

Plug-In NB Charging Rebates for Business Rebate Initiative

Participation Agreement

THIS PARTICIPATION AGREEMENT made as of this _____ day of _____, 202____. (the "Participation Agreement")

(Dated by NB Power)

BETWEEN: **New Brunswick Power Corporation**, a Crown corporation and agent of the Crown under and by virtue of the *Electricity Act*, SNB 2013, c 7, with its principal place of business at 515 King Street, PO Box 2000, Fredericton, NB, E3B 4X1, (hereinafter called "NB Power")

AND: XXXXXXX a XXXXXXX, duly incorporated or constituted under and by virtue of the laws of the Province of XXXXXXX, with its principal place of business at XXXXXXX (hereinafter called the "Recipient")

WHEREAS NB Power is seeking to distribute a component of the Zero Emission Vehicle Infrastructure Program (the "**Program**") funding to Recipients to install electric vehicle charging infrastructure in public places, on-street, in multi-unit residential buildings, at workplaces or for light-duty vehicle fleets.; and

WHEREAS the Recipient meets the eligibility requirements as set out in the "Plug-In NB Rebates for Business" program guide (the "**Program Guide**"), located at [Plug-In NB Charging Rebates for Business \(nbpower.com\)](http://nbpower.com) and incorporated into and forming part of this Agreement, and the eligibility requirements as set out hereinafter set out; and

WHEREAS NB Power is willing to provide and the Recipient is interested in receiving financial rebates toward the eligible costs of implementing charging infrastructure in the manner and upon the terms and conditions set out in the Program Guide and as hereinafter set forth; and

NOW THEREFORE, in consideration of the foregoing and the mutual promises herein set forth, along with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. INTERPRETATION

1.1 In this Agreement:

"**Agreement**" means this Participation Agreement and the Program Guide;

"**Eligible Expenditures**" means any expenditures incurred by the Recipient and qualifying as eligible expenditures in accordance with the requirements of the Program Guide, and incurred within the Eligible Expenditure Period in accordance with the terms and conditions of this Participation Agreement;

"**Eligible Expenditure Period**" means the period starting when this Participation Agreement is signed to 12 months from the date this Participation Agreement is signed by the Parties;

"**Fiscal Year**" means the period beginning on April 1st of any year and ending on March 31st in the next year;

"**Fixed Asset**" means a tangible non-current asset, including buildings and equipment, acquired by Recipient for use for the Project during the Eligible Expenditure Period;

"**Intellectual Property**" means any intellectual property recognized by law, including any intellectual property right protected through legislation including governing patents, copyright, trade-marks, and industrial designs;

"**Interest Rate**" means the Bank Rate, as defined in the *Interest and Administrative Charges Regulations* (Canada), in effect on the due date, plus 300 basis points, compounded monthly. The Interest Rate for any given month can be found at: <http://www.tpsgc-pwgsc.gc.ca/recgen/txt/taux-rates-eng.html>;

"**Minister**" means the Minister of Natural Resources and includes any duly authorized officers or representatives;

"**Party**" means either NB Power or Recipient;

"**Program**" means the Zero Emission Vehicle Infrastructure Program;

"**Program Guide**" means the "Plug-In NB Rebates for Business" program guide located at [Plug-In NB Charging Rebates for Business \(nbpower.com\)](http://nbpower.com);

"**Project**" means the project described in Article 1 of the Program Guide;

"**Rebate**" means the rebate described in Section 2 of this Participation Agreement;

"**Total Government Funding**" means cash contributions provided by the federal government and other contributions from the provincial/territorial and municipal governments toward the Total Project Costs;

Any additional capitalized terms used but not defined in this Participation Agreement have the meaning given to them in Program Guide.

2. FINANCIAL REBATES

- 2.1 NB Power will provide financial rebates to the Recipient to help offset the Eligible Expenditures made by the Recipient for the purchase and installation of eligible charging Infrastructure in the prescribed manner and upon the terms and conditions set forth the Agreement, and particularly Schedule A of the Program Guide.

The Recipient must request and receive preapproval of all expenditures related to the Project in order to qualify as an Eligible Expenditure, in accordance with the procedures set out in Schedule A of the Program Guide. The Rebate will be paid by NB Power in the manner and upon the terms and conditions set forth herein and in Program Guide.

- 2.2 Upon Project Completion, and in accordance with the procedure set out in Schedule A of the Program Guide, NB Power will reimburse the Recipient up to 50% of Total Project Costs, subject to the Maximum Funding amounts set out in the following table (the "Rebate"):

Table 1: Maximum Funding

Type of Charger	Technology Requirement	Maximum Funding
Level 2 (208 / 240 V) connectors 3.3 kW to 19.2 kW	Any EV charging station commercially available and CSA, ULC, UL or Interlink certified for use in Canada. The charging stations must have a SAE J1772 standard plug head or be a proprietary* connector type rated for a minimum of 3.3 kW power output.	Up to 50% of total Eligible Expenditures, to a maximum of \$5,000 per connector
Fast charger 20 kW to 49 kW	Any EV fast charger commercially available and CSA, ULC, UL or Interlink certified for use in Canada. The fast charger must have at least one (1) charger connector that is CHAdeMO compliant and one (1) charger connector that is SAE Combo or be a proprietary* connector type rated for a minimum of 20 kW power output.	Up to 50% of total Eligible Expenditures, to a maximum of \$15,000 per fast charger
Fast charger 50 kW and above	Any EV fast charger commercially available and CSA, ULC, UL or Interlink certified for use in Canada. The fast charger must have at least one (1) charger connector that is CHAdeMO compliant and one (1) charger connector that is SAE J1772 Combo (CCS) or be a proprietary* connector type rated for a minimum of 50 kW power output.	Up to 50% of total Eligible Expenditures, to a maximum of \$50,000 per fast charger

Total Government Funding shall not exceed **Seventy Five percent (75%)** of the Total Project Costs, except in the case where the Recipient is a provincial, territorial, regional, or municipal government or their department or agency, in which case, the Total Government Funding shall not exceed **One Hundred percent (100%)** of Total Project Costs.

2.3 The Recipient represents that no other federal, provincial, territorial or municipal government assistance, other than those described below, have been or will be provided in respect of the Total Project Costs incurred:

Canada:	Zero Dollars (\$0)
Other Federal:	Zero Dollars (\$0)
Provincial:	Zero Dollars (\$0)
Territorial:	Zero Dollars (\$0)
Municipal:	Zero Dollars (\$0)
Total Government Funding:	Zero Dollars (\$0)

The Recipient shall advise NB Power immediately of any changes to the Project or the Total Government Funding that may impact the allocation of funds to the Recipient. If by Project

Completion, the Total Government Funding that the Recipient has received exceeds **One Hundred percent (100%)** of the Total Project Costs incurred, NB Power may require the Recipient to reimburse such excess back to NB Power.

- 2.4 In order to be eligible to receive the Rebate for Eligible Expenditures as described herein, the Recipient must submit its quarterly reports, its final report and a rebate claim within the Eligible Expenditure Period and in accordance with the process set out in Schedule A of the Program Guide.
- 2.5 NB Power will not contribute to any Eligible Expenditures incurred by the Recipient prior to or after the Eligible Expenditure Period.

3. TERMS AND METHOD OF PAYMENT

- 3.1 Subject to the terms and conditions of this Participation Agreement and in accordance with the process set out in Schedule A of the Program Guide, following receipt of a rebate claim form acceptable to NB Power, and the provision of copies of paid invoices for the Eligible Expenditures incurred, NB Power will provide the Recipient with the Rebate, by way of electronic funds transfer/direct deposit or issuance of a cheque. Any and all rebate claim forms must be submitted by the Recipient ***within the Eligible Expenditure Period***, otherwise they will not qualify for the Rebate. NB Power shall be entitled to require the Recipient to provide additional supporting documentation, including detailed invoices or other documents, prior to issuing a Rebate to the Recipient. In no event will NB Power be required to pay interest for failing to make a payment under the Agreement.
- 3.2 The payment of monies by NB Power under the Agreement is subject to there being an appropriation by Federal Parliament for the Fiscal Year in which the payment of monies is to be made. Notwithstanding any other provision of the Agreement, NB Power may reduce or cancel the Rebate to the Project upon written notice to the Recipient in the event that the funding levels for the Department of Natural Resources (Canada) are changed by the Federal Parliament during the term of the Agreement. The Recipient may amend the Agreement to reduce their obligations related to the Projects in proportion to the reduction of the Rebate by Canada to NB Power. Neither NB Power nor the Minister will be liable for any direct, indirect, consequential, exemplary or punitive damages, regardless of the form of action, whether in contract, tort or otherwise, arising from any such reduction or termination of funding.

Where for any reason NB Power determines that the amount of the Rebate disbursed exceeds the amount to which the Recipient is entitled or the Recipient is not entitled to the Rebate, the Recipient must repay to NB Power no later than **thirty (30) days** from the date of NB Power's notice, the amount of the overpayment or the amount of the Rebate disbursed. If the amount is not repaid by its due date, interest accrues at the Interest Rate for the period beginning on the due date and ending on the day before the day on which repayment to NB Power is received.

4. GENERAL REBATE CONDITIONS AND REQUIREMENTS

- 4.1 Prior to the issuance of the Rebate, the Recipient must meet all eligibility requirements set out in the Program Guide and comply with all other terms and conditions set out in this Participation Agreement and the Program Guide, including the following terms and conditions:
 - a) **Conduct of Project:** The Recipient shall:
 - (i) carry out the Project promptly, diligently and in a professional manner and in accordance with the terms and conditions of the Agreement;
 - (ii) complete the Project within the Eligible Expenditure Period, unless terminated earlier pursuant to the provisions of this Participation Agreement; and
 - (iii) comply with all applicable federal, provincial and municipal laws in relation to the Project.

- b) **Disposal of Assets:** The Recipient shall be required that to seek written consent from NB Power before the disposal of any goods acquired or used for the Project that are either disposed of or cease to be used for the Project prior to the termination of this Agreement, and for **three (3) years** thereafter.

If, prior to the termination of this Agreement and for **three (3) years** thereafter, the Recipient sells, leases or otherwise disposes of any Fixed Asset excluding Intellectual Property, where the cost of the Fixed Asset is part of the Eligible Expenditures under the Project to which NB Power has made a Contribution, and where the proceeds of the sale, lease or other disposition are not applied to acquire assets in replacement of the Fixed Asset, the Recipient shall immediately notify NB Power in writing of such sale, lease or disposition and, if NB Power so requires, the Recipient shall share with NB Power the proceeds of the sale, lease or any other disposition in the same ratio as that of NB Power's rebate to the purchase of the Fixed Asset by the Recipient.

- c) **Inspections:** Recipient agrees to provide NB Power representatives with access during normal working hours to its facilities and to all records related to the implementation of the Project and Eligible Expenditures, as reasonably requested, both pre and post installation, in order to verify equipment characteristics, quantities, performance as well as review all records and information related to the Eligible Expenditures.
- d) **Option to Terminate:** In addition to any rights of termination that NB Power has hereunder, if, in the opinion of NB Power, no demonstrable progress has been made toward the Eligible Project within the Eligible Expenditure Period, NB Power retains the right to terminate the Agreement and shall be under no further obligation to make any payment to the Recipient under the Agreement. If this occurs, written notice shall be issued to the Recipient.
- e) **Information Requirements:** Upon request, Recipient agrees to provide NB Power, the Minister and/or their respective representatives, permission to access any and all books, records, information, supporting documentation and data (including, future utility and other energy consumption data) generated or collected in relation to the Agreement and the Project, which may be used by NB Power or the Minister for research, program development, reporting quality assurance, promotional uses or other related purposes. Subject to NB Power's and the Minister's respective access to information and privacy legislation, all information pertaining to the Project and the Rebate provided (including the Agreement) is public information and may be disclosed by either or both of NB Power and the Minister to third parties upon request under the relevant legislation.
- f) **Access:** Prior to the Project Completion and for three (3) years after the expiration of this Agreement, the Recipient shall provide NB Power, the Minister and/or their respective representatives reasonable access to any premises where the Project takes place to assess the Project's progress or any element thereof, subject to providing reasonable notice and complying with Recipient's safety requirements for such access.
- g) **Accounts and Audit:** Prior to the Project Completion and for **three (3) years** after the expiration of the Agreement, the Recipient shall, at its own expense: i) keep proper and accurate books, accounts, and records of its revenue received and expenses incurred and paid in connection with the Project and shall keep its invoices, receipts, and vouchers relating thereto; ii) accept ownership and custody of goods purchased for the Project and that evidence of ownership of such goods must be kept on record and available for audit by NB Power at all relevant time; iii) keep proper and accurate records of all data, analyses, and other scientific or technical assessments and reports, and any and all information relating to the outputs and outcomes of the Project; iv) on demand, make available to NB Power such books, accounts, records, invoices, receipts, and vouchers referred to above and permit NB Power to examine and audit and take copies and extracts from such documents; v) allow NB Power, at its expense and discretion, to conduct a technical audit to verify that all measures were implemented in

accordance with this Participation Agreement and the Program Guide; vi) allow NB Power at its own expense and discretion, to conduct an audit to verify the accuracy of reports submitted in relation to the Project; and vii) grant NB Power permission to share with the Minister the books and record related to the Project for review, accounting, reporting, auditing and program evaluation purposes, to verify the accuracy of reports under the Agreement.

- h) **Impact Assessment:** The Recipient represents and warrants that the Project is not a “designated project” nor a “project” according to the Canadian Environmental Assessment Act, 2012 or the Impact Assessment Act. If, within the Eligible Expenditure Period, the Project becomes a “designated project” or a “project” carried out on federal land or outside of Canada according to the Impact Assessment Act, the Parties agree that NB Power’s obligations under this Agreement will be suspended until: a) In the case of a “designated project”, i) the Impact Assessment Agency of Canada makes a decision that no assessment of the “designated project” is required and posts that decision; or ii) the decision statement with respect to the “designated project” that is issued to Recipient sets out that the effects that are indicated in the report with respect to the impact assessment of the Project are in the public interest.

In the case of a “project”, i) a determination indicating that the carrying out of the Project is not likely to cause significant adverse environmental effects by the Minister or another authority referred in the Impact Assessment Act; or ii) if the carrying out of the Project is likely to cause significant adverse environmental effects, a decision of the Governor in Council indicates that those effects are justified in the circumstances.

If the Project becomes a “designated project” or a “project” as defined in Paragraph 4.2 above NB Power will suspend payment to the Recipient until the conditions outlined in above have been met and may, terminate the Agreement with immediate effect by giving notice in writing to the Recipient. Following such termination, no further Rebate or Contribution will be disbursed under the Agreement, and neither NB Power nor the Minister will be liable for any direct, indirect, consequential, exemplary, or punitive damages, regardless of the form of action, whether in contract, tort, or extra-contractual liability, or otherwise, arising from the termination.

- i) **Intellectual Property:** All Intellectual Property that arises in the course of the Project shall vest in the Recipient or be licensed to the Recipient in the event that a Recipient’s subcontractor retains title to such Intellectual Property.

The Recipient shall supply to NB Power the reports and documents described in the Program Guide, and the Recipient hereby grants to each of NB Power and the Minister a non-exclusive, irrevocable, world-wide, free and royalty-free license in perpetuity to use, modify, and, subject to their respective access to information and privacy legislation, make publicly available such reports and documents for non-commercial governmental purposes.

- j) **Acknowledgement:** The Recipient shall acknowledge the financial support of the Minister in all public information produced as part of the Project and shall clearly identify the Minister’s role as a source of the Rebate provided to the Recipient.
- k) **Media:** The Recipient agrees to allow the Minister and/or NB Power to promote and/or make public announcements related to its participation in the Program. The Recipient acknowledges and agrees that the following may be made publicly available by either NB Power or the Minister: (i) the name of Recipient, the amount of the Rebate paid, and the general nature of the Program that the Recipient participated in, and (ii) any evaluation or audit report or other reviews related to the Program that the Recipient participated in. Furthermore, the Recipient will not, without NB Power’s express prior written permission or direction, use in advertising,

publicity, or otherwise, any trade name, trademark, trade device, service mark, symbol, code, or specification or any abbreviation, contraction, or simulation thereof of NB Power nor shall the Recipient claim ownership therein.

- l) **Representations and Warranties:** The Recipient represents and warrants that: i) all factual matters provided under this Participation Agreement and/or as required by the Program Guide, along with all supporting material submitted are true and accurate in all material respects, and that all estimates, forecasts and other related matters involving judgement were prepared in good faith and to the best of its ability, skill and judgement; ii) it is duly incorporated or registered and validly existing in good standing under the laws of New Brunswick and has the power and authority to carry on its business, to hold property, and undertakes to take all necessary action to maintain itself in good standing and preserve its legal capacity during the term of the Agreement; and iii) it has not, nor has any person offered or promised to any official or employee of Her Majesty the Queen in Right of Canada or New Brunswick, for or with a view to obtaining the Agreement any bribe, gift or other inducement and it has not nor has any person on its behalf employed any person to solicit the Agreement for a commission, fee or any other consideration dependent upon the execution of the Agreement.

5. **DEFAULT**

- 5.1 If, in the opinion of NB Power i) there has been a misrepresentation or breach of warranty, or the Recipient fails to proceed diligently or fails to submit the quarterly reports and final report as identified in the Program Guide; ii) the Recipient is otherwise in default in complying with or carrying out any of the terms, conditions, covenants, or obligations of the Agreement and any such defect has not been cured by or remedied by the Recipient within **thirty (30) days** of written notice of such defect having been provided to the Recipient; iii) if the Recipient becomes bankrupt or insolvent, or has a receiving order made against it (either under the *Bankruptcy and Insolvency Act* or otherwise), or a receiver is appointed, or the Recipient makes an assignment for the benefit of creditors, or if an order is made or a resolution passed for the winding up of the Recipient, or if the Recipient takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors; iv) a material adverse change in risk affecting the fulfilment of the terms and conditions of the Agreement has occurred; or v) the Recipient neglects or fails to pay NB Power any amount due in accordance with the Agreement, NB Power may declare that an event of default has occurred.
- 5.2 If NB Power declares that an event of default has occurred, in addition to all other remedies provided under contract law, NB Power may exercise one or more of the following remedies: i) suspend any obligation to provide the Rebate for the Eligible Expenditures of the Project or a part of the Project, including any obligation to pay any amount owing prior to the date of such suspension; ii) terminate any obligation of NB Power to provide the Rebate for the Eligible Expenditures, including any obligation to pay any amount owing prior to the date of such termination; iii) terminate the Agreement; and iv) direct the Recipient to repay all or part of the Rebate which has been paid to the Recipient, together with interest from the date of demand at the Interest Rate.

For greater clarity, all above remedies are cumulative.

- 5.3 The fact that NB Power does not exercise a remedy that NB Power is entitled to exercise under the Agreement will not constitute a waiver of such right and any partial exercise of a right will not prevent NB Power in any way from later exercising any other right or remedy under the Agreement or other applicable law.

6. **TERM OF AGREEMENT**

6.1 Subject to early termination as set out in the Agreement and except as otherwise provided below, the term of the Agreement will expire on the latest of:

- a) Project Completion;
- b) twelve (12) months from the date of final signature the Agreement; or
- c) the date on which all amounts owed by the Recipient to NB Power under the Agreement have been paid in full.

6.2 Notwithstanding any other provisions of the Agreement, NB Power may terminate the Agreement by written notice to take effect immediately upon receipt of said notice by the Recipient if:

- a) The Recipient is found to be in Default pursuant to Section 5 of the Agreement;
- b) The available Rebates under the Program have been depleted; or
- c) The Program is terminated.

7. SURVIVAL

7.1 The following clauses shall survive the expiration of the Agreement for an additional **three (3) years**:

- a) Accounts and Audits;
- b) Intellectual Property;
- c) Indemnity;
- d) Default; and
- e) Dispute Resolution.

8. INDEMNITY

8.1 Neither Canada, nor NB Power nor their respective employees, officers and agents, will have any liability in respect of claims of any nature, including claims for injury or damages, made by any person involved in the activities of the Project or as a result of or arising out of the Agreement, and the Recipient will indemnify and save harmless Canada, NB Power and their respective employees, officers and agents, in respect of such claims.

9. FORCE MAJEURE

9.1 The Parties shall not be in default or in breach of this Agreement due to any delay or failure to meet any of their obligations caused by or arising from any event beyond their reasonable control and without their fault or negligence, including any act of God or other cause which delays or frustrates the performance of the Agreement (a “force majeure event”). If a force majeure event frustrates the performance of the Agreement, NB Power will only be liable for its proportionate share of the Eligible Expenditures incurred and paid to the date of the occurrence of the event.

9.2 The performance of the obligation affected by a “force majeure event” as set out above shall be delayed by the length of time over which the event lasted. However, should the interruption continue for more than thirty (30) days, this Agreement may be terminated by NB Power.

9.3 Should either Party claim the existence of a “force majeure event” as above, prompt notice thereof shall be given to the other Party and the Party claiming the existence of a “force majeure event” shall have the obligation to provide reasonable satisfactory evidence of the existence of such event and use its best efforts to mitigate any damages to the other Party.

10. **DISPUTE RESOLUTION**

10.1 If a dispute arises concerning the application or interpretation of the Agreement, the Parties will attempt to resolve the matter through good faith negotiation, and may, if necessary and the Parties consent in writing, resolve the matter through mediation by a mutually acceptable mediator.

11. **NOTICES**

11.1 Wherever in the Agreement notice is required or permitted to be given or served by either Party to or on the other, the notice shall be in writing and shall be delivered personally to the authorized designate or sent by prepaid, registered mail, or by facsimile or email addressed as set forth herein, and each such notice shall be deemed given on the date of delivery namely three (3) days after mailing in the case of mail and two (2) hours from receipt of the facsimile transmission or email.

No notice may be given by mail during a real or apprehended mail strike in Canada. The specified addresses may be changed from time to time by either Party by notice as above provided.

To NB Power:
New Brunswick Power Corporation
P.O. Box 2000
515 King Street
Fredericton, New Brunswick
E3B 4X1
Attention: Chief Legal Officer

With a copy to

New Brunswick Power Corporation
P.O. Box 2000
515 King Street
Fredericton, New Brunswick
E3B 4X1
Attention: Products and Services, EV Program
E: pluginbranche@nbpower.com
F: 1-888-544-2333

To the Recipient:
Name:
Company name:
Client address 1:
Client address 2:

12. **GENERAL PROVISIONS**

- a) **Miscellaneous:** The division of the Agreement into articles and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. In the Agreement, words importing the singular number include the plural and vice versa and words importing gender include all genders.
- b) **Assignment:** NB Power shall be permitted, in its sole discretion and without requiring the consent of the Recipient, to assign the benefits and obligations of the terms and conditions of the Agreement.

An assignment by NB Power, as described above, shall free and relieve NB Power, from its liabilities and obligations under this Agreement and the Participant shall look to the assignee for performance of such liabilities and obligations.

No benefit arising from the Agreement shall be assigned in whole or in part by the Recipient without the prior written consent of NB Power and any assignment made without that consent is void and of no effect.

This Agreement shall inure to the benefit of and be binding on the Parties and their respective representatives, successors and assigns.

- c) **Legal Relationship:** Nothing contained in this Participation Agreement shall create the relationship of principal and agent, employer and employee, partnership or joint venture between the Parties. The Recipient shall not make any representation that: a) it is an agent of New Brunswick or the Minister; or b) could reasonably lead any member of the public to believe that the Recipient or its contractors are agents of New Brunswick or the Minister.
- d) **Third Party Beneficiaries:** Except as otherwise set out herein, nothing contained in the Agreement is intended for the benefit of third persons and no third party may claim for damages or otherwise to enforce any such benefit.
- e) **Governing Law:** The Agreement shall be interpreted in accordance with the applicable federal laws and the laws in force in the Province of New Brunswick, and the Parties agree that the Agreement supersedes any custom, usage, agreement or term implied by law to the contrary.
- f) **Waiver and Amendments:** Except as expressly provided in the Agreement, no amendment or waiver of the Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of the Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any the failure to comply, unless otherwise expressly provided.
- g) **Order of Interpretation:** In the event of a conflict or inconsistency between the terms of this Participation Agreement and those contained in the Program Guide, then the terms of this Participation Agreement shall prevail and govern the interpretation thereof.
- h) **Contra Proferentem Rule Not Applicable:** Should any provision of the Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it is agreed that both Parties, directly or through their agents, have participated in the preparation hereof.
- i) **Time of Essence:** Time is of the essence with respect to all provisions of the Agreement that specify a time for performance.
- j) **Language of the Agreement:** The Parties expressly request that this Agreement as well as documents relating there to be drawn up in English. Les parties ont expressément exigé que cette convention ainsi que tous les documents s'y rattachant soient rédigés en anglais.
- k) **Severability:** Any provision of the Agreement prohibited by law or otherwise ineffective, will be ineffective only to the extent of such prohibition or ineffectiveness and will be severable without invalidating or otherwise affecting the remaining provisions of the Agreement. The

Parties agree to negotiate in good faith a substitute provision which most nearly reflects the Parties' intent in entering into the Agreement.

- l) **Entire Agreement:** This Participation Agreement and the Program Guide constitute the entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes all previous negotiations, communications, and other agreements, whether written or verbal between the Parties. Except as otherwise specifically set forth in the Agreement, neither Party makes any representation or warranty express or implied, statutory or otherwise to the other.
- m) **Counterparts:** The Agreement (and any amendments) may be signed in counterparts including facsimile, PDF and other electronic copies, each of which when taken together, will constitute one instrument. To evidence the fact that it has executed the Agreement, each Party respectively may deliver a copy of its executed counterpart to the other Party by electronic means, and together, such executed electronic counterparts form a complete, executed and binding Agreement.
- n) **Acknowledgment:** The Parties acknowledge that each has read this Participation Agreement and the Program Guide (which is incorporated into and forms part of this Agreement).

13. AUTHORITY TO EXECUTE

13.1 Each Party to the Agreement represents and warrants that it has full and complete authority to enter into and perform the Agreement. Each person who executes the Agreement on behalf of either Party represents and warrants it has full and complete authority to do so and such Party will be bound thereby.

Company Name: _____

(Company Name)

Date:

NEW BRUNSWICK POWER CORPORATION

James Petrie
Chief Legal Officer

Date:

Lori Clark
Senior VP, Operations

Date: