



**PROCESS AND SYSTEMS UPGRADE (PSU) PROGRAM  
PROJECT APPLICATION FORM**

**Tab #4  
"Project Application"**

Please complete and submit this Project Application Form (the "Application") to your Local Distribution Company (LDC). The information will be used to provide the LDC with initial project details. The Application is subject to LDC written approval. Capitalized terms not defined herein are as prescribed in the Project Terms and Conditions.

Please complete all applicable highlighted yellow fields.

<b>PROJECT NAME:</b>	
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<b>LDC:</b>		<b>Date of Submission:</b>	
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APPLICANT INFORMATION				
Company legal name:				(the "Applicant")
Facility name:				(the "Facility")
Facility address:		Contact name:		
City:		Title:		
Postal code:		Phone:		
GST/HST #:		Email:		
Please indicate if the Applicant owns or leases the Facility:		<input type="checkbox"/> Owns	<input type="checkbox"/> Leases	
If you wish the IESO (Independent Electricity System Operator) to communicate with you by e-mail in connection with future conservation programs, customer satisfaction and other related purposes please confirm by checking this box:				<input type="checkbox"/>

For a Generation Project, complete the following section:

GENERATION PROJECT INFORMATION			
<i>Please select one of the following:</i>			
Conservation Combined Heat and Power (CCHP) i.e. >10% fossil fuels		<input type="checkbox"/>	
Waste Energy Recovery i.e. < 10% fossil fuel		<input type="checkbox"/>	
Generator Nameplate Capacity (kW)			
High Voltage Transformer Station Name			
High Voltage Transformer Station Feeder Name			
Capacity Screening Results (LDC Use Only)			
Date of LDC test:		LDC Notes:	
Result of LDC screening:			
<i>If proposed Generation Project has been screened by the IESO:</i>			
Date of IESO test:		IESO Notes:	
Result of IESO screening:			

PROJECT INFORMATION			
PAYMENT OPTIONS			
<i>Please specify your preferred incentive payment option:</i>			
Advanced Payment Option		<input type="checkbox"/>	
Deferred Payment Option		<input type="checkbox"/>	
THIRD PARTY CONTRIBUTIONS			
Have you, or will you be receiving any financial or any other contributions towards the Eligible Costs of the Project?		<input type="checkbox"/>	Yes
Source of any such Third Party Contributions:			

PROJECT SUMMARY								
Estimated Electricity Rate (\$/MWh):			Facility Electricity Consumption (MWh/year):					
Estimated Electricity Savings [MWh/year]	Hours of Operation [hours/year]	Baseline Electricity Consumption [MWh/year]	Estimated Electricity Bill Savings [\$ /year]	Estimated other benefits <sup>1</sup> [\$ /year]	Estimated other costs <sup>2</sup> [\$ /year]	Estimated Project Benefits [\$ /year]	Estimated Project Costs [\$]	Third Party Contributions [\$]
			\$0					

INCENTIVE CALCULATION				
Estimated Project Incentive <sup>3</sup>	Minimum of the following:	Electricity Savings x \$200/MWh	40% or 70% of Eligible Costs <sup>4</sup>	1-year Project Payback <sup>5</sup>

<sup>1</sup> other fuel or cost reductions e.g. reduced operating and maintenance costs, increased production, health and safety benefits  
<sup>2</sup> e.g. increased fuel costs, increased operation or maintenance costs  
<sup>3</sup> based on Application information, actual Participant Incentive based on actual Eligible Costs and Electricity Savings  
<sup>4</sup> 40% for Conservation Combined Heat and Power (CCHP) projects, 70% for all other eligible Projects  
<sup>5</sup> Incentive amount that provide a one-year simple payback (i.e. Project Costs - Third Party Contributions - Project Benefits)

PROJECT SUPPORTING INFORMATION			
Has a previous study /energy audit /assessment been completed?	<input type="checkbox"/>	Yes, with funding from LDC	ID#: _____
	<input type="checkbox"/>	Yes, without funding from LDC	
	<input type="checkbox"/>	No	

Please list the supporting documents to this Application, including the Engineering Feasibility Study, or the equivalent supporting documentation that substantially addresses the Engineering Feasibility Study Minimum Requirements:

1	
2	
3	
4	
5	

NOTICES			
All notices required pursuant to Section 20 of the Project Terms and Conditions shall be:			
If to the LDC:		If to the Applicant:	
Name:		Name:	
Title:		Title:	
Address:		Address:	
Phone:		Phone:	
E-mail:		E-mail:	
Fax:		Fax:	

APPLICANT'S DECLARATION			
I have read, understand and agree to comply with the Release, Waiver and Consent and the Project Terms and Conditions found below.			
Authorized signature:		Name:	
		<i>I have the authority to bind the Applicant</i>	
Date:		Title:	

**RELEASE, WAIVER & CONSENT**

**IMPORTANT: PLEASE CAREFULLY READ THE FOLLOWING RELEASE, WAIVER & CONSENT. BY SUBMITTING THE APPLICATION, YOU AGREE TO COMPLY WITH AND BE BOUND BY THIS RELEASE, WAIVER & CONSENT WHETHER OR NOT YOUR PROJECT IS APPROVED BY THE LDC.**

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

A. releases and forever discharges each of the LDC, the Independent Electricity System Operator ("IESO") and their respective representatives, affiliates, third party service providers and agents (the "Program Operators") and all of their respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns (collectively, the "Representatives") (the Program Operators and the Representatives hereinafter collectively referred to as "Releasees") from any and all actions, causes of action, suits, complaints, disputes, debts, liabilities, obligations, damages, legal fees, costs, disbursements, expenses, claims and demands of every kind whatsoever and howsoever arising, at law or in equity, or under any statute, including without limitation, claims for property damage, business interruption and personal injury of the Applicant's employees, officers, directors of licensees, which it can, will or may have by reason of any matter, cause or thing arising as a result of, in relation to or in connection with the attendance on one or more occasion by one or more of the employees, officers, directors, representatives, agents or third party service providers of any or all of the Program Operators (collectively, "Persons") at any and all facilities owned or occupied by the Applicant in connection with, arising out of or relating to the PSU Program, other than in the case of the gross negligence or wilful misconduct of such Persons during such attendances.

B. agrees that the Applicant will not make any claim or take any proceeding against any other person or entity with respect to any matter released and discharged in Section A above which may result in any claim arising against any of the Releasees for contribution or indemnity or other relief;

C. without limiting the foregoing, the Applicant hereby acknowledges, agrees and consents that by submitting an Application, whether or not the Application is ultimately accepted:

(a) the Applicant hereby consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators including all reports, data, personal information, records showing historical energy use and consumption, and other information of the undersigned or its subcontractors or representatives (collectively, the "Applicant Information") by the Program Operators for purposes relating to the operation, administration or assessment of the Program, any initiative thereof or the Application, and in connection with any reporting activities relating to the Program, which shall include, without limitation: (i) sharing of Applicant Information among the Program Operators; (ii) use by the Program Operators of the Applicant Information provided by the Applicant to process any of the Applicant's Applications and to conduct, analyze and report on the results of surveys and modify the Program based on such surveys; and (iii) for purposes of reporting, surveys, studies and audits, future conservation programs and the provision to the Program Operators past and current usage for such purposes. The Applicant understands that in connection with such reporting, surveys, studies and audits, the Program Operators may contact the Applicant directly, including by email or other electronic communications. Pursuant to Canada's anti-spam legislation ((hereinafter "CASL"), the LDC on behalf of the IESO, is hereby requesting your Express Consent (as that term is meant in CASL and its associated Regulations) to contact you at the electronic address identified in this Agreement. If you wish the IESO to communicate with you by email in connection with future conservation programs, customer satisfaction surveys and other related purposes, please confirm by providing your initial in the Applicant Information section of the Application. The Applicant may withdraw this consent at any time by contacting the LDC at [saveonenergy.ca/lhc-contact](http://saveonenergy.ca/lhc-contact) or the IESO at [customer.relations@ieso.ca](mailto:customer.relations@ieso.ca), [120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1](http://120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1), [ieso.ca](http://ieso.ca), [saveonenergy.ca](http://saveonenergy.ca) or [905-403-6900](tel:905-403-6900);

(b) the Program Operators are committed to protecting the personal information in its custody or control in accordance with applicable privacy laws. The Applicant may access the LDC's privacy policy at [www.saveonenergy.ca/lhc-privacy-policies](http://www.saveonenergy.ca/lhc-privacy-policies) and the IESO's privacy policy at <http://www.ieso.ca/privacy>

(c) it hereby consents to the disclosure by the IESO to the LDC of information regarding the Applicant's past participation in other IESO funded conservation and demand management programs for the purpose of processing the Application; and

(d) this Release, Waiver and Consent and all Applicant Information, in the possession or control of the Program Operators are subject to applicable laws that include the access provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) ("MFIPPA") or the *Freedom of Information and Protection of Privacy Act* (Ontario) ("FIPPA"), as the case may be, and that as a result, third parties may obtain access to the Applicant Information;

D. this Release, Waiver and Consent will continue in full force and effect for the benefit of the Releasees and will apply to each Application submitted by the undersigned to the LDC and to the extent of any conflict between this Release, Waiver and Consent and the terms of any agreement or other document entered into by the undersigned and one or more of the Program Operators pursuant to or in connection with the Program or any part thereof, the terms of this Release, and Waiver and Consent will prevail; and

E. this Release, Waiver and Consent will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**PROJECT TERMS AND CONDITIONS**

**IMPORTANT: PLEASE CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS. IF THE APPLICATION IS APPROVED BY THE LDC THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE PROJECT IDENTIFIED IN THE APPLICATION AND THE PARTICIPANT AGREES TO COMPLY WITH AND BE BOUND BY THE TERMS AND CONDITIONS HEREIN.**

Unless otherwise defined in the Project Application, capitalized terms used in these Terms and Conditions will have the meanings ascribed to them in Section 21.

The "Participant" is the "Applicant" in the Application. "Application" means the Project Application.

1. **GENERAL OBLIGATIONS OF THE PARTICIPANT.** The Participant shall and shall cause the owner(s) and and/or occupier(s) of the Facility to:

- a) implement the Project and perform all of its other obligations hereunder in accordance with these Terms and Conditions, Good Engineering Practices and all Applicable Laws;
- b) ensure that its relevant personnel are knowledgeable with the Project and are available to the LDC and the Technical Reviewer with respect to the M&V Plan and the IESO EM&V Protocols;
- c) ensure that all equipment being replaced in whole or in part by all or part of any Measure, when removed, is not sold for reuse and is decommissioned or disposed of in accordance with Applicable Laws;
- d) obtain and maintain all permits and approvals necessary for the installation, verification and operation of the Project;
- e) at no time modify, vary or amend in any material respect any of the features or specifications of the Project (including, its scope, objectives, contractors, consultants, Third Party Contributions, costs and implementation schedule) without first notifying the LDC in writing and obtaining the LDC's consent in writing, such consent not to be unreasonably withheld;
- f) provide the LDC and the IESO with the right at any time to make public the Facility, the Participant and the owner(s)'s and occupier(s) of the Facility's participation in the PSU Program, to use data relating to the Project aggregated with other projects in a manner intended to report on the Program and to advise other Participants of the features and equipment described in the Application unless the Participant has advised the LDC in writing that such information is confidential;
- g) acknowledge the assistance provided by the LDC and the IESO in all publications, publicity materials and other forms of release or communication pertaining to the Project, provided that the LDC will have the right to approve all such communications in advance;
- h) provide written clarification on any aspect of any document submitted by the Participant to the satisfaction of the Technical Reviewer or the LDC, each acting reasonably, within 10 Business Days of such request;
- i) maintain, or cause to be maintained, all of the equipment and improvements installed or implemented for a Project in good working order and operate and maintain, or cause to be operated and maintained, such equipment and improvements without any modification such that Commercially Reasonable Efforts are made to maintain the Electricity Savings throughout the Electricity Savings Period;
- j) ensure that the In-Service Date for the Project will be as stated in the M&V Report or in any event no later than December 31, 2020;
- k) prepare and submit to the LDC, in form and substance acceptable to the LDC and the Technical Reviewer, an Invoice Reconciliation Form substantially in the form provided in Tab #7 of this Application. The Invoice Reconciliation Form will be deemed to be a representation and warranty of the Participant to the LDC that the work required to be completed and the costs incurred have been completed and paid, as applicable;
- l) ensure that the owner(s) of the Facility acknowledge and consent to the installation of the Project and agree to reasonable access by the LDC or Technical Reviewer for the purposes of administering these Terms and Conditions and evaluation of the Project.

2. **TERM.** These Terms and Conditions become effective as of the date written in the Letter of Approval from the LDC and unless terminated earlier, expires:

- a) on the 4th anniversary of the In-Service Date for all Energy Efficiency Projects;
- b) on the 4th anniversary of the In-Service Date for Generation Projects having Participant Incentive with an Approved Amount of less than \$1 million; and
- c) on the 10th anniversary of the In-Service Date, for Generation Projects having a Participant Incentive with an Approved Amount greater than \$1 million.

2.1 **SURVIVAL.** Neither the expiration of the term of these Terms and Conditions nor its early termination will release either party from any obligation or liability that accrued prior to such expiration or termination. Sections 5, 9, 13, 14, 16, 18 19 and this Section 2.1 shall survive the expiry or early termination of these Terms and Conditions.

**3. PARTICIPANT INCENTIVE**

**3.1 Estimated Eligible Costs.** The Parties agree that the Estimated Eligible Costs are set out in the Application and confirmed in the Letter of Approval for purposes of calculating the Participant Incentive. Eligible Costs are those costs that are directly related to the design, selection, purchase and installation of the Measures included in the Project as approved by the LDC and the Technical Reviewer which may be amended or adjusted as required to reflect increase in costs outside of the control of the Participant such as fluctuations in currency exchange for significant equipment purchases or increases in cost to install tele-protections to an upstream transfer station or other distribution system upgrade costs incurred in order to connect Generation Projects. Eligible Costs include, but are not limited to:

- Capital expenses
- for Generation Projects, connection costs to connect the Project to the distribution system
- equipment and products including diagnostic and testing tools and associated software
- data collection services, including processing, analysis and data management
- meter purchase, design, installation and configuration costs associated with implementing the M&V Plan
- professional, engineering, scientific, technical, management and contract services
- travel, including accommodations but excluding meals
- printing services
- permit and licence fees
- costs associated with environmental assessments
- the cost of an Engineering Feasibility Study not funded by the LDC, including, any additional technical or engineering preparation, analysis or studies associated with the Project completed after the Engineering Feasibility Study, which may be incurred before or after the submission of the Project Application as approved by the LDC, and
- any reasonable costs determined by the Technical Reviewer (and agreed to by the LDC) to be an Eligible Cost in advance of such expense being incurred.

**3.2 Actual Eligible Costs.** The Actual Eligible Costs will be determined by the Technical Reviewer based on the Invoice Reconciliation Form and detailed and itemized invoices from the Participant describing the actual cost of eligible equipment, systems, parts and other products and the related prices paid for same including, services and labour paid in respect thereof.

**3.3 Calculation of the Participant Incentive.** The LDC will pay the Participant the applicable Participant Incentive calculated as follows:

- a) The Participant Incentive for an Energy Efficiency Project is an amount equal to the lower of:
  - i. 70% of the Eligible Costs of the Project;
  - ii. the product of the Electricity Savings of the Project multiplied by \$200/MWh capped at 120% of the Approved Amount; and
  - iii. the amount that would provide a Project Payback of one year for the Project.
- b) The Participant Incentive for Generation Projects is:
  - i. 70% of the Eligible Costs of the Project (including a Waste Energy Recovery project) or in the case of a Conservation Combined Heat and Power (CCHP) projects, 40% of the Eligible Costs of the Project;
  - ii. the product of the Electricity Savings multiplied by \$200/MWh capped at 120% of the Approved Amount; and
  - iii. the amount that would provide a Project Payback of one year.
- c) All Conservation Combined Heat and Power (CCHP) Projects must maintain the Total System Efficiency (TSE) requirement of 65% calculated on an annual basis as the sum of the (the Electricity Output (MWh) plus the Useful Thermal Output (MWh-thermal) divided by the Fuel Energy Input (MWh-thermal). If the M&V Report demonstrates the CCHP Project fails to achieve the TSE of 65% (rounded to the second decimal) the Participant Incentive will be discounted as follows:
  - 62.5% ≤ TSE < 65%: 5% discount
  - 60% ≤ TSE < 62.5%: 10% discount
  - 57.5% ≤ TSE < 60%: 15% discount
  - <57.5%: is considered an Event of Default

When calculating the Eligible Costs to be included in a Participant Incentive, the calculation will be based upon the lower of (i) the Estimated Eligible Costs, and (ii) the Actual Eligible Costs.

**4. PROJECT PARTICIPANT INCENTIVE PAYMENT OPTIONS.** Participants may receive payment of their Participant Incentive by way of either Deferred Payment Option or Advanced Payment Option and is subject to the discretion and prior approval of the LDC.

**4.1 Advanced Payment Option.** If the Participant has elected, as set out in the Application, to proceed by way of Advanced Payment Option, and subject to the Participant not being in default hereunder and otherwise satisfying all of its obligations herein contained, the LDC will pay the Participant the Approved Amount in three (3) installment payments as follows:

- a) A first payment of 50% of the Approved Amount provided that: (i) the Participant and the LDC have agreed to the M&V Plan as provided by the Technical Reviewer; and (ii) the LDC is in receipt of the Participant's Performance Security;
- b) A milestone payment of 90% of the Participant Incentive less the payment received in (a) above, provided that (i) the Technical Reviewer has confirmed the In-Service Date and the approved Eligible Costs; (ii) the Technical Reviewer has issued the Initial M&V Report; and (iii) payment is calculated based on the Initial M&V Report; and
- c) The balance of the Participant Incentive provided that: (i) the Technical Reviewer has issued the Final M&V Report; (ii) the balance is calculated taking into account the difference between the actual Participant Incentive (calculated on the basis of the final M&V Report) and the total payments made to date.

The LDC will not pay, and the Participant will not be entitled to any milestone payment referred to herein unless the applicable Program Deliverables in respect of such payment have been approved by the LDC and the Technical Reviewer.

**4.1.1 Performance Security.** If the Participant has elected, as indicated in the Application, to proceed by way of the Advanced Payment Option, it will deliver to the LDC, at its sole cost and expense, and as soon as practicable following receipt of the Letter of Approval from the LDC, a letter of credit substantially in the form set out in Tab #6 of the Application as may be updated from time to time (the "**Performance Security**"). The Performance Security shall be in an amount equal to 50% of the Approved Amount. The Participant agrees that the LDC shall be entitled to realize (i) the full amount of the Performance Security if the Participant fails to complete the Project in accordance with these Terms and Conditions; and (ii) in the event of a savings shortfall, the difference between the total Participant Incentive amount paid and the recalculated Participant Incentive taking into account the Electricity Savings shortfall as per the Final M&V Report. Without limiting the foregoing, and provided that the Participant is not in breach of these Terms and Conditions, the Performance Security will be decreased to \$0 upon payment to the Participant of the final incentive payment.

**4.1.2 Adequacy of Security; Replacement Security.** The Participant shall ensure that the Performance Security is at all times current, valid and enforceable and will provide replacement security, at its sole cost and expense, for any Performance Security that either expires, terminates or fails, or ceases to be in full force and effect for the purposes hereof; or for increasing the amount of posted Performance Security by an amount equal to that realized by the LDC. If the existing Performance Security is replaced with new Performance Security and provided the new Performance Security meets the requirements herein, the LDC shall return the existing Performance Security held by the LDC to the Participant, within 5 Business Days of the LDC's receipt of such new Performance Security.

**4.2 Deferred Incentive Payment Option.** If the Participant elects to proceed by way of the Deferred Incentive Payment Option as set out in the Application, and subject to the Participant not being in default hereunder and otherwise satisfying all of its obligations herein contained, the LDC will pay the Participant the Approved Amount in two (2) installments as follows: (a) 50% of the Participant Incentive based on the results of the Initial M&V Report; and (b) the balance of the Participant Incentive calculated as the difference between the actual Participant Incentive as determined by the Final M&V Report less the total payments made to date. The LDC will not pay, and the Participant will not be entitled to any milestone payment referred to herein unless the applicable Participant Document and the M&V Report in respect of such payment have been approved by the LDC and the Technical Reviewer.

**5. METHOD OF PAYMENT.** Payments under Section 4.1 or 4.2, as applicable, will be made by cheque payable to the Participant. The submission of the Invoice Reconciliation Form will be deemed to be a representation and warranty of the Participant to the LDC that the work required to be completed or costs required to be incurred and paid to qualify to receive such payment has been completed in all material respects or paid in accordance with the evidence thereof provided to the LDC, unless otherwise agreed to in writing by the LDC. In addition to the Participant Incentive, the LDC will pay any applicable taxes on the Participant Incentive. The Participant will provide to the LDC sufficient supporting documentation, as requested by the LDC, to facilitate and support the LDC in claiming input tax credits in respect of the Participant Incentive.

6. **IN-SERVICE DATE.** The Participant will cause the Project to achieve the In-Service Date on or before December 31, 2020. For certainty, a Project that is not completed by December 31, 2020 will not receive the Participant Incentive and will forthwith repay to the LDC any Participant Incentive amount paid to the Participant, if any. The Participant will deliver to the LDC not less than 10 Business Days' prior written notice of the date of the commissioning of the Project and of the proposed In-Service Date and will provide any data in electronic or written form relating thereto as may be reasonably requested by the LDC or the Technical Reviewer. To confirm if a Project has met the In-Service Date, the LDC and/or the Technical Reviewer may conduct an on-site review. Upon confirmation of the occurrence of the In-Service Date, the LDC will notify the Participant of such confirmation.

7. **ROLE OF THE TECHNICAL REVIEWER.** The Technical Reviewer will provide the LDC with independent technical expertise and administrative assistance in respect of the Project. The Participant shall, and shall cause the owner(s) and/or occupier(s) of the Facility, to cooperate with the Technical Reviewer and provide the Technical Reviewer with any required data and information and access to the Facility in order for the Technical Reviewer to perform its obligations in respect of the Project, including, without limitation, historical energy use, energy consumption or any other information relating to the Facility required by the Technical Reviewer for measurement and verification purposes.

8. **M&V PLAN / M&V REPORTS.** Prior to the LDC providing a Letter of Approval to the Participant the Participant will provide the LDC and the Technical Reviewer with all relevant data required for the Technical Reviewer to prepare the M&V Plan. The M&V Plan shall be approved by the Participant and the LDC each acting reasonably. The final approved M&V Plan is hereby incorporated into these Terms and Conditions and made a part hereof by reference with the same force and effect as though fully set forth herein. The Participant will fulfill all of its obligations pursuant to the M&V Plan. The actual Electricity Savings determined by the Technical Reviewer and set out in any M&V Report will be used by the LDC and the Technical Reviewer, among other things, to assess whether the Project has achieved the Anticipated Electricity Savings for such M&V Reporting Period. The "**M&V Reporting Period**" for any Project shall be for one year following the In-Service Date provided that the Participant has fulfilled all of its obligations pursuant to the M&V Plan, unless extended by agreement by the LDC in order to appropriately verify the Electricity Savings for reporting and calculation of the Participant Incentive. The Technical Reviewer will prepare an initial M&V Report following the first quarter following the In-Service Date (the "**Initial M&V Report**") and the final M&V Report will be delivered soon after the first anniversary of the In-Service Date unless such delivery is extended by the LDC in order to ensure proper verification of Electricity Savings (the "**Final M&V Report**"). Notwithstanding the aforementioned, additional M&V Reports may be required if deemed necessary by the LDC.

9. **EVALUATION, MONITORING AND VERIFICATION (EM&V).** The Project is subject to IESO EM&V Protocols to evaluate the achievement of Electricity Savings. In furtherance of the IESO EM&V Protocols, the Participant will, and will cause the owner(s) and occupier(s) of the Facility, to cooperate with the LDC and their respective designates and will make available such information in the form and with the frequency as may be reasonably prescribed, including, but not limited to, historical electricity consumption. The Participant will, and will cause the owner(s) and occupier(s) of the Facility to, on at least 5 Business Days' prior written notice, during normal business hours, and at such frequency as the LDC or the IESO reasonably requires, provide reasonable access to the LDC, the IESO and/or their respective designates to its premises for purposes of performing an inspection or technical audit for purposes of the IESO EM&V Protocols or to confirm that the Participant and each of its contractors has performed its obligations in respect of the Project in accordance with these Terms and Conditions. In furtherance of such inspection or audit, the Participant will and will cause the owner(s) and occupier(s) of the Facility to: (A) keep complete and accurate books, accounts and records and all other data required for the purpose of proper administration and EM&V of the Project for the longer of the Electricity Savings Period and the year 2020; and (B) on reasonable notice, provide reasonable access to the LDC, the IESO, and/or their respective designates to such books, accounts, records and other data and permit the LDC, the IESO and/or their respective designates to examine and audit and take copies and extracts from such documents.

10. **SAVINGS SHORTFALL.** In the event that the Electricity Savings in the Final M&V Report is less than the anticipated Electricity Savings, the Participant Incentive will be recalculated in accordance with Section 3.3 (the "**Adjusted Participant Incentive**"). If the recalculation results in an overpayment of the Participant Incentive by the LDC, the LDC shall be entitled to repayment from the Participant of an amount equal to the difference between the Participant Incentive and the Adjusted Participant Incentive.

**11. CHANGE NOTICE RE DECREASE IN ANTICIPATED ELECTRICITY SAVINGS.** The Participant will immediately provide the LDC written notice of any change or proposed change in the Project which will, or could reasonably be expected to, or has resulted in a decrease in the Anticipated Electricity Savings. The LDC, after consulting with the Technical Reviewer, will re-calculate the Participant Incentive in accordance with Section 3.3. If the LDC confirms that a CCHP Project will or is reasonably likely to achieve a TSE of <57.5%, an Event of Default will be deemed to have occurred and the LDC will be entitled to exercise all of its remedies hereunder, including pursuant to Section 13.1 .

**12. REPRESENTATIONS AND WARRANTIES**

The Participant covenants, represents and warrants to the LDC as follows:

- a) The Participant is either (A) a Distribution Customer who owns and or/occupies the Facility or (B) a person who will install and operate a Project at the Facility on behalf of the owner/operator of the Facility who is a Distribution Customer;
- b) The Participant and the owner(s) or occupier(s) of the Facility would not have undertaken the Project without the Participant Incentive;
- c) The Application is complete and accurate in all material respects and is an accurate representation of the Project;
- d) There is 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 is no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the owner(s) or occupier(s) of the Facility or, to the knowledge of the Participant, threatened against the owner(s) of the Facility;
- f) 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;
- g) The Participant has and will ensure that owner(s) and occupier(s) of the Facility have obtained all of the necessary internal approvals in order to proceed with the implementation of the Project;
- h) The Participant and/or the owner(s) or occupier(s) of the Facility, as the case may be, shall 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 these Terms and Conditions and fulfilling its obligations hereunder have been satisfied;
- i) The Participant has not and the owner(s) or occupier(s) of the Facility have not, prior to submitting the Application, entered into an agreement with any contractor or consultant, or ordered or purchased any equipment for use in relation to the Project;
- j) The Participant is not a non-resident of Canada for the purposes of the Income Tax Act (Canada);
- k) The Participant shall not, and shall ensure that the owner(s) and occupier(s) of the Facility shall not, directly or indirectly assign, transfer or sell any electricity it generates from a Project other than to the Facility;
- l) For Generation Projects only, the Participant shall not use, and shall ensure that the owner(s) and occupier(s) of the Facility shall not use, the Generation Project at any time during the term of these Terms and Conditions for the primary purpose of reducing electricity demand during the five (5) critical system-peak hours;
- m) Where the Participant is an Affiliate of the LDC, the execution and implementation of the Project and the consummation of the transactions contemplated therein are in compliance with all of the requirements under the Ontario Energy Board's Affiliate Relationships Code; and
- n) Where the Participant is an Affiliate of the LDC, Eligible Costs may consist only of costs on a fully-allocated cost basis.



**13. DEFAULT CONDITIONS.** Each of the following will be an event of default by the Participant ("**Event of Default**") if such failure is not remedied within 5 Business Days following written notice from the LDC provided that such cure period may be extended by the LDC if the LDC is satisfied that the Participant is diligently remediating such failure and such failure is capable of being cured during such extended cure period:

- a) The In-Service date has not occurred in accordance with Section 6;
- b) Project ceases to deliver Electricity Savings during the Term (other than for regularly scheduled maintenance);
- c) Operating the Project in any way other than with the intent of achieving the Anticipated Electricity Savings throughout the Electricity Savings Period;
- d) The Participant fails to provide or maintain Performance Security in accordance with Section 4.1.1;
- e) The Participant fails to perform any material covenant or obligation set forth in these Terms and Conditions;
- f) In the case of a CCHP Project, the Project delivers less than 57.5% of the Total System Efficiency;
- g) Any representation or warranty made by the Participant in these Terms and Conditions that is not true or correct in any material respect;
- h) The Participant fails or ceases to hold a valid license, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority;
- i) The Facility ceases to carry on business in the ordinary course;
- j) 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 or of the owner(s) or occupier(s) of the Facility;
- k) The Participant and/or the owner(s) or occupier(s) of the Facility amalgamates with, or merges with or into, or transfers the Facility and/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 by the Participant of these Terms and Conditions to the resulting, surviving or transferee Person and such Person has assumed all of the obligations of the Participant and/or the owner(s) or occupier(s) of the Facility, as the case may be, of these Terms and Conditions;
- l) The Participant and/or owner(s) or occupier(s) of the Facility, as the case may be, makes an assignment for the benefit of its creditors generally under any Applicable Law, 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 Applicable Law.
- m) The Participant has made a material amendment to a Project that has not first been consented to in writing by the LDC, acting reasonably.

**13.1 Remedies of the LDC.** If the Project is in a "Default Condition" or otherwise fails to meet these Terms and Conditions, and the Participant cannot or will not remedy the default within a time period agreed upon by the LDC: (i) upon written notice to the Participant, the LDC may terminate the Participant's eligibility to receive the Participant Incentive; and (ii) the LDC will be entitled to an amount as liquidated damages ("LD") and not as a penalty, calculated as follows: (Amount of the Participant Incentive paid by the LDC to the Participant) x (months in Default Condition) ÷ (total months in the Electricity Savings Period).

**14. INDEMNIFICATION AND LIMITATION OF LIABILITY.**

**14.1 No Warranty:**

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

**14.2 Limitation of Liability:**

**NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY: (A) IN NO EVENT WILL THE PARTICIPANT BE ENTITLED TO RECOVER FROM THE LDC OR ANY OTHER INDEMNIFIED PARTY (AS DEFINED IN SECTION 14.3 BELOW) FOR ANY LIABILITIES, DAMAGES, OBLIGATIONS, PAYMENTS, LOSSES, COSTS OR EXPENSES UNDER OR IN RELATION TO THIS AGREEMENT: (I) ANY AMOUNT IN EXCESS OF THE ACTUAL COMPENSATORY DIRECT DAMAGES, COURT COSTS AND REASONABLE FEES SUFFERED OR INCURRED BY THE PARTICIPANT AND IN ANY EVENT LIMITED TO THE PROJECT INCENTIVES PAID BY THE LDC HEREUNDER; OR (II) DAMAGES (WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL OR OTHERWISE) FOR (X) LOSS OF PROFIT, OR (Y) DIMINUTION OF VALUE OR LOSS OF USE OF ANY PROPERTY; AND (B) IN NO EVENT WILL THE LDC OR ANY OTHER INDEMNIFIED PARTY 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.**

**14.3 Indemnification by the Participant:**

The Participant will indemnify, defend and hold the LDC, 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, third party service providers and agents (including contractors and their employees) (collectively, the "**Indemnified Party**") harmless from and against any and all claims, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnified Party relating to, in connection with, resulting from, or arising out of (i) any claim by, or occurrence or event related to, any third party relating to the project and/or these Terms and Conditions, including, without limitation, any claim by, or occurrence or event related to, the owner(s) and occupier(s) of the Facility; and/or (ii) the negligence or wilful misconduct of the Participant, except in either case to the extent that any injury or damage related to such claim, occurrence or event is attributable to the negligence or wilful misconduct of the Indemnified Party. For greater certainty, in the event of contributory negligence or wilful misconduct of the Indemnified Party, then such Indemnified Party will not be indemnified hereunder in the proportion that the Indemnified Party's negligence or wilful misconduct contributed to any indemnifiable loss.

**15. MFIPPA.** These Terms and Conditions and all Confidential Information in the possession or control of the LDC, the IESO or the Participant are subject to Applicable Laws including the Municipal Freedom of Information and Protection of Privacy Act (Ontario) ("**MFIPPA**") or the Freedom of Information and Protection of Privacy Act ("**FIPPA**"), as the case may be, and that as a result, third parties may obtain access to each Party's Confidential Information that is in the custody or control of the LDC or the IESO (the "**Records**"). To the extent that the LDC or the IESO, as the case may be, must comply with disclosure obligations under MFIPPA or FIPPA, the Participant agrees and shall cause the owner(s) and occupiers of the Facility to keep the Records in its possession secure, and to provide the Records to the LDC or the IESO, as the case may be, within 5 Business Days of being directed to do so.

**16. CONFIDENTIALITY.** The Participant and the LDC each agree that, subject to Applicable Laws or court order, each party (for the purpose of this section, the "Receiving Party") will, in its capacity as a Receiving Party:

- a) maintain in strict confidence, all proprietary and confidential information about the business, operations or customers of the other party which it acquires from the other party (for the purpose of this section, the "Disclosing Party") by virtue of these Terms and Conditions ("Confidential Information") and will not disclose to any third party or make use of such Confidential Information for itself or any third party without the prior written consent of the Disclosing Party;
- b) The Receiving Party may disclose Confidential Information to any of its Representatives or any of its Affiliates who agree to be bound by the obligation of confidentiality herein and who have a reasonable need to know such Confidential Information but only for the purpose of the Receiving Party exercising its rights and obligations under these Terms and Conditions;
- c) The Participant acknowledges that the LDC is subject to MFIPPA and is governed by governmental authorities such as the Ontario Energy Board ("OEB") and shall have the right to disclose Confidential Information in accordance with the provisions of MFIPPA or as required by the OEB;
- d) the parties are entitled to all remedies available at law or equity to enforce or seek relief in connection with any breach of obligation pursuant to this Section 16;
- e) the Receiving Party shall be responsible for any breach of this Section 16 by itself and its Representatives and by any other person to whom it discloses any Confidential Information. The Disclosing Party would be irreparably injured by a breach of this section by the Receiving Party, or by any person to whom it discloses any Confidential Information, and that monetary damages would not be a sufficient remedy. Therefore, in such event, the Disclosing Party shall be entitled to all available equitable relief, including injunctive relief without proof of actual damages, as well as specific performance. Such remedies shall not be deemed to be exclusive remedies but shall be in addition to all other remedies available at law or equity;
- f) upon ten (10) Business Days' prior written notice from the Disclosing Party requesting return of any or all Confidential Information, the Receiving Party shall forthwith return to the Disclosing Party all Confidential Information, including, without limitation, all copies of any form of the Confidential Information the Receiving Party has received and, at the option of the Disclosing Party, deliver to the Disclosing Party, or destroy or have destroyed, any copies or other reproductions of the Confidential Information. The Receiving Party shall be entitled to keep, subject always to all the provisions of these Terms and Conditions, one copy of such notes, analyses, reports or other written material prepared by, or on behalf, the Receiving Party for its records. The Receiving Party shall provide to the Disclosing Party, upon reasonable request, a certificate of an officer of the Receiving Party certifying such destruction;
- g) in the event that the Receiving Party believes it is required by Applicable Laws to disclose, or is requested by a Governmental Authority to disclose, any Confidential Information to a Governmental Authority, the Receiving Party may so disclose; provided that it shall, to the extent permitted by law, first inform the Disclosing Party of the request or requirement for disclosure to allow an opportunity for the Disclosing Party to apply for an order to prohibit or restrict such disclosure.
- h) a violation of this section may cause irreparable damage or injury to the Disclosing Party, the exact amount of which may be impossible to ascertain, and that, for such reason, in addition to any other remedies available to such Party, such Party is entitled to proceed immediately to court in order to obtain, and the other Party will consent to, interim, interlocutory, and final injunctive relief restraining the other Party from breaching, and requiring the other Party to comply with, its obligations under this Section 16 without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made; and
- i) Notwithstanding the foregoing, "Confidential Information" does not include information that is:
  - (i) publicly available when it is received by or becomes known to the Receiving Party or that subsequently becomes publicly available other than through a direct or indirect act or omission of the Receiving Party (but only after it becomes publicly available);
  - (ii) established by evidence to have been already known to the Receiving Party at the time of its disclosure to the Receiving Party and is not known by the Receiving Party to be the subject of an obligation of confidence of any kind;
  - (iii) independently developed by the Receiving Party without any use of or reference to the Confidential Information of the Disclosing Party as established by evidence that would be acceptable to a court of competent jurisdiction; or
  - (iv) received by the Receiving Party in good faith without an obligation of confidence of any kind from a third party who the Receiving Party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence of any kind, but only until the Receiving Party subsequently comes to have reason to believe that such information was subject to an obligation of confidence of any kind when originally received;

provided, however, that, for the purposes of these Terms and Conditions, all Personal Information concerning any Participant will constitute Confidential Information, whether or not it falls into one of the exceptions set out in clause (i) through (iv) above.

**17. Force Majeure.** "Force Majeure" means:

- a) events beyond the reasonable control of a party applying reasonable diligence and foresight given the nature of the goods and services being provided under these Terms and Conditions, including, as applicable, any acts of God and the public enemy, the elements; fire; accidents; vandalism; sabotage; power failure; strikes, lockouts or any other industrial, civil or public disturbances; any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts and any other similar causes or acts.
  
- b) If, by reason of Force Majeure, either party hereto (the "**Frustrated Party**") is delayed or unable, in whole or in part, to perform or comply with any obligation or condition of these Terms and Conditions, then it will be relieved of liability and will suffer no prejudice for failing to perform or comply or for delaying such performance or compliance during the continuance and to the extent of the inability so caused from and after the happening of the event of Force Majeure, provided that it gives to the other party prompt notice of such inability, reasonably full particulars of the cause thereof and the expected cessation. If notice is not promptly given, then the Frustrated Party will only be relieved from performance or compliance from and after the giving of such notice. The Frustrated Party will use its best efforts to remedy the situation and remove, so far as possible with reasonable dispatch, the cause of its inability to perform or comply, provided, however, that settlement of strikes, lockouts and other industrial disputes shall be within the discretion of the Frustrated Party. The Frustrated Party will give prompt notice of the cessation of Force Majeure. The benefit of this provision of Force Majeure shall only survive for thirty (30) days from the commencement of an event of Force Majeure. A requirement to disclose Confidential Information other than under Canadian law pursuant to these Terms and Conditions shall not be an event of Force Majeure. Failure to meet the Performance Security obligations shall not be an event of Force Majeure. A failure by a sub-contractor to perform shall not be an event of Force Majeure for a Frustrated Party unless such sub-contractor is itself suffering from an event of Force Majeure and the provisos set forth above are followed.

**18. Dispute Resolution.** If any dispute arises under or in connection with these Terms and Conditions that the parties cannot resolve, each of the Parties will promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, a senior representative from each Party will meet, either in person or by telephone, to attempt to resolve the dispute. Each senior representative will be prepared to propose a solution to the dispute. If, following such efforts, the dispute is not resolved, the dispute will be settled by arbitration before a single arbitrator (the "**Arbitrator**") pursuant to the *Arbitration Act, 1991* (Ontario). A party desiring arbitration hereunder will give written notice of arbitration to the other party containing a concise description of the matter submitted for arbitration ("**Notice of Arbitration**"). If the parties fail to jointly appoint an Arbitrator, an arbitrator will be designated by a judge of the Ontario Superior Court of Justice upon application by either party. The arbitration will be conducted in English in the City of Toronto (or as otherwise agreed to by the parties) at such place therein and time as the Arbitrator may fix. The Arbitrator's written decision will be delivered to each party within 60 days following the conclusion of the arbitration hearing. The cost of any arbitration hereunder will be born by the parties in the manner specified by the Arbitrator in his/her decision. The decision of the Arbitrator will be final and binding upon the parties. There will be no appeal from the decision of the Arbitrator to any court, except on the ground that the conduct of the Arbitrator, or the decision itself, violated the provisions of the Arbitration Act, 1991 (Ontario) or solely on a question of law as provided for in such act. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

**19. MISCELLANEOUS**

**19.1 Environmental Attributes.** All Environmental Attributes arising in respect of electricity savings for which Participant Incentive, equipment or appliance replacement or decommissioning has been funded by the IESO, whether existing now or arising in the future (the "**Electricity Savings Environmental Attributes**") will be allocated on a proportionate basis, with the IESO owning an amount equal to the total quantity of Electricity Savings Environmental Attributes multiplied by the Environmental Attribute Funding Percentage (the result being the "**IESO Environmental Attributes**") and the Participant or the owner(s) and occupier(s) of the Facility, as the case may be, owning the remaining quantity of Electricity Savings Environmental Attributes (the "**Participant Environmental Attributes**"). All other environmental attributes arising in relation to a Participant will be owned by the Participant or the owner(s) and occupier(s) of the Facility, as the case may be, and neither the LDC nor the IESO will have any entitlement to them. For the purposes of this Section 19.1, Environmental Attribute Funding Percentage means, in respect of the Project, the total Participant Incentive paid divided by the total amount of actual costs incurred by the Participant or the owner(s) and occupier(s) of the Facility, as the case may be, that meet the eligibility requirements for such costs set out under these Terms and Conditions, multiplied by 100, and expressed as a percentage.

- a) The Participant or the owner(s) and occupier(s) of the Facility, as the case may be, shall notify the IESO in writing prior to assigning, transferring, encumbering, submitting for compliance purposes, trading or otherwise using (collectively, "realizing") any of the Participant Environmental Attributes, with such notice to include: (i) the quantity of Participant Environmental Attributes to which the Participant believes it is entitled; (ii) the quantity of Electricity Savings Environmental Attributes and the Environmental Attributes Funding Percentage used to determine the quantity of Participant Environmental Attributes; and (iii) supporting calculations and data used to determine the total quantity of Electricity Savings Environmental Attributes and the Environmental Attribute Funding Percentage.
- b) The IESO will contact the Participant or the owner(s) and occupier(s) of the Facility, as the case may be, prior to the IESO realizing on any of the IESO Environmental Attributes. The Participant will or will cause the or the owner(s) and occupier(s) of the Facility, as the case may be, to provide such information and cooperation as may be reasonably requested by the IESO for the purposes of confirming the allocation of Electricity Savings Environmental Attributes following a notification;
- c) The LDC hereby transfers and assigns to, or to the extent transfer or assignment is not permitted, holds in trust for, the IESO all IESO Environmental Attributes and the IESO hereafter will own all right, title and interest in and to all IESO Environmental Attributes.
- d) The Participant agrees that it will, or will cause the owner(s) and occupier(s) of the Facility, as the case may be, from time to time, upon written direction of the IESO, to take all such actions and do all such things necessary to:
- i. effect the transfer and assignment to, or holding in trust for, the IESO all rights, title and interest in all IESO Environmental Attributes; and
- certify, obtain, qualify and register with the relevant authorities or agencies IESO Environmental Attributes that are created and allocated or credited pursuant to applicable laws and regulations from time to time for the purpose of transferring such IESO Environmental Attributes to the IESO. The Participant will be entitled to reimbursement by the IESO of the cost of complying with such a direction provided that the IESO, acting reasonably, has approved such cost of compliance in writing prior to the cost being incurred by the Participant and provided that such reimbursement will be limited to: (x) the total amount of such cost of compliance that have been approved in advanced by the IESO, multiplied by (y) the applicable Environmental Attributes Funding Percentage.

**19.2 Currency.** All dollar amounts referred to herein are expressed in Canadian funds.

**19.3 Time.** Time is of the essence.

**19.4 Entire agreement.** These Terms and Conditions, together with the Application, the Letter of Approval, the Release, Waiver and Consent and the M&V Plan and any amendments thereto, constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral.

**19.5 Governing Law.** The laws of the province of Ontario apply these Terms and Conditions. The Participant hereby attorns to the jurisdiction of the courts of the Province of Ontario.

**19.6 Waiver.** No waiver of any provision of these Terms and Conditions 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. A waiver of any provisions of these Terms and Conditions shall not constitute either a waiver of any other provisions or a continuing waiver, unless otherwise expressly indicated in writing.

**19.7 Enurement.** These Terms and Conditions shall enure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

**19.8 Severability.** In the event that any of the covenants herein shall be held unenforceable or declared invalid for any reason whatsoever, to the extent permitted by law, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining provisions and such unenforceable or invalid portion shall be severable from the remainder of these Terms and Conditions.

**19.9 Assignment.** The Participant may not assign these Terms and Conditions or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of the LDC, which consent may not be unreasonably withheld.

**19.10 Amendment or Termination of Terms and Conditions.** The LDC may revise, replace or terminate these Terms and Conditions from time to time without notice.

**19.11 Further assurances.** The Participant agrees to execute such further assurances and documents, and to do all such things and actions which shall be necessary or proper for the carrying out of the purposes and intent of these Terms and Conditions.

**20. Notices.** All notices will be in writing given by e-mail or personal delivery and addressed to the party set out in the Application and will be deemed to have been given or received on the Business Day it is transmitted (if by email) or received (if by courier or hand-delivery) provided that it is transmitted or received on a Business Day prior to 5 pm local time in the place of receive. Otherwise such notice will be deemed to have been given and received on the next Business Day.

**21. DEFINITIONS.** In addition to the terms defined within these Terms and Conditions, the following terms will have the following meanings:

**"Actual Eligible Costs"** means the Eligible Costs that are actually incurred by the Participant to complete the Project as confirmed by the Technical Reviewer and the LDC in accordance with Section 3.2.

**"Advanced Payment Option"** means the Participant Incentive payments (if any) to be received by the Participant from the LDC in advance of the In-Service Date secured by the Performance Security where the Participant elects, as set out in the Application, the advanced incentive payment option and is paid to the Participant in accordance with Section 4.1.

**"Affiliate"** means any Person that: (a) Controls a Participant; (b) is Controlled by a Participant; or (c) is Controlled by the same Person that Controls a Participant.

**"Anticipated Electricity Savings"** means, in each M&V Reporting Period specified in the M&V Plan, the estimated Electricity Savings anticipated by the Technical Review to be achieved during such period, as set out in the M&V Plan.

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

**"Approved Amount"** is the estimated Participant Incentive approved by the LDC and communicated to the Participant upon approval of the Application.

**"Business Day"** means a day, other than a Saturday or a Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

**"CDM"** means electricity conservation and demand management.

**"Commercially Reasonable Efforts"** means all efforts required to satisfy, complete or achieve a condition, obligation or undertaking contemplated herein and which do not require to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount.

**"Distribution Customer"** means a non-residential customer of the LDC who is an account holder in the LDC's service area.

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

**"Electricity Output"** means the gross annual electricity generated from the WER or CCHP Project in MWh.

**"Electricity Savings"** means the annualized electricity consumption reduction, based on the anticipated normal operating conditions.

**"Electricity Savings Period"** means the period commencing on the In-Service Date and ending on the 4<sup>th</sup> anniversary thereof or in the case of Generation Projects having a Participant Incentive greater than \$1 million, ends on the 10th anniversary thereof.

**"Eligible Costs"** means costs to be included in the calculation of the Participant Incentive which must be directly related to the design, selection, purchase and installation of the Measure(s) of a Project and include, but is not limited to the following and are subject to approval by the LDC:

- capital expenses
- for Generation Projects, connection costs to connect the Project to the Distribution System
- equipment and products, including diagnostic and testing tools and instruments and associated software
- data collection services, including processing, analysis and data management
- meter purchase, design, installation and configuration costs associated with implementing the M&V Plan
- professional, engineering, scientific, technical, management and contracting services
- travel, including accommodation but excluding meals
- printing services
- permit and license fees
- costs associated with environmental assessments
- an Engineering Feasibility Study expense, not funded by the LDC, including, any additional technical or engineering preparation, analysis or studies associated with the Project completed after the Engineering Feasibility Study, which may be incurred before or after the submission of the Application for a Project, as approved by the LDC; and
- any reasonable costs as may be determined by the Technical Reviewer to be an Eligible Cost and agreed to by the LDC in advance of such expense being incurred.

**"Energy Efficiency Project"** means a Project that produces Electricity Savings by means other than Generation, including but not limited to, upgrading equipment, optimizing the operation of a system.

**"Engineering Feasibility Study"** means a detailed study of the consumption of electricity of a system in order to assess and evaluate (i) Measures, or their implementation, that could give rise to Electricity Savings, or (ii) electricity generation that could reduce the electricity consumption of a Facility as approved by the LDC and the Technical Reviewer.

**"Environmental Attributes"** means all benefits and entitlements associated with a Project or a Facility having decreased environmental impacts resulting from the implementation of the Project, and includes: all rights to any fungible or non-fungible attributes, whether arising from a Facility itself, from the interaction of the Facility with a Distribution System or the IESO-Controlled Grid or because of Applicable Law or voluntary programs established by any Governmental Authority;

all rights relating to the nature of the energy source as may be defined and awarded through Applicable Law or voluntary programs; and specific Environmental Attributes include ownership rights to any applicable credits, entitlements or other instruments resulting from interaction of the Facility or a Project with a Distribution System or the IESO-Controlled Grid or as specified by Applicable Law or voluntary programs; all rights to quantify and register the foregoing with competent authorities; and all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing. For clarity, "Environmental Attributes" do not include any amounts on account of future cost savings realized by a Participant by virtue of decreased demand or decreased consumption of electricity resulting from a Project.

**"Estimated Eligible Costs"** means the amount set out in the M&V Plan which such amount is the aggregate estimated Eligible Costs necessary to complete the Project.

**"Facility"** means the building(s), premises or lands, or part thereof in which the Project is located, more specifically described in the Application.

**"Fuel Energy Input"** means the total thermal energy (expressed in MWh-thermal) required to produce the thermal and Electricity Output as determined annually on an HHV basis.

**"Generation Project"** means a project that generates energy in the form of electricity and where such project is in compliance with the Behind-the-Meter Generation Project Rules including Behind-the-Meter Generation as defined by the IESO for the purpose of the BMG Project Rules, and Embedded Generation or Embedded Load Displacement as defined by the Ontario Energy Board (OEB) Distribution System Code.

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

**"Governmental Authority"** means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the OEB, the Electrical Safety Authority, the Environmental Commissioner's Office, and any Person acting under the authority of any of the foregoing.

**"HHV" or "Higher Heating Value"** means the amount of heat produced by the complete combustion of a unit quantity of fuel.

**"IESO"** means the Independent Electricity System Operator and any successor thereto.

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

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

**"In-Service Date"** means the first day that the Project is fully installed in accordance with the M&V Plan and delivers Electricity Savings and confirmed by the LDC.

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

**"Invoice Reconciliation Form"** means the invoice reconciliation form substantially in the form made available in Tab #7 specifically itemizing Eligible Costs and describing all (a) eligible equipment, systems, parts and other products, and the relating prices paid for same (b) services in respect thereof, the level of detail and sufficiency of the services shall be at the sole discretion of the LDC; and the anticipated In-Service Date.

**"Letter of Approval"** means the letter issued by the LDC approving the Project.

**"M&V Plan"** means the measurement and verification plan prepared by the Technical Reviewer, and agreed to by the LDC and the Participant, acting reasonably, outlining the methodology and activities to be undertaken to quantify and verify Electricity Savings from a Project;

**"M&V Report"** means a measurement and verification document containing the analysis by the Technical Reviewer of the quantified Electricity Savings delivered by the Measure or Measures included in a Project during the M&V Reporting Period.

**"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 these Terms and Conditions.

**"Measure"** or **"Measures"** means any activity undertaken for the primary purpose of obtaining or effecting, directly or indirectly, CDM including the installation, retrofit, replacement, modification or commissioning of equipment, systems, processes or behaviours that consume or result in the consumption of electricity as more specifically described in the M&V Plan.

**"MW"** means a megawatt; and **"MWh"** means a megawatt hour.

**"Program Deliverables"** means collectively the Initial M&V Report, the Final M&V Report and such other documentation as may be required to calculate and/or confirm the Participant Incentive and the Electricity Savings achieved.

**"Participant Incentive"** means the dollar amount set out in the Application for a Project, subject to adjustment in the Letter of Approval and in accordance with Section 3.3 and Section 11.

**"Person"** means a natural person, firm, trust, partnership, association, unincorporated organization, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

**"Personal Information"** means information about an identifiable individual or other information that is subject to any Privacy Laws.

**"Project"** means one or more Measures, which when implemented in respect of a System or Systems are expected to deliver Electricity Savings and "Project" where appropriate in accordance with the terms hereof, include a Third Party Project.

**"Project Benefits"** means the dollar amount which is the sum of all benefits to be generated from the implementation of the Project during the Electricity Savings Period including Electricity Savings and benefits not related directly to Electricity Savings, including from reducing other energy consumption, use of alternative fuels, positive and negative differences in operating and maintenance costs and other avoided costs.

**"Project Payback"** means the number of years it will take a Project to recover the Eligible Costs of such Project through the receipt of Project Benefits, and is calculated by: (a) subtracting from the lower of the estimated Eligible Costs and the actual Eligible Costs the Participant Incentive and (b) dividing the difference thereof by the annualized Project Benefits, such amounts to be actual or estimated, as the case may be, at such time of determination.

**"Representative"** means, in respect of one of the parties, any one of that party's employees, officers, directors, shareholders, contractors, agents, representatives and advisors.

**"Technical Reviewer"** means a Person retained by the IESO having on its staff individual who have professional experience and qualification as approved by the IESO.

**"Third Party Contributions"** means any financial or other contribution (including the value of contributions in kind) towards the Eligible Costs of a Project from or by any Person other than the Participant or the LDC.

**"Total System Efficiency"** has the meaning given to it in the Behind-the-Meter Generation Project Rules.

**"Useful Thermal Output"** means thermal energy produced by the Project and used for a gainful commercial or industrial purpose where such use avoids or reduces the use of fuel to produce thermal energy in an alternate process within the Facility.

**"WER" or "Waste Energy Recovery"** means the generation of electricity primarily from heat or fuel that is a waste by-product of the Facility.