where the Participant has the Required Rating and continues to maintain the Required Rating from the date of the Incentive Agreement to the 2nd anniversary of the In-Service Date, the OPA will suspend the Participant's obligation to deliver Performance Security pursuant to Section 7.1 hereof. If at any relevant time after the OPA suspends such obligation the Participant no longer maintains the Required Rating then the OPA shall have the right to demand that the Participant satisfy its obligations under Section 7.1 hereof within 10 Business Days, failing which the Participant will be in default of its obligations under this Agreement. If an Affiliate of the Participant has the Required Rating then the Participant may also have the benefit of this Section 7.2, if such Affiliate provides a guarantee to the OPA, in a form acceptable to the OPA, of the Participant's obligations under this Agreement and otherwise complies with this Section 7.2.

7.3 Results of Breach by the Participant

- (a) Prior to the In-Service Date:
 - (i) if any Participant Event of Default has occurred, the OPA may (A) draw on the Performance Security in an amount equal to the total of all amounts then paid by the OPA under Section 6.1 or (B) if the Participant has elected to provide Incentive Security, withhold any payment due to the Participant under Section 6.2; and
 - (ii) if the In-Service Date has not occurred in accordance with Section 5.1, the OPA may (A) draw on the full amount of the Performance Security or (B) if the Participant has elected to provide Incentive Security, suspend the payment obligation in respect of any Net Project Incentive due to the Participant pursuant to Section 6.2;

in each case in accordance with Section 9.2(b)(i).

- (b) After the In-Service Date:
 - (i) if a Participant Event of Default has occurred, the OPA may (A) draw on the full amount of the Performance Security in accordance with Section 9.2(b)(i) or (B) if the Participant has elected to provide Incentive Security, withhold any payment due to the Participant under Section 6.2; and
 - (ii) if a Participant Event of Default contained in Section 9.1(a) has occurred, the OPA may proceed in accordance with Section 9.2(c) for each such default.
- (c) Notwithstanding the foregoing, if the Participant has provided Performance Security to the OPA under this Agreement that has not been released, the OPA may call on that Performance Security for a breach by the Participant of this Agreement.
- (d) The Parties agree that any draw on Performance Security by the OPA is on account of liquidated damages and is not a penalty and the OPA shall be entitled to pursue a Claim for damages with respect to the amount or any portion of such amount or any portion of the Performance Security that the Participant failed to provide but was required to provide to the OPA as of the date of such Participant Event of Default and in such circumstances, notwithstanding Section 9.4, the OPA's remedies against the Participant in respect of such Participant Event of Default shall be limited to the amount of liquidated damages payable by the Participant pursuant to Sections 9.2(b)(i).

7.4 Continuing Obligation

- (a) If the Participant elects to provide Incentive Security in respect of any Project or Portfolio, or following the release by the OPA of all Performance Security in

accordance with the terms hereof, then, for the entire term or remaining term of this Agreement, as applicable, the Participant shall provide the OPA with 30 Business Days prior written notice (the "**Change Notice**") of any change or proposed change in the Project, Industrial System or the Facility which could reasonably be expected to result in a decrease in the Anticipated Electricity Savings.

- (b) Upon receipt of a Change Notice, the Participant shall provide the OPA with access to such documents and premises as the OPA shall require for the Technical Reviewer to review the change referred to in the Change Notice and to confirm whether a decrease in the Anticipated Electricity Savings will occur as a result of such change, which determination shall be binding on the Participant. Within 30 Business Days of such determination being made, the OPA shall provide the Participant with a written notice (the "**Claw Back Notice**") setting out the percentage reduction in the Anticipated Electricity Savings that will occur as a result of such change (the "**Percentage**").
- (c) Within 10 Business Days of receipt of the Claw Back Notice, the Participant shall pay to the OPA an amount equal to the Percentage multiplied by the Project Incentive paid to the Participant pursuant to Section 6.1 or 6.2, as applicable (the "**Claw Back Amount**"), failing which interest shall accrue on the Claw Back Amount at the Prime Rate plus 4% from such date until the date that it is paid in full.
- (d) If the Participant fails to provide a Change Notice in accordance with Section 7.4(a), the Claw Back Amount shall bear such interest from the date such Change Notice was to have been provided in accordance with Section 7.4(a) to the date on which the Claw Back Amount is paid in full.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

8.1 Mutual Representations of the Parties

Each of the Participant and the OPA 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;
- (b) this Agreement has been duly authorized, executed, and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction; and

- (c) the execution and delivery of this Agreement by it and the consummation of the transactions contemplated hereby will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of, its material obligations or any judgment, decree, order or award to which it is subject or any license permit, approval, consent or authorization held by it.

8.2 Representations of the Participant

In addition to the representations set out in Section 8.1, the Participant represents and warrants to the OPA as follows, and acknowledges that the OPA is relying on such representations and warranties in entering into this Agreement:

- (a) all statements, specifications, data, confirmations and information set out in each Application are complete and accurate in all material respects and are hereby restated and reaffirmed by the Participant as of the date of this Agreement;
- (b) all of the information set out in this Agreement pertaining to the Participant, and the Project or Portfolio, is true and correct, or, to the extent it relates to a Project or Portfolio yet to be constructed, is an accurate representation of the Participant's plans and designs for the construction of the Project or Portfolio;
- (c) the Participant meets all of the eligibility requirements set out in Section 2.2 of the Program Rules and each Project is an eligible Project pursuant to Section 2.3 of the Program Rules;
- (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 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;
- (g) the Facility is electrically connected directly to the Transmission System;
- (h) the Participant has not, prior to submitting an Application, entered into an agreement with any contractor or consultant, or ordered or purchased any equipment for use in relation to this Project without the prior written consent of the OPA;

- (i) 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;
- (j) a complete list of Third Party Contributions, showing the amount of each Third Party Contribution, is set out in Schedule "C" under the heading "Third Party Contributions";
- (k) the Participant, each Project or Portfolio, and each Facility satisfies the eligibility and other requirements set out in the Program Rules as of the date hereof; and
- (l) the Participant is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

8.3 Survival of Representations and Warranties

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

ARTICLE IX **REMEDY FOR DEFAULT**

9.1 Participant Breach

During the term of this Agreement, each of the following shall be an event of default by the Participant ("**Participant Event of Default**"):

- (a) The Project or Portfolio fails to achieve at least 90% of the Anticipated Electricity Savings in any M&V Reporting Period.
- (b) The Participant fails to post Performance Security in accordance with Article VII, if such failure is not remedied within five Business Days after written notice of such failure from the OPA.
- (c) The Participant fails to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within 15 Business Days after written notice of such failure from the OPA, provided that such cure period shall be extended by the OPA for a further 10 Business Days if the OPA 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 when made 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 OPA, provided that such cure period shall be extended by the OPA for a further 10 Business Days if the OPA 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 OPA, provided that such cure period shall be extended by the OPA for a further 10 Business Days if the OPA is satisfied that the Participant is diligently remediating such failure or cessation and that such failure or cessation is capable of being corrected during such extended cure period.
- (f) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Participant, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Participant under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Participant's obligations under this Agreement.
- (g) Other than in accordance with Section 10.2, 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.
- (h) 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. 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. 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 OPA, acting reasonably.
- (k) The In-Service Date has not occurred within 2 years from the date hereof in accordance with Section 5.1.

9.2 Remedies of the OPA

- (a) If any Participant Event of Default occurs and is continuing, upon written notice to the Participant, the OPA may terminate this Agreement.
- (b) If any Participant Event of Default occurs and is continuing, the OPA may:
 - (i) in addition to the remedy set out in Section 9.2(a) (A) draw on all or part of the Performance Security in accordance with Section 7.3 and, if the remedy in Section 9.2(a) has not been exercised, require the Participant to replace the Performance Security or (B) where the Participant has provided Incentive Security, suspend the obligation to make any payment due to the Participant in accordance with Section 7.3; and
 - (ii) refuse to make any Project Incentive payments to the Participant under this Agreement.
- (c) If a Participant Event of Default contained in Section 9.1(a) occurs, the OPA may, in addition to the remedies available to it in Sections 9.2(a) and 9.2(b) also have the right to elect to:
 - (i) allow the Participant, at the Participant's sole cost and expense, to substitute alternate equivalent electricity savings for the Electricity Savings;
 - (ii) extend the term of this Agreement until such date as the Anticipated Electricity Savings have been achieved;
 - (iii) where the Participant has elected to provide Performance Security, the OPA may call on 25% of the total Performance Security for each such failure; and
 - (iv) where the Participant has elected to provide Incentive Security, the OPA may withhold the payment that would otherwise have been paid to the Participant pursuant to Section 6.2 until it receives two subsequent consecutive M&V Reports each of which confirms that the Project or

Portfolio has achieved at least 90% of the Anticipated Electricity Savings for that M&V Reporting Period.

- (d) Notwithstanding anything else in this Agreement, on the occurrence of a Participant Event of Default referred to in Sections 9.1(f), 9.1(h) or 9.1(i), all of the OPA's obligations hereunder shall terminate immediately before such Participant Event of Default.
- (e) If any Participant Event of Default occurs and at such time the requirement of the Participant to provide Performance Security has been waived in accordance with Section 7.2, then for such Participant Event of Default and each further Participant Event of Default, the Participant shall pay to the OPA an amount equal to 25% of the Net Project Incentive, up to an aggregate total of 100% of the Net Project Incentive as liquidated damages and not as a penalty and the OPA shall be entitled to pursue a Claim for damages with respect to such amount or any portion of such amount. Notwithstanding Section 9.4, the OPA's remedies against the Participant under this Section 9.2(e) shall be limited to the amount of liquidated damages payable by the Participant pursuant to this Section 9.2(e).
- (f) If the OPA terminates this Agreement pursuant to Section 9.2(a) or the Agreement is terminated pursuant to Section 9.2(d), the OPA may draw on the Performance Security in accordance with Section 7.3.
- (g) If the OPA terminates this Agreement pursuant to Section 9.2(a) or the Agreement is terminated pursuant to Section 9.2(d) and at such Early Termination Date the requirement of the Participant to provide Performance Security has been waived in accordance with Section 7.2, then:
 - (i) if the Early Termination Date occurs prior to the In-Service Date the OPA may require the Participant to pay the OPA an amount equal to the total of all amounts paid by the OPA under Article VI; or
 - (ii) if the In-Service Date has not occurred in accordance with Section 5.1 or if the Early Termination Date occurs after the In-Service Date, the OPA may require the Participant to pay the OPA an amount equal to the Project Incentive;as liquidated damages and not as a penalty and the OPA shall be entitled to pursue a Claim for damages with respect to such amount or any portion of such amount. Notwithstanding Section 9.4, the OPA's remedies against the Participant hereunder shall be limited to the amount of liquidated damages payable by the Participant pursuant to this Section 9.2(g).
- (h) Termination shall not relieve the Participant or the OPA of their respective responsibilities relating to the Project or Portfolio and delivery of the Electricity Savings and Environmental Attributes up to and including the Early Termination Date. However, upon termination pursuant to this Section 9.2, the OPA shall not be required to pay any amounts to the Participant pursuant to Section 6.1 or 6.2,

as applicable, unless the time period for any payment under Section 6.1 or 6.2, as applicable, has expired prior to the Early Termination Date.

9.3 Other Performance Security

Notwithstanding anything else in this Agreement, if at any time Performance Security in respect of a Project or Portfolio is not required to be posted with the OPA pursuant to Article VIII, but the Participant has provided Performance Security to the OPA in respect of another Project or Portfolio under another agreement between the Participant and the OPA in respect of the Program, the OPA may call on such Project Security under this Article IX. Similarly, the OPA may set off against any payments owing to a Participant under one agreement in respect of the Program against any amounts owing to the OPA by that Participant under another agreement in respect of the Program.

9.4 Remedies Not Cumulative

For greater certainty, the express rights and remedies of the OPA set out in Section 9.2 are in addition to and shall not limit any other rights and remedies available to the OPA at law or in equity.

ARTICLE X GENERAL PROVISIONS

10.1 Program Rules

The Participant acknowledges and agrees that it is bound by the provisions of the Program Rules.

10.2 Assignment

A Participant shall not assign this Agreement to another Person other than 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, except with the prior written consent of the OPA.

10.3 Environmental Attributes

- (a) All Environmental Attributes arising in respect of Electricity Savings for which a Project Incentive has been paid, other than those which are required by the Participant by Applicable Laws in order solely to operate the Project for which the Project Incentive has been paid, shall be owned by the OPA and the Participant shall have no entitlement to any such Environmental Attributes. All other Environmental Attributes arising in relation to a Participant's Facility shall be owned by the Participant and the OPA shall have no entitlement thereto.
- (b) The Participant hereby transfers and assigns to, or to the extent transfer or assignment is not permitted, holds in trust for, the OPA who thereafter shall own, all rights, title, and interest in and to all such Environmental Attributes.

- (c) The Participant shall from time to time, upon written direction of the OPA, take all such actions and do all such things necessary to effect the transfer and assignment to, or holding in trust for, the OPA, all rights, title, and interest in all such Environmental Attributes.
- (d) The Participant shall from time to time, upon written direction of the OPA, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies such Environmental Attributes that are created and allocated or credited pursuant to Applicable Law from time to time for the purposes of transferring such Environmental Attributes to the OPA in accordance with this Section 10.3. The Participant shall be entitled to reimbursement of the cost of complying with a direction under this Section 10.3(d), provided that the OPA, acting reasonably, approved such cost in writing prior to the cost being incurred by the Participant.

10.4 Company Representative

Each of the Parties hereby appoints its Company Representative and confirms that its respective 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, shall 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 shall not have the power or authority to amend this Agreement.

10.5 Project Communications

The Participant shall obtain the OPA's prior written approval to all Project Communications in advance of publication or release thereof. Such approval shall be deemed to be granted if the OPA has not objected to the Project Communication within 10 business days of receipt by the OPA of the proposed Project Communication.

10.6 M&V Reporting

The OPA shall instruct the CMVP to complete the work necessary to deliver a M&V Report for each M&V Reporting Period within a specified time following the expiration of the applicable M&V Reporting Period.

10.7 Notice

All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be addressed to the other Party as follows:

- (a) If to Participant, all contact details shall be set out in Schedule "C" hereto under the heading "Participant Contact Information".
- (b) If to the OPA:

Ontario Power Authority
120 Adelaide Street West Suite 1600
Toronto, Ontario M5H 1T1
Attention: ●
Facsimile: ●
Email: ●

Either Party may, by written notice to the other, change its respective Company Representative or the address to which notices are to be sent.

- (c) Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is received or transmitted, provided that it is received or transmitted on a Business Day prior to 5:00 p.m. local time in the place of receipt. Otherwise such notice shall be deemed to have been given and received on the next Business Day.
- (d) Any notices of a Participant Event of Default and termination of this Agreement shall only be given by hand or courier delivery.

10.8 Counterparts and Execution

This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement which shall be binding on the Parties hereto, provided that each Party has signed at least one counterpart. This Agreement may be executed and delivered by facsimile transmission or other electronic means and the Parties hereto may rely upon all such signatures as though such signatures were original signatures.

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IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

[NAME OF PARTICIPANT]

Per: _____
Name:
Title:

I have authority to bind the Corporation.

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

I have authority to bind the Corporation.

SCHEDULE "A"

DEFINED TERMS

1. **"Actual Eligible Costs"** means the actual Eligible Costs incurred by the Participant;
2. **"Affiliate"** means any Person that: (i) Controls a Participant; (ii) is Controlled by a Participant; or (iii) is Controlled by the same Person that Controls a Participant;
3. **"Agreement"** means the agreement to which this Schedule "A" is attached together with Schedule "C" to "E", inclusive;
4. **"Annualized Electricity Savings"** means Electricity Savings divided by the number of years in the relevant Electricity Savings Period;
5. **"Anticipated Electricity Savings"** means in each M&V Reporting Period (as defined in the M&V Plan), the amount appearing opposite such period in the table set out in Schedule "C" hereto under the heading "Anticipated Electricity Savings", being the Electricity Savings anticipated to be achieved during such period by the Technical Reviewer as contained in the Project Review or such other amounts as were approved by the OPA in writing;
6. **"Applicable Laws"** 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;
7. **"Application"** means the Preliminary Engineering Study Funding Application, the Detailed Engineering Study Funding Application or the Project Incentive Application, as applicable;
8. **"Arbitrator"** has the meaning given to it in Section 3.2 of Schedule "B" hereof;
9. **"Base Case"** means the projected economic, operational and technical configuration of the Industrial System without implementation of the Project, for the Electricity Savings Period, taking into account appropriate adjustments during such period;
10. **"Business Day"** means any day that is not a Saturday, a Sunday, or a legal holiday in the Province of Ontario;
11. **"Change Notice"** shall have the meaning ascribed thereto in Section 7.4(a);
12. **"Claim"** means a claim or cause of action in contract or tort and other Applicable Law, or otherwise;
13. **"Claw Back Amount"** shall have the meaning ascribed thereto in Section 7.4(c);
14. **"Claw Back Notice"** shall have the meaning ascribed thereto in Section 7.4(b);

15. "**CMVP**" means a certified measurement and verification professional who is currently registered as a CMVP by the Association of Energy Engineers or who has the equivalent combination of experience and qualifications as determined by the OPA and provided such party registers as a CMVP with the Association of Energy Engineers within one year of starting to provide services to the OPA;
16. "**Commercially Reasonable Efforts**" means efforts which are designed to enable a party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by this Agreement and which do not require the performing party to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the transaction contemplated by this Agreement;
17. "**Company Representative**" means, in respect of the Participant or the OPA as applicable, the individual identified in Schedule "C" under the heading "Company Representative";
18. "**Confidential Information**" means all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with the Agreement including all new information derived at any time from any such confidential information, but excluding (i) publicly-available information unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative if such other source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party;
19. "**Confidentiality Undertaking**" has the meaning given to it in Section 1.1(c) of Schedule "B" hereto;
20. "**Control**" means, with respect to any Person at any time, (i) 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 (ii) 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;
21. "**Credit Rating**" means, (i) with respect to the Participant or an Affiliate (A) its long-term senior unsecured debt rating (not supported by third party credit enhancement) or (B) 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;

22. **"DBRS"** means Dominion Bond Rating Service limited or its successors;
23. **"Detailed Engineering Incentive"** means funding paid by the OPA to the Participant pursuant to a Detailed Engineering Study Funding Contract;
24. **"Detailed Engineering Study"** means a detailed study of the Industrial System load within a Facility and specific activities, Measures and or Generation that can be implemented in order to reduce the electricity consumption in the Facility, substantially in the form of Schedule "B" to the Program Rules;
25. **"Detailed Engineering Study Funding Application"** means an application by the Participant for a Detailed Engineering Incentive from the OPA prepared in accordance with instructions posted on the Website from time to time and as referred to in Section 4.1(a) of the Program Rules;
26. **"Detailed Engineering Study Funding Contract"** means a contract between a Participant and the OPA for funding of a Detailed Engineering Study pursuant to Article 4.0 of the Program Rules;
27. **"Disclosing Party"** means, with respect to Confidential Information, the Party providing or disclosing such Confidential Information and may be the OPA or the Participant, as applicable;
28. **"Early Termination Date"** means the date this Agreement terminates as a result of an early termination of this Agreement in accordance with Sections 9.2(a), 9.2(d);
29. **"Electricity Savings"** means the aggregate electricity reduction in MWh obtained during the Electricity Savings Period due to the use of the Measure or Measures included in the Project, as adjusted for Project specific circumstances, measured in MWh under normal operating conditions following the In-Service Date in the relevant Electricity Savings Period, initially as projected by the Technical Reviewer and contained in the Project Review and ultimately as verified by the Technical Reviewer in the M&V Report;
30. **"Electricity Savings Period"** means the period commencing on the In-Service Date and ending on the 10th anniversary thereof;
31. **"Eligible Costs"** means those costs directly related to design, selection, purchase and installation of the Measure or Measures included in a Project or Portfolio and will include only the following: (a) capital expenses; (b) equipment and products, including diagnostic and testing tools and instruments, and associated software; (c) data collection services, including processing, analysis and data management; (d) meter purchase, installation and configuration costs associated with implementing the M&V Plan; (e) salaries and benefits of employees directly involved in the design, selection, purchase and installation of the Measure or Measures included in the Project or Portfolio; (f) professional, engineering, scientific, technical, management and contracting services, including those required for training employees in the proper operation of the Project; (g) travel, including accommodation but excluding meals; (h) printing services; (i) permits and license fees; (j) costs associated with environmental assessments; (k) technical audits and studies

associated with the Project (excluding the Participant's Preliminary Engineering Study and Detailed Engineering Study expenses not funded by the OPA), including a study of energy consumption before or after Project implementation, in each case as approved in writing in advance by the OPA; and (l) such additional category of costs as may be consented to by the OPA in writing in advance of such expenses being incurred.

32. **"Energy Management Plan"** means a document generated by an Energy Manager in connection with the Participant's conservation policy and planning, describing the activities and plans required to reduce energy consumption in the 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;
33. **"Energy Manager"** means a person employed or engaged by a Participant whose primary responsibility is to propose and lead methodologies and processes to reduce energy consumption in the Participant's facilities;
34. **"Environmental Attributes"** means environmental attributes associated with a Facility having decreased environmental impacts resulting from the implementation of a Project, and includes:
 - (i) rights to any fungible or non-fungible attributes, whether arising from the Facility itself, from the interaction of the Facility with the IESO-Controlled Grid or because of applicable legislation or voluntary programs established by governmental authorities, governmental agencies or applicable regulatory bodies;
 - (ii) any and all rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs and specific Environmental Attributes include ownership rights to any applicable credits, entitlements or other instruments resulting from interaction of the Facility with the IESO-Controlled Grid or as specified by applicable legislation or voluntary programs, and the right to quantify and register these with competent authorities; and
 - (iii) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing;
35. **"Facility"** means the building(s) and premises owned or occupied by the Participant and in which Industrial System is located;
36. **"Final Project Status Report"** means the last Project Status Report to be filed with the OPA by the Participant, which includes a certification by the Technical Reviewer that the Project was completed in accordance with the Project Incentive Application in all material respects including confirmation of the Actual Eligible Costs;
37. **"FIPPA"** means the Freedom of Information and *Protection of Privacy Act* (Ontario), as the same may be amended or replaced from time to time;

38. "**Force Majeure**" has the meaning given to it in Section 2.3 of Schedule "B: hereof;
39. "**FIPPA Records**" has the meaning given to it in Section 1.5 of Schedule "B: hereof;
40. "**Generation**" means a process used to produce energy in the form of electricity that is primarily for the Participant's own use and the impact of which is measured in accordance with the M&V Plan and:
- (i) that has all permits and approvals required by Applicable Laws including, without limitation, all permits and approvals that may be required for the operation of the generator from the Ontario Ministry of the Environment pursuant to the *Environmental Assessment Act* (Ontario) and the *Environmental Protection Act* (Ontario);
 - (ii) that meets all of the relevant requirements for a generator under the Market Rules including, without limitation, the requirements described in any amendments to the IESO Market Rules from time to time; and
 - (iii) whose embedded generator(s) have an aggregate Nameplate Capacity that does not exceed the annual peak demand of the Industrial System electricity load in the Facility, as confirmed in the M&V Plan;
41. "**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 limited to 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;
42. "**Governmental Authority**" means any legislative, executive, judicial or administrative body or Person having jurisdiction in the relevant circumstances;
43. "**IESO**" means the Independent Electricity System Operator in the Province of Ontario;
44. "**IESO-Controlled Grid**" has the meaning ascribed to it by the IESO Market Rules;
45. "**IESO Market Rules**" means the rules made under Section 32 of the *Electricity Act, 1998*, together with all market manuals, policies and guidelines issued by the IESO, all as amended or replaced from time to time;
46. "**Incentive**" means one or more of the Preliminary Engineering Incentive, the Detailed Engineering Incentive and the Project Incentive, as applicable;

47. **"Incentive Security"** means the Net Project Incentive Payments withheld by the OPA as incentive security upon the election by the Participant in a Participant Security Election to provide incentive security and released to the Participant in accordance with Section 6.2 hereof;
48. **"Industrial"** means any entity which carries on an activity in the Province of Ontario falling into NAICS categories 31, 32 and 33 or subcategories 113, 1153 and 212 or any other NAICS category or subcategory that the OPA may approve from time to time, the current list of which is attached as Schedule 1 to the Program Rules, as the same may be amended from time to time;
49. **"Industrial System"** means the industrial system in the Facility to which the Project is proposed to be installed in order to obtain Electricity Savings;
50. **"In-Service Date"** means, in respect of a Project or Portfolio, the first day that the Project or Portfolio is fully installed in accordance with this Agreement and the Program Incentive Application and delivers Electricity Savings, as certified by the Technical Reviewer to the OPA;
51. **"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 application or competence of such law);
52. **"Invoice"** means a request for payment to the OPA from the Participant substantially in the form of Schedule "D" – Invoice Format to this Agreement;
53. **"M&V Plan"** means a measurement and verification document outlining the methodology and activities to be undertaken to measure and verify Electricity Savings that will be delivered by the Measure or Measures included in a Project, as developed by a CMVP and contained in the Project Review;
54. **"M&V Report"** means a measurement and verification document containing the analysis by a CMVP of the measured Electricity Savings delivered by the Measure or Measures included in a Project during the M&V Reporting Period specified by the M&V Plan which shall not be less than quarterly reporting during the first year following the In-Service Date and thereafter not less than annually;
55. **"M&V Reporting Period"** shall have the meaning ascribed thereto in the M&V Plan;
56. **"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;
57. **"Measure"** means the installation, retrofit, replacement or modification of an Industrial System that draws power from the IESO-Controlled Grid for the primary purpose of

obtaining Electricity Savings when applied by the Participant to the Industrial System's load, as described in Schedule "C" under the heading "Measures";

58. "**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;
59. "**Moody's**" means Moody's Investors Service, Inc. or its successor;
60. "**MW**" means a megawatt;
61. "**MWh**" means a megawatt hour;
62. "**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 any Participant;
63. "**Net Project Incentive**" means the amount specified in Schedule "C" under the heading "Net Project Incentive", such amount being the Project Incentive for a Project less the amount of any Preliminary Engineering Incentive and or Detailed Engineering Incentive paid or to be paid to the Participant in respect of such Project, subject to adjustment in accordance with Section 3.2;
64. "**Notice of Arbitration**" has the meaning given to it in Section 3.3 of Schedule "B" hereof;
65. "**OPA**" means the Ontario Power Authority;
66. "**Participant**" has the meaning set out in the first paragraph of this Agreement;
67. "**Participant Event of Default**" has the meaning given to it in Section 9.1;
68. "**Participant Security Election**" means an election to be made by the Participant and delivered to the OPA pursuant to Section 6.2 hereof pursuant to which the Participant elects to either: (i) post performance security in accordance with Section 7.1 hereof and receive the Net Project Incentive payments in accordance with Section 6.1 hereof; or (ii) provide Incentive Security and receive Net Project Incentive payments in accordance with Section 6.2 hereof;
69. "**Party**" means either of the Participant and the OPA, and the Participant and the OPA are collectively referred to as the "**Parties**";
70. "**Percentage**" shall have the meaning ascribed to it in Section 7.4(b);
71. "**Performance Security**" means security provided by the Participant in the form set out in Schedule "E" hereto to secure the obligations specified in Section 7.1 hereof, the maximum amount of which is specified in Schedule "C" under the heading "Performance Security";

72. **"Performance Security Amount"** means an amount equal to the Net Project Incentive multiplied by a percentage equal to 100% minus the Performance Security Reduction;
73. **"Performance Security Reduction"** means, at any time, the amount by which the amount of the Performance Security may be reduced as provided in Schedule "C" under the heading "Credit Rating of the Participant" which corresponds to the Allowable Reduction in Performance Security applicable to the Credit Rating of the Participant;
74. **"Person"** means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, governmental authority or other entity of any kind;
75. **"Portfolio"** means two or more Projects which are grouped together for the purpose of obtaining Project Incentives for the Projects so grouped and, if applicable, such Projects are set on Schedule "C" attached hereto under the heading "Portfolio";
76. **"Preliminary Engineering Incentive"** means funding paid by the OPA to the Participant pursuant to a Preliminary Engineering Study Funding Contract;
77. **"Preliminary Engineering Study"** means a preliminary study of the consumption of electricity of an Industrial System load within a Facility and activities and Measures that could give rise to Electricity Savings substantially in the form of Schedule "A" to the Program Rules;
78. **"Preliminary Engineering Study Funding Application"** means an application by the Participant to the OPA for a Preliminary Engineering Incentive, substantially in accordance with instructions posted on the Website from time to time;
79. **"Preliminary Engineering Study Funding Contract"** means a contract between a Participant and the OPA for funding of a Preliminary Engineering Study pursuant to Article 4.0 of the Program Rules;
80. **"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";
81. **"Program"** means the OPA's Industrial Accelerator^{OM} Program;
82. **"Program Rules"** means the Industrial Accelerator^{OM} Program Rules Version 2.0, as amended from time to time and posted on the Website;
83. **"Project"** means one or more Measures, which, when installed on a single Industrial System, will deliver Electricity Savings and **"Project"**, where appropriate in accordance with the terms hereof, includes a Micro-Project;

84. **"Project Benefits"** means the sum of all benefits anticipated to be generated from implementation of the Project as determined by the OPA, including benefits not related directly to savings in the consumption of electricity and including all economic benefits from reducing electricity consumption, use of alternative fuels, positive and negative differences in operating and maintenance costs and other avoided costs;
85. **"Project Budget"** means a summary, set out in Schedule "C" under the heading "Project Budget", of the budget for the planning, engineering, design, construction and commissioning of the Project or Portfolio, listing the budgeted payments for each category of expense and the total cost of the Project or Portfolio, as applicable;
86. **"Project Communication"** has the meaning given to it in Section 4.1(l);
87. **"Project Incentive"** means the amount set out in Schedule "C" under the heading "Project Incentive", subject to adjustment in accordance with Section 3.2;
88. **"Project Incentive Application"** means an application by the Participant to receive a Project Incentive pursuant to this Agreement, as more particularly referred to in Schedule "C" under the heading "Project Incentive Application";
89. **"Project Payback"** means the calculation set out in Schedule "C" under the heading "Project Payback", as confirmed by the Technical Reviewer in the Project Review, of the expected number of years it will take to recover the Eligible Costs, and is calculated by subtracting from the Eligible Costs (i) the sum of any Third Party Contributions to the Eligible Costs; and (ii) the Preliminary Engineering Incentive, the Detailed Engineering Incentive and the Net Project Incentive received by the Participant, if any, and dividing the remainder thereof by the expected Project Benefits, subject to adjustment in accordance with Section 3.2;
90. **"Project Review"** mean the written assessment of the Project or Portfolio, as applicable, by the Technical Reviewer, dated • including, without limitation, an assessment of:
- (i) the projected Electricity Savings to be obtained from implementing the Measure or Measures in the Project or Portfolio, as applicable, with consideration of the operational, technical and business risks, including the following:
 - (A) Project information and data needed to determine the Base Case;
 - (B) projected Electricity Savings based on an hourly and seasonal basis;
 - (C) analysis of the anticipated economic and technical end-of-life of current equipment and anticipated replacement in the absence of the Project or Portfolio, as applicable, resulting in a determination of the number of years that the equipment replacement has been accelerated and the consequential impact on Electricity Savings;

- (D) determination of the incremental Electricity Savings and capital and other costs relative to the current equipment, energy performance standards of equipment that would be installed in the absence of the Project or Portfolio, as applicable and the higher efficiency capital improvements directly influenced by the Program;
- (E) assessment of the implementation schedule for the proposed Project or Portfolio; and
- (F) Preparation of Project or Portfolio milestones.

- (ii) the projected Eligible Costs;
- (iii) the projected Project Benefits and Project Payback;
- (iv) the projected relevant interactive effects on the Facility in which the Industrial System is located;
- (v) the Minimum Expected Life of the Project or the Portfolio;
- (vi) the alternatives to the Project or Portfolio;
- (vii) compliance with the Program Rules and Applicable Law;
- (viii) the benefit of the Project or Portfolio to ratepayers in accordance with conservation and demand management industry standards;

and will also include:

- (ix) the amount of the Project Incentive, if any; and
- (x) the M&V Plan developed by the Technical Reviewer;

which Project Review has been approved by the OPA;

- 91. "**Project Schedule**" means a summary, set out in Schedule "C" under the heading "Project Schedule", of the schedule for the planning, engineering, design, construction and commissioning of the Project (including those Projects in a Portfolio) listing the significant dates for each such event;
- 92. "**Project Status Report**" means, in respect of a Project or Portfolio, a completed status report in the form posted on the OPA website from time to time and containing, without limitation, the Actual Eligible Costs incurred to and paid to the date thereof, the status of the Project implementation relative to the budget and schedule approved in the Project Review with a description of any changes in scope or other issues that may impact the Project In-Service Date or Electricity Savings;;
- 93. "**Rating Agency**" means any one of DBRS, Moody's or S&P;

94. "**Receiving Party**" means, with respect to Confidential Information, the Party receiving Confidential Information and may be the OPA or the Participant, as applicable;
95. "**Representative**" means, in respect of one of the Parties, any one of that Party's directors, officers, employees, counsel, consultants or other advisors;
96. "**Required 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;
97. "**S & P**" means the Standard and Poor's Rating Group (a division of McGraw-Hill Inc.) or its successor;
98. "**Technical Reviewer**" means a Person retained by the OPA having on its staff individuals who are professional engineers licensed in the Province of Ontario, CMVPs, certified engineering technologists in the Province of Ontario registered with The Ontario Association of Certified Engineering Technicians and Technologists and or Certified Energy Managers registered with the Association of Energy Engineers having at least 5 years experience in a specific technology area or an equivalent combination of experience and qualifications as approved by the OPA;
99. "**Third Party Contributions**" means any financial or other contribution (including the value of contributions in kind) towards the Eligible Costs from or by any party other than the Participant or the OPA;
100. "**Transmission System**" means that part of the IESO-Controlled Grid that conveys electricity at voltages of 50 kilovolts or higher and including any structures, equipment or other things used for that purpose, which for greater certainty, shall be included in the IESO-Controlled Grid; and
101. "**Website**" means the OPA's website at www.industrialaccelerator.ca.

SCHEDULE "B"
SUPPLEMENTARY TERMS & CONDITIONS

ARTICLE I
CONFIDENTIALITY AND FIPPA

1.1 Confidential Information

From the date of this Agreement to and following the expiry of this Agreement, neither Party shall in any manner disclose Confidential Information, except as follows:

- (a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article by any of its Representatives.
- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to Applicable Law, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by Applicable Law in accordance with Section 1.2.
- (c) Where the Participant is the Receiving Party, the Participant may disclose Confidential Information to any lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such lender or prospective lender or investor has been informed of the Participant's confidentiality obligations hereunder and such lender or prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the form acceptable to the OPA covenanting in favour of the OPA to hold such Confidential Information confidential on terms substantially similar to this Article I.
- (d) Notwithstanding the foregoing, the Participant consents to the disclosure:
 - (i) of its name and contact particulars on the Website;
 - (ii) on a confidential basis, of any information received by the OPA in respect of this Agreement for such internal purposes as the OPA may reasonably determine from time to time to the OPA's Representatives;

- (iii) of aggregated data relating to the Program; and
- (iv) such information necessary to advise other participants in the Program as to the features and equipment described in the Participant's Project Incentive Application unless the Participant, acting reasonably, has advised the OPA in writing that such information is confidential.

1.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is required by Applicable Law only to such Person or Persons to which the Receiving Party is legally compelled to disclose, and in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

1.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make, at its own expense, and retain one copy of, any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Applicable Law and shall keep such retained copy subject to the terms of this Article I.

1.4 Injunctive and Other Relief

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third party to whom the Disclosing Party owes a duty of confidence and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained

by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article I.

1.5 FIPPA Records and Compliance

The Participant and the OPA acknowledge and agree that the OPA and its Representatives are subject to FIPPA and that FIPPA applies to and governs all recorded information in any form or medium that is provided by the OPA or its Representatives to the Participant or provided by the Participant to the OPA 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 OPA ("**FIPPA Records**"), and may require the disclosure of such FIPPA Records to third parties. To the extent that the OPA must comply with disclosure obligations under FIPPA, the Participant agrees:

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

ARTICLE II **FORCE MAJEURE**

2.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:
 - (i) the Participant is unable to achieve at least 90% 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 obligations) hereunder, including the Participant being unable to achieve the In-Service Date within 2 years from the date of this Agreement;

then the Party so affected by Force Majeure shall be excused and relieved on a day for day basis from performing or complying with such obligations (other than payment obligations) for the period of time in which such Force Majeure shall continue and shall 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 shall 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 shall 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. 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 shall be allowed a further 10 Business Days (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 shall 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 shall be deemed to be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within 10 Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 2.1 shall relieve a Party of its obligations to 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 2 years from the date of this Agreement, then the time for achieving such date shall 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 shall be the In-Service Date as so extended.
- (g) If, by reason of one or more events of Force Majeure, the In-Service Date has not occurred by the 3rd anniversary of the date hereof, then notwithstanding anything in this Agreement to the contrary, the OPA may terminate this Agreement upon notice to the Participant or the Participant may terminate this Agreement upon notice to the OPA. Upon termination of this Agreement pursuant to this Section 2.1(g) **Error! Reference source not found.**, the Participant shall forthwith repay to the OPA any amounts paid to the Participant in accordance with Article VI which, as of the Early Termination Date have not been actually incurred by the Participant in accordance with the Project Schedule and the Project Budget, following which, all Performance Security shall be returned to the Participant forthwith.

2.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article II, nor shall 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 shall 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 Sections 2.1(b) or 21(d).

2.3 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 obligations) hereunder, that is beyond the affected Party's reasonable control, and shall 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 III **DISPUTE RESOLUTION**

3.1 Informal Dispute Resolution

If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties shall promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, the Company Representative from each Party shall meet, either in person or by telephone, to attempt to resolve the dispute. Each Company Representative shall be prepared to propose a solution to the dispute. If, following such efforts, the dispute is not resolved the dispute shall be settled by arbitration pursuant to Section 3.2.

3.2 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) shall 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.

3.3 Appointment and Powers of Arbitrator

A Party desiring arbitration hereunder shall 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 twenty (20) days thereafter, an Arbitrator shall 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.

3.4 Arbitration Procedure

The arbitration shall be conducted in English in the City of Toronto 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 shall determine, in accordance with the principles of natural justice. The arbitration and all matters arising directly or indirectly therefrom shall be kept strictly confidential by the Parties and shall not be disclosed to any third party except as may be compelled by law.

3.5 Arbitrator's Decision and Appeal

The Arbitrator's written decision shall be delivered to each of the Parties within 60 days following the conclusion of the arbitration hearing. The costs of any arbitration hereunder shall be borne by the Parties in the manner specified by the Arbitrator in his or her decision. The decision of the Arbitrator shall 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 shall 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*, or solely on a question of law as provided for in the *Arbitration Act*. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

3.6 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.

SCHEDULE "C"
PROJECT/PORTFOLIO DESCRIPTION

OPA Project Identification #:

Participant Contact Information

[Insert address, telephone number, facsimile number and email contact]

Technical Reviewer:

Company Representative:

OPA:

Participant:

Overview of the Project or Portfolio:

Portfolio: [NTD- if a Portfolio, list all Projects comprising the Portfolio]

Measures:

Municipal Address or Location:

Type of Facility:

Annual Hours of Operation:

Project Incentive Application: Dated ●, received by the OPA on ● and having OPA reference number ●.

Project Incentive:

Net Project Incentive:

Anticipated Project Benefits:

Preliminary Engineering Incentive:

Detailed Engineering Incentive:

Project Schedule:

[NTD – insert schedule of construction/commissioning of the Project/Portfolio]

Project Budget:

[NTD – insert budget of anticipated expenses in connection with the Project or Portfolio and at what stage of the Project Schedule such expenses shall be incurred]

Scheduled In-Service Date

Eligible Costs:

Third Party Contributions:

Project Payback:

Project/Portfolio Milestones:

[NTD – insert any milestones identified in the Project Review]

M&V Reporting Periods:

Electricity Savings:

Annualized Electricity Savings:

Anticipated Electricity Savings:

[NTD- insert a table of dates and the Electricity Savings anticipated to have been achieved to such date by the Technical Reviewer as contained in the Project Review of the Project]

Current Participant Credit Rating:

Incentive Security: [insert Net Project Incentive]

Performance Security: [Insert maximum amount]

[If Performance Security less than \$1M]

Maximum amount of Project Security	Deposit Date	Release Date
\$●	[the date hereof]	[2 nd anniversary of the In-Service Date]

[If Performance Security greater than \$1M]

A letter of credit shall be deposited with the OPA at the time the Participant delivers the first Request for Payment and shall be increased and decreased in accordance with Tables A and B below, respectively.

Table A

Maximum amount of Performance Security	Initial amount of Performance Security on the date hereof	1st Increase to Performance Security in accordance with 7.1(b)(i)	2nd Increase to Performance Security in accordance with 7.1(b)(ii)	3rd Increase to Performance Security in accordance with 7.1(b)(iii)
\$●	\$●	\$●	\$●	\$●

Table B

Maximum required amount of Performance Security	1st 50% decrease of Performance Security	2nd 50% decrease Performance Security
\$●	[1 st anniversary of the In-Service Date]	[2 nd anniversary of the In-Service Date]

Credit Rating of the Participant:Credit Rating of Participant

S&P	DBRS	Moody's	Allowable Reduction in Performance Security
At least A-	At least A low	At least A3	100%
At least BBB+	At least BBB high	At least Baa1	75%
At least BBB	At least BBB	At least Baa2	50%
At least BBB-	At least BBB low	At least Baa3	25%
	Below or Not Rated		0%

Account Details:

SCHEDULE "D" INVOICE FORMAT

Invoice

Company Name (Cheque Payable to):			
Address:			
City:	Province:	Postal Code:	Date (dd/mm/yy):
Contact Name:	Phone:	FAX:	
Invoice #:	PO #:	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"/> Performance Security (Option A) <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"/> Incentive Security (Option B) <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

Incentive Breakdown	
Total eligible incentive:	
Paid to date:	
Amount this payment :	
Balance due:	

Item	Description	Invoice #	Date (dd/mm/yy)	Amount

Comments:

Sub Total:

HST:

Grand Total:

Print Form

SCHEDULE "E"
FORM OF LETTER OF CREDIT

DATE OF ISSUE:	<*>
APPLICANT:	<*>
BENEFICIARY:	Ontario Power Authority and its permitted assigns (the " Beneficiary ")
AMOUNT:	<*> or a fluctuating amount to a maximum amount of <*>
EXPIRY DATE:	<*>
EXPIRY PLACE:	Counters of the issuing financial institution in Toronto, Ontario
CREDIT RATING:	[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the <i>Bank Act</i>]
TYPE:	Irrevocable and Unconditional Standby Letter of Credit Number : <*> (the " Credit ")

The Credit is issued in connection with the **[Insert Name of Contract]** Contract (the "**Contract**") dated **[Insert Date of Contract]** between the Beneficiary and the "Supplier", as such term is defined under the Contract.

The amount of the Credit shall initially be **[\$●] [25% of the Net Project Incentive]**. The amount of the Credit shall automatically increase to **[50% of the Net Project Incentive]** upon **[6.1(b) milestone]**. The amount of the Credit shall automatically increase to **[75% of the Net Project Incentive]** upon **[6.1(c) milestone]**. The amount of the Credit shall automatically increase to **[100% of the Net Project Incentive]** upon **[6.1(d) milestone]**. The amount of the Credit shall automatically reduce to **[50% of the Net Project Incentive on the first anniversary of the In-Service date and to [zero] on the second anniversary of the In-Service Date]**.

We hereby authorize the Beneficiary to draw on **[Issuing Bank Name/Address]**, in respect of the Credit, for the account of the Applicant, up to an aggregate amount of \$<*> (<*> Canadian Dollars) available by the Beneficiary's draft at sight accompanied by the Beneficiary's signed certificate stating that:

"The Supplier is in breach of, or default under, the Contract, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."

Drafts drawn hereunder must bear the clause "Drawn under irrevocable and unconditional Standby Letter of Credit No. <*> issued by **[Issuing Bank Name]** dated **[Issue Date]**."

Partial drawings are permitted.

This Letter of Credit will automatically extend for additional, successive terms of one year each (each an "Additional Term"), unless the undersigned provides the Beneficiary with written notice, at least 60 days prior to the expiration date of the then current term, that it does 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 **[Issuing Bank Name/Address (must be at the counters of the branch in the City of Toronto)]** at or before **[Expiry Time]** (EST) on **[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 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 another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by **[Issuing Bank Name]** of the Beneficiary's dated and signed letter addressed to **[Issuing Bank Name]** and completed as follows:

"We, the undersigned Beneficiary to **[Issuing Bank Name]** 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 the **[new Beneficiary]**, care of the Applicant."

[Issuing Bank Name]

By: _____

By: _____