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## **PART 2 - TERMS OF AGREEMENT**

I, the Applicant, agree to the following terms and conditions:

1. **ELIGIBLE APPLICANTS:** To be eligible to receive a financial incentive, the following conditions must be met:
  - (a) the facility for which the Project is proposed must be located within the Toronto Hydro- Electric System Limited ("Toronto Hydro") service territory and connected to the Toronto Hydro distribution grid;
  - (b) the Project must be an energy conservation and demand management ("CDM") project that results in a reduction of at least three (3) kilowatts of peak electricity demand;
  - (c) Applicant shall not receive funding in or from any other Ontario Power Authority or governmental authority sponsored incentive program with respect to the Project;
  - (d) Applicant must not commence Project work until Applicant receives prior written approval from Toronto Hydro (the "Project Approval Letter") along with the M&V Plan (as defined in Section 4(a) below). The Applicant must not commence work on the Project until the Applicant has received a Project Approval Letter and M&V Plan. Toronto Hydro will not approve Projects retroactively. Toronto Hydro, in its sole discretion, reserves the right to approve or determine the Project ineligible;
  - (e) For approved Project Applications delivering over 350 kW of peak electricity demand reduction, the Applicant shall be required to: (i) enter into a Data Centre Incentive Program CDM Agreement with Toronto Hydro for the Project work (the "Contract"). The Applicant must not commence work on the Project until the Applicant and Toronto Hydro enter into a Contract. Toronto Hydro will not approve Projects retroactively. Toronto Hydro, in its sole discretion, reserves the right to approve or determine the Project ineligible;
  - (f) Project work must start within ninety (90) Business Days of the later of: (i) receipt of a Project Approval Letter; or (ii) upon entering into a Contract with Toronto Hydro, as applicable, and completed (ie. in-service, delivering peak electricity demand reduction) and all invoices submitted to Toronto Hydro by no later than December 15, 2010, unless otherwise approved by Toronto Hydro, in its sole discretion.
2. **FINANCIAL INCENTIVE PAYMENT:**
  - (a) Upon Project Completion and subject to subsection (b) below, Toronto Hydro, in its sole discretion, shall pay the Applicant the following financial incentive: for non-lighting project measures: eight hundred dollars (\$800.00) per demonstrated kilowatt reduction in peak electricity demand or ten cents (\$0.10) per demonstrated kilowatt hour reduction in annual electricity consumption; for lighting project measures: four hundred dollars (\$400.00) per demonstrated kilowatt reduction in peak electricity demand or five cents (\$0.05) per demonstrated kilowatt hour reduction in annual electricity consumption. "Project Completion" means that the Project has been completed and the Applicant has: (i) submitted a Notice of Completion, invoices, receipts or other supporting documentation required by Toronto Hydro to verify performance of the Project; and (ii) Toronto Hydro has inspected the Project site and has verified performance of the Project and delivery of peak electricity demand and/or annual kW hour reduction.. The amount of the financial incentive shall be calculated in accordance with the actual achievement of the peak electricity demand and/or annual kW hour reduction as verified by Toronto Hydro in its sole discretion. Toronto Hydro's determination of actual reduction in peak electricity demand and or annual kW hour reduction shall be final and binding on the parties;
  - (b) The total financial incentive payable by Toronto Hydro, if any, shall not exceed 50% of the total cost of the Project;
  - (c) The approved financial incentive payment is inclusive of all applicable taxes, except GST. Toronto Hydro will not be responsible for any tax liability imposed on the Applicant as a result of any financial incentive given pursuant to this Agreement. Toronto Hydro shall have no liability for any amounts in connection with the Project in excess of the financial incentive payment. Notwithstanding anything else contained in this Agreement, the Applicant agrees and acknowledges that Toronto Hydro shall have no obligation to pay any monies hereunder until Toronto Hydro has verified, in its sole discretion, the actual achievement of peak electricity demand and/or annual kW hour electricity reduction;
  - (d) Toronto Hydro reserves the right, in its sole discretion, to measure and verify the actual peak electricity demand and/or annual KW hour electricity reduction and/or to obtain a third party's assistance in measuring and verifying the peak electricity demand and/or annual kW hour electricity reduction. Toronto Hydro may reject payout of the financial incentive, or adjust the financial incentive payable, if results from the measurement and verification process (described in Section 4, below) indicate that the Project did not achieve the estimated peak electricity demand and/or annual kW hour electricity reduction indicated in the Project Application;
  - (e) It is the Applicant's responsibility to inform Toronto Hydro of any material changes to the operation of the Project facility that would result in a lower peak electricity demand and/or annual kW hour electricity savings than indicated in the Project Application.
3. **PROJECTS COMPLETION:** Upon completion of the Project, the Applicant is required to provide Toronto Hydro with a Notice of Completion downloadable from [www.torontohydro.com/dcip](http://www.torontohydro.com/dcip) indicating readiness for post Project measurement and valuation by Toronto Hydro.

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4. MEASUREMENT & VERIFICATION.

- (a) Peak electricity demand and/or annual kW hour electricity reduction shall be measured and verified by Toronto Hydro in accordance with the Data Centre Incentive Program (DCIP) Measurement & Verification (M&V) Guide (the "**M&V Plan**") which M&V Plan shall be provided to the Applicant along with the Project Approval Letter.
- (b) Peak electricity demand and/or annual kW hour electricity reduction cannot be achieved through the curtailment of business output.
- (c) Applicant shall: (i) provide Toronto Hydro with access to meter data and any other information that may be required to measure and verify peak electricity demand and/or annual kW hour electricity reduction; (ii) provide Toronto Hydro Project site access to conduct pre and post Project measurement and evaluation; (iii) at least two weeks prior to Project implementation, allow Toronto Hydro, at its sole cost and expense, to install one or more sub-meters for the purpose of isolating the data centre electricity demand. The sub-meters shall remain installed for a sufficient period of time required for Toronto Hydro to determine base-line consumption. Thereafter, Toronto Hydro shall remove the sub-meters at its sole cost and expense; and (iv) following Project completion, allow Toronto Hydro to install one or more sub-meters for the purpose of isolating the data centre electricity demand. The sub-meters shall remain installed for a sufficient period of time required for Toronto Hydro to determine post Project consumption data. Thereafter, Toronto Hydro shall remove the sub-meters at its sole cost and expense.

5. PROJECT PERMANENCE. The Applicant shall ensure that the Project remains in service and delivers peak electricity demand and/or annual kW hour electricity reduction for a continuous period of at least thirty-six (36) months following Project Completion, failing which the Applicant shall be deemed to be in default of this Agreement and Toronto Hydro may request repayment of all or a portion of the financial incentive.

6. APPLICANT ACKNOWLEDGEMENTS: The Applicant acknowledges and agrees as follows: (a) Applicant did not begin the Project prior to receipt of Project approval from Toronto Hydro; (b) Toronto Hydro alone shall submit the incentives paid under this Agreement for credit or recognition by the Ontario Power Authority or other governmental authority; and (c) the Applicant has not and shall not receive funding in or from any other Ontario Power Authority or other governmental authority sponsored incentive program as it relates to the Project.

7. COVENANTS OF APPLICANT: The Applicant covenants and agrees that it shall:

- (a) undertake and complete the Project identified in the Project Application in order to achieve the estimated peak electricity demand and/or annual kW hour electricity reduction target as set out in the Project Application, all in accordance with the terms of this Agreement;
- (b) comply with all applicable laws and requirements of all governmental authorities, and obtain and maintain all permits, licences, insurance and approvals as may be required in connection with the Project, during the Term (as defined in Section 14, below) of this Agreement; and
- (c) maintain complete and accurate records for Toronto Hydro to verify the Applicant's undertaking and completion of the Project for three (3) years following payment of the financial incentive, and provide Toronto Hydro and the Ontario Power Authority, with reasonable access to such records, or answers to questions regarding same, as may be necessary. This section shall survive the Term of this Agreement.

8. CONFIDENTIALITY: Each party shall maintain in strict confidence any and all proprietary and confidential information it may receive about the other party under this Agreement, and will not disclose such confidential information to any other party without the prior written consent of the disclosing party. Notwithstanding the foregoing, Toronto Hydro shall be permitted to disclose confidential information regarding this Agreement to the Ontario Power Authority. The Applicant further acknowledges that Toronto Hydro is subject to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and may be required to disclose confidential information concerning this Agreement in accordance with the provisions thereof. This section shall survive the Term of this Agreement.

9. LIABILITY AND INDEMNITY: The Applicant shall be liable for and shall indemnify and hold Toronto Hydro and its Representatives harmless from and against any and all claims, loss, cost or damages, including consequential damages, expenses and costs for injury to or death of any person, or damage to or destruction of property of any person arising from or occurring by reason of: (i) any act or omission of the Applicant or its Representatives relating to this Agreement; (ii) the Applicant's misrepresentation or breach of a covenant or material obligation under this Agreement or (iii) the Applicant's actual or alleged implementation of the Project and its operation or any matter contemplated by this Agreement whether negligent or otherwise. Notwithstanding the fact that Toronto Hydro may have reviewed the information contained in the Application for the purpose of assessing the possible reduction of peak electricity demand and /or annual kW hour electricity as a result of implementing the Project, it is understood and agreed that Toronto Hydro shall not be held liable for, and makes no representation or warranty regarding the Project, expressed or implied, including, but not restricted to, any representation or warranty as to the fitness of the design or the capability of the material, equipment or workmanship in any features or measures included in the Project or with respect to the expected or anticipated peak electricity demand and/or annual kW hour electricity reduction, nor does Toronto Hydro warrant or certify that any equipment, features or measures included in the Project will satisfy the requirements of any law, rule, specifications or contract or that a financial incentive will be payable. This section shall survive the termination of this Agreement.

10. ENVIRONMENTAL ATTRIBUTES: Applicant hereby transfers and assigns to Toronto Hydro, unconditionally and absolutely, all of its right, title and interest in and to all benefits or entitlements associated with decreased environmental impacts now or in

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the future, direct or indirect, arising as a result of, relating to or in connection with this Agreement, and the right to quantify and register these, including without limitation, any renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance (collectively, the "Environmental Attributes"). Toronto Hydro shall be entitled, unilaterally and without the consent of the Applicant to deal with Environmental Attributes in any manner it determines, regardless of whether any consideration is being received by the Applicant.

11. **ASSIGNMENT:** The Applicant may not assign this Agreement, in whole or in part, without the prior written consent of Toronto Hydro, which Toronto Hydro may decline in its sole discretion.
12. **AMENDMENTS:** This Agreement may be amended only by mutual written agreement of the parties or by notice from Toronto Hydro.
13. **NON-WAIVER:** No failure to exercise and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any term of this Agreement will be deemed to be a waiver of any subsequent breach of that term.
14. **TERM:** Subject to any termination rights herein, the term of this Agreement shall commence on the date of Project approval and shall terminate on December 31, 2010 (unless otherwise approved by Toronto Hydro) or following Project Completion by the Applicant, whichever is earlier (the "Term").
15. **TERMINATION:** Either party shall have the right, in its discretion, to terminate this Agreement by giving a written notice of termination to the other party, where the other party has breached any covenant or material obligation under the Agreement, and such breach has not been remedied within 15 Business Days after written notice thereof by the other party. No amounts shall be payable in respect of partially completed Projects.
16. **INDEPENDENT CONTRACTORS:** Nothing in this Agreement shall be deemed to constitute a partnership or a joint venture or to create any agency or fiduciary relationship between the parties.
17. **GENERAL TERMS:** This Agreement (comprising of the Part 1, Project Application, Part 2, Terms of Agreement and the M&V Plan constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, negotiations, discussions, representations, warranties and understandings, whether written or verbal. This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of Ontario. If any term of this Agreement is or becomes illegal, invalid or unenforceable, the illegality, invalidity or unenforceability will be deemed severable and will not affect any other term of this Agreement.
18. **DEFINITIONS:** In addition to terms defined in the body of the Agreement, "Business Days", means a day other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for business; and "Representatives", in reference to a party, means the party's directors, officers, employees, agents, contractors and volunteers, the party's Affiliates (as defined in the Ontario *Business Corporations Act*) and such Affiliates' respective directors, officers, employees, agents, contractors and volunteers.