



INDUSTRIAL ACCELERATOR^{OM} PROGRAM

Process and Systems Initiative

**Project Incentive Contract
(December 18, 2014)**

Between

[name of Participant]

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

DATED as of the • day of •, •

IESO Project Identification No. •

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PROJECT INCENTIVE CONTRACT

This agreement is between ●, a ● [Set forth the name and legal form of the Participant] created under the laws of ● (the "**Participant**") and the Independent Electricity System Operator (the "**IESO**").

WHEREAS the IESO has implemented the Program to encourage industrial, commercial and institutional customers that are directly or indirectly connected to the IESO-controlled grid and who are not otherwise eligible for conservation incentives from any local distribution company to implement electricity efficiency initiatives that require capital expenditures;

AND WHEREAS the Participant submitted an Application for a Project or Portfolio that was accepted by the IESO pursuant to the Program Rules, and the Parties wish to execute this Agreement in order to formalize the contractual arrangements with respect to the Participant's participation in the Program on the terms and conditions hereinafter set out;

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

ARTICLE I **INTERPRETATION**

1.1 Definitions

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings ascribed to them in Schedule "A".

1.2 Interpretation

- (a) **Consent.** Whenever a provision requires an approval or consent and the approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.
- (b) **Currency.** Unless otherwise specified, all references to money amounts are to the lawful currency of Canada.
- (c) **Headings.** Headings of sections are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement. References to sections means sections of this Agreement, unless otherwise specified.
- (d) **Including.** Unless otherwise specified, where "including" is used in this Agreement, it means "including (or includes) without limitation".
- (e) **No Strict Construction.** Despite the fact that this Agreement was prepared on behalf of the IESO, each Participant acknowledges and agrees that any doubt or

ambiguity in the meaning, application or enforceability of any term or provision in this Agreement shall not be construed against the IESO in favour of the Participant when interpreting such term or provision, by virtue of such fact.

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

1.3 Non-Exclusivity of Contract

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

1.4 Terms and Conditions

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

1.5 Projects and Portfolios

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

1.6 Schedules

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

- Schedule "A" – Defined Terms
- Schedule "B" – Supplementary Terms & Conditions
- Schedule "C" – Project/Portfolio Description
- Schedule "D" – Invoice Format
- Schedule "E" – Form of Letter of Credit
- Schedule "F" – M&V Plan
- Schedule "G" – Release and Waiver

1.7 Entire Agreement

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

1.8 Amendments

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

1.9 Waivers

No waiver of any obligation or any remedy for breach of any provision of this Agreement will be effective or binding unless made in writing and agreed to by an authorized signing officer of the Party purporting to give the same and, unless otherwise provided, will be limited to the specific obligation or breach waived. The failure of any Party at any time to require performance by the other Party of any provision of the Agreement will not affect in any way the full right to require such performance at any subsequent time; nor will a waiver by any Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

1.10 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement.

ARTICLE II
TERM

2.1 Term

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

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

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

ARTICLE III
PROJECT INCENTIVE

3.1 Eligible Costs

- (a) The Parties agree that the projected Eligible Costs approved by the IESO are set out in Schedule "C" under the heading, "Eligible Costs".
- (b) The Participant shall, at the same time that the Participant delivers the Final Project Status Report, submit to the IESO all relevant receipts and, as may be required by the IESO, other documentation, showing the Actual Eligible Costs incurred by the Participant. The IESO has the right to audit such receipts or documentation and shall, in its discretion, accept or reject all or part thereof. The IESO may, within 60 days of receipt thereof, notify the Participant that the IESO intends to audit such receipts or documentation. Upon receipt of such notice, the Participant shall use all Commercially Reasonable Efforts to assist the IESO in the course of the audit by making any information and personnel available to the IESO within 5 Business Days of any request therefor. At the conclusion of such an audit, the IESO shall, in its sole discretion, either: (i) accept the receipts or documentation, or (ii) if the IESO does not accept such receipts or documentation, determine the Actual Eligible Costs based upon the results of its audit and notify the Participant thereof, and the Actual Eligible Costs shall be deemed for all purposes of this Agreement to be such amount determined by the IESO.

3.2 Project Incentive

- (a) The Parties agree that the Project Incentive was determined using (a) Eligible Costs forecasts provided by the Participant that were reviewed and assessed by the Technical Reviewer following which the Technical Reviewer made its recommendations to the IESO and (b) the amount of Third Party Contributions identified by the Participant at the time of the Project Review. The Parties further agree that if Actual Eligible Costs are less than the Eligible Costs and/or the

amount of Third Party Contributions increases after the date hereof, resulting in either:

- (i) the Project Incentive being greater than 70% of the Actual Eligible Costs of a Project (including a WER Project and those Projects in a Portfolio) or, in the case of a CCHP Project, being greater than 40% of the Actual Eligible Costs;
- (ii) the Project Payback being less than one year (including those Projects in a Portfolio); or
- (iii) the Project Incentive being greater than \$230/MWh of Annualized Electricity Savings;

the Project Incentive shall be automatically reduced by an amount such that: (A) the Project Incentive for the Project (including a WER Project and those Projects in a Portfolio) or the CCHP Project shall not be greater than 70% or 40%, respectively, of the Actual Eligible Costs, (B) the Project Payback shall not be less than one year, and (C) the Project Incentive shall not be greater than \$230/MWh of the Annualized Electricity Savings; and each of the Project Incentive and/or the Project Payback shall be deemed to be such lowered amount(s) for all purposes of this Agreement.

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

ARTICLE IV

PARTICIPANT RESPONSIBILITIES

4.1 General

The Participant covenants to:

- (a) implement the Project as described in and in accordance with the Project Incentive Application, the Project Schedule, the M&V Plan, this Agreement, the Program Rules, Good Engineering Practices and all Applicable Laws;
- (b) operate and maintain the Project or Portfolio for a period of not less than the term of this Agreement and during such time, use Commercially Reasonable Efforts to obtain the Electricity Savings identified in Schedule "C";

- (c) ensure that at any time after the In-Service Date and for the duration of the term of this Agreement, the Project or Portfolio, as applicable, continues to achieve at least 90 % of the Anticipated Electricity Savings, as evidenced by the applicable M&V Report;
- (d) provide Project Status Reports in accordance with this Agreement, and within 30 days of a request by the IESO;
- (e) carry out the Participant's obligations as required pursuant to the M&V Plan such as, without limitation, installing metering equipment, data collection and delivering such data to the IESO;
- (f) throughout the term of this Agreement, provide the IESO and its Representatives with access, at reasonable times upon reasonable request, to the Facility in which the Project is installed and to any relevant data collection devices for the purposes of, among others, preparing M&V Reports, installing additional metering if required by the IESO as part of the IESO's evaluation of the Project, collecting data and/or for inspection of the operation of the Project;
- (g) ensure that its relevant personnel are familiar with the Project and available to the IESO evaluation, measurement and verification parties throughout the term of this Agreement;
- (h) inform the IESO in writing of all Third Party Contributions received after the date hereof;
- (i) demonstrate leadership in the area of energy conservation by, among other things, developing conservation policies and establishing employee, community and peer-to-peer awareness programs;
- (j) file an Energy Management Plan with the IESO within one year of the date of its Application in respect of the Project or Portfolio;
- (k) within 10 Business Days of a request by the IESO, provide updated evidence, satisfactory to the IESO, of the Participant's solvency or other measures of overall financial health, including, without limitation, a certificate of the Participant's chief financial officer, or other senior officer acceptable to the IESO, with respect to the Participant's solvency and ability to post and maintain required Performance Security, if any, and to provide audited or unaudited financial statements and /or a ratings report from a Rating Agency, all as acceptable to the IESO;
- (l) acknowledge the assistance provided by the IESO in respect of the Project or Portfolio in all publications, publicity materials and other forms of release or communication pertaining to the Project ("**Project Communication**");
- (m) ensure that there is no material change to the Project or Portfolio without the prior written consent of the IESO;

- (n) ensure that all equipment being replaced in whole or in part by all or part of any Measure, when removed, is not sold for re-use and at the request of the IESO provide the Company Representative's written confirmation on behalf of the Participant; and
- (o) obtain and maintain throughout the term of this Agreement, all permits and approvals required by Applicable Law for the installation, ownership and operation of the Project.

ARTICLE V **IN-SERVICE DATE**

5.1 In-Service Date

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

ARTICLE VI **PAYMENT**

6.1 Net Project Incentive Payments (Performance Security)

Subject to the Participant not being in default hereunder and otherwise satisfying all of its obligations herein contained, and in each case, provided that the Participant has delivered the required percentage of the Performance Security Amount referred to in Section 7.1, the IESO shall pay the Participant, on a Project or Portfolio basis, as applicable:

- (a) 25 % of the Net Project Incentive, less 2.5 % of the Net Project Incentive, within 30 days of the later of (i) the date hereof and (ii) acceptance by the IESO of an Invoice;
- (b) 25 % of the Net Project Incentive, less 2.5 % of the Net Project Incentive, within 30 days of the later of (i) acceptance by the IESO of evidence satisfactory to the IESO that 25 % of the Eligible Costs have been incurred and paid by the Participant, (ii) receipt by the IESO of the most recent Project Status Report, and (iii) acceptance by the IESO of an Invoice;
- (c) 25 % of the Net Project Incentive, less 2.5 % of the Net Project Incentive, within 30 days of the later of (i) acceptance by the IESO of evidence satisfactory to the IESO that 50 % of the Eligible Costs have been incurred and paid by the

Participant, (ii) receipt by the IESO of the most recent Project Status Report, and (iii) acceptance by the IESO of an Invoice;

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

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

6.2 Net Project Incentive Payments (Incentive Security)

A Participant may elect in a Participant Security Election to provide Incentive Security, in which case Section 6.1 shall not be applicable and the Net Project Incentive shall, subject to Sections 7.3 and 7.4 hereof, be paid as set out herein. Subject to the Participant not being in default hereunder and otherwise satisfying all of its obligations herein contained, where the Participant elects to provide Incentive Security, the IESO shall pay the Participant, on a Project or Portfolio basis, as applicable:

- (a) the first third of the Net Project Incentive, less 3.33% of the Net Project Incentive, within 30 days of the later of (i) approval by the IESO of the first quarterly M&V Report following the In-Service Date, (ii) receipt by the IESO of the Final Project Status Report from the Participant, and (iii) acceptance by the IESO of an Invoice;
- (b) the second third of the Net Project Incentive, less 3.33% of the Net Project Incentive, within 30 days of the later of (i) approval by the IESO of the second quarterly M&V Report following the In-Service Date and (ii) acceptance by the IESO of an Invoice;
- (c) the final third of the Net Project Incentive, less 3.33% of the Net Project Incentive, within 30 days of the later of (i) approval by the IESO of the third quarterly M&V Report following the In-Service Date and (ii) acceptance by the IESO of an Invoice; and

- (d) the balance of the Net Project Incentive, if any, within 30 days of (i) approval by the IESO of the 1st annual M&V Report following the In-Service Date, (ii) acceptance by the IESO of an Invoice, and (iii) receipt by the IESO of a certificate of the Participant's chief financial officer, or other senior officer acceptable to the IESO, with respect to the Participant's solvency and to provide audited or unaudited financial statements and/or a ratings report from a Rating Agency, all as acceptable to the IESO.

6.3 Method of Payment

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

6.4 Invoice

An Invoice by the Participant shall be deemed to be a representation and warranty of the Participant to the IESO that the work required to be completed or costs required to be incurred and paid to qualify to receive such payment has been completed in all material respects or paid in accordance with the evidence thereof provided to the IESO, unless otherwise agreed to in writing by the IESO.

6.5 Excess Electricity Savings

Notwithstanding anything to the contrary herein, no Project Incentive will be paid to the Participant in respect of or relating to Electricity Savings in excess of the Annualized Electricity Savings specified in Schedule "C".

6.6 Responsibility for Taxes

In addition to the Net Project Incentive, the IESO will pay any applicable HST on the Project Incentive ("**Applicable Taxes**"). The Participant will provide the IESO sufficient supporting documentation, as requested by the IESO, to facilitate and support the IESO in claiming input tax credits in respect of the Net Project Incentive. In addition, if the IESO has reasonable grounds to challenge the validity of any HST imposed on the Net Project Incentive, the Participant will provide reasonable assistance to the IESO with such challenge.

ARTICLE VII **PERFORMANCE AND INCENTIVE SECURITY**

7.1 Requirement to Post Performance Security

Where the Participant intends to be paid the Net Project Incentive pursuant to Section 6.1 hereof, the Participant agrees to provide the IESO with the Performance Security, by way of a letter of credit in the form set out in Schedule "E" hereto to be executed and delivered to the IESO in accordance with the terms described herein, in order to secure its commitment to implement the Project or Portfolio in accordance with this Agreement, to ensure that the Project or Portfolio, at

any time, continues to achieve at least 90% of the Anticipated Electricity Savings and to secure the Participant's performance of its obligations hereunder.

- (a) If the amount of the required Performance Security is equal to or less than \$1,000,000.00, the Participant shall deliver to the IESO the Performance Security by way of letter of credit within 30 days of the date hereof and the IESO shall, in accordance with this Agreement and after receipt by the IESO of a certificate of the Participant's chief financial officer, or other senior officer acceptable to the IESO, with respect to the Participant's solvency and ability to post and maintain required Performance Security, if any, and to provide audited or unaudited financial statements and /or a ratings report from a Rating Agency, all as acceptable to the IESO (dated on or about the 2nd anniversary of the In-Service Date), release the Performance Security on the 2nd anniversary of the In-Service Date and the amount of such Performance Security shall not change, subject to Section 7.1(d) hereof.

- (b) If the maximum amount of the Performance Security specified in Schedule "C" is greater than \$1,000,000.00, the Performance Security shall be delivered by way of a letter of credit within 30 days of the date hereof in an initial amount equal to 25% of the Performance Security Amount, and the amount of such required Performance Security shall increase and decrease in accordance with this Section 7.1(b) and may decrease in accordance with Section 7.1(d). The amount of such Performance Security shall increase as follows:
 - (i) first, upon the request for payment in accordance with Section 6.1(b), by a further amount equal to 25% of the Performance Security Amount and cumulatively 50% of the Performance Security Amount;
 - (ii) second, upon the request for payment in accordance with Section 6.1(c), by a further amount equal to 25% of the Performance Security Amount and cumulatively 75% of the Performance Security Amount; and
 - (iii) third, upon the request for payment in accordance with Section 6.1(d), by a further amount equal to 25% of the Performance Security Amount and cumulatively 100% of the Performance Security Amount.

Such Performance Security shall decrease as follows:

- (iv) upon the 1st anniversary of the In-Service Date and after receipt by the IESO of a certificate of the Participant's chief financial officer, or other senior officer acceptable to the IESO, with respect to the Participant's solvency and ability to post and maintain required Performance Security, if any, and to provide audited or unaudited financial statements and /or a ratings report from a Rating Agency, all as acceptable to the IESO (dated on or about the 1st anniversary of the In-Service Date), such Performance Security shall decrease by an amount equal to 50% of the total Performance Security outstanding at that time; and

- (v) upon the 2nd anniversary of the In-Service Date and after receipt by the IESO of a certificate of the Participant's chief financial officer, or other senior officer acceptable to the IESO, with respect to the Participant's solvency and ability to post and maintain required Performance Security, if any, and to provide audited or unaudited financial statements and /or a ratings report from a Rating Agency, all as acceptable to the IESO (dated on or about the 2nd anniversary of the In-Service Date), such Performance Security shall be reduced to zero or otherwise released, and any outstanding letter of credit will be returned by the IESO.

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

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

7.2 Requirement Waived

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

7.3 Results of Breach by the Participant

- (a) Prior to the In-Service Date:

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

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

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

7.4 Continuing Obligation

- (a) If the Participant elects to provide Incentive Security in respect of any Project or Portfolio, or following the release by the IESO of all Performance Security in accordance with the terms hereof, then, for the entire term or remaining term of this Agreement, as applicable, the Participant shall provide the IESO with 30 Business Days prior written notice (the "**Change Notice**") of any change or

proposed change in the Project, System or the Facility which could reasonably be expected to result in a decrease in the Anticipated Electricity Savings.

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

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

8.1 Mutual Representations of the Parties

Each of the Participant and the IESO represents and warrants to the other as follows, and acknowledges that the other is relying on such representations and warranties in entering into this Agreement:

- (a) it has the requisite power, authority and capacity to enter into this Agreement and to perform its obligations hereunder;
- (b) this Agreement has been duly authorized, executed, and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction; and
- (c) the execution and delivery of this Agreement by it and the consummation of the transactions contemplated hereby will not result in the breach or violation of any

of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of, its material obligations or any judgment, decree, order or award to which it is subject or any license permit, approval, consent or authorization held by it.

8.2 Representations of the Participant

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

- (a) all statements, specifications, data, confirmations and information set out in each Application are complete and accurate in all material respects and are hereby restated and reaffirmed by the Participant as of the date of this Agreement;
- (b) all of the information set out in this Agreement pertaining to the Participant, and the Project or Portfolio, is true and correct, or, to the extent it relates to a Project or Portfolio yet to be constructed, is an accurate representation of the Participant's plans and designs for the construction of the Project or Portfolio;
- (c) the Participant meets all of the eligibility requirements set out in Section 1.2 of the Program Rules and each Project is an eligible Project pursuant to Section 1.3 or Section 1.4 of the Program Rules, as applicable;
- (d) there are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Participant or, to the knowledge of the Participant, threatened against the Participant;
- (e) there are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Participant, threatened against the Participant, that could have a Material Adverse Effect on the Participant;
- (f) all requirements for the Participant to make any declaration, filing or registration with, give any notice to or obtain any license, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied;
- (g) the Facility is electrically connected to the Transmission System;
- (h) the Participant did not, without the prior written consent of the IESO, purchase, lease or otherwise obtain any equipment, materials or other goods, or enter into any agreement for the provision of services, relating to the Project or Portfolio in respect of which this Agreement is being entered into prior to submitting a Project Incentive Application;

- (i) the Project or Portfolio does not involve the installation of any equipment or system or the operation thereof that, in either case, does not comply with all Applicable Laws;
- (j) a complete list of Third Party Contributions, showing the amount of each Third Party Contribution, is set out in Schedule "C" under the heading "Third Party Contributions";
- (k) the Participant, each Project or Portfolio, and each Facility satisfies the eligibility and other requirements set out in the Program Rules as of the date hereof; and
- (l) the Participant is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

8.3 Survival of Representations and Warranties

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

ARTICLE IX **REMEDY FOR DEFAULT**

9.1 Participant Breach

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

- (a) The Project or Portfolio fails to achieve at least 90% of the Anticipated Electricity Savings in any M&V Reporting Period.
- (b) The Participant fails to post Performance Security in accordance with Article VII, if such failure is not remedied within five Business Days after written notice of such failure from the IESO.
- (c) The Participant fails to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within 15 Business Days after written notice of such failure from the IESO, provided that such cure period shall be extended by the IESO for a further 10 Business Days if the IESO is satisfied that the Participant is diligently remedying such failure and that such failure is capable of being cured during such extended cure period.
- (d) Any representation or warranty made by the Participant in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within 10 Business Days after receipt by the Participant of written notice of such fact from the IESO, provided that such cure period shall be extended by the IESO for a further 10 Business Days if the IESO is satisfied that

the Participant is diligently correcting such breach and that such breach is capable of being corrected during such extended cure period.

- (e) The Participant fails or ceases to hold a valid license, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Participant or the Project or Portfolio and is not remedied within 10 Business Days after receipt by the Participant of written notice of such failure or cessation from the IESO, provided that such cure period shall be extended by the IESO for a further 10 Business Days if the IESO is satisfied that the Participant is diligently remedying such failure or cessation and that such failure or cessation is capable of being corrected during such extended cure period.
- (f) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Participant, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Participant under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Participant's obligations under this Agreement.
- (g) Other than in accordance with Section 11.2, the Participant amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Participant under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Participant's obligations under this Agreement.
- (h) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Participant or of any of the Participant's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within 30 days of the appointment. By decree, judgment or order of a Governmental Authority, the Participant is adjudicated bankrupt or insolvent or any substantial part of the Participant's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of 30 days after the entry thereof. A petition, proceeding or filing is made against the Participant seeking to have the Participant declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within 30 days.

- (i) The Participant makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.
- (j) The Participant has made a material amendment to a Project or Portfolio that has not first been consented to in writing by the IESO, acting reasonably.
- (k) The In-Service Date has not occurred within 2 years from the date hereof in accordance with Section 5.1.

9.2 Remedies of the IESO

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

- (A) if the Project or Portfolio failed to achieve 90% of the Anticipated Electricity Savings for a quarterly M&V Reporting Period within the first year after the In-Service Date, the first annual M&V Report is received by the IESO that confirms that the Project or Portfolio has achieved at least 90% of the Anticipated Electricity Savings for the first annual M&V Reporting Period; or
- (B) if the Project or Portfolio failed to achieve 90% of the Anticipated Electricity Savings for an annual M&V Reporting Period, it receives two subsequent consecutive M&V Reports each of which confirms that the Project or Portfolio has achieved at least 90% of the Anticipated Electricity Savings for that M&V Reporting Period.

If the IESO seeks to use one or more of the above-noted remedies in this Section 9.2(c), the Parties shall negotiate in good faith to determine which of the remedies are most appropriate under the circumstances of the particular Participant Event of Default. If the Parties have not agreed upon a remedy, or set of remedies, within fifteen (15) Business Days of a proposal therefore being made, such remedy or remedies shall be determined by the IESO, acting in its sole discretion.

- (d) Notwithstanding anything else in this Agreement, on the occurrence of a Participant Event of Default referred to in Sections 9.1(f), 9.1(h) or 9.1(i), all of the IESO's obligations hereunder shall terminate immediately before such Participant Event of Default.
- (e) If any Participant Event of Default occurs and at such time the requirement of the Participant to provide Performance Security has been waived in accordance with Section 7.2, then for such Participant Event of Default and each further Participant Event of Default, the Participant shall pay to the IESO an amount equal to 25% of the Net Project Incentive, up to an aggregate total of 100% of the Net Project Incentive as liquidated damages and not as a penalty and the IESO shall be entitled to pursue a Claim for damages with respect to such amount or any portion of such amount. Notwithstanding Section 9.4, the IESO's remedies against the Participant under this Section 9.2(e) shall be limited to the amount of liquidated damages payable by the Participant pursuant to this Section 9.2(e).
- (f) If the IESO terminates this Agreement pursuant to Section 9.2(a) or the Agreement is terminated pursuant to Section 9.2(d), the IESO may draw on the Performance Security in accordance with Section 7.3.
- (g) If the IESO terminates this Agreement pursuant to Section 9.2(a) or the Agreement is terminated pursuant to Section 9.2(d) and at such Early Termination Date the requirement of the Participant to provide Performance Security has been waived in accordance with Section 7.2, then:

- (i) if the Early Termination Date occurs prior to the In-Service Date the IESO may require the Participant to pay the IESO an amount equal to the total of all amounts paid by the IESO under Article VI; or
- (ii) if the In-Service Date has not occurred in accordance with Section 5.1 or if the Early Termination Date occurs after the In-Service Date, the IESO may require the Participant to pay the IESO an amount equal to the Net Project Incentive;

as liquidated damages and not as a penalty and the IESO shall be entitled to pursue a Claim for damages with respect to such amount or any portion of such amount. Notwithstanding Section 9.4, the IESO's remedies against the Participant hereunder shall be limited to the amount of liquidated damages payable by the Participant pursuant to this Section 9.2(g).

- (h) Termination shall not relieve the Participant or the IESO of their respective responsibilities relating to the Project or Portfolio and delivery of the Electricity Savings and Environmental Attributes up to and including the Early Termination Date. However, upon termination pursuant to this Section 9.2, the IESO shall not be required to pay any amounts to the Participant pursuant to Section 6.1 or 6.2, as applicable, unless the time period for any payment under Section 6.1 or 6.2, as applicable, has expired prior to the Early Termination Date.

9.3 Other Performance Security

Notwithstanding anything else in this Agreement, if at any time Performance Security in respect of a Project or Portfolio is not required to be posted with the IESO pursuant to Section 7.2, but the Participant has provided Performance Security to the IESO in respect of another Project or Portfolio under another agreement between the Participant and the IESO in respect of the Program, the IESO may, during the same period of time that Performance Security would have been required but for Section 7.2, call on such Performance Security under this Article IX. In the event the IESO calls on Performance Security provided under another agreement, the IESO may require the Participant to replace such Performance Security. In addition, the IESO may set off against any payments owing to a Participant under one agreement in respect of the Program against any amounts owing to the IESO by that Participant under another agreement in respect of the Program.

9.4 Remedies Not Cumulative

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

ARTICLE X
LIMITATION OF LIABILITY AND INDEMNIFICATION

10.1 No Warranty

Except as specifically set forth or referenced in this Agreement, there are no representations, warranties, or conditions of either Party, express, implied, statutory or otherwise, regarding any matter including any implied warranties or conditions of quality or fitness for a particular purpose. Without limiting the generality of the foregoing, the Participant acknowledges that its participation in the Program is based on its own assessment of the Program and not on any reliance on anticipated or projected results, and that such participation may not result in the achievement of any Electricity Savings, which is expressly disclaimed by the Participant.

10.2 Limitation of Liability

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY: (A) IN NO EVENT WILL THE PARTICIPANT BE ENTITLED TO RECOVER FROM THE IESO OR ANY OTHER INDEMNIFIED PARTY (AS DEFINED IN SECTION 10.3 BELOW) FOR ANY LIABILITIES, DAMAGES, OBLIGATIONS, PAYMENTS, LOSSES, COSTS OR EXPENSES UNDER OR IN RELATION TO THIS AGREEMENT: (I) ANY AMOUNT IN EXCESS OF THE ACTUAL COMPENSATORY DIRECT DAMAGES, COURT COSTS AND REASONABLE FEES SUFFERED OR INCURRED BY THE PARTICIPANT AND IN ANY EVENT LIMITED TO THE PROJECT INCENTIVES PAID BY THE IESO HEREUNDER; OR (II) DAMAGES (WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL OR OTHERWISE) FOR (X) LOSS OF PROFIT, OR (Y) DIMINUTION OF VALUE OR LOSS OF USE OF ANY PROPERTY; AND (B) THE IESO AND INDEMNIFIED PARTIES (AS DEFINED IN SECTION 10.3 BELOW) WILL NOT BE LIABLE TO THE PARTICIPANT, ITS SUCCESSORS OR ASSIGNS, OR ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS OR REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE UNDER OR IN RELATION TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY.

10.3 Indemnification by the Participant

The Participant (the “**Indemnifying Party**”) will indemnify, defend and hold the IESO, the Government of Ontario, the members of the Government of Ontario’s Executive Council and their respective Affiliates, and each of the foregoing Person’s respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the “**Indemnified Party**”) harmless from and against any and all Claims, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers’ fees and reasonable disbursements in connection therewith) (each, an “**Indemnifiable Loss**”), asserted against or suffered by the Indemnified Party relating to, in connection with, resulting from, or arising out of

(i) any Claim by, or occurrence or event related to, any third party relating to the Project or Portfolio, as the case may be, or this Agreement; and/or; (ii) the negligence or wilful misconduct of the Participant, except in either case to the extent that any injury or damage related to such Claim, occurrence or event is attributable to the negligence or wilful misconduct of the Indemnified Party. For greater certainty, in the event of contributory negligence or breach of the Indemnified Party, then such Indemnified Party will not be indemnified hereunder in the proportion that the Indemnified Party's negligence or breach contributed to any Indemnifiable Loss.

10.4 Defence of Claims

- (a) Promptly after receipt by the Indemnified Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which an indemnity provided for in Section 10.3 may apply, the Indemnified Party will notify the Indemnifying Party in writing of such fact. The Indemnifying Party will assume the defence thereof with counsel designated by the Indemnifying Party and satisfactory to the affected Indemnified Party, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party has reasonably concluded that there may be legal defences available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party will have the right to select separate counsel satisfactory to the Indemnifying Party acting reasonably (at no additional cost to the Indemnified Party) to participate in the defence of such action on behalf of the Indemnified Party. The Indemnifying Party will promptly confirm that it is assuming the defence of the Indemnified Party by providing written notice to the Indemnified Party. Such notice will be provided no later than ten (10) days prior to the deadline for responding to any claim relating to any Indemnifiable Loss.

- (b) Should any Indemnified Party be entitled to indemnification under Section 10.3 as a result of a Claim by a third party, and the Indemnifying Party fails to assume the defence of such claim (which failure will be assumed if the Indemnifying Party fails to provide the notice prescribed by subsection 10.4(a)), the Indemnified Party will, at the expense of the Indemnifying Party, contest (or, with the prior written consent of the Indemnifying Party, acting reasonably, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Indemnifying Party (with the Indemnifying Party remaining obligated to indemnify the Indemnified Party under Section 10.3), as the case may be, if, in the written opinion of an independent third party counsel chosen by the Parties, such Claim is meritorious. If the Indemnifying Party is obligated to indemnify any Indemnified Party under Section 10.3, the amount owing to the Indemnified Party will be the amount of such Indemnified Party's actual out-of-pocket loss net of any insurance proceeds received or other recovery.

ARTICLE XI
GENERAL PROVISIONS

11.1 Program Rules

- (a) The Participant acknowledges and agrees that it is bound by the provisions of the Program Rules.
- (b) The provisions of this Agreement and the Program Rules are to be read and interpreted together. Except as expressly provided otherwise in this Agreement, any inconsistency between the provisions of this Agreement and the Program Rules will be resolved by giving meaning and effect to the provisions of this Agreement in precedence to the provisions of the Program Rules.

11.2 Assignment

A Participant shall not assign this Agreement to another Person other than an Affiliate to whom the Participant's title to the Facility is also assigned and who has assumed all of the Participant's obligations hereunder and agrees to be bound by this Agreement, except with the prior written consent of the IESO.

11.3 Environmental Attributes

- (a) All Environmental Attributes arising in respect of Electricity Savings for which the Project Incentive has been paid (the “**Electricity Savings Environmental Attributes**”) will be, pursuant to Section 11.3(b), owned by the IESO and the Participant will have no entitlement to any such Electricity Savings Environmental Attributes. All other Environmental Attributes arising in relation to a Participant’s Facility will be owned by the Participant and the IESO will have no entitlement thereto.
- (b) The Participant hereby grants, transfers, conveys, assigns and sets over to, or to the extent such transfer or assignment is not permitted, holds in trust for, the IESO free and clear of all liens, claims and encumbrances other than those in favour of the IESO, all of the Participant’s right, title, benefit and interest in and to all Electricity Savings Environmental Attributes, and the IESO will own all right, title, benefit and interest in and to all Electricity Savings Environmental Attributes.
- (c) The Participant will from time to time, upon written direction of the IESO, take all such actions and do all such things necessary to effect, as set out in Section 11.3(b), the transfer and assignment to, or holding in trust for, the IESO, all right, title, benefit and interest in and to all Electricity Savings Environmental Attributes.
- (d) The Participant will from time to time, upon written direction of the IESO, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies the Electricity Savings

Environmental Attributes that are created and allocated or credited pursuant to Applicable Law from time to time for the purposes of transferring the Electricity Savings Environmental Attributes to the IESO in accordance with this Section 11.3. The Participant will be entitled to reimbursement of the cost of complying with a direction under this Section 11.3(d), provided that the IESO, acting reasonably, approved such cost in writing prior to the cost being incurred by the Participant.

11.4 Company Representative

Each of the Parties hereby appoints its Company Representative and confirms that its respective Company Representative is duly authorized to act on behalf of the Party that has made the appointment. The Company Representative is an individual with whom the other Party may consult at all reasonable times, and whose instructions, requests and decisions, provided the same are in writing signed by the respective Company Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement and the Project or Portfolio, but, for greater certainty, the Company Representative shall not have the power or authority to amend this Agreement.

11.5 Project Communications

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

11.6 M&V Reporting

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

11.7 Notice

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

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

Independent Electricity System Operator
120 Adelaide Street West Suite 1600
Toronto, Ontario M5H 1T1
Attention: Manager, Contracts – Conservation Division
Facsimile: 416-967-1947
Email: conservationcontracts@ieso.ca

With a copy to:

Industrial Accelerator Program Management

Email: IAPM@ieso.ca

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

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

11.8 Counterparts and Execution

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

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

[NAME OF PARTICIPANT]

Per: _____
Name:
Title:

I have authority to bind the Corporation.

**INDEPENDENT ELECTRICITY SYSTEM
OPERATOR**

Per: _____
Name:
Title:

I have authority to bind the Corporation.

SCHEDULE "A"

DEFINED TERMS

"**Actual Eligible Costs**" means the actual Eligible Costs incurred by the Participant;

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

"**Agreement**" means this agreement, including all recitals and Schedules, as it is or they may be amended, restated or supplemented from time to time;

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

"**Anticipated Electricity Savings**" means in each M&V Reporting Period (as defined in the M&V Plan), the amount appearing opposite such period in the table set out in Schedule "C" hereto under the heading "Anticipated Electricity Savings", being the Electricity Savings anticipated to be achieved during such period by the Technical Reviewer or such other amounts as were approved by the IESO in writing;

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

"**Applicable Taxes**" shall have the meaning given to it in Section 6.6;

"**Application**" means the Preliminary Engineering Study Funding Application, the Detailed Engineering Study Funding Application or the Project Incentive Application, as applicable;

"**Arbitrator**" has the meaning given to it in Section 3.2 of Schedule "B" hereof;

"**Base Case**" means the projected economic, operational and technical configuration of the 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 a Saturday, a Sunday, or a legal holiday in the Province of Ontario;

"**CCHP Project**" means a Project involving Generation, causing the simultaneous production of electrical and thermal energy where both forms of energy are productively and efficiently used within the Facility and/or its processes;

"**Change Notice**" shall have the meaning ascribed thereto in Section 7.4(a);

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

"**Claw Back Amount**" shall have the meaning ascribed thereto in Section 7.4(c);

"**Claw Back Notice**" shall have the meaning ascribed thereto in Section 7.4(b);

"**CMVP**" means a certified measurement and verification professional who is currently certified as such by the Association of Energy Engineers;

"**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**" means, in respect of the Participant or the IESO as applicable, the individual identified in Schedule "C" under the heading "Company Representative";

"**Confidential Information**" means all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with the Agreement including all new information derived at any time from any such confidential information, but excluding (i) publicly-available information unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative if such other source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party;

"**Confidentiality Undertaking**" has the meaning given to it in Section 1.1(c) of Schedule "B" hereto;

"**Control**" means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise, and "**Controlled**" has a corresponding meaning;

"**Credit Rating**" means, (i) with respect to the Participant or an Affiliate (A) its long-term senior unsecured debt rating (not supported by third party credit enhancement) or (B) the lower of its issuer or corporate credit rating, as applicable, in either case being the lower rating provided by S&P, Moody's or DBRS or any other established and reputable debt rating agency agreed to by the Parties from time to time, each acting reasonably;

"**DBRS**" means Dominion Bond Rating Service limited or its successors;

"Detailed Engineering Study" means a detailed study of the System load within a Facility and specific activities, Measures and or Generation that can be implemented in order to reduce the electricity consumption in the Facility, meeting the minimum requirements as outlined in Exhibit C to the Program Rules;

"Detailed Engineering Study Funding Application" means an application by the Participant for a Detailed Engineering Study Incentive from the IESO prepared in accordance with instructions posted on the Website and as referred to in Section 3.1(a) of the Program Rules, and which may be modified, supplemented and replaced from time to time;

"Detailed Engineering Study Funding Contract" means a contract between a Participant and the IESO for funding of a Detailed Engineering Study pursuant to Article 3.0 of the Program Rules;

"Detailed Engineering Study Incentive" means funding paid by the IESO to the Participant pursuant to a Detailed Engineering Study Funding Contract;

"Disclosing Party" means, with respect to Confidential Information, the Party providing or disclosing such Confidential Information and may be the IESO or the Participant, as applicable;

"Early Termination Date" means the date this Agreement terminates as a result of an early termination of this Agreement in accordance with Sections 9.2(a) or 9.2(d);

"Electricity Savings" means the aggregate electricity consumption reduction from the IESO-Controlled Grid, expressed in MWh, obtained during the Electricity Savings Period due to the use of the Measure or Measures included in the Project, measured in accordance with the M&V Plan, initially as projected by the Technical Reviewer and specified in Schedule "C", and ultimately as verified by the CMVP in the M&V Report following the In-Service Date in the relevant Electricity Savings Period;

"Electricity Savings Period" means the period commencing on the In-Service Date and ending on the 10th anniversary thereof;

"Electricity Savings Environmental Attributes" has the meaning given to it in Section 11.3(a);

"Eligible Costs" means the amount equal to the difference between X and Y; where:

X: represents the total of those costs directly related to design, selection, purchase and installation of the Measure or Measures included in a Project or Portfolio, including the development of a modified Base Case Baseline, as prescribed in the M&V Plan, and includes only the following: (a) capital expenses; (b) equipment and products, including diagnostic and testing tools and instruments, and associated software; (c) data collection services, including processing, analysis and data management; (d) meter purchase, installation and configuration costs associated with implementing the M&V Plan; (e) salaries and benefits of employees directly involved in the design, selection, purchase and installation of the Measure or Measures included in the Project or Portfolio; (f) professional, engineering, scientific, technical, management and contracting services, including those required for training employees in the proper operation of the Project; (g) travel, including accommodation but excluding meals; (h)

printing services; (i) permits and license fees; (j) costs associated with environmental assessments; (k) technical audits and studies associated with the Project (excluding the Participant's Preliminary Engineering Study and Detailed Engineering Study expenses not funded by the IESO), including a study of energy consumption before or after Project implementation, in each case as approved in writing in advance by the IESO; and (l) such additional category of costs as may be consented to by the IESO in writing in advance of such expenses being incurred; and

Y: represents the total of all Third Party Contributions;

"Energy Management Plan" means a document generated by an Energy Manager in connection with the Participant's conservation policy and planning, describing the activities and plans required to reduce energy consumption in the Participant's facilities and detailing how the Participant is demonstrating leadership in the area of energy conservation by, among other things, developing conservation policies and establishing employee, community and peer-to-peer awareness programs;

"Energy Manager" means a person employed or engaged by a Participant whose primary responsibility is to propose and lead methodologies and processes to reduce energy consumption in the Participant's facilities;

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

- (i) rights to any fungible or non-fungible attributes, whether arising from the Facility itself, from the interaction of the Facility with the IESO-Controlled Grid or because of applicable legislation or voluntary programs established by governmental authorities, governmental agencies or applicable regulatory bodies;
- (ii) any and all rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs and specific Environmental Attributes include ownership rights to any applicable credits, entitlements or other instruments resulting from interaction of the Facility with the IESO-Controlled Grid or as specified by applicable legislation or voluntary programs, and the right to quantify and register these with competent authorities; and
- (iii) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing;

"Facility" means the building(s) and premises owned or occupied by the Participant and in which the System is located;

"Final Project Status Report" means the last Project Status Report to be filed with the IESO by the Participant, which includes a certification by the Technical Reviewer that the Project was completed in accordance with the Project Incentive Application in all material respects including confirmation of the Actual Eligible Costs;

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

"**Force Majeure**" has the meaning given to it in Section 2.3 of Schedule "B" hereof;

"**FIPPA Records**" has the meaning given to it in Section 1.5 of Schedule "B" 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:

- (i) that has all permits and approvals required by Applicable Laws including, without limitation, all permits and approvals that may be required for the operation of the generator from the Ontario Ministry of the Environment pursuant to the *Environmental Assessment Act* (Ontario) and the *Environmental Protection Act* (Ontario); and
- (ii) that meets all of the relevant requirements for a generator under the IESO Market Rules including, without limitation, the requirements described in any amendments to the IESO Market Rules from time to time;

"**Good Engineering Practices**" means any of the practices, methods and activities adopted by a significant portion of North American industries as good practices applicable to the design, building, and operation of projects of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent engineer in light of all the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Applicable Law; Good Engineering Practices are not limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods or acts generally accepted in North American industries;

"**Governmental Authority**" means any legislative, executive, judicial or administrative body or Person having jurisdiction in the relevant circumstances;

"**HST**" means any tax payable under Part IX of the *Excise Tax Act* (Canada).

"**IESO**" means the Independent Electricity System Operator in the Province of Ontario;

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

"**IESO Market Rules**" means the rules made under Section 32 of the *Electricity Act, 1998*, together with all market manuals, policies and guidelines issued by the IESO, all as amended or replaced from time to time;

"**Incentive**" means one or more of the Preliminary Engineering Study Incentive, the Detailed Engineering Study Incentive and the Project Incentive, as applicable;

"Incentive Security" means the Net Project Incentive Payments withheld by the IESO as incentive security upon the election by the Participant in a Participant Security Election to provide incentive security and released to the Participant in accordance with Section 6.2 hereof;

"Indemnifiable Loss" has the meaning given to it in Section 10.3;

"Indemnified Party" has the meaning given to it in Section 10.3;

"Indemnifying Party" has the meaning given to it in Section 10.3;

"In-Service Date" means, in respect of a Project or Portfolio, the first day that the Project or Portfolio is fully installed in accordance with this Agreement and the Project Incentive Application and delivers Electricity Savings, as certified by the Technical Reviewer to the IESO;

"Insolvency Legislation" means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada), the *Companies' Creditor Arrangement Act* (Canada), or any analogous legislation, and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction or the application or competence of such law);

"Invoice" means a request for payment to the IESO from the Participant, on the Participant's letter head, which includes the information set out in Schedule "D" – Invoice Format to this Agreement;

"M&V Plan" means a measurement and verification plan developed by a CMVP employed or retained by the Technical Reviewer which outlines the criteria by which Electricity Savings shall be measured, the information and data to be collected, the methodologies to be used and the activities to be undertaken by the Participant, to be provided to the Technical Reviewer for the purpose of developing the M&V Report and attached hereto at Schedule "F";

"M&V Report" means a measurement and verification document approved by a CMVP employed or retained by the Technical Reviewer quantifying the Electricity Savings delivered by the Measure or Measures included in a Project during the M&V Reporting Period specified by the M&V Plan, provided that such reporting period shall not be less than quarterly during the first year following the In-Service Date and thereafter not less than annually;

"M&V Reporting Period" shall have the meaning ascribed thereto in the M&V Plan;

"Material Adverse Effect" means any change (or changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations under this Agreement;

"Measure" means the installation, retrofit, replacement or modification of a System for the primary purpose of obtaining Electricity Savings when applied by the Participant to the System's load, as described in Schedule "C" under the heading "Measures";

"Minimum Expected Life" means the number of years a Project or Portfolio is required to provide the Electricity Savings, being 10 years after the In-Service Date;

"**Moody's**" means Moody's Investors Service, Inc. or its successor;

"**MW**" means a megawatt;

"**MWh**" means a megawatt hour;

"**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;

"**Negative Outlook**" means, with respect to any credit rating agency providing a Credit Rating for purposes of this Agreement, a potential or threatened downgrade to the Credit Rating of any Participant;

"**Net Project Incentive**" means the amount specified in Schedule "C" under the heading "Net Project Incentive", such amount being the Project Incentive for a Project less the amount of any Preliminary Engineering Study Incentive and or Detailed Engineering Study Incentive paid or to be paid to the Participant in respect of such Project, subject to adjustment in accordance with Section 3.2;

"**Notice of Arbitration**" has the meaning given to it in Section 3.3 of Schedule "B" hereof;

"**Participant**" has the meaning set out in the first paragraph of this Agreement;

"**Participant Event of Default**" has the meaning given to it in Section 9.1;

"**Participant Security Election**" means an election to be made by the Participant and delivered to the IESO pursuant to Section 6.2 hereof pursuant to which the Participant elects to either: (i) post Performance Security in accordance with Section 7.1 hereof and receive the Net Project Incentive payments in accordance with Section 6.1 hereof; or (ii) provide Incentive Security and receive Net Project Incentive payments in accordance with Section 6.2 hereof;

"**Party**" means either of the Participant and the IESO, and the Participant and the IESO are collectively referred to as the "**Parties**";

"**Percentage**" shall have the meaning ascribed to it in Section 7.4(b);

"**Performance Security**" means security provided by the Participant in the form set out in Schedule "E" hereto to secure the obligations specified in Section 7.1 hereof, the maximum amount of which is specified in Schedule "C" under the heading "Performance Security";

"**Performance Security Amount**" means an amount equal to the Net Project Incentive multiplied by a percentage equal to 100% minus the Performance Security Reduction;

"**Performance Security Reduction**" means, at any time, the amount by which the amount of the Performance Security may be reduced as provided in Schedule "C" under the heading "Credit Rating of the Participant" which corresponds to the Allowable Reduction in Performance Security applicable to the Credit Rating of the Participant;

"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 so grouped and, if applicable, such Projects are set on Schedule "C" attached hereto under the heading "Portfolio";

"Preliminary Engineering Study" means a preliminary study of the consumption of electricity of a System load within a Facility and activities and Measures that could give rise to Electricity Savings, meeting the minimum requirements as outlined in Exhibit B to the Program Rules;

"Preliminary Engineering Study Funding Application" means an application by the Participant to the IESO for a Preliminary Engineering Study Incentive, substantially in accordance with instructions posted on the Website and as referred to in Section 3.1(a) of the Program Rules, and which may be modified, supplemented and replaced from time to time;

"Preliminary Engineering Study Funding Contract" means a contract between a Participant and the IESO for funding of a Preliminary Engineering Study pursuant to Article 3.0 of the Program Rules;

"Preliminary Engineering Study Incentive" means funding paid by the IESO to the Participant pursuant to a Preliminary Engineering Study Funding Contract;

"Prime Rate" means the annual rate of interest equal to the rate at which the Royal Bank of Canada establishes at its principal office in Toronto as the reference rate of interest to determine interest rates it will charge on such day for commercial loans in Canadian dollars made to its customers in Canada and which it refers to as its "prime rate of interest";

"Program" means the IESO's Industrial Accelerator^{OM} Process and Systems Initiative Program;

"Program Rules" means the Industrial Accelerator^{OM} Process and Systems Initiative Program Rules Version 3.0, as amended from time to time and posted on the Website;

"Project" means one or more Measures, which, when installed on a single System, will deliver Electricity Savings;

"Project Benefits" means the sum of all benefits anticipated to be generated from implementation of the Project as determined by the IESO, including benefits not related directly to savings in the consumption of electricity and including all economic benefits from reducing electricity consumption, use of alternative fuels, positive and negative differences in operating and maintenance costs and other avoided costs;

"Project Budget" means the total budget for the planning, engineering, design, construction and commissioning of the Project or Portfolio, as set out in Schedule "C" under the heading "Project Budget";

"Project Communication" has the meaning given to it in Section 4.1(1);

"Project Incentive" means the amount set out in Schedule "C" under the heading "Project Incentive", subject to adjustment in accordance with Section 3.2;

"Project Incentive Application" means an application by the Participant to receive a Project Incentive pursuant to this Agreement, as may be modified, supplemented and replaced from time to time, and as more particularly referred to in Schedule "C" under the heading "Project Incentive Application";

"Project Payback" means the calculation set out in Schedule "C" under the heading "Project Payback", as confirmed by the Technical Reviewer and contained in the Project Review Summary Report, of the expected number of years it will take to recover the Eligible Costs, and is calculated by subtracting, from the Eligible Costs, the Preliminary Engineering Study Incentive, the Detailed Engineering Study Incentive and the Net Project Incentive received by the Participant, if any, and dividing the remainder thereof by the expected Project Benefits, subject to adjustment in accordance with Section 3.2;

"Project Review" has the meaning given to it in the Program Rules;

"Project Review Summary Report" means a summary document containing certain information obtained from the Project Review as set out in Section **Error! Reference source not found.** of the Program Rules;

"Project Schedule" means the schedule for the planning, engineering, design, construction and commissioning of the Project (including those Projects in a Portfolio) as indicated by the Participant in the Application or as updated during the Project Review;

"Project Status Report" means, in respect of a Project or Portfolio, a completed status report in the form posted on the IESO website from time to time and containing, without limitation, the Actual Eligible Costs incurred to and paid to the date thereof, the status of the Project implementation relative to the budget and schedule provided by the Participant during the Project Review with a description of any changes in scope or other issues that may impact the Project In-Service Date or Electricity Savings;

"Rating Agency" means any one of DBRS, Moody's or S&P;

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

"Release and Waiver" means the Release and Waiver attached hereto at Schedule "G";

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

"Required Rating" means the Participant or Affiliate has a Credit Rating of at least A- from S&P, A low from DBRS or A3 from Moody's;

"S & P" means the Standard and Poor's Rating Group (a division of McGraw-Hill Inc.) or its successor;

"**System**" means the equipment or process in the Facility to which the Project is proposed to be installed in order to obtain Electricity Savings;

"**Technical Reviewer**" means a Person retained by the IESO having on its staff individuals who have the professional experience and qualifications approved by the IESO;

"**Third Party Contributions**" means any financial or other contribution (including the value of contributions in kind) received from or made by any party other than the Participant or the IESO in connection with a Project or Portfolio;

"**Transmission System**" means that part of the IESO-Controlled Grid that conveys electricity at voltages of 50 kilovolts or higher and including any structures, equipment or other things used for that purpose, which for greater certainty, shall be included in the IESO-Controlled Grid;

"**Website**" means the IESO's website at www.industrialaccelerator.ca; and

"**WER Project**" means a Project involving Generation such that the generation of electricity is primarily from a waste by-product of the Facility.

SCHEDULE "B"
SUPPLEMENTARY TERMS & CONDITIONS

ARTICLE I
CONFIDENTIALITY AND FIPPA

1.1 Confidential Information

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

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

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

1.2 Notice Preceding Compelled Disclosure

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

1.3 Return of Information

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

1.4 Injunctive and Other Relief

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

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

1.5 FIPPA Records and Compliance

The Participant and the IESO acknowledge and agree that the IESO 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 IESO or its Representatives to the Participant or provided by the Participant to the IESO 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 IESO ("**FIPPA Records**"), and may require the disclosure of such FIPPA Records to third parties. To the extent that the IESO must comply with disclosure obligations under FIPPA, the Participant agrees:

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

ARTICLE II **FORCE MAJEURE**

2.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:
 - (i) the Participant is unable to achieve at least 90% of the Anticipated Electricity Savings; or
 - (ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including the Participant being unable to achieve the In-Service Date within 2 years from the date of this Agreement;

then the Party so affected by Force Majeure shall be excused and relieved on a day for day basis from performing or complying with such obligations (other than payment obligations) for the period of time in which such Force Majeure shall continue and shall not be liable for any liabilities, damages, losses, payments, costs, expenses to, or incurred by, the other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure.

- (b) A Party shall be deemed to have invoked Force Majeure effective from the commencement of the event or circumstances constituting the Force Majeure when that Party gives to the other Party prompt written notice of the Force Majeure, provided that such notice shall be given within 10 Business Days of the later of (i) the commencement of the event or circumstances constituting Force Majeure or (ii) the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the development or operation of the Facility or Project. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such 10 Business Day period, the Party invoking Force Majeure shall be allowed a further 10 Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars to the other Party.
- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be deemed to be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within 10 Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 2.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) If an event of Force Majeure causes the Participant to not achieve the In-Service Date within 2 years from the date of this Agreement, then the time for achieving such date shall be extended on a day for day basis for each day of delay directly resulting from such Force Majeure event and for all purposes of this Agreement the In-Service Date shall be the In-Service Date as so extended.
- (g) If, by reason of one or more events of Force Majeure, the In-Service Date has not occurred by the 3rd anniversary of the date hereof, then notwithstanding anything in this Agreement to the contrary, the IESO may terminate this Agreement upon notice to the Participant or the Participant may terminate this Agreement upon notice to the IESO. Upon termination of this Agreement pursuant to this Section 2.1(g), the Participant shall forthwith repay to the IESO any amounts paid to the Participant in accordance with Article VI which, as of the Early Termination Date have not been actually incurred by the Participant in accordance with the Project Schedule and the Project Budget, following which, all Performance Security shall be returned to the Participant forthwith.

2.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article II, nor shall it be relieved of its obligations hereunder in any of the following circumstances:

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence;
- (b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);
- (c) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach of or failure to comply with Applicable Law by such Party;
- (d) if the Force Majeure was caused by a lack of funds or other financial cause; or
- (e) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 2.1(b) or 2.1(d).

2.3 Definition of Force Majeure

For the purposes of this Agreement, the term "**Force Majeure**" means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, that is beyond the affected Party's reasonable control, and shall include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute);
- (e) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics; and
- (f) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted

in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction.

ARTICLE III **DISPUTE RESOLUTION**

3.1 Informal Dispute Resolution

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

3.2 Arbitration

Subject to and in accordance with the provisions of this section, any and all differences, disputes, claims or controversies arising out of or in any way connected with this Agreement, whether arising before or after the expiration or termination of this Agreement, (including any dispute as to whether an issue is arbitrable) shall be resolved by arbitration before a single arbitrator (the "**Arbitrator**") pursuant to the *Arbitration Act, 1991* (Ontario) and otherwise in accordance with the laws of the Province of Ontario.

3.3 Appointment and Powers of Arbitrator

A Party desiring arbitration hereunder shall give written notice of arbitration to the other Party containing a concise description of the matter submitted for arbitration ("**Notice of Arbitration**"). If the Parties fail to jointly appoint an Arbitrator within twenty (20) days thereafter, an Arbitrator shall be designated by a judge of the Ontario Superior Court of Justice upon application by either Party. The Arbitrator may determine all questions of law, fact and jurisdiction with respect to the dispute or the arbitration (including questions as to whether a dispute is arbitrable) and all matters of procedure relating to the arbitration. The Arbitrator may grant legal and equitable relief (including injunctive relief), award costs (including legal fees and the costs of the arbitration), and award interest.

3.4 Arbitration Procedure

The arbitration shall be conducted in English in the City of Toronto at such place therein and time as the Arbitrator may fix and, failing agreement thereto by the Parties, in accordance with such procedures as the Arbitrator shall determine, in accordance with the principles of natural justice. The arbitration and all matters arising directly or indirectly therefrom shall be kept strictly confidential by the Parties and shall not be disclosed to any third party except as may be compelled by law.

3.5 Arbitrator's Decision and Appeal

The Arbitrator's written decision shall be delivered to each of the Parties within 60 days following the conclusion of the arbitration hearing. The costs of any arbitration hereunder shall be borne by the Parties in the manner specified by the Arbitrator in his or her decision. The decision of the Arbitrator shall be final and binding upon the Parties in respect of all matters relating to the arbitration, the conduct of the Parties during the proceedings and the final determination of the issues in the arbitration. There shall be no appeal from the decision of the Arbitrator to any court, except on the grounds that the conduct of the Arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991*, or solely on a question of law as provided for in the *Arbitration Act, 1991*. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

3.6 Preclusion of Actions

Submission to arbitration under this section is intended by the Parties to preclude any action in matters which may be arbitrated hereunder, save and except for enforcement of any arbitral award hereunder.

SCHEDULE "C"
PROJECT/PORTFOLIO DESCRIPTION

IESO Project Identification #:

Participant Contact Information

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

Technical Reviewer:

Company Representative:

IESO:

Participant:

Overview of the Project or Portfolio:

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

Measures:

Municipal Address or Location:

Type of Facility:

Annual Hours of Operation:

Project Incentive Application: Dated ●, received by the IESO on ●.

Project Incentive:

Net Project Incentive:

Anticipated Project Benefits:

Preliminary Engineering Study Incentive:

Detailed Engineering Study Incentive:

Project Budget:

[NTD – insert budget of anticipated expenses in connection with the Project or Portfolio]

Scheduled In-Service Date

Eligible Costs:

Third Party Contributions:

Project Payback:

Electricity Savings:

Annualized Electricity Savings:

Anticipated Electricity Savings:

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

Current Participant Credit Rating:

Incentive Security: [insert Net Project Incentive]

Performance Security: [Insert maximum amount]

[If Performance Security less than \$1M]

Maximum amount of Performance Security	Deposit Date	Release Date
\$●	[within 30 days of the date hereof]	[2 nd anniversary of the In-Service Date]

[If Performance Security greater than \$1M]

A letter of credit shall be deposited with the IESO and shall be increased and decreased in accordance with the provisions of this Agreement which, as of the date hereof, is in accordance with Tables A and B below, respectively.

Table A

Maximum amount of Performance Security	Initial amount of Performance Security within 30 days of the date hereof	1st Increase to Performance Security in accordance with 7.1(b)(i)	2nd Increase to Performance Security in accordance with 7.1(b)(ii)	3rd Increase to Performance Security in accordance with 7.1(b)(iii)
\$●	\$●	\$●	\$●	\$●

Table B

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

Credit Rating of the Participant:

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

Account Details:

SCHEDULE "E"
FORM OF LETTER OF CREDIT

Date: **[insert date]**

Irrevocable and Unconditional Standby Letter of Credit No. **[insert number]**(the "Credit")

Amount: Not exceeding CAD\$**[insert]**

Date and Place of Expiry: **[insert date]**, at the counters of Issuing Bank

Beneficiary: Applicant:

Independent Electricity System Operator

120 Adelaide Street West

Suite 1600

Toronto, Ontario

Canada M5H 1T1

Dear Sir,

The Credit is issued in connection with the **Industrial Accelerator Program Project Incentive Contract** dated **[insert date of Contract]** and having the IESO Project Identification No. **[insert IESO Project Identification number on contract]**, as amended from time to time (the "Contract") between the Beneficiary and the "Participant", as such term is defined under the Contract.

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

"The Participant is in breach of, or default under, the Contract, or any other contract between the Beneficiary and the Participant, and therefore the Beneficiary is entitled, or is otherwise entitled pursuant to the provisions of the Contract, to draw upon the Credit in the amount of the draft attached hereto."

Drafts drawn hereunder must bear the clause "Drawn under irrevocable and unconditional Standby Letter of Credit No. **[insert reference number]** issued by **[insert Issuing Bank's name and address]** dated **[insert date]**".

Partial drawings are permitted.

This page 2 forms an integral part of Standby Letter of Credit No. **[insert number]**

This Letter of Credit will automatically extend without amendment for additional, successive terms of one year each (each an "**Additional Term**"), unless the undersigned provides the Beneficiary with written notice by registered mail or courier, at least 60 days prior to the expiration date of the then current term, that it does not wish to extend this Letter of Credit for an Additional Term.

We engage with you that all drafts drawn under and in compliance with the terms of the Credit will be duly honoured, if presented at the counters of The Bank of Nova Scotia, Ontario International Trade Services, 61 Front Street West, 4th Floor, Toronto, Ontario, Canada M5H 1H1 at or before 5:00 p.m. (EST) on **[insert date]** or any future expiration 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 a Letter of Transfer hereto, without the consent of the Applicant, and upon receipt by **[insert Issuing Bank's name and address]** of the Beneficiary's dated and signed Letter of Transfer addressed to **[insert Issuing Bank's name and address]** and completed as follows:

"For value received, the undersigned Beneficiary hereby irrevocably transfers to: **[insert name and address of Transferee]** (the "**Transferee**") all rights of the undersigned beneficiary to draw up to but not exceeding a sum of **[insert amount remaining under LC]** under the Standby Letter of Credit No. **[insert date]** issued by **[insert Issuing Bank's name and address]** dated **[date to be inserted upon issuance of LC]**, subject to the same terms and conditions.

By this Letter of Transfer, all rights of undersigned Beneficiary in such Standby Letter of Credit are transferred to the Transferee (up to the amount aforesaid) and the Transferee shall (up to the amount aforesaid) have the sole right as beneficiary thereof.

The undersigned Beneficiary irrevocably instructs that any amendments hereafter made must immediately be advised to the Transferee for action thereon.

This page 3 forms an integral part of Standby Letter of Credit No. **[insert number]**

Kindly notify the Transferee in such form as you deem advisable of the Transfer and after noting the Transfer on the original instrument, which we are forwarding to you herewith, kindly forward it to the Transferee.”

Yours truly,

Authorized signature

Authorized signature

SCHEDULE "F"
M&V PLAN

[as attached]

SCHEDULE "G"
RELEASE AND WAIVER

[as attached]