

PROCESS AND SYSTEM UPGRADES INITIATIVES 2011-2014
DETAILED ENGINEERING STUDY FUNDING CONTRACT

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

BETWEEN:

[LEGAL NAME OF THE LDC], a corporation governed by the laws of the Province of Ontario,
(the "LDC")

- and -

[LEGAL NAME OF THE PARTICIPANT], a [LEGAL FORM OF THE PARTICIPANT] governed by
the laws of [JURISDICTION OF THE PARTICIPANT],
(the "Participant")

(each of the LDC and the Participant may be referred to as a "Party" and, collectively, the "Parties").

WHEREAS the Participant has submitted a Detailed Engineering Study Funding Application to the LDC;

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

AND WHEREAS the LDC has approved the Detailed Engineering Study Funding Application;

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

1. Defined Terms.

All capitalized terms not herein defined will have the meanings given in Schedule "A".

2. Detailed Engineering Study.

The Participant agrees to complete the Detailed Engineering Study and prepare a Draft Report and a Final Report as set out in Section 4 on the results of such Detailed Engineering Study in accordance with the Detailed Engineering Study Report Minimum Requirements and the Detailed Engineering Study SOW attached hereto in Schedule "B" and Schedule "C", respectively.

3. Payment.

- (a) The Participant Incentive approved by the LDC is \$ _____ (the "Approved Amount").
- (b) Subject to the Participant satisfying all of its obligations herein contained, the LDC agrees to pay the Participant Incentive to the Participant as follows:
 - (i) 50% of the Approved Amount, within 60 days after the approval of the Draft Report, as set out in Section 4(a)(ii); and
 - (ii) the difference between (A) the lesser of (i) the Approved Amount and (ii) the actual costs incurred by the Participant to complete the Detailed Engineering Study (as set out in the invoices provided by the Participant in accordance with Section 4(b)(ii)), and (B) the first instalment payment received by the Participant pursuant to Section 3(b)(i), within 60 days after the approval of the Final Report, as set out in Section 4(b)(ii).
- (c) All payments hereunder will be made in Canadian dollars by cheque or by electronic funds transfer to the Participant's account or such other mode of payment at the sole discretion of the LDC.
- (d) All payments hereunder are conditional on the Participant providing an invoice to the LDC together with sufficient documentation to support and substantiate the Participant Incentive payments.

- (e) 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. In addition, if the LDC has reasonable grounds to commence a discussion, negotiation or challenge, in any manner whatsoever, with a tax authority regarding the validity of any Applicable Taxes imposed on the Participant Incentive, the Participant will provide such reasonable assistance as may be required by the LDC with such discussion, negotiation or challenge. For greater certainty, in no event shall the LDC be relieved of its obligations under this Agreement, including the LDC's obligation to pay Applicable Taxes as provided hereunder, pending the outcome of any discussion, negotiation or challenge with a tax authority.

4. **Reports.**

(a) Draft Report

- (i) The Participant will submit a Draft Report to the Technical Reviewer, with a copy (in hard or searchable electronic format) to the LDC. The Technical Reviewer will communicate to the Participant how many days it will take the Technical Reviewer to review the Draft Report.
- (ii) If the Technical Reviewer determines that the Draft Report reflects the Detailed Engineering Study Report Minimum Requirements and the Detailed Engineering Study SOW, the LDC will communicate the approval of the Draft Report to the Participant.
- (iii) If the Draft Report is not approved by the Technical Reviewer, the LDC will not pay any part of the Participant Incentive to the Participant and will communicate to the Participant the reasons (if and as provided by the Technical Reviewer) for not approving the Draft Report. The LDC may allow the Participant a reasonable period of time to address such deficiencies and to re-submit a Draft Report, provided that such revised Draft Report will remain subject to the terms and conditions of this Agreement. If such revised Draft Report does not address such 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, 2013, unless otherwise agreed to by the LDC; this Agreement will terminate, the Participant will not be entitled to receive the Participant Incentive and the Participant will need to re-submit a new Detailed Engineering Study Funding Application to the LDC in order to participate in the Detailed Engineering Study Initiative.

(b) Final Report

- (i) The Participant will submit to the Technical Reviewer, with a copy (in hard or searchable electronic format) to the LDC, the Final Report and all supporting receipts and invoices evidencing the cost incurred by the Participant to complete the Final Report within 60 days of the communication by the LDC of the approval of the Draft Report, unless otherwise agreed by the LDC. The Technical Reviewer will communicate to the Participant the estimated number of days it will take the Technical Reviewer to review the Final Report.
- (ii) If the Technical Reviewer determines that the Final Report (A) reflects the scope of the study as originally determined and as set out in the Detailed Engineering Study Funding Application and the Detailed Engineering Study SOW and (B) incorporates the comments made with respect to the Draft Report, the LDC will communicate the approval of the Final Report and the confirmation of the amount of the final instalment of the Participant Incentive payable to the Participant pursuant to Section 3(b)(ii).
- (iii) If the Technical Reviewer or the LDC disputes that the receipts or invoices submitted by the Participant reflect the actual costs incurred by the Participant, the actual costs incurred will be deemed for all purposes of this Agreement to be such amount determined by the Technical Reviewer or the LDC, as may be applicable, based upon their audit of such receipts and invoices.
- (iv) If the Final Report is not approved by the Technical Reviewer, the LDC will not pay any remaining Participant Incentive to the Participant and will communicate to the Participant the reasons (if and as provided by the Technical Reviewer) for not approving the Final Report. If such revised Final Report does not address such deficiencies to the satisfaction of the LDC and the Technical Reviewer within 30 days of the communication by the LDC of the reasons (if and as provided by the Technical Reviewer) for not approving the Final Report, this Agreement will terminate, the Participant will not be entitled to receive the remaining Participant Incentive and the Participant will need to re-submit a new Detailed Engineering Study Funding Application to the LDC in order to participate in the Detailed Engineering Study Initiative.

- (v) If the System that is the subject of a Detailed Engineering Study is changed or altered after completion of the Draft Report but prior to the acceptance by the LDC of the Final Report, the Participant will update the Final Report to account for such changes or alterations and submit same to the LDC immediately.

5. Communication with Technical Reviewer

The Participant will cooperate and provide on a timely basis any requested information to the LDC or the Technical Reviewer should the LDC or the Technical Reviewer, respectively, require clarification from the Participant when reviewing the Draft Report or the Final Report. The Participant shall, at the same time as it provides information to the Technical Reviewer, provide a copy of such information to the LDC.

6. Term.

This Agreement will terminate on the earliest of:

- (a) on or before the date by which the Draft Report is required to be approved, as provided in Section 4(a)(iii);
- (b) 60 days from the date the LDC communicates the approval of the Draft Report to the Participant if the Participant has not submitted a Final Report by such date, as provided in Section 4(b)(i);
- (c) 30 days from the date the LDC communicates the reasons for not approving the Final Report if the Participant has not submitted a revised Final Report by such time that is approved by the LDC, as provided in Section 4(b)(iv);
- (d) the date of the payment of the final instalment of the Participant Incentive pursuant to Section 3(b)(ii); and
- (e) December 31, 2015.

Sections 3(e), 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 21 and 25, and such other provisions as are necessary for the interpretation thereof and any other provisions hereof, the nature and intent of which is to survive termination or expiration of this Agreement, will survive the expiration or termination of this Agreement.

7. Environmental Attributes.

All right, title and interest in and to all benefits or entitlements associated with Environmental Attributes are hereby unconditionally and absolutely transferred and assigned, or to the extent transfer or assignment is not permitted, held in trust for, by the Participant to, or in favour of, the LDC in its capacity as agent for and on behalf of the OPA, and not for the LDC's own benefit. Until the OPA notifies the Participant otherwise, the LDC, in its capacity as agent, shall be entitled, unilaterally and without the consent of the Participant, to deal with such Environmental Attributes on behalf of the OPA in any manner the LDC determines. The Participant acknowledges that the OPA may direct the Participant in the same manner as the LDC and that until the OPA notifies the Participant otherwise the LDC may direct the Participant to take such actions and do all such things necessary to certify, obtain, qualify and register with the relevant authorities or agencies such Environmental Attributes for the purpose of transferring, assigning, or holding in trust, such Environmental Attributes to and for the OPA and the Participant shall comply with such directions, and the Participant will be entitled to reimbursement of the cost of complying with such direction, provided that the LDC, acting reasonably, has approved such cost in writing prior to the cost being incurred by the Participant.

8. Representations and Warranties.

The Participant represents and warrants to the LDC as follows, and acknowledges that the LDC is relying on such representations and warranties in entering into this Agreement:

- (a) the Participant would not have undertaken the Detailed Engineering Study without the Participant Incentive;
- (b) each of the Participant and the proposed Project satisfies the eligibility requirements set out in Sections 1 to 3, as applicable, of Schedule "D" as of the date hereof;
- (c) the Detailed Engineering Study to be performed relates to a Project that satisfies the applicable eligibility and other requirements set out in Section 2 of Schedule "D" as of the date hereof and does not relate to any Ineligible Project set out in Section 3 of Schedule "D"
- (d) the Participant has executed and delivered the Release and Waiver, 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.**

- (a) The performance and administration of this Agreement will be subject to the OPA EM&V Protocols, which will include evaluation of the effectiveness of this Agreement in meeting the objectives of the Detailed Engineering Study Initiative. In furtherance of the OPA EM&V Protocols, the Participant will cooperate with the LDC, the OPA and their respective designates and will make available such information in the form and with the frequency as may be reasonably prescribed, including with respect to historical electricity consumption.
- (b) The Participant and the LDC will both 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 this Agreement and all such records and data will be maintained during the term of this Agreement and for the period of time thereafter which is the greater of seven years and the period of time specified under Applicable Law. On reasonable notice, at any time during normal business hours in respect of the subject matter of the Detailed Engineering Study, the Participant will provide reasonable access to the LDC, the OPA, and/or their respective designates to such books, accounts, records and other data and: (A) at the reasonable request of the LDC and/or OPA, make available to the LDC, the OPA and/or their respective designates, the personnel of the Participant and its subcontractors involved in the Detailed Engineering Study and the maintenance of such books, accounts, records and data referred to above for purposes of this Section 9; and (B) permit the LDC, the OPA or their respective designates to examine and audit and take copies and extracts from such documents.

10. **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 Detailed Engineering Study Initiative hereunder is based on its own assessment of the Detailed Engineering Study 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.

11. **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 12 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 LAWYERS' AND ADVISORS' FEES SUFFERED OR INCURRED BY THE PARTICIPANT AND IN ANY EVENT LIMITED TO THE PARTICIPANT INCENTIVE PAYMENTS 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) THE LDC AND INDEMNIFIED PARTIES (AS DEFINED IN SECTION 12 BELOW) WILL NOT BE LIABLE TO THE PARTICIPANT, ITS SUCCESSORS OR ASSIGNS OR ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS OR REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE UNDER OR IN RELATION TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY.

12. **Indemnification by the Participant.**

The Participant (the "**Indemnifying Party**") will indemnify, defend and hold the LDC, the OPA, 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 Eligible Study or Project or this Agreement; and/or (ii) the negligence or wilful misconduct of the Participant, except in either case to the extent that any injury or damage related to such Claim, occurrence or event is attributable to the negligence or wilful misconduct of the Indemnified Party. For greater certainty, in the event of contributory negligence or 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. The LDC will hold the benefit the Participant's obligations under this Section 12 in the LDC's own right and, in trust, for the benefit of any other Indemnified Party.

13. **Confidentiality.**

- (a) Each Party will, in its capacity as a Receiving Party:
- (i) not use or reproduce Confidential Information of the Disclosing Party for any purpose, other than as and to the extent expressly permitted under this Agreement or as may be reasonably necessary for the exercise of its rights or the performance of its obligations set out in this Agreement;
 - (ii) not disclose, provide access to, transfer or otherwise make available any Confidential Information of the Disclosing Party except as expressly permitted in this Agreement; and
 - (iii) take all measures reasonably required to maintain the confidentiality and security of all Confidential Information of the Disclosing Party that it Handles.
- (b) The Receiving Party may disclose Confidential Information of the Disclosing Party:
- (i) to a third party that is not a Representative of the Receiving Party if and to the extent required by a Governmental Authority or otherwise as required by Applicable Laws, provided that the Receiving Party must first give the Disclosing Party notice of such compelled disclosure (except where prohibited by Applicable Laws from doing so) and must use Commercially Reasonable Efforts to provide the Disclosing Party with an opportunity to take such steps as it desires to challenge or contest such disclosure or seek a protective order. Thereafter, the Receiving Party may disclose the Confidential Information of the Disclosing Party, but only to the extent required by Applicable Laws and subject to any protective order that applies to such disclosure; and
 - (ii) to:
 - A. its accountants, internal and external auditors and other professional advisors if and to the extent that such Persons need to know such Confidential Information in order to provide the applicable professional advisory services relating to the Receiving Party's business;
 - B. potential permitted assignees or successors of the Receiving Party if and to the extent that such Persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other transaction or transfer involving the business, assets or services provided by the Receiving Party; and
 - C. employees of each Party and its other Representatives if and to the extent that such Persons need to know such Confidential Information to perform their respective obligations under this Agreement;provided that any such Person is aware of the provisions of this Section 13 and has entered into a written agreement with the Receiving Party that includes confidentiality obligations in respect of such Confidential Information that are no less stringent than those contained in this Section 13.
- (c) Without limiting the foregoing, each Party acknowledges and agrees that:
- (i) the LDC will Handle reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, to the OPA on an ongoing basis as part of its participation in the Detailed Engineering Study Initiative or other CDM initiatives offered by the OPA and may do so without further notice to or further consent of the Participant; and the LDC and OPA may disclose and provide reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, to the OEB, the Ontario Ministry of Energy and the Ontario Environmental Commissioner for Handling by such entities provided that the LDC or the OPA, as the case may be, has in place with any such Person a written agreement that includes confidentiality obligations in respect of such Confidential Information that are comparable to those contained in this Section 13;
 - (ii) this Agreement and all Confidential Information in the possession or control of the LDC, the OPA or the Participant are subject to Applicable Laws that include the access provisions of MFIPPA or FIPPA, as the case may be, and that as a result, third parties may obtain access to each Party's Confidential Information. Moreover, the LDC and its Representatives are subject to MFIPPA or FIPPA and the OPA and its Representatives are subject to FIPPA, and that MFIPPA or FIPPA, as the case may be, applies to and governs all recorded information in any form or medium that is provided by the LDC or the OPA, respectively, or its Representatives to the Participant or provided by the Participant to the LDC or the OPA, respectively, or its Representatives for the purposes of this Agreement, or created by the Participant in the performance of this Agreement, and that is in the custody or control of the LDC or the OPA, as the case may be (collectively, the "Records"), and may require the disclosure of such Records to third parties;

- (iii) each Party is responsible for ensuring that its agreements with Representatives contemplate and permit such potential access or disclosure, and will be fully liable to any such Representatives for any Claim arising out of or relating to such access;
- (iv) the LDC and the OPA may at any time make public the Participant's participation in the Detailed Engineering Study Initiative and data relating to the Detailed Engineering Study, including a description of the Project and type of Facility, historical energy use and consumption, aggregated with other studies in a manner intended to report on the Detailed Engineering Study Initiative; and
- (v) the Participant may acknowledge the assistance provided by the LDC and the OPA in all public communications, provided that the LDC and the OPA will have the right to approve in writing all such public communications in advance.

14. Injunctive Relief.

Each Party acknowledges that any violation of the provisions of Section 13 may cause irreparable damage or injury to the other Party (including, in the case of the LDC, any of the other Indemnified Parties), 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 (including, in the case of the LDC, any of the other Indemnified Parties), such Party (including, in the case of the LDC, any of the other Indemnified Parties) 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 Section 13, without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made. Nothing in this Section 14 will be construed to limit the right of a Party (including, in the case of the LDC, any of the other Indemnified Parties) to obtain injunctive relief in any other circumstance in which it may be otherwise entitled to such relief.

15. MFIPPA and FIPPA Compliance.

To the extent that the LDC or the OPA, as the case may be, must comply with disclosure obligations under MFIPPA or FIPPA, the Participant agrees (without limiting its obligation set out in Section 13):

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

16. 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 pursuant to Schedule "E" of this Agreement.

17. Schedules.

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

Schedule "A" — Definitions

Schedule "B" — Detailed Engineering Study Report Minimum Requirements

Schedule "C" — Detailed Engineering Study SOW

Schedule "D" — Eligibility Criteria

Schedule "E" — Arbitration Provisions

Schedule "F" — Form of Release and Waiver

18. **Headings.**

The insertion of headings is for convenience of reference only and will not affect the interpretation of this Agreement. The terms "hereof", "hereunder", and similar expressions refer to this Agreement and not to any particular Article, Section, Schedule or other part hereof. Unless otherwise indicated, any reference in this Agreement to an Article, Section or Schedule refers to the specified Article or Section of, or Schedule to, this Agreement.

19. **Entire Agreement.**

Except as otherwise provided, this Agreement, together with the Release and Waiver, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.

20. **Amendments.**

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

21. **Governing Law and Attornment.**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. For the purpose of all legal proceedings, this Agreement will be deemed to have been made and performed in the Province of Ontario and the courts of the Province of Ontario will have exclusive jurisdiction to entertain any action arising under this Agreement. The LDC and the Participant each hereby attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

22. **Successors and Assigns.**

This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and assigns. This Agreement may not be assigned by the Participant to another Person other than an affiliate except with the prior written consent of the LDC, which consent may be unreasonably withheld or delayed.

23. **Further Assurances.**

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

24. **Severability.**

The invalidity, unenforceability or illegality of any provision in this Agreement will not, to the extent permitted by Applicable Law, affect the validity, enforceability or legality of any other provision of this Agreement, which will remain in full force and effect.

25. **Third Party Beneficiaries.**

Except as provided in Sections 7, 9, 11, 12, 13, 14, 15 and this Section 25, this Agreement is solely for the benefit of:

- (a) the LDC and its successors and assigns, with respect to the obligations of the Participant under this Agreement, and
- (b) the Participant and its successors and permitted assigns, with respect to the obligations of the LDC under this Agreement;

and this Agreement will not be deemed to confer upon or give to any other Person any Claim or other right or remedy. The Participant appoints the LDC as the trustee for the OPA of the applicable provisions set out in this Agreement, including Sections 9, 11, 12, 13, 14, 15 and this Section 25, and the LDC accepts such appointment. The LDC is the agent of the OPA for the purpose of Section 7.

26. **No Partnership, etc.**

Nothing in this Agreement will be deemed to constitute a partnership or joint venture or create any fiduciary relationship between the LDC and the Participant.

V.4.0 Process And System Upgrades Initiatives 2011-2014: (1) Preliminary Engineering Study Initiative; (2) Detailed Engineering Study Initiative; and (3) Project Incentive Initiative – Detailed Engineering Study Funding Contract, August 20, 2013

27. **Force Majeure**

The LDC shall not be in default and shall not be deemed to be in default of its obligations in this Agreement by reason of delay or of failure or inability to perform its obligations hereunder where the said delay, failure or inability is due solely to any cause which is unavoidable or beyond the reasonable control of the LDC, including without limitation any act of God or other cause which frustrates the performance of the LDC's obligations in this Agreement.

28. **Notices**

Any notice to be given under this Agreement unless expressly provided otherwise herein must be in writing and will be given by facsimile or e-mail or other means of electronic communication or by hand-delivery as provided. Any notice, if sent by facsimile or e-mail or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received on the Business Day is delivered to the applicable address noted below. Either Party may, by notice of change of address to the other Party, change its address to which notices are to be sent. Notices and other communications must be addressed as follows:

If to the LDC:

-
- Attention: ●
- Fax: ●
- E-mail: ●

With a copy to:

-
- Attention: ●
- Fax: ●
- E-mail: ●

If to the Participant:

-
- Attention: ●
- Fax: ●
- E-mail: ●

With a copy to:

-
- Attention: ●
- Fax: ●
- E-mail: ●

29. **Counterparts.**

This Agreement may be executed in any number of counterparts and all such counterparts will, for all purposes, constitute one agreement binding on both Parties provided that each Party has signed at least one counterpart.

30. **Facsimile/Electronic Signatures.**

This Agreement may be executed and delivered by facsimile transmission or by any other method of electronic transmission and the Parties may rely upon all such signatures as though such signatures were original signatures.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF the Parties have executed this Agreement by their duly authorized respective representative(s) as of the date first above written.

[LEGAL NAME OF LDC]

[LEGAL NAME OF PARTICIPANT]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Per: _____
Name:
Title:

[I/We] have authority to bind the LDC

[I/We] have authority to bind the Participant

SCHEDULE "A"

DEFINITIONS

In this Agreement, the following terms will have the following meanings:

"Agreement" means this Detailed Engineering Study Funding Contract, including all recitals and Schedules, as it or they may be amended, restated or supplemented from time to time.

"Annualized Electricity Savings" means Electricity Savings during the relevant Electricity Savings Period divided by the number of years in the relevant Electricity Savings Period in the case of a Project (other than a Small Capital Project), or by 5 in the case of a Small Capital Project. Where the Expected Life of a Small Capital Project is less than 5 years, then, in the case of a Small Capital Project, Electricity Savings during the period between the end of the Expected Life and the 5th anniversary of the in-service date will be deemed to be nil.

"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.

"Approved Amount" has the meaning given to it in Section 3(a).

"Arbitrator" has the meaning given to it in Section (a) of Schedule "E".

"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.

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

"Commercially Reasonable Efforts" means all efforts which may be required to enable a Person, directly or indirectly, to satisfy, consummate, complete or achieve a condition, transaction, activity, obligation or undertaking contemplated by this Agreement and which do not require such Person to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the purpose of, and the condition, transaction, activity, obligation or undertaking contemplated by, this Agreement.

"Confidential Information" of a Party means any and all information of such Party or any of its affiliates, licensors, customers and employees or other service providers, and information on the Detailed Engineering Study Funding Application, and, in the case of the LDC, includes the OPA and Governmental Authorities (the **"Disclosing Party"**) that has or will come into the possession or knowledge of the other Party, or any of their respective affiliates, licensors, customers and employees or other service providers and, in the case of the LDC, includes the OPA, (the **"Receiving Party"**) in

connection with or as a result of entering into this Agreement, including information concerning the Disclosing Party's past, present or future customers, suppliers, technology, or business. Notwithstanding the foregoing, "Confidential Information" does not include information that is:

- (a) 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);
- (b) 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;
- (c) 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
- (d) 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 this Agreement, all Personal Information concerning any Participant will constitute Confidential Information, whether or not it falls into one of the exceptions set out in clause (a) through (d) of this definition.

"Demand Response" means a reduction in consumption of electricity as a result of the activation of Measures or protocols that are or were implemented in order to load shift or load shed in order to reduce the electricity demand.

"Detailed Engineering Study" means a detailed study of the consumption of electricity of a System within a Facility, or of a Facility, in order to assess and evaluate (i) Measures, or their implementation, that could give rise to Electricity Savings, or (ii) if approved by the OPA, electricity generation by the Eligible Person that could reduce the electricity consumption by a System within a Facility, or of a Facility, from the Distribution System, and expected to meet the Detailed Engineering Study Report Minimum Requirements.

"Detailed Engineering Study Funding Application" means an application (File Number ●, dated ● and confirmed by the LDC on ●) by the Participant for a Participant Incentive from the LDC prepared in accordance with instructions posted on the Website from time to time.

"Detailed Engineering Study Initiative" means the OPA-designed initiative under the OPA's Process and System Upgrades Initiatives designed to provide a Participant Incentive to a Participant for the purpose of obtaining a Detailed Engineering Study.

“Detailed Engineering Study Report Minimum Requirements” means the minimum requirements to be met with respect to the preparation and content of Draft Reports and Final Reports as set out in Schedule "B".

“Detailed Engineering Study SOW” means the scope of work, attached hereto in Schedule "C", to be performed by an Independent Engineer in order to prepare a Detailed Engineering Study and to be attached to the applicable Detailed Engineering Study Funding Application.

“Disclosing Party” has the meaning given to it in the definition of “Confidential Information”.

“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.

“Draft Report” means a draft Detailed Engineering Study prepared by an Independent Engineer.

“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, in the case of a Project (other than a Small Capital Project), the period commencing on the in-service date of the Project and ending on the 10th anniversary thereof, or in the case of a Small Capital Project, the period commencing on the in-service date and ending on the earlier of: (i) the last date of the Expected Life of the Small Capital Project; and (ii) the 5th anniversary of the in-service date.

“Eligible Person” means, in respect of the Detailed Engineering Study Initiative, a person that satisfies the eligibility criteria set out in Section 1 of Schedule "D".

“Eligible Study” means a Project to be studied that meets the eligibility criteria set out in Section 2 of Schedule "D" and is not a type of Project to be studied as described in Section 3 of Schedule "D".

“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.

“Expected Life” means the number of years a Project will deliver Electricity Savings, such period at least being equal to the Minimum Expected Life.

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

“Final Report” means a final Detailed Engineering Study issued by an Independent Engineer.

“FIPPA” means the *Freedom of Information and Protection of Privacy Act* (Ontario).

“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 Ontario Environmental Commissioner, and any Person acting under the authority of any of the foregoing, but excluding the OPA.

“Handle” or **“Handling”** means to access, receive, collect, use, store, process, record, disclose, transfer, retain, dispose of, destroy, manage or otherwise handle.

“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 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.

“Indemnifiable Loss” has the meaning given to it in Section 12.

“Indemnified Party” has the meaning given to it in Section 12.

“Indemnifying Party” has the meaning given to it in Section 12.

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

“**Ineligible Project**” has the meaning given to it in Section 3 of Schedule "D".

“**Insolvent**”, in respect of a Person, means a Person:

- (a) who is for any reason unable to meet its obligations as they generally become due or otherwise acknowledges its insolvency,
- (b) who has ceased paying its current obligations in the ordinary course of business as they generally become due,
- (c) who has ceased to carry on business in the ordinary course,
- (d) who institutes any proceeding, takes any corporate action, or executes any agreement to authorize its participation in or the commencement of any proceeding seeking: (a) to adjudicate it a bankrupt or insolvent; (b) liquidation, dissolution, winding-up, reorganization, arrangement, protection, relief or composition of it or any of its property or debts or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or (c) appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its properties and assets, or
- (e) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing due.

“**LDC**” has the meaning given to it in the preamble of this Agreement.

“**Lighting**” means equipment and controls used to provide illumination through the use of electricity resulting in a load.

“**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..

“**Minimum Expected Life**” means the number of years a Project is required to provide the Electricity Savings, being 10 years after the in-service date, other than in the case of a Small Capital Project in which case the Minimum Expected Life is 1 year after the in-service date.

“**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario).

“**MW**” means a megawatt.

“**MWh**” means a megawatt hour.

V.4.0 Process And System Upgrades Initiatives 2011-2014: (1) Preliminary Engineering Study Initiative; (2) Detailed Engineering Study Initiative; and (3) Project Incentive Initiative – Detailed Engineering Study Funding Contract, August 20, 2013

“**OEB**” means the Ontario Energy Board or its successor.

“**OPA**” means the Ontario Power Authority or its successor.

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

“**Participant**” has the meaning given to it in the preamble of this Agreement.

“**Participant Incentive**” means funding that may be paid by the LDC to the Participant pursuant to this Agreement.

“**Party**” and “**Parties**” have the meanings given to them in the preamble of this Agreement.

“**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, includes a Small Capital Project.

“**Project Incentive Initiative**” means the Initiative designed to provide a financial incentive to a Participant for the purpose of implementing a Project.

“**Receiving Party**” has the meaning given to it in the definition of “Confidential Information”.

“**Records**” has the meaning given to it in Section 13(c)(ii).

“**Release and Waiver**” means the release and waiver and consent executed by the Participant in favour of the LDC, among others, and submitted by the Participant with its Detailed Engineering Study Funding Application, in the form attached hereto as Schedule "F".

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

“**Small Capital Project**” means a stand-alone Project, which, when installed, is expected to deliver at least 100 MWh of Annualized Electricity Savings and which may be eligible to receive a Project Incentive up to a maximum of \$1,000,000;

“**System**” will be defined broadly and 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.

“**Technical Reviewer**” means a Person retained by the OPA having on its staff individuals who have professional experience and qualifications as approved by the OPA.

“**Third Party Contributions**” means any financial or other contribution (including the value of contributions in kind) towards the eligible costs of the Project (as such costs are defined pursuant to the Project Incentive Initiative) from or by any Person other than the Participant or the LDC.

“**Website**” means the website located at the address: <https://saveonenergy.ca/>.

SCHEDULE "B"
DETAILED ENGINEERING STUDY REPORT MINIMUM REQUIREMENTS

Purpose:

This Schedule contains the minimum requirements for a Draft Report or a Final Report (in this Schedule, the “**Reports**”). Such Reports must meet the technical, financial and economic analysis, and overall quality and completeness requirements as outlined below. Such Reports will also recommend opportunities for further study of potentially cost-effective electricity opportunities (in this Schedule, “**Opportunities**”).

For the purposes of the Detailed Engineering Study Initiative, the Reports must provide energy and demand savings estimates to an accuracy of +/- 10% and Project cost estimates to an accuracy of +/- 25%. The Reports must be prepared or reviewed by, and signed by an Independent Engineer.

Detailed Engineering Study Report Submission Requirements:

In order to complete a satisfactory Report, Participants should prepare a Report submission package containing:

- one original copy of the Detailed Engineering Study (bound and drawings) signed by the Independent Engineer,
- one hard copy of the Detailed Engineering Study Report (bound and drawings), and
- one electronic copy of the Detailed Engineering Study Report, in Portable Document Format (PDF) and the “Measures Summary Template”, as found on the website for the Detailed Engineering Study Initiative.

Participants should submit the prepared submission package to:

-

with a copy to:

[LDC]

In the event of a conflict or inconsistency between the hard copy and the electronic copy of the Report, the original bound copy of the Report will prevail.

Amending Reports:

At any time until the final day for submitting a Report, a Participant may amend a submitted Report. The right of Participants to amend includes amendments or withdrawals wholly initiated by Participants and amendments or withdrawals in response to subsequent information that becomes available to the Participant. Following acceptance of the Report by the LDC and the Technical Reviewer, all amendments thereto proposed by the Participant will require the written approval of the LDC.

Any amendment should clearly indicate what part of the Detailed Engineering Study the amendment is intending to replace. A notice of amendment should be sent to the LDC as soon as possible and should be signed by a senior representative of the Participant and by an Independent Engineer.

Report to be Retained by the LDC:

The LDC will not return any Reports or any accompanying documentation submitted by a Participant.

Form and Content:

The following are the required components of a Report:

1.0 Executive Summary:

- 1.1 Facility name and location.
- 1.2 Dates of study start and completion.
- 1.3 A brief background and description of the System studied.
- 1.4 A brief description of Measures recommended for further study, with estimates of:
 - 1.4.1 Annualized Electricity Savings,
 - 1.4.2 Annual average electricity demand reduction,
 - 1.4.3 Project benefits that contribute to cost-effectiveness of the Project,
 - 1.4.4 Any costs directly related to the Project which are not included in eligible costs,
 - 1.4.5 Simple payback for the recommended Measures based on total eligible costs (as such costs are defined pursuant to the Project Incentive Initiative) excluding any Participant Incentives or Third Party Contributions,
 - 1.4.6 Project payback for the recommended Measures including any Participant Incentives or Third Party Contributions, and
 - 1.4.7 Estimated Participant Incentive.
- 1.5 Author of report with acknowledgement of key personnel involved including titles.
- 1.6 Acknowledgement of Facility personnel involved in the study with titles.

2.0 Base Case and System Studied:

2.1 Description of the System studied:

- 2.1.1 Type of System and areas of plant/process served,
 - 2.1.2 Explanation of why the System was chosen for study
 - 2.1.3 Process flow diagram, indicating measurement boundary, and how the System interacts with the remaining plant,
 - 2.1.4 Relevant electrical single line diagrams,
 - 2.1.5 Process and instrumentation drawings (P&ID),
 - 2.1.6 Equipment data sheets or existing equipment efficiency,
 - 2.1.7 Preliminary base case baseline (subject to review and acceptance by the Technical Reviewer during baseline data collection);
 - 2.1.7.1 Annualized electricity energy consumption,
 - 2.1.7.2 Daily and seasonable electrical load profile,
 - 2.1.7.3 Load duration curve or table indicating annual hours of operation at significant capacity points,
 - 2.1.7.4 Production and throughput as it relates to the electricity consumption of the System
 - 2.1.8 Operating and maintenance costs for the System,
 - 2.1.9 Product quality from the existing System,
 - 2.1.10 Reliability of the existing System,
 - 2.1.11 Age of the System or major System components and analysis of remaining life,
 - 2.1.12 Standard commercially available replacement equipment cost and energy use (at least the cost of new equipment that meets the System requirements).
- 2.2 Measured electrical, process and operating data collected during the Detailed Engineering Study provided in MS Excel spreadsheet format.
- 2.3 The most recent electric utility bills received for a single billing period at the location of the nearest utility revenue metering point.

3.0 Opportunity Analysis:

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

3.1 Technical:

- 3.1.1 Technical description of each identified Measure.
- 3.1.2 Methodology and calculations used to arrive at electricity and demand savings estimates for each Measure.
- 3.1.3 Identification and specification of any software tools used in the analysis.
- 3.1.4 Results of analysis including uncertainty ranges and assumptions for operating conditions for the life of the Measure:
 - 3.1.4.1 Annualized Electricity Savings,
 - 3.1.4.2 Monthly average electrical demand reduction, and
 - 3.1.4.3 Daily electrical demand reduction profile by season.
- 3.1.5 Analysis of “interactive effects” between Systems and the Measure (i.e. a reduction in electricity use in one area may cause an increase in another).
- 3.1.6 Quantification of “other benefits” with dollar savings estimate that may result from implementation of each Measure. Methodology must be shown. Examples of “other benefits” are:
 - Changes in fossil fuel consumption,
 - Changes in product quality or productivity, or
 - Changes in operating and maintenance costs.
- 3.1.7 Description of measurement techniques that would aid in ongoing evaluation of electricity savings for each Measure.

3.2 Economic and Financial:

- 3.2.1 Itemized implementation costs of each Measure including:
 - 3.2.1.1 Detailed design and engineering,
 - 3.2.1.2 Project management,
 - 3.2.1.3 Equipment,
 - 3.2.1.4 Installation labour,
 - 3.2.1.5 Demolition,
 - 3.2.1.6 Scrap value recovery, and
 - 3.2.1.7 Commissioning.
- 3.2.2 Simple payback for each identified Measure without Participant Incentives or any Third Party Contributions.
- 3.2.3 Project payback for each identified Measure including any Participant Incentives or Third Party Contributions

4.0 Recommendations:

V.4.0 Process And System Upgrades Initiatives 2011-2014: (1) Preliminary Engineering Study Initiative; (2) Detailed Engineering Study Initiative; and (3) Project Incentive Initiative – Detailed Engineering Study Funding Contract, August 20, 2013

4.1 Provide recommendations by Measure and at the Project level:

- 4.1.1 Discussion of recommended and non-recommended Measures using results of technical and economic analysis,
- 4.1.2 Simple payback for each recommended Measure and for the aggregate of all recommended Measures based on total eligible costs with no Participant Incentives or Third Party Contributions,
- 4.1.3 Project payback for each recommended Measure and for the aggregate of all recommended Measures,
- 4.1.4 Discussion of expected lifetime of recommended Measures with a description of any special maintenance practices required to realize continued savings,
- 4.1.5 Discussion of risks associated with performance of recommended Measures.

5.0 Implementation Action Plan:

5.1 Detailed technical description for implementation of each recommended Measure:

- 5.1.1 Specifications suitable for procurement of bids for the Project construction and commissioning. Include sample manufacturers data sheets if applicable,
- 5.1.2 List of existing equipment to be de-commissioned,
- 5.1.3 Proposed operating parameters including mode and sequence of operation and programming of process control systems.

5.2 Provide a schedule for implementation:

- 5.2.1 Overall time to complete Project broken down by major tasks and time required for each,
- 5.2.2 Detail any known timeline risks and critical tasks.

SCHEDULE "C"
DETAILED ENGINEERING STUDY SOW

See attached document

SCHEDULE "D"
ELIGIBILITY CRITERIA

1. Participant Eligibility Criteria

To be an Eligible Person under this Initiative a Person must:

- (a) be an electricity consumer; and
- (b) not be Insolvent.

2. Study Eligibility Criteria

To be an Eligible Study, the proposed Project to be studied must:

- (a) involve the installation or implementation of a Measure or Measures;
- (b) be in respect of a single Facility of the Eligible Person connected to, or behind the meter of another electricity consumer connected to, a Local Distribution Company's Distribution System, but in the LDC's service area;
- (c) (i) in the case of a proposed Small Capital Project, be expected to deliver at least 100 MWh of Annualized Electricity Savings and which may be eligible to receive a Project Incentive up to a maximum of \$1,000,000; or (ii) in the case of a Project, be expected to generate, based on a Detailed Engineering Study approved by the Technical Reviewer and the LDC, Annualized Electricity Savings of greater than 350 MWh; and
- (d) not be an Ineligible Project.

Pursuant to the terms and conditions of the Detailed Engineering Study Initiative,

- (e) the scheduled in-service date of a Project may not occur any later than two years following the date of execution of an agreement for the Project Incentive Initiative or any later than December 31, 2015, unless otherwise approved by the LDC.

3. Ineligible Projects

None of the following types of Projects qualifies to be studied (each, an "**Ineligible Project**"):

- (a) a Project that the LDC determines is more appropriately funded by another OPA or other existing program;
- (b) a Project with a project payback of less than one year;
- (c) Lighting;
- (d) Demand Response;
- (e) a Project designed to reduce voltage or improve power factor or power quality, other than as an ancillary benefit to obtaining Electricity Savings;
- (f) a Project that is not reasonably expected to achieve its Minimum Expected Life;
- (g) a Project that involves installation of any equipment or system if such equipment or system, or the operation of either, would not comply with all Applicable Laws;
- (h) except as otherwise approved in writing by the LDC, a Project for which any financial incentive has been, is being or may be received from the OPA (other than a Participant Incentive), the Province of Ontario or any agency thereof;
- (i) prior to submitting a Detailed Engineering Study Funding Application, the Participant has approved the undertaking of a Detailed Engineering Study or entered into an agreement with a contractor or consultant or ordered or purchased any equipment for use in relation to the Project;
- (j) an electricity generation Project, unless otherwise approved in writing by the LDC; or
- (k) a fuel-switching Project, unless otherwise approved in writing by the LDC.

SCHEDULE "E"
ARBITRATION PROVISIONS

- (a) Subject to and in accordance with the provisions of this Schedule "E", any and all differences, disputes, Claims or controversies arising out of or in any way connected with this Agreement, whether arising before or after the expiration or termination of this Agreement, (including any dispute as to whether an issue is arbitrable) will be resolved by arbitration before a single arbitrator (the "**Arbitrator**") pursuant to the *Arbitration Act, 1991* (Ontario) and otherwise in accordance with the laws of the Province of Ontario.
- (b) 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 within 20 days thereafter, an Arbitrator will be designated by a judge of the Ontario Superior Court of Justice upon application by either Party. The Arbitrator may determine all questions of law, fact and jurisdiction with respect to the dispute or the arbitration (including questions as to whether a dispute is arbitrable) and all matters of procedure relating to the arbitration. The Arbitrator may grant legal and equitable relief (including injunctive relief), award costs (including legal fees and the costs of the arbitration), and award interest.
- (c) 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 and, failing agreement thereto by the Parties, in accordance with such procedures as the Arbitrator will determine, in accordance with the principles of natural justice. The arbitration and all matters arising directly or indirectly therefrom will be kept strictly confidential by the Parties and will not be disclosed to any third party except as may be compelled by law.
- (d) The Arbitrator's written decision will be delivered to each of the Parties within 60 days following the conclusion of the arbitration hearing. The costs of any arbitration hereunder will be borne by the Parties in the manner specified by the Arbitrator in his or her decision. The decision of the Arbitrator will be final and binding upon the Parties in respect of all matters relating to the arbitration, the conduct of the Parties during the proceedings and the final determination of the issues in the arbitration. There will be no appeal from the decision of the Arbitrator to any court, except on the grounds that the conduct of the Arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (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.
- (e) Submission to arbitration under this Schedule "E" is intended by the Parties to preclude any action in matters which may be arbitrated hereunder, save and except for enforcement of any arbitral award hereunder.

SCHEDULE "F"
FORM OF RELEASE AND WAIVER

RELEASE AND WAIVER AND CONSENT

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

- A. releases and forever discharges each of [NAME OF LDC] ("LDC"), the Ontario Power Authority ("OPA") and their respective representatives, affiliates, third party service providers and agents (collectively, the "**Program Operators**") and all of the respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns of the Program Operators (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 nature or 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 undersigned's employees, officers, directors or licencees, 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 occasions by one or more of the employees, officers, directors, representatives, third party service providers or agents of any or all of the Program Operators (collectively, "**Persons**") at any and all facilities owned or occupied by the undersigned in connection with, arising out of or relating to the initiatives designed by the OPA for electricity conservation and demand management and directed at one of the commercial and institutional, industrial, low-income or residential electricity consumer groups (collectively referred to as the "**CDM Program**"), other than in the case of the gross negligence or willful misconduct of such Persons during such attendances;
- B. agrees that the undersigned will not make any claim or take any proceedings against any other person or entity with respect to any matter released and discharged in Section 1 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 undersigned acknowledges, agrees and consents that by submitting an application ("**Application**") to participate in a CDM Program or any initiative thereof, whether or not its Application is ultimately accepted:
- (a) it 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 CDM Program, any initiative thereof or the Application, and in connection with any reporting activities relating to the CDM 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 Participant to process any of the undersigned's Applications and to conduct, analyze and report on the results of surveys and modify the CDM Program based on such surveys; and (iii) disclosure to the Ontario Energy Board, the Independent Electricity System Operator, the Ontario Ministry of Energy or the Ontario Environmental Commissioner or their respective successors;
- (b) it hereby consents to the disclosure by the OPA to the LDC of information regarding the Participant's past participation in other OPA funded conservation and demand management programs for the purpose of processing the Participant's Application; and
- (c) this Release and Waiver and Consent and all Applicant Information, in the possession or control of the LDC and/or the OPA 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. the foregoing Release and 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 and 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 CDM Program or any part thereof, or any initiative under any CDM Program, the terms of this Release and Waiver and Consent will prevail; and
- E. this Release and 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.

IN WITNESS WHEREOF the undersigned has executed this Release and Waiver and Consent by its duly authorized representative(s) as of the date below written.

Dated: [DATE]

[LEGAL NAME OF PERSON MAKING APPLICATION]

Name:
Title:

Name:
Title:

[I/We] have the authority to bind the corporation.