



ENERGY RECOVERY STANDARD OFFER PROGRAM

ERSOP RULES

Version 1.0

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SECTION 1 – INTRODUCTION

1.1 Background to the Energy Recovery Standard Offer Program

The Ontario Power Authority has developed this Energy Recovery Standard Offer Program (ERSOP) for the Province of Ontario to support the efficient generation of electricity from recovery of otherwise wasted energy sources such as unutilized by-products that can be used as fuels. The fundamental objective of the ERSOP Program is to facilitate the increased development of Energy Recovery Facilities that are up to a maximum capacity of 20 MW in size, connected to a Distribution System and in an area of the Province where such generation can effectively be accommodated. Some typical examples of projects suitable for the ERSOP Program include energy recovery from pressure reduction facilities, energy recovery from hot exhaust streams (other than from electricity generating facilities), and energy recovery from otherwise flared process by-products.

This document contains the rules with respect to the ERSOP Program, which will be reviewed periodically and may be amended in accordance with Section 8.2.

The OPA will maintain an application package, including the application form, the ERSOP Contract and detailed instructions on how to apply for an ERSOP Contract, on the Website. Any conflict or inconsistency between the ERSOP Contract and the ERSOP Rules shall be resolved in favour of the ERSOP Contract.

This Energy Recovery Standard Offer Program is complemented by a separate program, the Combined Heat Power Standard Offer Program or CHPSOP, to facilitate the development of gas-fired electricity generating facilities that utilize combined heat and power technology.

All capitalized terms in these ERSOP Rules are defined in Appendix 1 – Standard Definitions attached to this document and available on the Website.

1.2 Participation in the ERSOP Program

To participate in the ERSOP Program, Applicants must be willing to make necessary investments in their facilities, including the connection, metering and verification costs, bear certain ongoing costs and risks of operation and maintenance, and enter into an ERSOP Contract with the OPA pursuant to which the OPA will pay the Supplier a predetermined price per MWh of electricity delivered to the grid. Applicants must comply with Laws and Regulations, including for greater certainty the Distribution System Code, the Transmission System Code and the IESO Market Rules, as each may be applicable. Applicants must also acknowledge the important role that effective consultation with local communities plays in the successful planning, development and operation of generating facilities and must be prepared to undertake their appropriate role in such consultations and address the interests or concerns of such communities in good faith and in compliance with Laws and Regulations.

Although the ERSOP Program is intended to promote and facilitate the connection of new generating facilities in an efficient manner, Applicants are cautioned that in certain areas of the Province it is not currently economically or technically feasible to connect additional generating facilities. As a result, during the Launch Period, a number of areas of the Province are ineligible to participate in the ERSOP Program. The OPA has designated on the Website those areas of the Province for which Applications are eligible to be submitted during the Launch Period and will be reviewed. After the end of the Launch Period, Applications for Projects in all areas of the Province will be eligible to be submitted, subject to Section 2.3(e). Once an eligible Application for a Project has been received by the OPA, regardless of whether it was received during or after the Launch Period, the OPA, in consultation with other agencies, will determine whether the applicable Distribution System and Transmission System resources are available to connect the Project. If a Project cannot be accommodated, the OPA will reject the Application.

SECTION 2 – PROJECT ELIGIBILITY REQUIREMENTS

2.1 Basic Eligibility Requirements

- (a) To be eligible to participate in the ERSOP Program, a proposed generating facility must:
 - (i) utilize an Eligible Primary Energy Source for the production of Electricity and only supplement it with Eligible Supplementary Fuel, in accordance with the requirements of Section 3.2;
 - (ii) not have a Gross Nameplate Capacity of more than 20 MW;
 - (iii) not have generated electricity prior to August 18, 2005;
 - (iv) connect to a Distribution System or to an Electrical Host Facility that is connected to a Distribution System;
 - (v) if it is the subject of an Application received during the Launch Period, be located in an area of the Province that has been designated on the Website as eligible for ERSOP Projects, unless subject to Section 2.1(a)(vii), any required Impact Assessments for such Project (regardless of whether such Project is a New Energy Recovery Facility or an Eligible Existing Energy Recovery Facility) have been completed, issued and are in good standing;
 - (vi) not be the subject of, or have been the subject of, a physical or financial power or capacity purchase contract relating to the generation of Electricity by such proposed facility (in whole or in part), or other form of contract relating to Electricity or Related Products relating to such proposed facility with the OPA, the Ontario Electricity Financial Corporation or the Government of Ontario or any other agency of the Government of Ontario (a “**Prior Contract**”). For greater certainty, a generating facility that is or has been the subject of a conservation or demand management contract shall not be eligible to participate in ERSOP; and
 - (vii) not be the subject of an application for an Impact Assessment submitted prior to the execution of the ERSOP Contract for such proposed generating facility, unless a completed application for such Impact Assessment was submitted and paid for prior to November 23, 2010 and the Applicant provides proof of this with its Application.
- (b) Projects shall only be eligible for the ERSOP Program where the Host Facility in respect of the proposed generating facility is in existence at the time of the Application.
- (c) Upgrades or expansions to existing Energy Recovery Facilities are not eligible to participate in ERSOP. Eligible Existing Energy Recovery Facilities are only permitted to participate in accordance with Section 3.3.

2.2 Behind-the-Meter Facilities

- (a) Projects that are in respect of Behind-the-Meter Facilities will only be permitted to participate in the ERSOP Program if (i) the Applicant provides the OPA with written

confirmation in the Prescribed Form from the applicable LDC, confirming that the LDC expects to be able to fulfill its obligations under the Retail Settlement Code and other Laws and Regulations with the Project connected as a Behind-the-Meter Facility, (ii) the Supplier accepts all costs and risks associated with complying with the LDC's metering and settlement requirements, (iii) the OPA is satisfied that there is a sufficient technical rationale to justify such configuration, and (iv) the Supplier agrees to enter into an amendment to the ERSOP Contract such that any financial benefit to the Facility or the Electrical Host Facility that accrues by virtue of the Facility Delivering Electricity as a Behind-the-Meter Facility is returned to the OPA. For greater certainty, any such amendment will provide for a reduction in the Contract Payment by the amount of "Global Adjustment" and other variable charges that are avoided as a result of the Behind-the-Meter Facility configuration. In all circumstances, the Supplier shall be solely responsible for ensuring compliance with the "Debt Retirement Charge" requirements under Regulations 493/01 and 494/01 made pursuant to the Electricity Act.

- (b) Without limiting the generality of the foregoing, the following information is provided to assist prospective Applicants considering Projects in respect of Behind-the-Meter Facilities:
 - (i) If the Project's Delivered Electricity is at any time in excess of the Electrical Host Facility's load, then settlement would normally require the subtraction of values as between the Electrical Host Facility's meter and the Facility's meter, which is referred to as "subtractive totalization of metering". It is expected that LDCs may not connect Projects which would require subtractive totalization of metering and therefore such Projects would not be capable of complying with the requirements of 2.2(a).
 - (ii) In order to avoid the need for subtractive totalization of metering, Projects that are intended to have the capability of "premises islanding" should establish connection and premises islanding arrangements with the applicable LDC such that premises islanding can take place on the LDC side of the load and generation metering installations, with appropriate arrangements for LDC settlement under islanded operations. Under this configuration, these Projects would not be Behind-the-Meter Facilities and therefore would not be subject to the restriction set out in Section 2.2(a).
 - (iii) Applicants are strongly cautioned that any challenges arising with the connection of a Project as a Behind-the-Meter Facility following submission of an Application or execution of a ERSOP Contract is at the Applicant's sole risk and may result in forfeiture of the Application Security or Completion and Performance Security, as applicable. For greater certainty, the OPA will not provide any special consideration to Behind-the-Meter Facilities in its connection availability screen.
 - (iv) In the event that the OPA does not accept an Applicant's technical rationale to justify a connection configuration for a Behind-the-Meter Facility, the OPA shall advise the Applicant and shall provide the Applicant with the opportunity to revise its Connection Point such that its Project is no longer a Behind-the-Meter Facility. If the Applicant declines to revise its Connection Point, the Application shall be considered incomplete and rejected in accordance with Section 4.2(e). The only technical rationale identified to-date to justify connecting an ERSOP Project as a Behind-the-

Meter Facility is that the location of the Energy Recovery Facility relative to the Host Facility is determined by the location of the Eligible Primary Energy Source, and as a result of the location of the Energy Recovery Facility, the cost of constructing a dedicated feeder to a Connection Point suitable for parallel metering would be disproportionate to the scale of the Project.

- (v) Upon receipt of an Application in respect of a Behind-the-Meter Facility which satisfies the requirements set out in Section 2.2(a), the OPA, in consultation with the applicable LDC, will develop a form of amendment to the ERSOP Contract that will provide that any financial benefit to the Facility or the Electrical Host Facility that accrues by virtue of the Facility Delivering Electricity as a Behind-the-Meter Facility is returned to the OPA. In order to ensure that there is no need for subtractive totalization in any period when generation may exceed the load of the Electrical Host Facility, the Applicant may be required to forego any compensation for a net injection to the Distribution System.

2.3 Program Limits

- (a) In accordance with the limits set out in the CESOP Directive, 200 MW of capacity has been allocated for a combination of ERSOP Projects and CHPSOP Projects (the “**Available Capacity**”). For Launch Applications, the sub-limits set out in Section 9.3 shall apply. For greater certainty, the Available Capacity applies to both Eligible Existing Energy Recovery Facilities and New Energy Recovery Facilities.
- (b) Available Capacity shall only be allocated to a Project, based on its Contract Capacity, at the time an ERSOP Contract is offered in accordance with Section 6.1(a). Provided that the ERSOP Contract is executed and returned in accordance with Section 6.1(b), the total Available Capacity shall be reduced by the amount of the Contract Capacity corresponding to such ERSOP Contract. If the Applicant fails to return the ERSOP Contract in accordance with Section 6.1(b), then any capacity allocated in respect of such ERSOP Contract shall be forfeited and such capacity shall become Available Capacity.
- (c) So long as there is sufficient Available Capacity to accommodate any part of a Project, the OPA shall consider there to be sufficient Available Capacity to accommodate the entire Project, provided that in no circumstances will the OPA permit the Available Capacity to be exceeded by more than 20 MW. Following the assessment of all Launch Applications, the OPA shall use its best efforts to regularly update the level of Available Capacity on the Website.
 - (i) If, for example, there is 3 MW of Available Capacity and the next Project to be processed has an Contract Capacity of 5 MW, the OPA shall consider there to be enough Available Capacity to accommodate such Project, provided that following the execution of the ERSOP Contract in respect of such Project, the level of Available Capacity shall be zero.
- (d) Once the level of Available Capacity reaches zero, and there are no outstanding offers of ERSOP Contracts, then notwithstanding anything in the ERSOP Rules to the contrary, all remaining Applications shall be rejected by the OPA, and any Application Security shall be returned within 20 Business Days, and no further Applications shall be considered. For greater certainty, the Application Fee is not

refundable in these circumstances, provided that if, at such time, the OPA has not yet received or opened the hard copy materials (which include the Application Fee) in respect of an Application, it shall return these unopened.

- (e) To facilitate the procedure set out in Section 2.3(d), following the end of the Launch Period, the OPA will temporarily cease receiving new Applications until it has completed processing of the Launch Applications and has determined whether there is any remaining Available Capacity. The OPA will provide no less than five Business Days notice on the Website of the reopening of the ERSOP Program for new Applications following the end of the Launch Period.

SECTION 3 – APPLICATION REQUIREMENTS

3.1 Application Materials

- (a) An Applicant must provide with its Application a certified cheque, bank draft or money order payable to the Ontario Power Authority in the amount of \$1,000, which fee is inclusive of HST and shall be non-refundable (subject to Section 2.3(d)) regardless of whether the Application is accepted by the OPA (the “**Application Fee**”).
- (b) An Applicant must provide security with its Application, payable to and in favour of the “Ontario Power Authority” in the amount of \$20,000 per MW of Contract Capacity in the form of a certified cheque, bank draft, money order or an irrevocable and unconditional standby letter of credit issued by a financial institution listed in either Schedule I or II of the *Bank Act* (Canada), or such other financial institution having a minimum credit rating of (i) A– with S&P, (ii) A3 with Moody’s, (iii) A low with DBRS, or (iv) A with Fitch IBCA, substantially in the form attached as Exhibit A (the “**Application Security**”). If the Application is accepted and the Applicant is offered to enter into an ERSOP Contract, upon the OPA’s receipt of the Completion and Performance Security, in accordance with Section 6.1(b), the Application Security will be returned to the Applicant. Any interest earned by the OPA on any Application Security provided to the OPA shall be for the sole account of the OPA and the Applicant shall not have any right to such interest.
- (c) All Applicants must provide consent in the Prescribed Form for the IESO and the applicable LDC to disclose information to the OPA. The consent must be addressed jointly to the OPA, the IESO and the applicable LDC, and signed by the Applicant and the Electrical Host Facility (if applicable). It authorizes the LDC and the IESO to provide to the OPA information relating to the Applicant or the Project, the Electrical Host Facility (if applicable) and each of their connections, meters, meter and billing data and accounts as the OPA may require for the purposes of evaluating the Application and/or offering or administering a ERSOP Contract.
- (d) Where the Application is not in respect of a Host Developed Project, the Applicant must also provide an authorization letter in the Prescribed Form authorizing the owner of the Host Facility to provide the OPA information relating to the Applicant or the Project and the Host Facility, as the OPA may require for the purposes of evaluating the Application and/or offering or administering a ERSOP Contract.
- (e) Prior to applying to the ERSOP Program, Applicants must contact their LDC to discuss an appropriate Connection Point and discuss the availability of connection resources on the Distribution System for their Project. The Application will require

Applicants to identify the time and date of such meeting, as well as the representative(s) from the LDC who participated.

- (f) An Application must include the following connection details regarding the Project:
 - (i) Contract Capacity (which, for greater certainty, shall not exceed 20 MW) and Gross Nameplate Capacity (if different),
 - (ii) Eligible Primary Energy Source and any applicable Eligible Supplementary Fuel,
 - (iii) proposed Connection Point, (iii) other information relating to the Connection Point, including distribution feeder designation and voltage and corresponding transformer station bus, and
 - (iv) such other information as may be required by the ERSOP Application form, as applicable.
- (g) An Application must include evidence that the Applicant has either title or rights of access to the Site, sufficient to build, operate and maintain the Project, enforceable by contract for the term of the ERSOP Contract (“**Access Rights**”). Such Access Rights may include a lease, option, letter of intent, memorandum of understanding or other grant conditional only on the Applicant entering into the ERSOP Contract.
- (h) An Applicant must provide the OPA with a valid e-mail address for purposes of correspondence related to the ERSOP Program, which address the Applicant may amend from time to time by providing written notice to the OPA.

3.2 Eligible Primary Energy Source

- (a) All Applicants must provide in the Prescribed Form a plan that is satisfactory to the OPA, to supply their Project with one or more Eligible Primary Energy Sources (the “**Fuel Supply Plan**”). The Fuel Supply Plan shall, without limitation, include evidence to the satisfaction of the OPA that:
 - (i) the Eligible Primary Energy Source will be available for use by the Supplier for the Term of the ERSOP Contract;
 - (ii) there will be sufficient Eligible Primary Energy Source to operate the Facility in accordance with the anticipated number of operating hours during the first 10 Contract Years, such that the Facility’s average Primary Energy Source Percentage (described below in Section 3.2(b)) is at least 90% during such 10-year period;
 - (iii) no fuels other than the Eligible Primary Energy Source(s) and any Eligible Supplementary Fuel are required to operate the Facility; and
 - (iv) sufficient measurement and verification will be implemented as part of the Project to permit the OPA to confirm that the fuel use by the Facility is consistent with the Fuel Supply Plan.
- (b) The Primary Energy Source Percentage or PESP is the percentage of a Facility’s Delivered Electricity in a given time period “*t*” that is attributable to the consumption of Eligible Primary Energy Source and is calculated as follows:

$\text{PESP}_t = \frac{DE_t - SE_t}{DE_t}$
where:

PESP _t	is the Primary Energy Source Percentage over time period “t”;
DE _t	is the total Delivered Electricity over time period “t” (in MWh);
SE _t	is the total energy produced by an Eligible Supplementary Fuel over time period “t” (in MWh) and is calculated as the total Eligible Supplementary Fuel (in MMBTU) consumed in time period “t” divided by 10.0 MMBTU/MWh (HHV).

- (c) For Applications in respect of Projects that are not Host Developed Projects, the Application must include evidence satisfactory to the OPA that the Applicant has the exclusive right to use the Eligible Primary Energy Source for the purpose of generating electricity. Such rights may include a fuel supply agreement, an option, letter of intent, memorandum of understanding or other grant conditional only on the Applicant entering into the ERSOP Contract.

3.3 Eligible Existing Energy Recovery Facilities

- (a) Where a Facility has previously generated Electricity while synchronized to the Distribution System, provided it did not generate electricity at any time prior to August 18, 2005 (an “**Eligible Existing Energy Recovery Facility**”), such Facility shall only be eligible for the ERSOP Program in accordance with the terms and conditions of this Section 3.3.
- (b) In addition to the information required to be provided with an Application pursuant to Section 3.1, an Application in respect of an Eligible Existing Energy Recovery Facility must also include (i) a Metering Plan in the Prescribed Form, (ii) a single line electrical drawing bearing the stamp of a Professional Engineer licensed to practice in Ontario, which identifies the as-built Connection Point(s), clearly showing area transmission and distribution facilities, including the transmission station(s) that is electrically closest to the Facility and (iii) evidence satisfactory to the OPA, of the date on which the construction of the Facility was complete in all material respects and the Facility demonstrated the capability of producing and sustaining the applicable Contract Capacity (the “**In-Service Date**”). In determining whether the evidence of the In-Service Date is satisfactory, the OPA shall consider whether such evidence would have satisfied the requirements for achieving Commercial Operation under the ERSOP Contract, had such requirements been applicable to the Facility.
- (c) Notwithstanding Section 6.3(b), the Term of an ERSOP Contract offered in respect of an Eligible Existing Energy Recovery Facility shall be calculated as 20 years minus the number of days between the In-Service Date and the date of the electronic submission of the Application.

3.4 Responsibility for Project Viability

Despite anything contained in these ERSOP Rules or in the ERSOP Contract, Applicants are solely responsible for ensuring the technical, regulatory and financial viability of their Projects, and the OPA shall have no responsibility whatsoever to independently assess the viability of any Application or Project nor any liability whatsoever in the event that a Project turns out not to be viable in any respect. For greater certainty, Applicants are solely responsible for satisfying the Primary Energy Source Percentage requirements in the ERSOP

Contract and for any financial consequences they may incur resulting from a shortfall in the availability of the Eligible Primary Energy Source, however caused.

SECTION 4 – APPLICATION REVIEW

4.1 Application

- (a) Applicants who wish to participate in the ERSOP Program must submit an Application to the OPA in accordance with instructions posted on the Website from time to time, together with all documents required to establish that the Applicant has satisfied all of the Project and Application eligibility criteria set out in Section 2 and Section 3, respectively. Applicants are required to submit Applications electronically, at which point they will be issued a Time Stamp and a reference number. A copy of the application form, the Application Fee, Application Security, schedules, attachments and other documents specified in the ERSOP Application form must be delivered in hard copy format to the OPA at 120 Adelaide Street West, Suite 1600, Toronto ON, M5H 1T1, Attention: Energy Recovery Standard Offer Program, no later than five Business Days after the Applicant is sent an e-mail by the OPA confirming electronic submission of the Application, and in accordance with the specific details set out in the ERSOP Application form. The reference number must be clearly marked on the envelope containing the hard copy materials and on all of the hard copy materials.
- (b) If the OPA does not receive all the required materials by 5:00 p.m. (EPT) on the fifth Business Day after the Applicant is sent an e-mail by the OPA confirming electronic submission of the Application, any hard copy materials will be returned to the Applicant and the Time Stamp and reference number on the electronic submission of the Application will be forfeited.

4.2 Review of Mandatory Requirements

- (a) Each Application will be reviewed in detail by the OPA to confirm that the overall Application is complete and that all constituent elements of such Application confirm that the Project satisfies all of the eligibility requirements set out in Section 2 and that the Application satisfies all of the eligibility requirements set out in Section 3.
- (b) The OPA reserves the right, but is not obligated, to request clarification, additional information, documentation and statements in relation to any Application at any time. Any such requested clarification, additional information, documentation or statements must be submitted to the OPA by e-mail within 10 Business Days of the date of such request, or by such other means and within such other time frame as may be requested by the OPA, failing which the Application may be rejected as being incomplete.
- (c) The OPA reserves the right to reject any incomplete Application, any Application that does not satisfy all of the eligibility requirements set out in Section 2 and Section 3 or any Application in respect of which the included information is not satisfactory to the OPA or its advisers in any respect. The Application Fee will not be refunded in such circumstances.
- (d) Once the OPA has confirmed that an Application meets the requirements set out in Section 2 and Section 3, the OPA will assess, by order of Time Stamp, whether

connection resources are currently available to connect the Project in accordance with Section 5, except where, subject to Section 2.1(a)(vii), any required Impact Assessments for such Project (regardless of whether such Project is a New Energy Recover Facility or an Eligible Existing Energy Recovery Facility) have been completed, issued and are in good standing, in which case the OPA will proceed to offer an ERSOP Contract in accordance with Section 6.1(a). The OPA may, in its discretion, contact an Applicant to discuss amendments to a Project, but where an Applicant declines to make any such amendments, it shall be without prejudice to the unamended Application.

- (e) Where an Application has been rejected, the OPA shall give reasons for rejecting the Application and shall return the Application Security within 20 Business Days of providing such notice. Rejection of an Application shall be without prejudice to submitting a revised Application to the extent that an Applicant believes an Application can be improved and thereby accepted, provided that such revised Application shall be issued a new Time Stamp and reference number at the time of resubmission and shall be subject to the ERSOP Rules and ERSOP Contract in effect at the time of resubmission.
- (f) A decision by the OPA to accept or reject an Application shall be final and binding and not subject to appeal.

SECTION 5 – CONNECTION AVAILABILITY MANAGEMENT

5.1 Connection Availability Screen

- (a) When the OPA determines that an Application is complete following receipt of any clarification, additional information, documentation and statements required by the OPA in accordance with Section 4.2(b), it will provide notice to the Applicant and will conduct a connection availability screen in accordance with Section 5.1(c). The OPA's target for processing Applications in accordance with Section 5.1(c) is 60 days following such notice.
- (b) All Applications will be assessed in order of Time Stamp such that, to the extent that multiple Projects require the same connection resource or allocation of remaining Available Capacity, Projects with an earlier Time Stamp will be assessed in priority to Projects with a later Time Stamp. All Applications received following the launch of the ERSOP Program and prior to June 30, 2011 at 5:00 PM (EPT) (the “**Launch Period**”) shall be assessed in accordance with Section 9. For greater certainty, an Application is considered to be received at the time of the electronic submission of the Application, provided that the hard copy materials are received in accordance with Section 4.1(a).
- (c) Once the OPA has confirmed that an Application meets the requirements set out in Section 2 and Section 3, the OPA, along with the IESO and applicable Transmitters, will determine whether the Transmission System has sufficient connection resources to accommodate the connection of the Project and the OPA will coordinate with any applicable LDCs and confirm such LDCs' determination as to whether the applicable Distribution System has, or will have sufficient connection resources to accommodate the connection of the Project. In both cases such determination will take into account all prior Applications that have been processed; applications for projects under the CHPSOP Program submitted prior to the Application; contracts for Feed-in Tariff projects and any other generating facilities that are existing,

committed or are the subject of a ministerial direction. Following the end of the Launch Period, this process will occur in coordination with other OPA connection availability processes, including the “Transmission Availability Test” and “Distribution Availability Test”, which are run pursuant to the Feed-in Tariff Program.

- (d) If the analysis in Section 5.1(c) determines that there are sufficient Transmission System and Distribution System resources necessary to accommodate the connection of the Project, the OPA will offer an ERSOP Contract in accordance with Section 6.1(a).
- (e) If the analysis in Section 5.1(c) determines that there are insufficient Transmission System or Distribution System resources available to accommodate the connection of the Project, the OPA will reject the Application and will return the Application Security to the Applicant within 20 Business Days, and the Applicant may reapply to the ERSOP Program in accordance with Section 5.2.

5.2 Reapplication

An Applicant may reapply to the ERSOP Program at any time subject to the ERSOP Rules in effect at such time. If, within six months after a rejection of its Application pursuant to Section 5.1(e), an Applicant reapplies to the ERSOP Program for the same Project (a “**Reapplication**”), the Application Fee applicable to any Reapplication shall be \$200. For greater certainty, any Application that is the subject of a Reapplication will be issued a new Time Stamp in accordance with Section 4.1(a) and will be required to include the full Application Security set out in Section 3.1(b).

SECTION 6 – ERSOP CONTRACT FORM AND EXECUTION

6.1 Offer & Acceptance

- (a) Following the OPA’s confirmation that an Application meets the requirements set out in Section 2 and Section 3, if the OPA has determined that there are sufficient Distribution System and Transmission System resources necessary to accommodate the connection of the Project and there is sufficient Available Capacity for the Project, the OPA will accept the Application and provide notice to the Applicant in respect of such Project in which the OPA shall offer an ERSOP Contract in its most recent standardized form on the basis of the information set out in the Application (the “**Offer Notice**”).
- (b) An Applicant will have 10 Business Days from the issuance of the Offer Notice to accept the offered ERSOP Contract. An Applicant may accept and enter into the ERSOP Contract by printing and executing the enclosed ERSOP Contract documents and delivering the executed documents together with the required Completion and Performance Security to the OPA in accordance with the instructions in the Offer Notice.
- (c) Where an Offer Notice is provided in respect of an Application for which the Application Security was provided to the OPA in the form of certified cheque, bank draft or money order, an Applicant that intends to provide Completion and Performance Security in the same form as the Application Security may convert the Application Security into Completion and Performance Security to reduce the

amount of Completion and Performance Security outstanding, by enclosing the provided consent form with its response to the Offer Notice.

- (d) Upon receipt of the executed ERSOP Contract and the Completion and Performance Security, the OPA will return the Application Security (if applicable) to the Supplier within 15 Business Days. If the OPA does not receive the executed ERSOP Contract and Completion and Performance Security from the Applicant within 10 Business Days of the Offer Notice, the Application shall be deemed to have been withdrawn, the offer of an ERSOP Contract shall be revoked, and the OPA shall be entitled to draw on the full amount of the Application Security as liquidated damages and not as a penalty.

6.2 Contract Pricing

Subject to Section 9.1(c), the Contract Price is \$90.00/MWh. Each year following Commercial Operation of a Facility, 30% of the Contract Price shall be escalated on the basis of increases in CPI.

6.3 Overview of Contractual Provisions

- (a) The ERSOP Contract requires the Supplier to own the Facility (or lease the Facility for the Term) and to design, build, operate and maintain the Facility as it is outlined in the Application using Good Engineering and Operating Practices and in compliance with Laws and Regulations, including for greater certainty the Distribution System Code, the Transmission System Code and the IESO Market Rules, as each may be applicable. For New Energy Recovery Facilities, the Milestone Date for Commercial Operation will be the date that is three years after the Contract Date.
- (b) The OPA's payment obligations under the ERSOP Contract will be, commencing on the Term Commencement Date, to pay for Hourly Delivered Electricity at the Contract Price and, in the case of Registered Facilities, less the greater of HOEP and zero, multiplied by the Peak Performance Factor for the corresponding hour, for a period of 20 years, subject to earlier termination in accordance with the ERSOP Contract's terms. The application of the Peak Performance Factor will result in higher payments during On-Peak Hours and lower payments during Off-Peak Hours to encourage such Projects to schedule their production during On-Peak Hours to the extent practicable. For Eligible Existing Energy Recovery Facilities, the payment period shall be less than 20 years, as set out in Section 3.3(c). During any hours where HOEP is greater than the Contract Price and there is Hourly Delivered Electricity, the positive difference between HOEP and the Contract Price multiplied by such Hourly Delivered Electricity shall be payable by the Supplier to the OPA.
- (c) The ERSOP Contract requires the Supplier to maintain a rolling two-year average Primary Energy Source Percentage of at least 50% and to use Commercially Reasonable Efforts to comply with the Fuel Supply Plan. Starting at the end of the third Contract Year and at the end of each Contract Year thereafter, if the Facility fails to achieve a rolling two-year average Primary Energy Source Percentage of at least 90%, the Contract Price for the next Contract Year shall be reduced by \$1/MWh for each percentage point that the rolling two-year average Primary Energy Source Percentage is below 90%.

- (d) The ERSOP Contract sets out the metering requirements for the Facility, and the Supplier must provide a Metering Plan to the OPA for approval. The Supplier must also provide the OPA and its designated agents all rights necessary to receive, retain, audit and use the meter data for the purposes of settling the ERSOP Contract and any other purpose consistent with the objectives of the ERSOP Program, and must also provide read only access to the Facility's meters.
- (e) Prior to or commensurate with the execution of the ERSOP Contract, Suppliers developing New Energy Recovery Facilities will be required to provide the OPA with Completion and Performance Security in an amount of \$30,000/MW of Contract Capacity. Suppliers developing Eligible Existing Energy Recovery Facilities will be required to provide the OPA with Completion and Performance Security in an amount of \$15,000/MW of Contract Capacity.
- (f) Prior to achieving Commercial Operation, the Supplier may only terminate the ERSOP Contract with a full return of Completion and Performance Security if the Supplier's Connection Costs are estimated to be substantially more than what would have been reasonably foreseeable by a prudent Supplier taking Commercially Reasonable Efforts to estimate such costs.
- (g) After achieving Commercial Operation, the Supplier may only terminate the ERSOP Contract with a full return of Completion and Performance Security if there is a significant drop in the availability of Eligible Primary Energy Source from the Host Facility that is beyond the reasonable control of the Supplier, in which case the Contract Facility must be shut down for the balance of what would have been the remaining Term.
- (h) The ERSOP Contract provides that all Environmental Attributes otherwise applicable to the Contract Facility or available to a Supplier in respect thereof are absolutely and unconditionally assigned to the OPA, except to the extent that such Environmental Attributes are needed and consumed for the generation of Hourly Delivered Electricity. The ERSOP Contract also provides that eighty percent (80%) of the profit generated by any Future Contract Related Products are to the OPA's account.

6.4 Resolving Inconsistencies

Section 6.3 is for descriptive purposes only. For greater certainty, to the extent that there is any inconsistency between Section 6.3 and the ERSOP Contract, the ERSOP Contract shall prevail.

SECTION 7 – CONFIDENTIALITY

- (a) All information provided by or obtained from the OPA in any form in connection with the ERSOP Program, either before or after the execution of a ERSOP Contract, that is not otherwise publicly available is the sole property of the OPA and must be treated as confidential, and
 - (i) is not to be used for any purpose other than applying to participate in the ERSOP Program and the performance by the Supplier of its obligations under the ERSOP Contract;

- (ii) must not be disclosed without the prior written authorization of the OPA, other than to the Applicant's or Supplier's partners, advisors, applicable LDC, IESO, OEB, contractors, and Secured Lenders, provided the disclosing party obtains similar confidentiality commitments from such third parties; and
 - (iii) shall be returned by the Applicant, Supplier or third party (as applicable) to the OPA immediately upon request of the OPA.
- (b) Information provided by an Applicant or a Supplier is subject to, and may be released in accordance with, the provisions of the FIPPA. Notwithstanding any confidentiality statement provided by the Applicant or Supplier, the OPA may be required to disclose information which is provided to the OPA by an Applicant or Supplier and is otherwise not protected from disclosure through an exemption in FIPPA or any other applicable legislation, regulation or policy. Applicants should not assume that such an exemption is available.
- (c) Information provided by an Applicant in relation to a Project, including technology, capacity, location, date, status within the ERSOP Program and name of and contact information for an Applicant may be disclosed by the OPA on the Website or otherwise, and such disclosure may be made on an individual basis, or on aggregated with information provided by other Applicants.
- (d) Applicants are advised that their Applications will, as necessary, be disclosed on a confidential basis to the OPA's counsel, consultants, the IESO, Transmitters, LDCs, the Government of Ontario, and other advisers retained for the purpose administration of the ERSOP Program.

SECTION 8 – ADDITIONAL RULES

8.1 Assignment and Change of Control

- (a) An Applicant shall not assign its Application to another Person other than an Applicant Related Person, except with the prior written consent of the OPA, which consent may not be unreasonably withheld.
- (b) An Applicant shall not permit or allow a change of Control of such Applicant, except with the prior written consent of the OPA, which consent may not be unreasonably withheld.
- (c) If an Applicant violates any provision of this Section 8.1, the OPA shall be entitled to reject the Application and draw on the full amount of the Application Security as liquidated damages and not as a penalty.

8.2 Program Review

Provided that there is any remaining Available Capacity, the OPA intends to review and amend as necessary the ERSOP Program, the ERSOP Rules and the form of ERSOP Contract (which, for greater certainty, shall not affect any executed ERSOP Contracts) two years after the launch of the ERSOP Program. The OPA may make amendments prior to this date in response to ministerial directions, changes in Laws and Regulations, significant changes in market conditions or other circumstances as required.

8.3 General

- (a) Each Application will be prepared at the sole cost and expense of the Applicant.
- (b) The OPA shall not be liable to pay any Applicant's costs or expenses under any circumstances. In particular, the OPA will not reimburse the Applicant in any manner whatsoever in the event of rejection of any or all Applications or in the event of the cancellation or suspension of the ERSOP Program at any time. By submitting an Application, the Applicant irrevocably and unconditionally waives any claims against the OPA relating to the Applicant's costs and expenses including without limitation, costs in relation to satisfying the Project eligibility criteria described in Section 2 and the Application eligibility criteria described in Section 3, the Application Fee and any costs associated with delivering the Application Security.
- (c) Notwithstanding anything contained in these ERSOP Rules, the OPA reserves the right, in its sole discretion, to reject any Application in whole or part whether or not completed properly and whether or not it contains all necessary information and reserves the right to discuss different or additional proposals to those included in any Application.
- (d) The OPA reserves the right to cancel all or any part of the ERSOP Program at any time and for any reason or to suspend the ERSOP Program in whole or in part for any reason for such period of time as the OPA shall determine in its sole discretion, in each case without any obligation or any reimbursement to the Applicants. In the event that all or any part of the ERSOP Program is cancelled, the OPA shall return the full Application Security to all affected Applicants.
- (e) Each Applicant shall be solely responsible for its own costs and expenses relating to the preparation and submission of its Application and the development of the Facility, whether or not an Application is rejected or the ERSOP Program is suspended, cancelled, revoked or revised. Under no circumstances whatsoever shall the OPA be liable for any indirect, punitive or consequential damages associated with the Applicant's participation in the ERSOP Program.
- (f) The OPA may verify with any Applicant or with any third party any information set out in an Application.
- (g) The OPA may at any time make changes to these ERSOP Rules, the form of ERSOP Contract, or the ERSOP Program (including substantial changes or a suspension or termination of the ERSOP Program), without any liability whatsoever to Applicants or prospective Applicants, except for the return of Application Security.
- (h) The OPA reserves the right to waive any informality or irregularity at its discretion or to otherwise exercise administrative discretion with respect to an Application or an Applicant's compliance with these ERSOP Rules.

8.4 Reserved Rights

- (a) The rights reserved to the OPA in these ERSOP Rules are in addition to any other express rights or any other rights which may be implied in the circumstances, and the OPA shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Applicant or any third party resulting from the OPA exercising any of its express or implied rights under the ERSOP Program.

- (b) By submitting an Application, the Applicant authorizes the collection by the OPA of the information set out in the Application and otherwise collected in accordance with the terms hereof, and the use of such information for the purposes set out in or incidental to these ERSOP Rules and the ERSOP Contract, and for the purpose of offering, managing and directing the ERSOP Program generally.

8.5 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 Dollars and Cents, and shall be rounded to the nearest Cent.
- (c) **Discretion.** Where the OPA may take an action or make a determination under these ERSOP Rules, the decision to take such action or make such determination shall be at the OPA's sole and absolute discretion.
- (d) **Governing Law.** These ERSOP Rules are 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.
- (e) **Headings.** Headings of Sections are inserted for convenience of reference only and do not affect the construction or interpretation of these ERSOP Rules. References to Sections means Sections of these ERSOP Rules, unless otherwise specified.
- (f) **Liquidated Damages.** By submitting an Application, Applicants acknowledge and agree that it would be extremely difficult and impracticable to determine precisely the amount of actual damages that would be suffered by the OPA and Ontario rate-payers as result of an Applicant failing to execute a ERSOP Contract in response to an Offer Notice. Applicants submitting Applications further acknowledge and agree that the liquidated damages set forth in these ERSOP Rules are a fair and reasonable approximation of the amount of actual damages that would be suffered by the OPA and Ontario rate-payers as a result of a failure to execute a ERSOP Contract in response to an Offer Notice, and does not constitute a penalty.
- (g) **No Strict Construction.** Despite the fact that these ERSOP Rules were drafted by the OPA's legal and other professional advisors, Applicants submitting Applications acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision in these ERSOP Rules shall not be construed against the OPA in favour of the Applicant when interpreting such term or provision, by virtue of such fact.
- (h) **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.
- (i) **Severability.** If any provision of these ERSOP Rules 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 these ERSOP Rules and without affecting its application to the other Party or circumstances.

- (j) **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.
- (k) **Time.** Time is of the essence in the performance of the Parties' respective obligations.
- (l) **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.

SECTION 9 – PROGRAM LAUNCH

9.1 Application Requirements

- (a) Notwithstanding anything to the contrary in Section 4.1(a) or otherwise in these ERSOP Rules, all Applications that meet all of the Project and Application eligibility requirements set out in Section 2 and Section 3 and are received by the OPA by June 30, 2011 at 5:00 PM (EPT) (the “**Launch Applications**”) shall be assigned a Time Stamp in accordance with the procedure set out in Section 9.2. For greater certainty, an Application is considered to be received at the time of the electronic submission of the Application, provided that the hard copy materials are received in accordance with Section 4.1(a).
- (b) Any Launch Application that does not meet all of the Project and Application eligibility requirements set out in Section 2 and Section 3 will be rejected in accordance with Section 4.2.
- (c) All Applicants submitting a Launch Application may include, along with the other materials required pursuant to Section 3.1, a reduction, in increments of \$0.01/MWh, to the Contract Price (the “**Price Reduction**”). Where the Applicant provides a Price Reduction, the Contract Price in the applicable ERSOP Contract shall be equal to the Contract Price set out in Section 6.2, less the Price Reduction.

9.2 Time Stamp Assignment

- (a) All Launch Applications will be assigned a Time Stamp in relative priority to one another such that Launch Applications with a greater Price Reduction shall be assigned earlier Time Stamps than those Launch Applications with a lesser, or no, Price Reduction. The Time Stamps assigned to all Launch Applications shall be earlier in time than the Time Stamps assigned to Applications received after the end of the Launch Period. For the purpose of coordinating the connection availability screen set out in Section 5.1(c) during the Launch Period, such screen shall alternate between CHPSOP applications and ERSOP Applications, starting with a CHPSOP application.

- (b) Where two or more Launch Applications propose the same Price Reduction, their Time Stamps will be assigned in relative priority to one another by random draw.
- (c) Notwithstanding Sections 4.2(d) or 5.1(d), no ERSOP Contracts shall be offered in respect of Launch Applications until all Launch Applications have been reviewed and prioritized by the OPA.

9.3 Program Sub-limits for Launch

- (a) In order to ensure an equitable allocation of Available Capacity between CHPSOP Projects and ERSOP Projects, during the Launch Period a minimum of 150 MW of the Available Capacity will be available to CHPSOP Projects and a minimum of 50 MW of Available Capacity will be available to ERSOP Projects.
- (b) If either CHPSOP or ERSOP does not use its entire allocation of Available Capacity pursuant to Section 9.3(a), then the remaining Available Capacity shall become available to either CHPSOP Projects or ERSOP Projects. If there are sufficient CHPSOP Projects and ERSOP Projects to utilize their entire respective sub-limits of Available Capacity pursuant to Section 9.3(a), then if necessary to comply with the absolute limit of 220 MW set out in Section 2.3(c), the final Available Capacity shall be allocated to an ERSOP Project.

EXHIBIT A – APPLICATION SECURITY (LETTER OF CREDIT FORM)

DATE OF ISSUE:	[●]
APPLICANT:	[●]
BENEFICIARY:	Ontario Power Authority and its permitted assigns (“ Beneficiary ”)
AMOUNT:	[●]
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 ERSOP Program Rules issued by the Ontario Power Authority dated ●, as amended (the “**ERSOP Rules**”) and the Application dated **[Insert Date of Application]** submitted by **[insert name of ERSOP Program Applicant]** in response thereto (the “**Application**”).

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 Applicant, as such term is defined in the ERSOP Rules, whose Application has been received by the Beneficiary, **[has failed to deliver the Completion and Performance Security within 10 Business Days of being notified by the Beneficiary that it has been selected to enter into a ERSOP Contract,]** or **[has failed to sign the ERSOP Contract within 10 Business Days of the date on which the Applicant was given the ERSOP Contract to sign,]** or **[has made a material misrepresentation in the Application,]****[has violated the ERSOP Rules]** and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto. All capitalized terms used in this certificate that have not been defined herein have the meanings ascribed to them in the definitions appendix of the ERSOP Program Rules, effective as of the date of the Date of Issue stated above.” **[as applicable]**

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 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 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]** 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 at the Applicant's expense, 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 all 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: _____