

SCHEDULE A – BINDING TERMS AND CONDITIONS FOR THE COMPETITION PRIZE WINNER

INNOVATION AGREEMENT

This INNOVATION AGREEMENT (the “Agreement”) is made and entered into as of the [REDACTED] day of [REDACTED], 2018 (the “Effective Date”).

BETWEEN:

ONTARIO POWER GENERATION INC., an Ontario corporation having its offices at 700 University Ave., Toronto, Ontario, Canada M5G 1X6;

(hereinafter referred to as the “**Company**”);

AND

[REDACTED];

(hereinafter referred to as the “**Innovator**”).

WHEREAS:

- A. The Company has partnered with Spark Centre’s Ignite Competition to host a pitch competition in support of technology development (the “**Competition**”);
- B. Having successfully pitched its early stage, under-development technology, invention or innovative commercial process (the “**Innovation**”), the Innovator has been selected as the winner of the Competition; and
- C. The Company and the Innovator wish to collaborate with respect to their joint development of the Innovation and, in particular, the Company has agreed to provide seed funding in accordance with the Competition Terms and Conditions and may provide continuing mentorship to the Innovator in exchange for certain intellectual property rights in the Innovation and any derivative works resulting therefrom (the “**Project**”).

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

1. DEFINITIONS

1.1 For the purpose of this Agreement:

- (a) “**Background Intellectual Property**” means Intellectual Property of the Innovator or the Company which is owned, licensed, acquired or developed by such Party prior to or independently of the Project.

- (b) **“Confidential Information”** means: any information disclosed by one Party to the other during the term of this Agreement relating directly or indirectly to the Project that is or should reasonably be understood to be confidential or proprietary to the disclosing Party. Confidential Information of a Party includes, but is not limited to, Intellectual Property, proprietary information and ideas, patentable ideas and/or trade secrets, existing and/or contemplated products and services, patent applications, improvements, designs, analysis, copyrightable material, technical, research and development, marketing, sales, operating, performance, costs, profit, margin and other financial information, know how, business and process information, business strategy, computer programs (or techniques), and all record-bearing media containing or disclosing such information and documents, books, manuals, reports, computer reports, software or data files, financial data, product specifications, samples, drawings, software demonstrations, documents, models or prototypes, and future products and plans, or other information that is specifically disclosed pursuant to this Agreement.
- (c) **“Intellectual Property”** means any patents, patent rights, trade-marks, service marks, registered designs, topography or semiconductor mask work rights, copyrights, design rights, applications for any of the foregoing, software (hard copies and machine readable formats, including source code and all related documentation) developed in performance of the Project, trade secrets, know-how and any other similar protected rights in any jurisdiction, whether registered or not registered, together with all rights of action in relation to the infringement of any of the above.
- (d) **“Necessary IP”** means Background Intellectual Property of a Party that is necessary to the reasonable use and exploitation of the Project IP.
- (e) **“Parties”** means the Company and the Innovator and **“Party”** means any one of them.
- (f) **“Personal Information”** has the meaning ascribed to it under the Freedom of Information and Protection of Privacy Act, RSO 1990, Chapter F.31 (**“FIPPA”**).
- (g) **“Project IP”** means the Intellectual Property developed by a Party as a direct result of the performance of the Project.

2. INTELLECTUAL PROPERTY

- 2.1 Background Intellectual Property. Nothing herein shall serve to, or should be construed to transfer any ownership or commercial rights whatsoever in the Background Intellectual Property of the Innovator, the Company, or any Background Intellectual Property of a third party that is disclosed by a Party for purposes of the Project. Such Background Intellectual Property shall be treated as Confidential Information and may be used solely for the purpose of performing activities related to the development of the Project. For the avoidance of doubt as to the content of the Innovator’s Background Intellectual Property, within 15 business days of the Effective Date, the Innovator shall provide to the Company copies of all Background Intellectual Property related to the Innovation including, without limitation, all documents, drawings, data and specifications.
- 2.2 Company Created IP. Project IP, including all intellectual property rights therein, created

solely by Company personnel, shall be owned by the Company.

- 2.3 Jointly Created IP. Project IP, including all intellectual property rights therein, created jointly by Company personnel and the Innovator, shall be owned by the Innovator. To the extent any jointly created IP can be commercialized, Innovator and Company shall use good faith to endeavour to reach mutually satisfactory terms on an agreement to jointly commercialize the jointly created IP. If the Parties are unable to reach terms on any such agreement, Company may nonetheless independently commercialize the Innovation pursuant to the license rights granted to it under section 2.4.
- 2.4 IP License. In the event that the Parties are unable to reach terms on an agreement within a reasonable period of time to exploit the jointly created IP in accordance with section 2.3, the Innovator shall grant to the Company a perpetual, irrevocable, assignable, transferable, royalty-free, exclusive, and fully paid-up license to use, exploit, copy, reproduce, transmit, modify and create derivative works from any Project IP and Necessary IP (the “Unrestricted License”). For greater certainty, the Innovator acknowledges and agrees that the Unrestricted License is granted to the Company on an exclusive basis and the Innovator will refrain from granting any Project IP or Necessary IP, through a license or otherwise, to any third-party other than the Company without the prior written consent of the Company.
- 2.5 No Diminishing of Intellectual Property Rights. The Innovator will not take any action that may compromise or diminish the grant to Company of rights in the Intellectual Property. The Innovator will perform any acts required to confirm or document Company’s rights in the Intellectual Property. These acts include obtaining, at the request of Company and at Innovator’s expense, assignments of rights from Innovator’s personnel, as applicable, any applicable subcontractor’s employees and any applicable subcontractor. These acts also include providing, at Company’s expense, access to Innovator’s personnel, as applicable, and any applicable subcontractor to assist Company to protect fully its rights in the Intellectual Property.
- 2.6 Representations and Warranties. Innovator represents and warrants to Company as follows.
- (a) **No Suits**. There is no claim, demand or suit respecting any part of the Intellectual Property, Background Intellectual Property or Necessary IP.
- (b) **No Potential Claims**. There is no potential claim, demand or suit that Innovator is aware of respecting the Intellectual Property, Background Intellectual Property or Necessary IP, in whole or in part, that could affect the performance, function or use of the Intellectual Property, Background Intellectual Property or Necessary IP, in whole or in part, as intended by this Agreement.
- (c) **Ownership**. Innovator is the exclusive owner of, and has good and marketable title to, all the Intellectual Property, Background Intellectual Property and Necessary IP. There is no ownership interest, agreement option or other right, title, benefit, interest or privilege outstanding in favour of any person for the purchase or licence from Innovator of, or any lien in favour of any other person in, any of the Intellectual Property, Background Intellectual Property or Necessary IP.

- (d) **Right to Grant Licence.** Innovator has the right to grant the licence rights in the Project IP and Necessary IP and will obtain such rights from personnel and subcontractors as contemplated by this Agreement.
- (e) **Company's Remedy for Breach.** Innovator will indemnify and hold harmless Company and its affiliates from and against all losses suffered or incurred by Company and its affiliates and all claims, demands, actions, suits or proceedings for losses made against Company and its affiliates by any person arising in respect of any breach or infringement or alleged breach or infringement by Company or its affiliates of any right of any third party in any of the Intellectual Property, the Background Intellectual Property or the Necessary IP.

3. PUBLICITY

Disclosure of Project Details. Neither Party will reference the other party to this Agreement in a press release or any other oral or written statement in connection with the Project and its results intended for use in the public media, except as required by law or with the other Party's prior written consent. Neither Party shall be permitted to use the name and/or logo of the other without the other Party's prior written consent.

4. CONFIDENTIALITY

- 4.1 Protection of Confidential Information. Each Party agrees to maintain in confidence and safeguard all Confidential Information of the other Party as well as any Personal Information disclosed to it by the other Party. More specifically, each Party agrees to: (i) use the Confidential Information only for the purposes of fulfilling the intent of this Agreement; (ii) use the same degree of care as with its own confidential information, which shall be at least a reasonable standard of care, to prevent disclosure of the Confidential Information; (iii) disclose Confidential Information only to its affiliates, employees, directors, officers, students and contractors who have a "need to know" and who shall be made aware of, and be required to observe and comply with the covenants and obligations contained herein; (iv) assume all liability for any breach of this Agreement by it or its affiliates, employees, directors, officers, students and contractors; and (v) treat Personal Information as required by FIPPA.
- 4.2 Exceptions. Notwithstanding any other provision of this Agreement, each Party acknowledges that Confidential Information shall not include any information which is:
 - (a) published or becomes generally available to the public other than as a result of a breach of the undertakings of this Agreement by either of the Parties;
 - (b) in the possession of either Party prior to its receipt from the other Party, as evidenced by contemporaneous written evidence, and is not subject to a duty of confidentiality;
 - (c) rightfully received from a third party not subject to a duty of confidentiality to the disclosing party and/or without breach of this Agreement;
 - (d) independently developed by a Party without the use of any of the Confidential Information; or
 - (e) expressly permitted to be disclosed either under this Agreement or with the written approval of the disclosing Party.

- 4.3 Compliance with Court Order or Statute. In the event that a Party is required to disclose any of the Confidential Information in order to comply with applicable laws or regulations, or pursuant to the order of a court, tribunal, government agency, or government administrative body, such Confidential Information may be disclosed without breach of this Agreement. Prior to the Party making a disclosure under this paragraph, the disclosing Party shall provide reasonable notice to the Party owning such Confidential Information to allow that Party to assert whatever exclusions or exemptions may be available to it under any law or regulation.
- 4.4 Ownership. Confidential Information shall remain the property of its owner or the disclosing Party, as the case may be.
- 4.5 Survival of Confidentiality Obligations. The obligations of confidentiality in Article 5 “Confidentiality” shall, with respect to: (a) each disclosure of Confidential Information hereunder, continue for three (3) years from the date of each disclosure of Confidential Information; and (b) each disclosure of Personal Information hereunder, survive any expiration or termination of this Agreement indefinitely.

5. Equipment

- 5.1 Ownership. Unless otherwise agreed by the Parties in writing, all equipment and/or materials purchased by or transferred to a Party by the other Party pursuant to a written contract for the purposes of carrying out the Project shall be and remain the property of the recipient Party following the completion of the Project or termination of this Agreement.

6. CONTROLLED GOODS & EXPORT CONTROLS

- 6.1 Export Control Regulations. The Parties acknowledge that the Project IP may be subject to export control regulations as mandated by applicable law and the Innovator and the Company agree to abide by all such laws and regulations in relation to the Project IP.

7. REPRESENTATIONS AND WARRANTIES

- 7.1 General. Each Party represents and warrants to the other Party that it is duly organized, validly existing and in good standing, and it has the right and authority to enter this Agreement and do all acts and things as required or contemplated to be done, observed and performed by it hereunder.
- 7.2 No Warranty for Project IP. The Parties make no warranty, express or implied, concerning the Project IP provided or developed under this Agreement, which is all provided “as is”. THE PARTIES MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED WITH RESPECT TO THE PROJECT IP, ANY WORK OR SERVICES PERFORMED UNDER THIS AGREEMENT OR THE RESEARCH UNDERTAKEN IN CONNECTION WITH THE PROJECT AND/OR THIS AGREEMENT.

8. LIABILITY AND INDEMNIFICATION

- 8.1 General Limitation. In no event shall the total cumulative liability of the Company (including its employees, directors, officers, students or agents), for all claims arising out of or relating to this

Agreement, exceed \$25,000. The foregoing provision limiting the liability of Company (including its employees, directors, officers, students or agents) shall apply regardless of the form or cause of action, whether in contract or tort, or a breach of a fundamental term or condition. The express undertakings and warranties given by the parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

- 8.2 No Consequential Damages. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL DAMAGES, LOST PROFITS, LOST SAVINGS, LOSS OF ANTICIPATED REVENUE OR ANY EXEMPLARY, PUNITIVE, SPECIAL OR INDIRECT DAMAGES ARISING FROM OR IN ANY WAY CONNECTED TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.3 Indemnity Obligations of Innovator. Innovator shall indemnify and save harmless the Company against all costs, suits or claims on account of injuries (including death) to persons participating in or affected by the Project or damage to property where such injury or damage is caused by any wilful misconduct or negligent act or omission of Innovator during the performance of this Agreement.

9. OBLIGATIONS OF THE COMPANY AND THE INNOVATOR

- 9.1 Seed Funding. In consideration for the intellectual property rights granted to the Company under this Agreement, the Company shall provide \$25,000 in seed funding to the Innovator (the “**Seed Funding**”). The Seed Funding shall be payable to Innovator within 60 business days following the execution of this Agreement and shall be used exclusively on legitimate research expenditures related to the Innovation. At Company’s request, the Innovator will promptly provide to Company a detailed accounting of the Innovator’s use of the Seed Funding and all research expenditures made in connection therewith. To the extent it has been determined by the Company, acting reasonably, that the Innovator has misused the Seed Funding, including by using the Seed Funding on any item unrelated to furthering the development of the Innovation, the Innovator shall promptly reimburse the Company in an amount equivalent to the quantum of the misused funds.
- 9.2 No Additional Obligation. The Seed Funding represents the entire financial commitment of Company to the Innovator under this Agreement. Any additional financial or other support expended by the Company on the Project shall be at the Company’s sole and absolute discretion, including access to Company’s facilities and mentorship of the Innovator by the Company’s employees.
- 9.3 Innovator has an ongoing obligation to comply with Company’s Supplier Code of Business Conduct, a copy of which is available at www.opg.com.

10. TERM & TERMINATION

- 10.1 Term. This Agreement is effective as of the Effective Date and, unless terminated earlier in accordance with the terms herein, will terminate three years following the Effective Date (the “**Term**”).

10.2 Termination for Cause:

- (a) Company may immediately terminate this Agreement (including the obligation to make any assignment or enter into any license hereunder) for cause if: (i) any proceeding in bankruptcy, receivership, liquidation or insolvency is commenced against the Innovator or its property; (ii) the Innovator makes any assignment for the benefit of its creditors, becomes insolvent, commits any act of bankruptcy, ceases to do business as a going concern, or seeks any arrangement or compromise with its creditors under any statute or otherwise; or (iii) the Innovator breaches any material term of this Agreement and fails to remedy such breach within thirty (30) days of receiving written notice to do so.

10.3 Termination for Convenience:

- (a) Company may terminate this Agreement without cause on 60 days' prior written notice to the Innovator.

10.4 Effect of Termination:

- (a) In the event that this Agreement is terminated for convenience, neither Party shall be relieved of obligations incurred prior to the effective date of termination.
- (b) Following the termination of this Agreement for any reason, Innovator shall, at Company's request, transfer, assign and return to Company all property and materials in Innovator's possession or control belonging to Company, and all items containing any Confidential Information of the Company; provided that Innovator may retain copies of the Confidential Information (a) as part of archival records (including backup systems) that Innovator keeps in the ordinary course of its business, but only as required by Innovator's records retention policies, (b) as may be required by law, or (c) if it is relevant to a dispute between the Parties.

10.5 Survival. The following provisions shall survive the expiry or earlier termination of this Agreement: Article 2 (Intellectual Property), Article 3 (Publicity), Article 4 (Confidentiality), Section 6.1 (Export Control Regulations) Section 7.2 (No Warranty for Research/Project IP), Article 8 (Liability and Indemnification), Article 9 (Financial Obligations of the Company), Article 10 (Term and Termination), and Article 12 (General).

11. CONSULTATION AND REPORTS

11.1 Technical Representatives. The Innovator's technical representative for the Project shall be or such other representative as the Innovator may subsequently designate in writing.

11.2 Reasonable Access. During the term of this Agreement, the Company's representatives may have reasonable access to consult with the Innovator's Technical Representative regarding the Project. The terms and frequency of such access shall be determined between the Company and the Innovator's technical representative.

11.3 Final Report. On or within 90 days following the completion of the Project, the Innovator, through the Technical Representative, shall provide the Company with a final report for the Project (the

"Final Report").

12. GENERAL

- 12.1 Giving Effect to the Agreement. The Parties agree to do all things and execute all documents required to give effect to the provisions of this Agreement.
- 12.2 Governing Law. 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.
- 12.3 Independent Parties. The Company and Innovator are independent parties and nothing in this Agreement shall constitute either Party as the employer, principal or partner of or joint venture with the other Party. No Party has any authority to assume or create any obligation or liability, either express or implied, on behalf of the other Party.
- 12.4 Assignment. This Agreement shall not be assigned by any Party without the prior written consent of the other Party.
- 12.5 Successors and Assigns. This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- 12.6 Change of Control. The Innovator shall obtain the Company's written consent prior to any change of ownership or control of the Innovator.
- 12.7 Entire Agreement. This Agreement sets forth the entire agreement between the Parties pertaining to the Project, and no modification, variation or amendment of it shall be binding upon the Parties unless it is in writing and signed by duly authorized representatives of both Parties. The Parties acknowledge that there are no collateral agreements, representations, warranties, arrangements, understandings or otherwise, written or oral, pertaining to the subject matter of this Agreement.
- 12.8 Waiver. No waiver by either Party of any delay, default or omission by the other Party shall affect or impair the rights of the non-defaulting Party in respect of any subsequent delay, default or omission of the same or different kind. For the avoidance of doubt, no waiver by either Party shall be valid unless made in writing.
- 12.9 Force Majeure. Neither Party shall be deemed to be in default hereunder for any delay or failure to perform its obligations resulting from unforeseeable causes beyond its reasonable control ("**Force Majeure**"). Each Party will use its best efforts to anticipate such delays and failures, and to devise means to eliminate or minimize them.
- 12.10 Headings. The headings contained in this Agreement are for convenience only and shall not be interpreted to limit or otherwise affect the provisions of this Agreement.
- 12.11 Severability. The provisions of this Agreement shall be deemed severable. If any provision of this Agreement shall be held unenforceable by any court of competent jurisdiction, it shall be severed from this Agreement and the remaining provisions shall remain in full force and effect.
- 12.12 Counterparts. This Agreement may be executed in any number of counterparts and by different

parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. Delivery by electronic transmission in portable document form (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

12.13 Notices. All notices, demands or requests required or permitted hereunder shall be deemed properly given when sent in writing to the designated representative of the other Party at the addresses set out below, or such other address as a Party may from time to time advise, by way of: (a) registered first class mail; (b) commercial courier, return receipt requested; (c) personal delivery; or (d) electronic mail. In the case of (a) through (c) above, notices shall be deemed received when physically received by the recipient. In the case of (d) above, notices shall be deemed received on the following business day.

Notice to the Innovator shall be sent to:

[COMPANY NAME]
[COMPANY ADDRESS LINE 1]
[COMPANY ADDRESS LINE 2]
Attention: _____
Tel: XXX-XXX-XXXX Ext. XXX
Email: _____

Notices to the Company shall be sent to:

[COMPANY NAME]
[COMPANY ADDRESS LINE 1]
[COMPANY ADDRESS LINE 2]
Attention: _____
Tel: XXX-XXX-XXXX Ext. XXX
Email: _____

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives.

Ontario Power Generation Inc.

[Insert name of Innovator]

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

PRINT NAME

PRINT NAME

TITLE

TITLE