

INDUSTRIAL ~~TRANSMISSION CONNECTED ELECTRICITY EFFICIENCY~~ ACCELERATOR^{OM} PROGRAM
PRE-FEASIBILITY PRELIMINARY ENGINEERING STUDY FUNDING CONTRACT

~~(December 23, 2009)~~

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

BETWEEN:

ONTARIO POWER AUTHORITY

(hereinafter referred to as the "OPA")

- and -

[NAME OF PARTICIPANT]

(hereinafter referred to as the "Participant")

WHEREAS the Participant has submitted a ~~Pre-Feasibility~~ Preliminary Engineering Study Funding Application to the OPA pursuant to the Program Rules;

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

AND WHEREAS in the absence of receipt of the Preliminary Engineering Incentive the Participant would not undertake the Preliminary Engineering Study;

AND WHEREAS The OPA has approved the ~~Pre-Feasibility~~ Preliminary Engineering Study Funding Application;

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

1. **Defined Terms.** All capitalized terms not herein defined shall have the meanings given in Schedule "A" hereto.
2. **Company Representatives.** The Participant hereby appoints [NAME OF COMPANY REPRESENTATIVE] as its representative ("Company Representative") who is duly authorized to act on behalf of the Participant, and with whom the OPA 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 Participant as to all matters pertaining to this Agreement and the Project or Portfolio, and for greater certainty, who shall not have the power or authority to amend this Agreement.
3. **Preliminary Engineering Study.** The Participant agrees to ~~carry out the Pre-Feasibility~~ complete the Preliminary Engineering Study and prepare a report on the results of such ~~Pre-Feasibility~~ Preliminary Engineering Study in accordance with ~~the Pre-Feasibility Exhibit A – Preliminary Engineering~~ Study Minimum Requirements ~~attached hereto as Schedule "B" to the Program Rules~~ and the ~~Pre-Feasibility~~ Preliminary Engineering Study Funding Application, file number • dated • and ~~received~~ confirmed by the OPA on •. Schedule "~~CB~~" hereto contains certain details of the ~~Pre-Feasibility~~ Preliminary Engineering Study, including: the scope of the ~~Pre-Feasibility~~ Preliminary Engineering Study, the Facility name, municipal address or location, expected commencement and completion dates of the ~~Pre-Feasibility~~ Preliminary Engineering Study and the ~~Pre-Feasibility~~ Preliminary Engineering Incentive approved by the OPA (the "**Approved Amount**").
4. **Costs.** The Participant shall ~~at the same time as submitting its~~ concurrently with the Draft Report, ~~(as defined below)~~ submit to the OPA a certificate signed by the Participant's Company Representative showing the actual costs incurred ~~and paid~~ by the Participant ~~in the course of the Pre-Feasibility~~ to complete the Preliminary Engineering Study and attaching all relevant receipts ~~therefor~~ ("Certificate of Costs"). The OPA ~~may audit, and may either~~ has the right to audit such certificate and shall, in its discretion, accept or reject ~~the Certificate of Costs, all or part of such certified costs.~~ The OPA may, within 30 days of receipt thereof, notify the Participant that the OPA intends to audit such ~~Certificate of Costs~~ certified 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 Costs~~ certified costs or (ii) if the OPA does not accept such ~~Certificate of Costs~~ certified costs, determine the ~~proper actual~~ costs incurred ~~by the Participant to complete such Pre-Feasibility Study~~ based ~~on~~ upon the results of its audit ~~(the "OPA Approved Costs")~~ and notify the Participant thereof. ~~Notwithstanding anything else in, and the actual costs incurred shall be deemed for all purposes of~~ this Agreement, ~~the OPA is not obligated to make any payment hereunder until such time as the Certificate of Costs is accepted by the OPA, and there is otherwise no default hereunder by the Participant to be such amount determined by the OPA.~~
5. **Payment.**
 - (a) ~~5. Payment.~~ The OPA agrees to pay the Preliminary Engineering Incentive to the Participant ~~the Pre-Feasibility Incentive~~ as follows:
 - (i) ~~(a) The OPA shall, within 30 days of receipt by the OPA of a draft report on the results of the Pre-Feasibility Study provided by the Participant in accordance with Schedule "B" hereto (the "Draft Report"), pay the Participant 50% of the lower of (i) the Approved Amount, and (ii) 50% of the lower of (A) the total funds approved for the Preliminary Engineering Study and (B) the actual costs incurred and paid by the Participant to complete such Pre-Feasibility Study as certified in the Certificate of Costs accepted by the OPA, or the OPA Approved Costs, as applicable. The OPA shall~~ the Preliminary Engineering Study, within 30 days of ~~approval~~ acceptance by the OPA of an Invoice and acceptance by the OPA of a ~~final~~ draft report on the results of such ~~Pre-Feasibility Study (the "Final Report"), pay the Participant the balance of the actual funds incurred by the Participant to complete such Pre-Feasibility Study as certified in the Certificate of Costs accepted by the OPA, provided that the total amount paid hereunder shall not exceed the Approved Amount.~~ study provided by the Participant (the "Draft Report"), which acceptance will in part be based on the extent to which the Draft Report reflects appropriately the originally contemplated scope of the study, as set out in the Preliminary Engineering Study Funding Application and not on the specific recommendations set out in the Draft Report; and
 - (ii) the remaining amount of the actual funds as determined in (i) above for the Preliminary Engineering Study, within 30 days of acceptance by the OPA of an Invoice and approval by the OPA of a final report on the results of such study provided by the Participant (the "Final Report").

(b) All payments hereunder shall be made in Canadian dollars by cheque or by electronic funds transfer to the Participant's account.

(c) The maximum amount available for funding of a Preliminary Engineering Study for any one Project is \$10,000.

6. **Reports.** The OPA shall not be liable to pay any amount pursuant to ~~section 5~~ Section 5 of this Agreement unless the Draft Report ~~or the Final Report, as applicable, is~~ has been accepted ~~by the OPA. In particular, the Draft Report or the Final Report~~ has been approved, as applicable, shall be prepared substantially in accordance with the Pre-Feasibility Study Funding Application as determined in each case by the OPA, ~~acting reasonably.~~ The Participant shall deliver the Final Report to the OPA within 60 days of ~~acceptance of~~ delivery to the Participant by the OPA of its comments on the Draft Report by the OPA. If the Industrial System that is ~~the subject of~~ the subject of the ~~Pre-Feasibility~~ Preliminary Engineering Study is changed or altered after completion of the ~~Pre-Feasibility~~ Preliminary Engineering Study but prior to the acceptance by the OPA of the Final Report, the Participant shall update the ~~Pre-Feasibility~~ Preliminary Engineering Study and the Final Report to account for such alterations and satisfy the requirements contained in ~~Schedule "B" hereto~~ Exhibit A – Preliminary Engineering Study Minimum Requirements to the Program Rules.

7. **Net Project Incentive.** The ~~Participant agrees that any amounts paid~~ total amount of funding advanced pursuant to ~~section 5 shall~~ this Agreement will be deducted from ~~the any~~ the any Project Incentive, ~~if any, in order to calculate the Net Project Incentive, if any~~ so that the total amount paid to the Participant in respect of the Project does not exceed the Project Incentive determined in accordance with Section 2.6 of the Program Rules.

8. **Term.** Unless the Draft Report is accepted by the OPA within ~~16~~ eight months of the date hereof or such other date as the Parties may agree in writing, this Agreement shall terminate and the Parties shall have no further obligations hereunder.

9. **Environmental Attributes.**

(a) ~~To the extent that the Participant implements one or more Measures in respect of a Project for which the Participant may be paid a Pre-Feasibility Incentive pursuant to this Agreement, all~~ All Environmental Attributes arising in ~~respect of~~ relation to Electricity Savings ~~from such Project~~ funded by an amount paid under the Program Rules 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 ~~at~~ the 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 owned by the OPA pursuant to Section 9(a) above.

(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 owned by the OPA pursuant to Section 9(a) above.

(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~~ Section 9. The Participant shall be entitled to reimbursement of the cost of complying with a direction under this ~~section~~ Section 9, provided that the OPA, acting reasonably, approved such cost in writing prior to the cost being incurred by the Participant.

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

11. 10. Confidential Information and FIPPA.

(a) 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:

(i) 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 ~~section~~ Section 11 by any of its Representatives.

(ii) 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 court order otherwise, 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 10(b) 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 or its Representatives shall provide notice to each such recipient that such Confidential Information is subject to non-disclosure on terms in accordance with the terms of this Agreement.

(iii) 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 a form acceptable to the OPA covenanting in favour of the OPA to hold such Confidential Information confidential on terms substantially similar to this ~~section 10~~ Section 11.

(iv) Notwithstanding the foregoing, the Participant consents to the disclosure:

(A) of its name and contact particulars on the OPA's website;

- (B) 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;
- (C) of aggregated data relating to the Program; and
- (D) such information necessary to advise other potential participants in the Program about the features and equipment described in the Participant's ~~Project Pre-Feasibility~~Preliminary Engineering Application unless the Participant, acting reasonably, has advised the OPA in writing that such information is Confidential Information.

~~(b) 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 or 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.~~

(b) ~~(e)~~ 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 ~~section 10.~~Section 11.

(c) ~~(e)~~ The Receiving Party acknowledges that breach of any provisions of this ~~Article~~Section 11 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 ~~section 10.~~Section 11.

(d) ~~(e)~~ 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:

- (i) to keep FIPPA Records in its possession secure;
- (ii) 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
- (iii) 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.

12. ~~11.~~ **Dispute Resolution.**

- (a) 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 Representatives 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~~Section 11(b) of this Agreement.
- (b) Subject to and in accordance with the provisions of this ~~section.~~Section 11, 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.
- (c) 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.

- (d) 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.
- (e) 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.
- (f) Submission to arbitration under this ~~section~~Section 11 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.

13. Release and Waiver . Concurrently with the execution of this Agreement the Participant shall execute and deliver a release and waiver in the form of Schedule "C" attached hereto.

14. ~~12.~~ Schedules. The following schedules are hereby incorporated in and form part of this Agreement:

Schedule "A" – Definitions;

Schedule "B" – ~~Pre Feasibility~~Preliminary Engineering Study ~~Minimum Requirements; and~~Description

Schedule "C" ~~–Pre Feasibility Study Details.–~~Release and Waiver

15. ~~13.~~ Entire Agreement. Except as otherwise provided, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

16. ~~14.~~ Amendments. This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by both of the parties.

17. ~~15.~~ Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the province of Ontario and the laws of Canada applicable therein.

18. ~~16.~~ Successors and Assigns. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Agreement shall not be assigned to another ~~person~~Person other than an Affiliate except with the prior written consent of the OPA, which consent may not be unreasonably withheld or delayed.

19. ~~17.~~ Counterparts. This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on all the parties provided that each party has signed at least one counterpart.

20. ~~18.~~ Facsimile/Electronic Signatures. This Agreement may be executed and delivered by facsimile transmission or by any other method of electronic transmission and the parties hereto may rely upon all such ~~facsimile~~ signatures as though such ~~facsimile~~ signatures were original signatures.

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

ONTARIO POWER AUTHORITY

[NAME OF PARTICIPANT]

Per: _____
 Name:
 Title:

Per: _____
 Name:
 Title:

I have authority to bind the Corporation.

I have authority to bind the Corporation.

Schedule "A"

Definitions

"**Affiliate**" means any ~~person~~Person that: (i) Controls a Participant; (ii) is Controlled by a Participant; or (iii) is Controlled by the same ~~person~~Person that Controls a Participant.

"**Agreement**" means this ~~agreement~~Preliminary Engineering Study Funding Contract including Schedule "A", Schedule "B" and Schedule "C" attached hereto.

"**Annualized Electricity Savings**" means Electricity Savings divided by the number of years in the relevant Electricity Savings Period.

"**Applicable Laws**" means any applicable law including any statute, legislation, regulation ~~or treaty~~ and any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, ~~permit requirement~~, award or decree of a Governmental Authority.

"**Application**" means the Preliminary Engineering Study Funding Application.

"**Approved Amount**" ~~has~~shall have the meaning ~~given to it in section~~ascribed thereto in Section 3 hereof.

"**Arbitrator**" ~~has the meaning given to it in section 11(b)~~shall have the meaning ascribed thereto in Section 11(b) hereof.

~~"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.~~

"**Business Day**" means any day ~~that is not~~other than a Saturday, a Sunday, or a legal~~statutory~~ holiday in the Province of Ontario.

"**Certificate of Costs**" ~~has~~shall have the meaning ~~given to it in section~~ascribed thereto in Section 4 hereof.

"**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.

"**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.

"**Company Representative**" ~~has~~shall have the meaning ~~given to it in section~~ascribed thereto in Section 2 hereof.

"**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~~this 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 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.

"**Confidentiality Undertaking**" ~~has the meaning given to it in section 10(a)(iii) hereof~~shall have the meaning ascribed thereto in Section 11(a)(iii) hereof.

"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 through the ownership of securities or ownership interest or by contract, trust or otherwise, and "Controlled" has a corresponding meaning.

"**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.

"**Draft Report**" ~~has~~shall have the meaning ~~given to it in section~~ascribed thereto in Section 5(a)(i) hereof.

"**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~~CMVP in the M&V Report.

"**Electricity Savings Period**" means the period commencing on the In-Service Date and ending on the 10th anniversary thereof; or in the case of a Micro Project, the 5th year thereof.

~~"Eligible Costs" means certain costs directly related to design, selection, purchase and installation of the Measure or Measures included in a Project or Portfolio as estimated by the Technical Reviewer and contained in the Project Review.~~shall have meaning ascribed thereto in Section 2.5 of the Program Rules.

"Environmental Attributes" means environmental attributes associated with a Facility having decreased environmental impacts resulting from the implementation of a Project, and includes:

(a) 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;

(b) "Environmental Attributes" means environmental attributes associated with a Facility having decreased environmental impacts resulting from the implementation of a Project, and includes (a) 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, and (b) 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 ~~(e) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing.~~

(c) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing.

"Facility" means the building(s) and premises owned or occupied by the Participant and in which the Industrial System is located ~~which will be the object of the Project.~~

~~"Feasibility Incentive" means funding paid by the OPA to the Participant pursuant to a Feasibility Study Funding Contract.~~

~~"Feasibility Study" means a detailed study of the Industrial System load within a Facility and specific activities and Measures that can be implemented in order to reduce the electricity consumption in the Facility, substantially in the form of Exhibit B – Feasibility Study Minimum Requirements to the Program Rules.~~

~~"Feasibility Study Funding Contract" means a contract between a Participant and the OPA for funding of a Feasibility Study by a Feasibility Incentive in accordance with the Program Rules. "Feasibility Study Funding Application" means an application for a Feasibility Incentive from the Participant to the OPA in accordance with instructions posted on the OPA's website from time to time.~~

"Final Report" ~~has~~shall have the meaning ~~given~~ascribed to it in ~~section~~Section 5(a)(ii) hereof.

"FIPPA" means the *Freedom of Information and Protection of Privacy Act* (Ontario), as the same may be amended or replaced from time to time.

"FIPPA Records" ~~has the meaning given to it in section 10(e) hereof.~~shall have the meaning ascribed to it in Section 10(d) hereof.

"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 (a) for which the Participant 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); (b) that meets all of the relevant requirements for a generator under the IESO Market Rules as amended from time to time; and (c) whose embedded generator(s) have an aggregate Nameplate Capacity that does not exceed the annual peak demand of the Industrial System electricity load of the Facility.

"Governmental Authority" means any legislative, executive, judicial or administrative body or ~~person~~Person having jurisdiction in the relevant circumstances.

"IESO-Controlled Grid" has the meaning ascribed to it by the IESO Market Rules.

"IESO Market Rules" means the rules made under ~~Section~~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.

"Industrial System" means the industrial system in the Facility to which the Project is proposed to be installed ~~and used~~in order to obtain Electricity Savings.

"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 the Project Incentive Agreement ~~and the Program Incentive Application~~ and delivers Electricity Savings, as certified by the Technical Reviewer to the OPA.

"Invoice" means a request for payment to the OPA from the Participant substantially in the form of Exhibit C – Invoice to the Program Rules.

"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.

"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 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.

"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 an Application.

"Micro Project" means a stand alone Project, which, when installed, is expected to deliver Electricity Savings, as confirmed by the Technical Reviewer in the Project Review, of at least 100 MWh of Annualized Electricity Savings and not more than 700MWh of Annualized Electricity Savings.

~~"Minimum Expected Life" means the number of years a Project or Portfolio will continue to provide the Electricity Savings, being 10 years after the In-Service Date, and in the case of a Micro Project, 5 years after the In-Service Date.~~MW" means a megawatt.

"MWh" means a megawatt hour.

~~"M&V Plan" means a 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 the Technical Reviewer and contained in the Project Review.~~

~~"M&V Report" means the analysis by a CMVP of the measured Electricity Savings delivered by the Measure or Measures included in a Project during the reporting period specified by the M&V Plan.~~

"Nameplate Capacity" means the rated, continuous load-carrying capability net of parasitic or station service loads, expressed in MW, of a generating facility to generate and deliver electricity at a given time.

"Net Project Incentive" means the Project Incentive for a Project less the amount of any ~~Pre-Feasibility~~Preliminary Engineering Incentive and or ~~Feasibility~~Detailed Engineering Incentive paid or to be paid to the Participant in respect of such Project.

"Notice of Arbitration" ~~has~~shall have the meaning ~~given to it in section~~ascribed thereto in Section 11(c) hereof.

"OPA" means the Ontario Power Authority.

"OPA Approved Costs" has the meaning given to it in ~~section~~Section 4 hereof.

"Participant" means the Person entering into this Agreement with the OPA.

"Party" means either of the Participant and the OPA, and the Participant and the OPA are collectively referred to as the "Parties".

"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.

"Portfolio" means two or more Projects which are grouped together for the purpose of obtaining Project Incentives for the Projects as so grouped pursuant to Section 2.6(c) of the Program Rules.

~~"Pre-Feasibility Preliminary Engineering Incentive"~~ means funding paid by the OPA to the Participant pursuant to this Agreement.

~~"Pre-Feasibility Preliminary Engineering Study"~~ means a preliminary study of the consumption of electricity of an Industrial System load within a Facility and activities ~~and~~ [Measures ~~and or Generation~~] that could give rise to Electricity Savings, substantially in the form of ~~Schedule "B" hereto~~ Exhibit A – Preliminary Engineering Study Minimum Requirements to the Program Rules.

~~"Pre-Feasibility Preliminary Engineering Study Funding Application"~~ means an application by the Participant to the OPA for ~~a Pre-Feasibility Incentive, substantially in accordance with instructions posted on the OPA's website from time to time~~ funding of a Preliminary Engineering Study pursuant to Article 4.0 of the Program Rules.

"Program" means the OPA's Industrial Accelerator^{OM} Program.

"Program Rules" means the Industrial ~~Transmission-Connected Electricity Efficiency~~ Accelerator^{OM} Program rules, Rules Version 2.0 as amended from time to time and posted on the ~~OPA's website~~ Website.

"Project" means one or more Measures, which, when installed on a single Industrial System, are expected to deliver Electricity Savings and "Project", where appropriate in accordance with the Program Rules, includes a Micro-Project.

~~"Project Incentive" means an amount of up to \$230/MWh of Annualized Electricity Savings per Project or Portfolio payable pursuant to the incentive to be paid by the OPA to the Participant pursuant to Section 2.6(c) of the Program Rules and~~ a Project Incentive Agreement.

~~"Project Incentive Agreement" means the agreement between the OPA and the Participant in respect of any approved Project or Portfolio pursuant to which the Project Incentive is payable, which agreement will have a term of up to 12 years, being an initial period not greater than 2 years to achieve the In-Service Date and a further period equal to 10 years, other than in the case of a Micro-Project which shall have a term of up to 7 years, being an initial period not greater than 2 years to achieve the In-Service Date and a further period equal to 5 years.~~

~~"Project Review" mean a written assessment of a Project or Portfolio by a Technical Reviewer, including, without limitation, an assessment of:~~

- ~~(a) — 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:
 - ~~(i) — Project information and data needed to determine the Base Case;~~
 - ~~(ii) — projected Electricity Savings based on an hourly and seasonal basis;~~
 - ~~(iii) — 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;~~
 - ~~(iv) — 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;~~
 - ~~(v) — assessment of the implementation schedule for the proposed Project or Portfolio; and~~
 - ~~(vi) — Preparation of Project or Portfolio milestones.~~~~
- ~~(b) — the projected Eligible Costs;~~
- ~~(c) — the projected changes in operating and maintenance costs, other fuel use and productivity of the Industrial System;~~
- ~~(d) — the projected relevant interactive effects on the Facility in which the Industrial System is located;~~
- ~~(e) — the Minimum Expected Life of the Project or the Portfolio;~~
- ~~(f) — the alternatives to the Project or Portfolio;~~
- ~~(g) — compliance with the Program Rules and Applicable Law;~~
- ~~(h) — the benefit of the Project or Portfolio to ratepayers in accordance with conservation and demand management industry standards;~~

and will also include:

- ~~(i) — the amount of the Project Incentive, if any; and~~
- ~~(j) — the M&V Plan developed by the Technical Reviewer;~~

~~which Project Review shall be approved by the OPA.~~ has the meaning ascribed to it in Section 5.2 of the Program Rules.

"Receiving Party" means, with respect to Confidential Information, the Party receiving Confidential Information and may be the OPA or the Participant, as applicable.

"Representative" means, in respect of one of the Parties, any one of that Party's directors, officers, employees, counsel, consultants or other advisors.

"Technical Reviewer" means a Person retained by the OPA having on its staff individuals who are professional ~~engineer~~engineers licensed in the Province of Ontario, ~~a~~CMVPs, certified engineering ~~technologist~~technologists in the Province of Ontario registered with The Ontario Association of Certified Engineering Technicians and Technologists, and or ~~a~~ Certified Energy ~~Manager~~Managers registered with the Association of Energy Engineers ~~with~~having at least 5 years experience in a specific technology area or an equivalent combination of experience and qualifications as approved by the OPA.

"Website" means the OPA's website at www.industrialaccelerator.ca

Schedule "B"

~~Pre-Feasibility Study Minimum Requirements~~

~~Purpose:~~

~~This Schedule contains the minimum requirements for a Pre-Feasibility Study Report as described in the Program Rules. The Pre-Feasibility Study Report must meet the technical, financial and economic analysis, and overall quality and completeness requirements as outlined below. It will recommend for further study the potentially cost-effective electricity opportunities (Opportunities) for a single Industrial System.~~

~~For the purposes of the Program, Pre-Feasibility Study Reports must provide energy and demand savings estimates to an accuracy of +/- 30% and Project cost estimates to an accuracy of +/- 50%. The Pre-Feasibility Study Report must be prepared or reviewed by, and signed by a registered professional engineer licensed to practice in Ontario (the "Engineer").~~

~~Capitalized terms have the meaning given to them in this document, the Program Rules or the then-current IPMVP, as applicable.~~

~~Pre-Feasibility Study Report Submission Requirements:~~

~~In order to complete a satisfactory Pre-Feasibility Study Report, Participants should prepare a Pre-Feasibility Study Report submission package containing:~~

- ~~• one original (bound) of the Pre-Feasibility Study,~~
- ~~• the Submission Cover Form, as found on the Website, signed by an authorized representative of the Participant, (prominently marked "Original");~~
- ~~• a Pre-Feasibility Study Cover Form as found on the website, signed by the Engineer;~~
- ~~• three (3) hard copies of the Pre-Feasibility Study Report (bound), and~~
- ~~• one electronic copy of the Pre-Feasibility Study Report, in Portable Document Format (PDF) and the Measures Summary Template, as found on the website, in Microsoft Excel format on CD-ROM in a sealed package.~~

~~Participants should submit the prepared submission package to:~~

~~**Program Manager — Industrial Transmission Connected Electricity Efficiency Programs**
Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, Ontario M5H 1T1
Attention: XXXXXXXX~~

~~In the event of a conflict or inconsistency between the hard copy and the electronic copy of the Pre-Feasibility Study, the original bound copy of the Pre-Feasibility Study Report shall prevail.~~

~~Amending Studies~~

~~At any time a Participant may amend a submitted Pre-Feasibility Study Report. The right of Participants to amend includes amendments or withdrawals wholly initiated by Participants and amendments or withdrawals in response to subsequent information that becomes available to the Participant. Following acceptance of the Pre-Feasibility Study Report by the OPA, all amendments thereto proposed by the Participant shall require the written approval of the OPA.~~

~~Any amendment should clearly indicate what part of the Pre-Feasibility Study the amendment is intending to replace. A notice of amendment should be sent to the OPA as soon as possible and should be signed by an authorized representative of the Participant and by the Engineer.~~

~~Pre-Feasibility Study Report to be Retained by the OPA~~

~~The OPA will not return the Pre-Feasibility Study Report or any accompanying documentation submitted by a Participant.~~

~~Form and Content~~

~~Following are the required components of a Pre-Feasibility Study Report:~~

~~1.0 Executive Summary:~~

- ~~1.1 Facility name and location.~~
- ~~1.2 Dates of study start and completion.~~
- ~~1.3 A brief background and description of the Industrial System studied,~~
- ~~1.4 A brief description of Measures recommended for further study, with estimates of:
 - ~~1.4.1 Annual electricity savings,~~
 - ~~1.4.2 Annual average electricity demand reduction,~~
 - ~~1.4.3 Project Benefits that contribute to cost-effectiveness of the Project,~~~~

- ~~1.4.4—Simple payback for the recommended Measures based on total Eligible Costs excluding Incentives or Third Party Contributions;~~
- ~~1.4.5—Project Payback for the recommended Measures.~~
- ~~1.5 Author of report with acknowledgement of key personnel involved including titles.~~
- ~~1.6 Acknowledgement of facility personnel involved in the study with titles.~~

~~2.0 Base Case~~

~~2.1 Preliminary Engineering Study Description of the Industrial System studied:~~

- ~~2.1.1—Type of system and areas of plant/process served;~~
- ~~2.1.2—Annual hours of operation;~~
- ~~2.1.3—Existing equipment efficiency and Base Case Baseline;~~
- ~~2.1.4—How does the system interact with other systems in the plant;~~
- ~~2.1.5—Explanation of why this system was chosen for study;~~
- ~~2.1.6—Age of system or major system components.~~

~~3.0 Opportunity Analysis~~

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

~~3.1 Technical~~

- ~~3.1.1—Technical description of each identified Measure.~~
- ~~3.1.2—Methodology and calculations used to arrive at energy and demand savings estimates for each Measure.~~
- ~~3.1.3—Identification and specification of any software tools used in the analysis~~
- ~~3.1.4—Results of analysis including uncertainty ranges for:
 - ~~3.1.4.1 Annual electricity savings;~~
 - ~~3.1.4.2 Monthly average demand reduction;~~
 - ~~3.1.4.3 Daily electrical demand reduction profile by season~~~~
- ~~3.1.5—Indication of "interactive effects" between systems and the Measure i.e. a reduction in energy use in one area may cause an increase in another.~~
- ~~3.1.6—Indication of any "other benefits" that may result from implementation of each Measure. Methodology must be shown. Examples of "other benefits" are:
 - ~~3.1.6.1 Changes in fossil fuel consumption;~~
 - ~~3.1.6.2 Changes in product quality or productivity; or~~
 - ~~3.1.6.3 Changes in operating & maintenance costs.~~~~

~~3.2 Economic and Financial~~

- ~~3.2.1—Itemized cost of each identified Measure that should include considerations for: Detailed design and engineering, project management, equipment, installation labour, demolition, and commissioning.~~
- ~~3.2.2—Simple payback for each identified Measure without Incentives or any third party contributions.~~
- ~~3.2.3—Project Payback.~~

~~4.0 Recommendations~~

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

~~Schedule "C"~~

~~Pre-Feasibility Study Details~~

Scope of Study:

Facility Name:

Facility Address:

Expected Commencement Date:

Expected Completion Date:

Company Representatives

Participant:

OPA:

Date of the consulting proposal:

Name of the consultant's company:

Approved Amount:

OPA File #:

Title of study:

Reference # of study:

Schedule "C"
Release and Waiver

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby, for itself and its successors and assigns, releases and forever discharges each of the Ontario Power Authority ("OPA) and Willis Energy Services (ONT) Ltd. ("Willis") and all of their respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns (hereinafter collectively referred to as the "Releasees") from any and all actions, causes of action, suits, complaints, disputes, debts, liabilities, obligations, damages, legal fees, costs, disbursements, expenses, claims and demands of every kind, at law or in equity, or under any statute, including without limitation, claims for property damage, business interruption and personal injury of the undersigned's employees, officer, directors or licencees, which it can, shall or may have by reason of any matter, cause or thing arising as a result of, in relation to or in connection with the attendance by one or more of the employees, officers, directors, representatives or agents ("Persons") on one or more occasions of either or both of the OPA and Willis at any and all facilities owned or occupied by the undersigned in connection with, arising out of or relating to the OPA's Industrial Accelerator^{OM} Program (the "Industrial Accelerator^{OM} Program"), other than in the case of the gross negligence or willful misconduct of such Persons during such attendances. The foregoing release shall continue in full force and effect for the benefit of the OPA and Willis and to the extent of any conflict between this release and the terms of any Preliminary Engineering Study Contract, Detailed Engineering Study Contract, Project Incentive Agreement or other document entered into by the undersigned and the OPA pursuant to or in connection with the OPA's Industrial Accelerator^{OM} Program, the terms of this release shall prevail.

[Date]

[Name of Company making Application]

Name:

Title:

Input:	
Document 1 ID	interwovenSite://BJDOCS/WSLegal/5696259/4
Description	#5696259v4<WSLegal> - Pre-Feasibility Study Funding Contract
Document 2 ID	interwovenSite://BJDOCS/WSLegal/5696259/8
Description	#5696259v8<WSLegal> - Preliminary Engineering Study Funding Contract
Rendering set	standard

Legend:	
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Deletion	
Moved from	
<u>Moved to</u>	
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Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Moved to	16
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Total changes	477