

INTRODUCTION

This PSU Program Application Workbook contains the all of the required forms and terms and conditions to govern your participation in the PSU Program, including:

1. Overview
2. Engineering Feasibility Study (EFS) Application Form, with Release, Waiver and Consent, and EFS Terms and Conditions
3. EFS Letter of Approval
4. PSU Project Application Form, with Release, Waiver and Consent, and Project Terms and Conditions
5. Project Letter of Approval
6. Performance Security Form
7. Invoice Reconciliation Form

ENGINEERING FEASIBILITY STUDY PROCESS OVERVIEW

	Application	Application Review and Approval	Complete Study	Study Report Review
Activity	Applicant and LDC assess opportunity, eligibility and readiness for EFS Application; Applicant selects a consultant, develops a scope of work and the consultant's proposal (the Technical Reviewer should be consulted on the metering plan); the LDC, Applicant and consultant prepare the Application; Applicant reviews the EFS Terms and Conditions in the EFS Application form	The Technical Reviewer reviews the Application; Participant responds to Information Requests from the Technical Reviewer; the Technical Reviewer provides a recommendation to the LDC (the "Application Review")	Participant's consultant completes the EFS; the EFS report is sent to the LDC and Technical Reviewer; an EFS results meeting should be coordinated with all parties	Participant and the consultant respond to Information Requests from the Technical Reviewer; the Technical Reviewer completes the "Study Report Review", approving the EFS report
Milestone	Applicant submits the signed EFS Application (tab 2) with the consultant's proposal	LDC provides the EFS Letter of Approval (tab 3) to the Participant	EFS report submitted	The EFS is approved (complete); LDC processes the Initial Funding Amount (50%) ¹

¹ Participant must submit a Project Application within 12 months to be eligible for the Balance Payment.

PSU PROJECT PROCESS OVERVIEW

	Application	Application Review and Approval	Construction	M&V
Activity	Applicant, LDC and the Technical Reviewer collaborate to assess opportunity, eligibility and readiness for a PSU Project Application, and form consensus on Application values; Applicant reviews the Project Terms and Conditions in the Project Application form	The Technical Reviewer reviews the Application; Participant responds to Information Requests from the Technical Reviewer; the Technical Reviewer provides a recommendation to the LDC and prepares the M&V Plan	Participant installs Project and notifies the LDC when complete, along with actual cost details in the Invoice Reconciliation Form (tab 7)	Participant provides Project data per the M&V Plan, after three months and one-year from the In-Service Date; Technical Reviewer prepares the M&V Reports to determine the actual Electricity Savings
Milestones	Applicant submits the signed Project Application (tab 4)	LDC provides the Project Letter of Approval (tab 5) and M&V Plan; Participant agrees to the M&V Plan	Technical Reviewer confirms the In-Service Date of the Project	Technical Reviewer issues the initial (Q1) and final (Y1) M&V Reports
Payment		Advanced Payment Option: Once approved, 1) Participant provides the Performance Security (tab 6) (letter of credit), 2) the Technical Reviewer issues a payment recommendation to the LDC, and 3) the LDC processes 1st payment		After each M&V Report, 1) the Technical Reviewer issues a payment recommendation to the LDC and 2) the LDC processes payment (See Payment Options in the Project Letter of Approval for details - tab 5)



**PROCESS AND SYSTEMS UPGRADE (PSU) PROGRAM
ENGINEERING FEASIBILITY STUDY (EFS) APPLICATION FORM**

Tab #2
"EFS Application"

Please complete and submit the below EFS Application to your Local Distribution Company (LDC). The information will be used to provide the LDC with initial details, but does not constitute a commitment by the LDC. Capitalized terms not defined herein are as prescribed in the EFS Terms and Conditions. Please complete all applicable highlighted yellow fields. ☒

PROJECT NAME:	
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LDC:		Date of Submission:	
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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/Company 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"/>
CONSULTANT INFORMATION				
Consultant Firm Name:		Certificate of Authorization:		
Authorized Contact Name:				
Phone:		Email:		

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:	
Result of LDC screening:	
LDC Notes:	

PROPOSED STUDY REQUEST	
Estimated Engineering Feasibility Study cost:	
THIRD PARTY CONTRIBUTIONS	
Have you, or will you be receiving any financial or any other contributions towards the Eligible Costs of the Engineering Feasibility Study?	<input type="checkbox"/> Yes
Source of any such Third Party Contributions:	

PROPOSED PROJECT INFORMATION								
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 ¹ [\$ /year]	Estimated other costs ² [\$ /year]	Estimated Project Benefits [\$ /year]	Estimated Project Costs [\$]	Third Party Contributions [\$]
			\$0					
POTENTIAL INCENTIVE CALCULATION								
Estimated Project Incentive ³	Minimum of the following:	Electricity Savings x \$200/MWh	40% or 70% of Eligible Costs ⁴	1-year Project Payback ⁵				
¹ other fuel or cost reductions e.g. reduced operating and maintenance costs, increased production, health and safety benefits ² e.g. increased fuel costs, increased operation or maintenance costs ³ actual Participant Incentive based on Project results e.g. Eligible Costs and actual Electricity Savings ⁴ 40% for Conservation Combined Heat and Power (CCHP) projects, 70% for all other eligible Projects ⁵ Incentive amount that provide a one-year simple payback (i.e. Eligible Costs - Project Benefits)								

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 indicate below the list of attached supporting documents (e.g. Any previous relevant studies/assessments):			
1			
2			
3			
4			
5			

NOTICES			
All notices required pursuant to Section 20 of the EFS 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 be bound by the Release, Waiver and Consent and the EFS Terms and Conditions 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/ldc-contact or the IESO at customer.relationships@ieso.ca, [120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1](mailto:120AdelaideStreetWest,Suite1600,Toronto,ONM5H1T1), ieso.ca, saveonenergy.ca or 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/ldc-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.

ENGINEERING FEASIBILITY STUDY 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 ENGINEERING FEASIBILITY STUDY IDENTIFIED IN THE APPLICATION AND YOU AGREE TO COMPLY WITH AND BE BOUND BY THE TERMS AND CONDITIONS HEREIN.

Unless otherwise defined in the Engineering Feasibility Study Application, capitalized terms used in these Terms and Conditions will have the meanings ascribed to them in Section 26. The "Participant" is the "Applicant" in the Application.

- 1. Application.** If the Application is approved by the LDC, the Participant agrees to complete an Engineering Feasibility Study Report (the "Report") and submit the Report to the LDC and the Technical Reviewer for review and approval by the LDC. In order for an Application to be approved, the proposed Project to be studied must: (a) involve the installation or implementation of a Measure or Measures; (b) be in respect of a Facility connected to, or behind the meter of another electricity consumer connected to the Distribution System in the LDC's service area; (c) be expected to deliver at least 300 MWh of Electricity Savings; and (d) the scheduled In-Service Date of the Project may not occur later than December 31, 2020. If the LDC determines that the Application meets the Engineering Feasibility Study Report Minimum Requirements set out in Section 3, the LDC shall notify the Participant in writing (the "EFS Approval Letter"). The EFS Approval Letter will include: (i) the EFS Initial Funding Amount (as defined below); and (ii) the EFS Balance Funding Amount. If the Report Engineering Feasibility Study is not approved by the LDC, the LDC will not pay any part of the Participant Incentive to the Participant and will communicate to the Participant the reasons for not approving the Application.
- 2. Engineering Feasibility Study Report.** The Participant, in consultation with the LDC and Technical Reviewer, shall be responsible for completing a comprehensive Report. The LDC may allow the Participant a reasonable period of time to address such deficiencies and to re-submit the Report to the LDC. If such revised Report does not address the deficiencies to the satisfaction of the LDC and the Technical Reviewer on or before the earlier of (A) eight months of the date hereof and (B) December 31, 2020, unless otherwise agreed to by the LDC, these Terms and Conditions will terminate, the Participant will not be entitled to receive the Participant Incentive and the Participant will need to re-submit a new Application to the LDC.
- 3. Engineering Feasibility Study Minimum Requirements.** The Report must be prepared or reviewed by, and signed by a Professional Engineer, licensed to practice in the province of Ontario and the LDC will not accept an Application where the scope of work does not include the following minimum requirements (the "Engineering Feasibility Study Minimum Requirements"):

 - (a) Base Case and System Studied: detailed description of the existing System studied, including:

 - existing equipment details (e.g. make, model, # of units, rated power, rated capacity, year installed, run hours)
 - an assessment of the condition of the existing and the expected remaining life
 - an overview of existing equipment operating modes or cycles (e.g. production vs. non-production), identify high-use periods and seasonal variances (if applicable), an estimate of the true operating demands (often different than what is currently supplied by the system) based on available operating parameters (e.g. flow, pressure, temperature, production).
 - identify how the system is currently operating/controlled (e.g. automated vs. manual)
 - description of any planned changes to the System or Facility (e.g. expansions) that would occur in the absence of the Project that would impact the 'base case'.
 - (b) An estimation of the baseline electricity consumption of the System, based on power/load measurements for an appropriate period (e.g. two weeks minimum with no correlating data, or one week with longer duration operating data, for relatively constant operation systems).

 - collaborate with the Technical Reviewer to develop or confirm agreement on the baseline data collection plan and share baseline data once available to confirm adherence to plan
 - calculate the annual consumption according to (or cross-referenced with) operating data, such as equipment operating logs (run-times, on/off), or other operating data (e.g. flow), if available for a longer duration than power/load measurements.
 - (c) Measure Analysis, including:

 - Project description, including: scope of modifications and future operating logic (e.g. modulating speed to match flow demand, based on feedback signal).
 - Calculate Annual Electricity Savings, provide a sample of the calculation with an explanation of the methodology, and justification for any assumptions.
 - Estimate other benefits or costs associated with implementing the Project. This can include operating and maintenance savings or costs. If there are no additional benefits (or costs), this should be stated along with a brief justification.

(d) Detailed description of Project cost and installation, including:

- a breakdown of costs by equipment, installation and other capital costs (design and engineering, project management, commissioning). Where applicable, provide budgetary quotes for equipment, installation and other related costs.
- Include a high-level installation schedule and a realistic In-Service Date.

(e) The Participant shall provide such other information as may be requested by the LDC and/or the Technical Reviewer.

4. Supporting Documentation. Once the Participant has been notified that the Report has been approved by the LDC, the Participant shall provide the LDC with all supporting receipts and invoices evidencing the cost incurred by the Participant to complete the Report. If the LDC disputes that the receipts or invoices reflect the actual cost incurred by the Participant, the actual costs incurred will be deemed for all purposes to be such amount determined by the Technical Review or the LDC, based on their audit of such receipts and invoices.

5. Technical Reviewer. The Participant shall, and shall cause the owner(s) and/or occupier(s) of the Facility, to cooperate with the LDC and/or the Technical Reviewer and provide the LDC and/or the Technical Reviewer, with any required data and information and access to the Facility in order for the LDC and/or the Technical Reviewer to perform its obligations in respect of the Report, including requiring clarification from the Participant when reviewing the Report.

6. Payment. If your Application is approved, the Participant is eligible to receive a Participant Incentive not to exceed \$50,000, unless otherwise approved by the LDC, exclusive of Applicable Taxes, toward the actual cost of the Report (the "**Eligible Costs**"). The Eligible Costs are those prescribed in Section 7 below. The Participant Incentive approved by the LDC shall be confirmed in the EFS Approval Letter (the "**Approved Amount**"). Subject to the Participant satisfying all of its obligations herein contained, the Approved Amount shall be paid in two instalments, as follows:

(a) 50% of the actual cost of the Report (as evidenced by appropriate invoices submitted to the LDC along with the Application upon notification from the LDC that the Application has been approved (the "**EFS Initial Funding Amount**"); and

(b) the balance of the cost of the Report is payable upon confirmation of the Project In-Service Date (the "**EFS Balance Funding Amount**").

All payments hereunder are conditional on the Participant providing sufficient documentation to support and substantiate the Participant Incentive payments. For certainty, the Participant is not entitled to the EFS Balance Funding Amount described in Section 6(b) above unless the Project is implemented.

7. Eligible Costs. Eligible Costs are the actual costs incurred by the Participant to complete the Report. Costs must be directly related to the investigation, assessment, analysis, conceptualization, design, specification, estimation and reporting required for the development of the Project and the completion of the Report. For certainty, any costs incurred before the approval of the Application are not eligible, unless otherwise approved by the LDC. Eligible costs include, but are not limited to:

(a) Applicable labour costs billed at reasonable hourly rates by the approved engineering consultant(s) identified in the Application and includes time for:

- communications with the Participant, facility personnel, the LDC and the Technical Reviewer
- Site visits to obtain information, conduct meetings and interviews, present results
- Investigation, assessment, analysis, conceptualization, design, specification, estimation and reporting

(b) The costs of performing a Connection Impact Assessment, if applicable, to develop the cost estimate of a Generation project

(c) Non-labour costs incurred by the approved engineering consultant(s) and their subcontractors, including, but not limited to:

- Administrative costs for printing, presenting, etc. and reasonable travel expenses

(d) Expenses for measurement and data collection, including contractors, temporary meter rentals, or other purchases approved by the LDC based on the Technical Reviewer's recommendation

8. Representations and Warranties. The Participant represents and warrants as follows:

(a) The Participant reasonably expects that the Report will identify Measures that will generate Electricity Savings;

(b) The Participant would not have undertaken the Application and Report without the Participant Incentive;

(c) The proposed Project satisfies the minimum requirements set out in Section 3;

(d) The Participant agrees to continue to comply with the Release, Waiver and Consent, has not taken any actions to amend or suspend it or to terminate its existence and it continues to be in full force and effect as of the date hereof; and

(e) The Participant has the authority to implement the studied Project.

9. Evaluation, Monitoring and Verification; Audit. The Engineering Feasibility Study Funding Program is subject to IESO EM&V Protocols. 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. The Participant will, and will cause the owner(s) and occupier(s) of the Facility to, keep complete and accurate books, accounts and records and all other data required by each of them respectively for the purpose of proper administration, monitoring and verification of these terms and conditions and all such records and data will be maintained during the Term. On reasonable notice, at any time during normal business hours in respect of the subject matter of the Engineering Feasibility Study, the Participant will provide reasonable access to the LDC, the IESO and/or their respective designates to such books, accounts, records and other data and : (A) at the reasonable request of the LDC and/or IESO, make available to the LDC, the IESO and/or their respective designates, the personnel of the Participant and its subcontractors involved in the Application and Report and the maintenance of such books, accounts, records and data referred to above for the purposes of this Section 9; and (B) permit the LDC, the IESO and/or their respective designates to examine and audit and take copies and extracts from such documents.

10. Indemnification & Limitation of Liability. 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.

11. 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.

12. 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 12;

(e) the Receiving Party shall be responsible for any breach of this Section 12 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 12 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.

13. Dispute Resolution. If any dispute arises under or in connection with this Agreement 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.

MISCELLANEOUS

14. Environmental Attributes. All right, title and interest in and to all benefits or entitlements associated with decreased environmental impacts now or in the future, direct or indirect, arising as a result of, relating to or in connection with the electricity savings for which an incentive has been paid, and the right to quantify and register these, including any energy efficiency certificate, renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission, reduction allowance (collectively, 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 owner(s) or occupier(s) of the Facility owning the remaining quantity of Electricity Savings Environmental Attributes (the “**Participant Environmental Attributes**”), where Environmental Attribute Funding Percentage means, in respect of an Eligible Measure purchase and installed, the total incentive amount paid to the Participant and funded by the IESO in respect of the Measure, divided by the total amount of actual costs incurred by the Participant 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 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 Participant agrees that all right, title and interest in and to all benefits or entitlements associated with the IESO Environmental Attributes are hereby transferred and assigned by the Participant to, or to the extent transfer or assignment is not permitted, held in trust for, the IESO and its successors and assigns.

(c) The IESO will be entitled unilaterally and without consent deal with such IESO Environmental Attributes in any manner it determines. You acknowledge that the IESO will contact the Participant prior to realizing on any IESO Environmental Attributes.

(d) The Participant agrees that it will, from time to time, upon written direction of the IESO, 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

(ii) 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 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.

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

16. Time. Time is of the essence.

17. Entire agreement. These Terms and Conditions, together with the Application, 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.

18. 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. 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.

20. 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.

21. 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.

22. 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.

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

24. 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.

25. 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

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

“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.

“Applicable Taxes” means any applicable HST and any other applicable sales or use taxes.

“Application” means the Engineer Feasibility Study Application found at Tab 2. Engineering Feasibility Study.

“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.

“Engineering Feasibility Study Application” means an application by the Participant for a Participant Incentive from the LDC for a Engineering Feasibility Study.

“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 Savings” means the aggregate electricity consumption reduction over a specified period of time, expressed in MWh, obtained as a result of a specified Eligible Study measured under normal operating conditions.

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

“Environmental Attributes” means all benefits and entitlements associated with a Measure or a Facility having decreased environmental impacts resulting from the implementation of a Project, and includes:

(a) all rights to any fungible or non-fungible attributes, whether arising from a Facility itself, from the interaction of a Facility with a Distribution System or the IESO-Controlled Grid or because of Applicable Law or voluntary programs established by any Governmental Authority;

(b) 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 the interaction of a Facility or a Measure with a Distribution System or the IESO-Controlled Grid or as specified by Applicable Law or voluntary programs;

(c) all rights to quantify and register the foregoing with competent authorities; and

(d) 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 or Measures employed in connection with a Project.

“Facility” means the building(s), premises or lands, or part thereof, owned or occupied by the Participant and in which the System is located.

“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 System Operator, the OEB, the Electrical Safety Authority, the Ontario Environmental Commissioner, and any Person acting under the authority of any of the foregoing, but excluding the IESO.

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

“IESO” means the Independent Electricity System Operator of Ontario established under Part II of the *Electricity Act, 1998* (Ontario), or its successor.

“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.

“IESO Market Rules” means the rules made under section 32 of the *Electricity Act, 1998* (Ontario), together with all market manuals, policies and guidelines issued by the IESO.

“Independent Engineer” means a registered professional engineer licensed to practice in Ontario who is not an employee of the Participant.

“M&V Plan” means a measurement and verification document outlining the methodology and activities to be undertaken to quantify and verify Electricity Savings from a Project.

“Measures” means: (i) 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; or (ii) any equipment, system or product related to the foregoing.

“MW” means a megawatt.

“MWh” means a megawatt hour.

“Participant” has the meaning given to it in the Engineering Feasibility Study Application.

“Participant Incentive” means funding that may be paid by the LDC to the Participant pursuant to these Terms and Condition.

“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 identifiable individual or other information that is subject to any Privacy Laws.

“Privacy Laws” means all federal, provincial, state, municipal or other applicable statutes, laws or regulations of any Governmental Authority in any jurisdiction governing the Handling of information about an identifiable individual, including the *Personal Information and Protection of Electronic Documents Act (Canada)*, FIPPA, MFIPPA and equivalent provincial legislation.

“Project” means one or more Measures which, when implemented in respect of a single System, are expected to deliver Electricity Savings and “Project”, where appropriate in accordance with the terms hereof.

“Release, Waiver and Consent” means the release and waiver and consent agreed to by the Participant in favour of the LDC, among others, and submitted by the Participant with its Engineering Feasibility Study Funding Application

“Representative” means, in respect of one of the Parties, any one of that Party’s employees, officers, directors, shareholders, contractors, agents, representatives and advisors.

“System” means an integrated or interdependent combination of installed equipment and processes that: (a) may be used for (i) manufacturing or other industrial or commercial processes, or (ii) circulating or distributing inside, outside or between Facilities commodities, goods or utilities (including heating, cooling, air or other gases, water or other liquids); and (b) consumes electricity.