



COMMUNITY ENERGY PARTNERSHIP PROGRAM FUNDING AGREEMENT

Funding Agreement ID: _____

Date: _____

RECIPIENT: _____ (the "Recipient")

APPLICATION IDENTIFICATION: This Agreement relates to Application No. _____

RECIPIENT'S ADDRESS: _____

Fax: _____ Phone: _____

Contact Person: _____ Email: _____

TOTAL FUNDING AMOUNT: \$ _____ (subject to adjustment as provided herein)

RECIPIENT'S DEPOSIT ACCOUNT: Bank: _____ Account No. _____

Transit No. _____

RECIPIENT ENTITY: (Please check applicable box below)

- one or more individuals resident in Ontario;
- a Registered Charity with its head office in Ontario;
- a Not-For-Profit Organization with its head office in Ontario;
- a "co-operative corporation", as defined in the *Co-operative Corporations Act* (Ontario), all of whose members are resident in Ontario;
- a private corporation whose shareholders all fall into categories above, and for whom commercial electricity generation is not their primary business or employment;
- a partnership or limited partnership whose partners all fall into one of the first four categories above, and for whom commercial electricity generation is not their primary business or employment;
- any other organization that would be considered to have a 100% Community Participation Level under the FIT rules.

Program Manager use only: Version/Date of CEPP Program Rules: Version: _____ Date: _____

WHEREAS:

1. On September 24, 2009, the Ontario Minister of Energy and Infrastructure directed the Ontario Power Authority (the “**OPA**”) to establish with the assistance of a third party (the “**Program Manager**”), a Community Energy Partnerships Program (the “**CEPP**”) through which the OPA will facilitate the participation of communities in the development of renewable energy generation facilities. In particular, CEPP will assist communities in paying for some of the soft costs associated with the development of renewable energy projects.
2. Deloitte & Touche LLP has been retained as the Program Manager and the Community Power Fund has been retained as the Community Partnerships Manager to deliver certain services and manage certain requirements of the CEPP on behalf of the OPA.
3. The OPA, the Program Manager and the Community Partnerships Manager have developed the CEPP and the CEPP Program Rules, for the purpose of implementing the Minister’s directive.
4. The Recipient submitted an application for funding under the CEPP that was approved by a Review Committee under the Program Rules.
5. Pursuant to the Program Rules, the Recipient is required to enter into this Funding Agreement (this “**Agreement**”) to receive the CEPP funding applied for in the Application;

NOW THEREFORE, for valuable consideration, the Program Manager and the Recipient hereby mutually agree to be bound by the terms and conditions set out in this Agreement. The Program Rules, the Application and the following Schedules are attached to this Agreement and incorporated herein by reference and are deemed to be a part hereof:

Schedule A	Terms and Conditions
Schedule B	Activities, Deliverables and Timelines
Schedule C	Funding Disbursement Schedule and Conditions to Funding
Schedule D	Form of Amending Agreement
Schedule E	Form of Supplementary Funding Agreement
Schedule F	Form of Deliverables Submission Cover Page
Schedule G	Form of Check-In Report

Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Program Rules and otherwise shall have the respective meanings given to them in the Terms and Conditions. “Include” shall mean “include without limitation”. Each of the Program Manager and the Recipient is a “Party” and together the “Parties”.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

NOTE: If the Recipient is a corporation, use the following signature block and delete the non-applicable signature blocks.

Deloitte & Touche LLP

[INSERT RECIPIENT NAME]

By:

By:

Name:
Title:

Name:
Title:

I have the authority to bind the partnership.

By:

Name:
Title:

I/We have the authority to bind the corporation.

NOTE: If the Recipient is a Limited Partnership, use the following signature block and delete the non-applicable signature blocks.

Deloitte & Touche LLP

[RECIPIENT], by its general partner [GENERAL PARTNER]

By:

By:

Name:
Title:

Name:
Title:

I have the authority to bind the partnership.

I have the authority to bind the corporation.

NOTE: If the Recipient is an individual, use the following signature block and delete the non-applicable signature blocks

Deloitte & Touche LLP

RECIPIENT

By:

Name:
Title:

Name:

I have the authority to bind the partnership.

Witness:

SCHEDULE A

TO CEPP FUNDING AGREEMENT

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**ARTICLE 1
REPRESENTATIONS AND WARRANTIES**

- 1.1 The Recipient represents, warrants to the Program Manager, and acknowledges that the Program Manager is relying on such representations and warranties in entering into this Agreement, and covenants that:
- (a) it has received a copy of and has reviewed the Program Rules, acknowledges that the Program Manager has recommended that it receive independent legal advice with respect to the Program Rules, the Application and this Agreement and has had an opportunity to receive such advice;
 - (b) it owns or has authority to carry out the Project and has an Economic Interest (as defined in the FIT Rules) therein;
 - (c) it is one of the following categories and meets the 100% Community Participation Level as defined in the FIT Rules:
 - (i) one or more individuals resident in Ontario;
 - (ii) a Registered Charity with its head office in Ontario;
 - (iii) a Not-For-Profit Organization with its head office in Ontario;
 - (iv) a “co-operative corporation”, as defined in the Co-operative Corporations Act (Ontario), all of whose members are resident in Ontario;
 - (v) a private corporation whose shareholders all fall into categories (i) – (iv) above, and for whom commercial electricity generation is not their primary business or employment;
 - (vi) a partnership or limited partnership whose partners all fall into categories (i) – (iv) above, and for whom commercial electricity generation is not their primary business or employment; or
 - (vii) any other organization that would be considered to have a 100% Community Participation Level under the FIT rules.
 - (d) it has the full power and authority to enter into this Agreement and carry out its obligations as set out herein;
 - (e) it has taken all necessary actions to authorize the execution of this Agreement including, if appropriate, passing a resolution authorizing the Recipient to enter into this Agreement and, if it is not the Project owner, the Project owner(s) have taken all necessary actions to authorize execution of this Agreement;
 - (f) it is, and shall continue to be for the term of this Agreement, a natural person or validly existing legal entity with full power to fulfill its obligations under this Agreement;
 - (g) it has or shall engage, and shall continue to have or engage for the term of the Agreement, the experience and expertise necessary to carry out the Project;
 - (h) where Activities that are the subject of this Agreement have already been carried out:

- (i) subject to applicable exceptions in the Program Rules, the Recipient has engaged in a Competitive Tender Process in relation to the engagement of all consultants and suppliers of goods and services in relation to Activities funded in whole or in part under the CEPP (each, a “**Funded Activity**”);
 - (ii) where interests in a Project are held by the Recipient and one or more other Persons that are not a Community, no portion of the CEPP funding has been or shall be used by or accrue to the account of such other Person(s), whether directly or indirectly;
 - (iii) the Application is not in respect of, and the Recipient has not received and will not receive, CEPP funding for Excluded Project Expenses; and
 - (iv) no Funding Termination Event has occurred or is reasonably expected to occur;
- (i) Except as has been disclosed in the Application, there are no previous or contemporaneous Applications made by the Recipient, the Community related to or associated with the Recipient, or another applicant under the CEPP related to or associated with such Community;
 - (j) any information the Recipient provided to the Program Manager or the OPA, whether in or in support of the Application or this Agreement (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and shall continue to be true and complete for the term of the Agreement unless any event or circumstance or change of or affecting the Recipient, a Funded Activity, the Application or a Project has or will make such information untrue or incomplete, in which case the Recipient shall advise the Program Manager in writing of such event, circumstance or change promptly and in any event not later than at the time that the next following Check-In Report is due;
 - (k) the Application complied with the Program Rules, including Section 4 thereof;
 - (l) all prerequisites to the Funded Activities as set out in the Program Rules, have been met;
 - (m) the Project is:
 - (i) intended to constitute a Renewable Generating Facility;
 - (ii) located in the Province of Ontario;
 - (iii) intended to have a capacity of greater than 10 kilowatts and not more than 10 megawatts;
 - (iv) (other than the FIT Program or a FIT Contract) not being funded, or the subject of an application for funding, under any other OPA-administered program, including the Aboriginal Renewable Energy Fund or the Aboriginal Energy Partnerships Program; and
 - (v) not an Existing Generating Facility (as defined in the FIT Rules) unless it is an Incremental Project (in which case the Project only relates to the incremental capacity increase);
 - (n) for Projects that are currently or were previously the subject of a RESOP Contract, the RESOP Contract has terminated, evidence of such termination has been provided to the OPA, and any applicable Connection Impact Assessment has been rescinded;

- (o) there is no reason to expect that the Project would not be both Economically Viable and the subject of a future FIT Contract;
- (p) the Recipient has not engaged and shall not engage in Project-splitting as described in the Program Rules; and
- (q) where the Project is owned by or otherwise involves more than one Community:
 - (i) no Community has applied for or shall apply for funding for any Funded Activity other than the Recipient, whether from the OPA or any other source;
 - (ii) where another Community receives funding for an Activity, the Recipient has not applied for or received, and shall not apply for or receive, and funding for such Activity, whether from the OPA or any other source.

ARTICLE 2 FUNDS AND ACTIVITIES

- 2.1 The Recipient acknowledges and agrees that the Program Rules are incorporated by reference in this Agreement, including definitions of capitalized terms. The Recipient agrees to comply with all provisions of the Program Rules applicable to it, including those in relation to carrying out the Activities, incurring and expending Disbursements, providing the Program Manager with the Deliverables and audit and verification rights of the Program Manager and the OPA. The version of the Program Rules is that indicated on the cover page. The Recipient agrees to comply with the Program Rules as amended from time to time, subject to Article 10 of these Terms and Conditions.
- 2.2 The Program Manager shall:
- (a) subject to section 2.3 of these Terms and Conditions, comply with its obligations under the Program Rules;
 - (b) subject to section 2.3 of these Terms and Conditions, provide the dollar amounts, on behalf of the OPA, in the nature of Disbursements to which the Recipient is entitled under the Program Rules and this Agreement (the “**Funds**”) to the Recipient in accordance with this Agreement and the Program Rules and as set out in Schedule C;
 - (c) subject to section 2.3 of these Terms and Conditions, in respect of payment of Funds, pay the Recipient by cheque or deposit Funds into an account designated by the Recipient on the first page of this Agreement or as the Recipient may otherwise designate from time to time, provided that the account:
 - (i) resides at a Canadian financial institution; and
 - (ii) is in the name of the Recipient.
- 2.3 The Recipient shall:
- (a) be entitled to receive such amount of Funds as is approved by the OPA
 - (b) carry out the Funded Activities:
 - (i) in accordance with the terms and conditions of this Agreement, the Program Rules and the Application;

- (ii) in compliance with Laws and Regulations; and
 - (iii) on the schedule and by the deadlines set out in Schedule B.
 - (c) set aside and use the Funds only for the purpose of carrying out the Project and only for the Activities applied for and set out in the Application; and
 - (d) use the Funds only in accordance with the Budget.
- 2.4 If the Program Manager provides Funds to the Recipient prior to the Recipient's immediate need for the Funds, the Recipient shall place the Funds in a liquid account in the name of the Recipient at a Canadian financial institution and shall not use the Fund for any purpose other than as expressly set out in this Agreement.
- 2.5 The Recipient shall not use the Funds for any GST or HST costs for which it has or will receive a rebate, tax credit, input tax credit or refund.
- 2.6 Neither the OPA nor the Program Manager grants the Recipient any intellectual property rights, and, in particular, no license or other rights to use any names, logos or marks associated with the Program Manager, the OPA, the Province of Ontario, or the CEPP.
- 2.7 Deliverables shall be delivered to the Program Manager by the applicable deadline set out in Schedule B and together with a duly completed Deliverables Submission Cover Page in the form attached as Schedule F. The acceptability, quality and completeness of Deliverables shall be in the sole discretion of the Program Manager and the Program Manager shall have the right to reject all or a portion of any Deliverable on such basis.
- 2.8 Each Deliverables submission shall contain representations and warranties as follows:
- (a) The Recipient has complied with the CEPP Program Rules and this Agreement in submitting its Application and in carrying out the Activities funded, in whole or in part, under the CEPP; and
 - (b) Subject to applicable exceptions provided in the Program Rules, the Recipient has engaged in a Competitive Tender Process in relation to the engagement of all external consultants and suppliers of goods and services in relation to the Activities funded in whole or in part under the CEPP and the terms and conditions, including price, of each such engagement are commercially reasonable, reflect an Arm's Length relationship and are free from conflict of interest and collusion.
- 2.9 Each Deliverables submission shall also contain copies of invoices for external consultants, accountants and legal advisors, for all Activities funded under this Agreement, provided that such invoices may, except as approved by the Program Manager in the Application, only reflect payments based on agreed upon rates for services provided and may not include per diems or disbursements or other fees, costs or expenses for meals, hospitality, or other expenses.
- 2.10 Acceptance of a Deliverable by the Program Manager under this Agreement is acceptance only for the purpose of funding the Activity as provided hereunder and shall in no way be construed as acceptance or endorsement by the Program Manager or the OPA for any other purpose. In particular, acceptance by the Program Manager of any Deliverable that has been carried out in for the purpose of qualifying for, meeting a requirement of or complying with the FIT Rules, in relation to a FIT Contract or Laws and Regulations shall not have the effect of approving such Deliverable for such purpose.

- 2.11 Where some or all expenses within Grant 1 or Grant 2 under an Application are reimbursable under the Program Rules or this Agreement, the Recipient shall enter into written agreements with all consultants and service providers engaged in relation to such Grant, provided that a written contract is not required where the aggregate cost or value of the services provided by the consultant or service provider, together with any Affiliate, principal, employee and contractor thereof, is less than \$500.00.
- 2.12 Where employees or other internal resources of the Recipient are devoted to a Funded Activity so as to comprise Project Expenses, the Recipient shall comply with Section 3.7 of the Program Rules.
- 2.13 Project Expenses may consist only of direct costs incurred by a Recipient for services necessary for the Funded Activities and may not consist of any fees, costs, disbursements, payments-in-kind, gifts, expenses or other consideration of any type, other than:
- (a) Eligible External Expenses; and
 - (b) Internal Applicant Resources;
- subject to and in accordance with the Program Rules.
- 2.14 The Recipient may from time to time, in accordance with the Program Rules and this Agreement, submit a supplementary application for funding, in a form substantially similar to the Recipient's original application for funding. If approved by the Program Manager in accordance with the Program Rules the Program Manager may require the Recipient to enter into a Supplementary Funding Agreement in the form attached as Schedule E.

ARTICLE 3 CONFLICT OF INTEREST

- 3.1 Subject to the exceptions provided in the Program Rules, the Recipient shall engage in a Competitive Tender Process in relation to the engagement of all external consultants and suppliers of goods and services in relation to the Activities funded in whole or in part under the CEPP and the terms and conditions, including price, of each such engagement shall be commercially reasonable, reflect an Arm's Length relationship and shall be free from conflict of interest and collusion.
- 3.2 The Recipient shall carry out the Activities and the Project and use the Funds without any actual, potential or perceived conflict of interest.
- 3.3 For the purposes of this Article, a conflict of interest includes any circumstances where:
- (a) the Recipient; or
 - (b) any person who has the capacity to influence the Recipient's decisions,
- has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project and the use of the Funds.
- 3.4 The Recipient shall:
- (a) disclose to the Program Manager in writing, without delay, any situation that could reasonably be interpreted as either an actual, potential or perceived conflict of interest or other breach of this Article 3; and

- (b) comply with any terms and conditions that the Program Manager may reasonably prescribe as a result of the disclosure (without prejudice to any remedy the Program Manager may be entitled to exercise hereunder).

ARTICLE 4 REPORTING

4.1 The Recipient shall:

- (a) submit to the Program Manager all Check-in Reports in the form attached as Schedule G, as amended from time to time by the Program Manager, in accordance with the Program Rules, including Section 3.5 thereof, and this Agreement, including Schedule B;
- (b) submit to the Program Manager any other reports requested by the Program Manager in accordance with the timelines and content requirements specified by the Program Manager;
- (c) ensure that all Check-In Reports and other reports are completed to the satisfaction of the Program Manager; and
- (d) ensure that all Check-In Reports and other reports are signed on behalf of the Recipient by an authorized signing officer of the Recipient.

4.2 Upon the occurrence of any of the following events (in each case, a “**Review Event**”):

- (a) a Funding Termination Event;
- (b) an Event of Default;
- (c) a material breach of this Agreement;
- (d) unavailability of expected funding for Funded Activity other than under the CEPP; or
- (e) an ECP Event (as defined in section 10.1 of these Terms and Conditions);

the Recipient shall so inform the Program Manager promptly in writing, and in any case not later than the date of the next following Check-In Report.

4.3 The report or Check-In Report delivered to the Program Manager pursuant to section 4.2 of these Terms and Conditions shall contain the recommendations of the Recipient with respect to amendments to this Agreement, termination of this Agreement, or other appropriate action of the Parties in light of the Review Event.

4.4 Following a Review Event:

- (a) the Recipient shall not, without the written consent of the Program Manager, incur any further expenditures in connection with the CEPP in relation to the Project, and shall not be eligible for any further funding under the CEPP in respect of the Project (other than in respect of otherwise Eligible External Expenses in relation to which the Recipient entered into a legally binding commitment in writing prior to such occurrence, such commitment could not reasonably have been excluded from the relevant contract or otherwise avoided through commercially reasonable efforts to include appropriate termination provisions or otherwise, and evidence of such commitment is provided to the Program Manager);

- (b) the Program Manager may pursue such remedies or courses of action available to it under Articles 9 or 10 of these Terms and Conditions.

ARTICLE 5 RECORDS RETENTION AND AUDIT RIGHTS

- 5.1 The Recipient shall, and ensure that its contractors shall, keep and maintain all books and records, including such agreements with consultants and service providers, necessary to support the information contained in and with respect to each the above representations and warranties, any Deliverables submitted to the Program Manager, and any statement or information submitted to the Program Manager in relation to the CEPP, for a period of not less than seven (7) years from the later of the date that the final Disbursement is made in respect of the Application and the date that all Deliverables in respect of such Grant are received by the Program Manager, and the OPA, its authorized representatives, an independent auditor identified by the OPA or the Government of Ontario, (in each case, the “**Inspecting Party**”) shall be entitled to request copies of, and access to, such books and records from time to time during such period for audit, verification or reporting purposes, and may provide all such records and information to its third party advisors, agents, consultants and auditors, and to the Ontario Energy Board and the Government of Ontario.
- 5.2 The Inspecting Party may, at its own expense, upon twenty-four hours’ Notice to the Recipient and during normal business hours, enter upon the Recipient’s premises or those of its contractors to review the progress of the Project and the Recipient’s expenditure of the Funds and, for these purposes, the Inspecting Party may:
- (a) inspect and copy the records and documents referred to in section 5.1 of these Terms and Conditions; and
- (b) conduct an audit or investigation of the Recipient or the Recipient’s contractors in respect of the expenditure of the Funds, the Funded Activities and/or the Project.
- 5.3 To assist in respect of the rights set out in this Article 5, the Recipient and its contractors shall disclose any information reasonably requested by the Inspecting Party, and shall do so in a form reasonably requested by the Inspecting Party.
- 5.4 No provision of the Agreement shall be construed so as to give the Inspecting Party any control whatsoever over the Recipient’s records or those of its contractors.
- 5.5 Recipient shall ensure that its contracts or legal arrangements with its contractors obligates such contractors to provide to the Inspecting Party the rights set out in this Article 5.
- 5.6 If any discrepancy is identified by the audit referred to in this Article 5, the appropriate adjustments shall be promptly made between the parties. If there has been an overpayment by the Program Manager or the OPA to the Recipient, the amount of the overpayment shall constitute a debt due to the OPA or Program Manager, as the case may be, and may be so recovered from the Recipient. If such overpayment is greater than three (3) percent of the aggregate funding in respect of the Activities for the relevant audited Grant, the cost of such audit shall be paid by the Recipient, and such amount shall also constitute a debt due by the Recipient to the OPA or Program Manager and may be so recovered. Any debt due by the Recipient to the OPA or Program Manager herein referred to may, in addition to any other remedies available at law or in equity against the Recipient, also be recovered by the OPA or Program Manager by set-off.

ARTICLE 6 ACKNOWLEDGEMENT OF OPA SUPPORT

- 6.1 Unless otherwise directed by the Program Manager, the Recipient shall, in a form approved by the Program Manager, acknowledge the support of the OPA in any publication of any kind, written or oral, relating to the Project using the statement set out below:

“This project has received funding support from the Ontario Power Authority through the Community Energy Partnerships Program. Such support does not indicate endorsement by the Ontario Power Authority or the Province of Ontario of the contents of this material.”

- 6.2 If the Recipient publishes any material of any kind relating to the Project, the Recipient shall indicate in the material that the views expressed in the material are the views of the Recipient and do not necessarily reflect those of the Ontario Power Authority or the Province of Ontario.

ARTICLE 7 INDEMNIFICATION

- 7.1 The Recipient agrees to indemnify and hold the OPA, the Program Manager, their respective affiliates, and each of their officers, directors, members, partners, principals, agents, servants, employees and subcontractors (collectively, the “**OPA Indemnitees**”) harmless from and against any and all actions, claims, damages, losses, liabilities, expenses, costs, judgments, settlements or other costs, including without limitation, reasonable attorneys’ fees, arising out of or relating to: (i) any material breach of or material inaccuracy in any representation, warranty, or covenant of the Recipient in this Agreement, the Application or the Program Rule; (ii) any claim that any Activities infringe upon or violate any patent, copyright, trade secret, contractual, or any other proprietary right of any third party, and (iii) any bodily injury, death or damage to property related to or arising out of the Project, the CEPP, the Program Rules or this Agreement, including that caused by any act or negligent omission or wilful misconduct of the Recipient, its affiliates, the Community to which the Recipient pertains, and each of their officers, directors, members, partners, principals, agents, servants, employees and subcontractors.

ARTICLE 8 INSURANCE

- 8.1 The Recipient represents and warrants that it has, and shall maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence. The policy shall include the following:
- (a) the OPA Indemnitees (as defined in section 7.1) as additional insureds with respect to liability arising in the course of performance of the Recipient’s obligations under, or otherwise in connection with, the Agreement;
 - (b) a cross-liability clause;
 - (c) contractual liability coverage; and
 - (d) a 30 day written notice of cancellation, termination or material change.

- 8.2 The Recipient shall within three (3) months of the date of this Agreement provide the Program Manager or the OPA with certificates of insurance, or other proof as may be requested by the Program Manager or the OPA, that confirms the insurance coverage as provided for in section 8.1 of these Terms and Conditions. Upon the request of the Program Manager or OPA, the Recipient shall make available to the Program Manager or OPA a copy of each insurance policy.

ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES

- 9.1 Each of the following events shall constitute an event of default (each, an **“Event of Default”**):
- (a) in the opinion of the Program Manager, the Recipient has knowingly provided false or misleading information in its Application or in any other communication with the Program Manager, whether written or oral;
 - (b) the Recipient breaches any material requirement of this Agreement or the Program Rules;
 - (c) the nature of the Recipient’s operations, or its corporate or other status, changes so that it no longer meets one or more of the applicable eligibility requirements of the CEPP;
 - (d) the Recipient ceases to operate;
 - (e) an event of Force Majeure continues for a period of 90 days or more;
 - (f) a Funding Termination Event occurs;
 - (g) any representation or warranty made by the Recipient in this Agreement is not true or correct in any material respect when given or applicable during the term of this Agreement;
 - (h) the Recipient defaults in respect of (i) any material financing, services or supply contract or (ii) lease or purchase agreement in respect of lands, in relation to the Project or the Activities;
 - (i) the Recipient commits any act of fraud in relation to the Program Manager, the Project, the Program Rules or this Agreement;
 - (j) by agreement, decree, judgment or order of a governmental authority, the Recipient agrees to be treated as or is adjudicated bankrupt or insolvent or any substantial part of the Recipient’s property is sequestered or subject to the appointment of any third party and such agreement, decree, judgment, order or appointment continues in effect unrevoked, undischarged and unstayed for a period of thirty (30) days after the entry or implementation thereof;
 - (k) the Recipient dissolves, winds up or liquidates, or makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation;
 - (l) a receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Recipient or of any of the Recipient’s property is appointed by a governmental authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged

or such appointment is not revoked or withdrawn within thirty (30) days after the appointment;

- (m) the Recipient amalgamates with, or merges with or into, or transfers (whether by operation of law or otherwise) all or substantially all of its assets to, another Person without the prior written consent of the Program Manager;
- (n) the Recipient transfers any portion or aspect of the Project to a non-Community or other entity otherwise ineligible under the CEPP without the prior written approval of the Program Manager;
- (o) the Recipient fails to comply with the Enhanced Cooperation Procedures or any amended schedule, budget or Activity to which it is subject pursuant to Article 10 of these Terms and Conditions;
- (p) any investor, partner or other party involved in the Project withdraws from the Project so as to materially impair the viability of the Project;
- (q) the Recipient is no longer eligible to receive funds under or otherwise participate in the CEPP; or
- (r) the Recipient ceases to have an Economic Interest in the Project.

9.2 If any Event of Default occurs, the Program Manager shall be entitled at any time to deliver to the Recipient a written notice that the Recipient is in default of its obligations hereunder (the “**Notice of Default**”). The Notice of Default shall set out the nature of the default and a reasonable period of time by which the default is to be cured, which time period shall not exceed 14 days. If the cure period has expired without the Event of Default being cured, or if the Program Manager has reasonably determined that the Event of Default is not curable, at any time following the delivery of the Notice of Default, the Program Manager may deliver a notice to Recipient terminating this Agreement or take one or more of the following actions:

- (a) suspend the payment of Funds for such period as the Program Manager determines appropriate;
- (b) cancel all further instalments of Funds;
- (c) demand the repayment of any Funds;
- (d) demand the repayment of an amount equal to any Funds the Recipient used for purposes not agreed upon by the Program Manager;
- (e) demand the repayment of an amount equal to any Funds the Program Manager provided to the Recipient; or
- (f) terminate this Agreement.

9.3 If an Event of Default referred to in sections 9.1(j) through (l) of these Terms and Conditions occurs, this Agreement shall terminate automatically without notice, act or formality, effective immediately before the occurrence of the Event of Default.

9.4 The Program Manager’s remedies hereunder are in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. Nothing in this Article limits or affects any other rights or causes of action that the Program Manager may have regarding representations, warranties, covenants and indemnities in

its favour contained in this Agreement. If the Program Manager waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination in the event of the non-fulfillment, non-observance or non-performance of any other conditions, obligation or covenants in whole or in part.

- 9.5 Any default of the Recipient under this Agreement shall be deemed, at the sole and absolute option of the Program Manager, upon notice to the Recipient, a default of the Recipient under any and all other agreements, if any, between the Program Manager and the Recipient or the OPA and the Recipient (collectively, the “**Other Agreements**”), whether currently in force or hereinafter entered into, and the Program Manager shall be entitled to exercise any remedy available to it under this Agreement, the Other Agreements or at law. Any default of the Recipient under any of the Other Agreements, whether currently in force or hereinafter entered into, shall be deemed, at the sole and absolute option of the Program Manager, upon notice to the Recipient, a default of the Recipient under this Agreement and the Program Manager shall be entitled to exercise any remedy available to it under this Agreement, the Other Agreements or at law.

ARTICLE 10 ENHANCED COOPERATION PROCEDURES

- 10.1 Subject to section 10.4 of these Terms and Conditions, where from time to time one of the following events occurs:

- (a) the Recipient has not complied with, or there are reasonable grounds to believe that the Recipient will not comply with or carry out:
 - (i) the schedule or deadlines set out in Schedule B;
 - (ii) the Budget; or
 - (iii) the Activities as described in Schedule B; or
- (b) there occurs:
 - (i) a change in Laws and Regulations; or
 - (ii) a material amendment of the Program Rules that has a material adverse affect on the ability of the Recipient to comply with the Program Rules or this Agreement;

the Program Manager may, in its sole and absolute discretion with respect to events set out in subsection (a) of this section and acting reasonably with respect to events set out in subsection (b) of this section, in addition to any remedies that may be available to it under Section 9.2 of these Terms and Conditions or otherwise, initiate the procedures set out in this Article 10 by delivering notice thereof to the Recipient, by which notice such event will be deemed to be an “**ECP Event**”. Following such notice, the Parties will cooperate in the manner hereinafter set out (the “**Enhanced Cooperation Procedures**”).

- 10.2 The Enhanced Cooperation Procedures shall consist of the following:

- (a) the Program Manager and the Recipient shall consult with respect to appropriate revisions to the obligations of the Parties hereunder;
- (b) the Recipient may by notice request (the “**Request**”) approval by the Program Manager in respect of revisions (the “**Revisions**”) to the schedule and deadlines set out in Schedule B, the Budget, the Activities or other items, as appropriate; and

- (c) the Program Manager shall approve or reject the Revisions, acting reasonably, by notice in writing.
- 10.3 Following Program Manager approval of the Revisions, in its discretion and depending on the nature and extent of the Revisions, the Program Manager may, in its discretion, require that the Program Manager enter into an Amending Agreement in the form attached as Schedule D.
- 10.4 The following events or circumstances shall be excluded from this Article 10:
- (a) cost-overruns for an Activity, whether or not a Funded Activity, any part thereof, the Activities in aggregate, or the Project due to foreseeable events, circumstances or changes;
 - (b) Activities that should have been included in the initial Application on the basis that it was foreseeable that such Activities were necessary or appropriate for the Project

ARTICLE 11 REPAYMENT AND SET-OFF

- 11.1 If the Recipient at any time and from time to time owes any monies, including any Funds, to the Program Manager, whether or not their return or repayment has been demanded by the Program Manager, such monies shall be deemed to be a debt due and owing to the Program Manager by the Recipient and the Recipient shall pay or return the amount to the Program Manager immediately unless the Program Manager directs otherwise in writing.
- 11.2 The Program Manager may charge the Recipient interest on any monies owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.
- 11.3 The Recipient shall pay any monies owing to the Program Manager by cheque payable to the "Deloitte & Touch LLP" and mailed to the Program Manager at the address provided in section 14.1 of these Terms and Conditions or as the Program Manager may otherwise direct from time to time.
- 11.4 The Program Manager shall be entitled to set-off any monies owed to it or to which is may be entitled against any obligations it may have to the Recipient, its Affiliates or the relevant Community.

ARTICLE 12 CONFIDENTIALITY AND PROTECTION OF PRIVACY

- 12.1 The Recipient acknowledges and agrees that the OPA and the Program Manager shall have the right to make public the names of the Recipient, the title of the Project or proposed Project, and the amount of funds awarded, if any.
- 12.2 The Program Manager will at all times maintain in strict confidence all Confidential Information (as defined in the FIT Rules) which they may receive from the Recipient (or in the course of performing its obligations under this Agreement), and will use such Confidential Information solely in connection with performing such obligations. Each Party shall maintain the Confidential Information of the other Party in confidence using at least the same degree of care as it employs in maintaining in confidence its own proprietary and confidential information, but in no event less than a reasonable degree of care.
- 12.3 The Party receiving Confidential Information will not publish, reproduce, copy, disseminate or disclose the Confidential Information, or otherwise use the same except in performing its

obligations under this Agreement, without the prior written consent of the disclosing Party. The receiving Party shall disclose the Confidential Information only to those of its employees who have a need to know, and who are bound by this obligation of confidentiality. Upon the expiry or termination of this Agreement, each Party shall return to the disclosing Party any and all Confidential Information received, or destroy it at the option of the disclosing Party, provided that the OPA and the Program Manager may retain a copy of such essential information as required by Laws and Regulations.

- 12.4 The Recipient agrees that the Project Manager may use the Recipient's Confidential Information for the purpose of creating models and standards for the development of community power projects, and that these models and standards may be made publicly available provided they do not disclose any Project-specific or Recipient-specific information.
- 12.5 The Recipient acknowledges that the Program Manager acts on behalf of the OPA and that the OPA is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Program Manager or the OPA in connection with the Project or otherwise in connection with the Agreement is subject to disclosure in accordance with that Act. Each Party shall comply with all privacy laws applicable to it.
- 12.6 Each Party shall immediately advise the other if it believes that any practice or procedure in which the other Party is engaging contravenes an applicable privacy law, or if either receives or learns of any complaint or allegation to that effect.
- 12.7 The provisions of this Article 12 will survive any termination or expiration of this Agreement for as long as any Confidential Information exists.

ARTICLE 13 DISPUTE RESOLUTION

- 13.1 All disputes arising out of or relating to this Agreement that cannot be resolved by the parties following an appropriate period of discussion shall be resolved by way of binding arbitration. In such case, the parties shall appoint a single arbitrator, or if the parties fail to appoint an arbitrator within 15 days following the agreement to refer the dispute to arbitration, upon application of either of the parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed to by the parties, the arbitrator shall render a decision within thirty (30) days after the end of the arbitration hearing and shall notify the parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change the Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the parties.

ARTICLE 14 NOTICE PROVISIONS

- 14.1 Any notices required to be given by this Agreement shall be given by personal delivery, in which case the notice shall be deemed to have been given on the day of delivery, or by prepaid post, in which case the notice shall be deemed to have been given with the expiration of the fifth day after the date of mailing, or by electronic means on a Business Day, in which case the notice shall be deemed to have been given on the business day next following the Business Day of sending, and in each case to the address given below:

In the case of the Program Manager:

To:

Deloitte & Touche LLP
181 Bay Street
Bay Wellington Tower - Brookfield Place
Suite 1400
Toronto Ontario M5J 2V1
Canada

Attention: CEPP Program Manager

Phone No: (416) 775-7495
Email: CEPP@Deloitte.ca

And to:

Community Power Fund
30 Duncan Street, Suite 203
Toronto, ON, M5V 2C3

Attention: CEPP Community Partnerships Manager

Phone No: (416) 597-2748
Email: info@communityenergyprogram.ca

In the case of the Recipient:

to the address of the Recipient set out on the cover page of this Agreement.

ARTICLE 15 CHANGE IN LAWS AND REGULATIONS

- 15.1 To the extent that there is a change in Laws and Regulations which frustrates the contractual relationship established between the Parties by this Agreement following the date hereof, then:
- (a) each Party shall notify the other Party as soon as reasonably possible upon becoming aware of the consequences of such change;
 - (b) the Parties shall engage in good faith negotiations to amend this Agreement on the basis that such amendments together with the change in the Laws and Regulations will not frustrate the contractual relationship between the Parties as it existed prior to the introduction of such change in the Laws and Regulations; and
 - (c) if the Parties fail to reach agreement on the amendments described in paragraph (b) of this section, at the option of either Party, such event shall be deemed to be a Funding Termination Event and the provisions of this Agreement with respect thereto, including Article 19 of these Terms and Conditions, shall apply.

**ARTICLE 16
GENERAL PROVISIONS**

- 16.1 Except for those provisions of this Agreement which are identified for the benefit of the OPA, including sections 5.6 and 7.1, this Agreement is not intended to confer any rights or remedies upon any person other than the Parties to this Agreement.
- 16.2 The Program Manager and the Recipient are independent operators and agree and declare that nothing in this Agreement shall be construed as creating a partnership, joint venture, or agency relationship between the parties. Neither Party has any authority whatsoever to enter into legally binding obligations on behalf of the other.
- 16.3 Whenever any action or payment to be taken or made under this Agreement would otherwise be required to be taken or made on a day other than a Business Day, that action or payment shall be taken or made on the next succeeding Business Day.
- 16.4 No failure to enforce any provision of this Agreement shall be construed as a waiver of such provision or the right of such Party to enforce each and every such provision. Waiver of any breach of this Agreement shall not be deemed to be a waiver of any other or future breach, even if similar in nature.
- 16.5 No agreement purporting to amend or modify this Agreement or any document relating thereto or connected therewith is valid and binding unless it is in writing and signed by the parties hereto.
- 16.6 Each of the parties hereto will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other Party may, either during the term of this Agreement or otherwise, reasonably require to effectively carry out or better evidence or perfect the full intent of this Agreement.
- 16.7 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Neither Party may assign all or any part of this Agreement, without the approval of the other Party, provided that the Program Manager may assign this Agreement to the OPA or to any successor Program Manager appointed by the OPA.
- 16.8 This Agreement together with the Application and the Program Rules constitutes the entire agreement between the Program Manager and the Recipient pertaining to the subject matter of this Agreement. There are no warranties, conditions, or representations and there are no agreements in connection with the subject matter of this Agreement except as specifically set forth or referred to in this Agreement, the Application and the Program Rules.
- 16.9 Time shall at all times be of the essence of this Agreement.
- 16.10 All dollar amounts referenced in this Agreement are references to Canadian dollars.
- 16.11 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Subject to Article 13 of these Terms and Conditions, the parties hereto each attorn to the jurisdiction of the courts of the Province of Ontario.
- 16.12 This Agreement may be executed in several counterparts, each of which so executed will be deemed to be an original, and such counterparts together shall constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to bear the date as of the date written in the beginning of this Agreement.

- 16.13 The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision shall be deemed to be severed.
- 16.14 In the case of any conflict between the Program Rules and this Agreement, the provisions of this Agreement shall prevail.
- 16.15 Articles 5, 7, 10, 11, 12, 13, 14 and 16 of these Terms and Conditions shall survive the termination of this Agreement and continue in full force and effect.

SCHEDULE B

TO CEPP FUNDING AGREEMENT

FUNDED ACTIVITIES, DELIVERABLES AND TIMELINES

<u>Disbursement #</u>	<u>Funded Activities</u>	<u>Deliverable</u>	<u>Deadline</u>

CHECK IN REPORTS

- monthly
- quarterly

SCHEDULE C

TO CEPP FUNDING AGREEMENT

FUNDING DISBURSEMENT SCHEDULE AND CONDITIONS TO FUNDING

Disbursement #	Amount	Condition Precedent	Deliverables

SCHEDULE D

TO CEPP FUNDING AGREEMENT
FORM OF AMENDING AGREEMENT

[See Attached]

SCHEDULE E

TO CEPP FUNDING AGREEMENT

FORM OF SUPPLEMENTARY FUNDING AGREEMENT

[See Attached]

SCHEDULE F

TO CEPP FUNDING AGREEMENT

FORM OF DELIVERABLES SUBMISSION COVER PAGE



**COMMUNITY ENERGY PARTNERSHIP PROGRAM
DELIVERABLES SUBMISSION COVER PAGE**

Funding Agreement ID: _____

The undersigned Recipient represents and warrants to the Program Manager as follows:

1. The Deliverables attached hereto have been delivered to the Program Manager by the applicable deadline set out in Schedule B of the CEPP Funding Agreement. The Recipient acknowledges and agrees that the acceptability, quality and completeness of Deliverables shall be in the sole discretion of the Program Manager and the Program Manager shall have the right to reject all or a portion of any Deliverable on such basis.
2. The Recipient has complied with the CEPP Program Rules and the Funding Agreement in submitting its Application and in carrying out the Activities funded, in whole or in part, under the CEPP.
3. Except in accordance with applicable exceptions as provided in the Program Rules, the Recipient has engaged in a Competitive Tender Process in relation to the engagement of all external consultants and suppliers of goods and services in relation to the Activities funded in whole or in part under the CEPP and the terms and conditions, including price, of each such engagement are commercially reasonable, reflect an Arm's Length relationship and are free from conflict of interest and collusion.
4. Attached hereto are copies of invoices for external consultants, accountants and legal advisors, for all Activities that are the subject of the Funding Agreement, and such invoices, except as previously approved by the Program Manager, only reflect payments based on agreed upon rates for services provided and do not include per diems or disbursements or other fees, costs or expenses for meals, hospitality, or similar expenses.
5. The Recipient acknowledges that:
 - (a) acceptance of a Deliverable by the Program Manager under this Agreement is acceptance only for the purpose of funding the Activity as provided under the Funding Agreement and shall in no way be construed as acceptance or endorsement by the Program Manager or the OPA for any other purpose; and
 - (b) acceptance by the Program Manager of any Deliverable that has been carried out in for the purpose of qualifying for, meeting a requirement of or complying with the FIT Rules,

in relation to a FIT Contract or Laws and Regulations shall not have the effect of approving such Deliverable for such purpose.

6. Attached hereto are the Deliverables due in accordance with Schedule B of the Funding Agreement and consisting of the following:

NOTE: If the Recipient is a corporation, use the following signature block and delete the non-applicable signature blocks.

[INSERT RECIPIENT NAME]

By:

Name:
Title:

By:

Name:
Title:

I have the authority to bind the corporation.

NOTE: If the Recipient is a Limited Partnership, use the following signature block and delete the non-applicable signature blocks.

[RECIPIENT], by its general partner [GENERAL PARTNER]

By:

Name:
Title:

I have the authority to bind the corporation.

NOTE: If the Recipient is an individual, use the following signature block and delete the non-applicable signature blocks

RECIPIENT

Name:

Witness:

SCHEDULE G

TO CEPP FUNDING AGREEMENT

FORM OF CHECK-IN REPORT



Community Energy Partnerships Program

CHECK-IN REPORT

Project Name	
Name of Recipient	
Application Number	
Funding Agreement ID	
Date	
How much funding has been spent to date?	

Project Progress

Describe the activities that have been completed since the last check-in.

Next Steps

Describe the activities that will be completed between now and the next check-in.

Project Alerts

Please provide details on any challenges the project is facing and on any new developments or variances from the Funding Agreement, Application or last check-in. For example, changes in suppliers, hourly rates, budget, project schedule etc. Are there any reasons this project will not be completed within the timeline specified in the Funding Agreement?

CEPP Funding Agreement – Form of Check-in Report

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Office Use Only

NOTES

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