



**Supply Agreement for
Electricity Efficiency and Conservation Activities**

Between

Nova Scotia Power Incorporated

and

EfficiencyOne

Effective Date – January 1, 2016

Table of Contents

1		
2	1.	INTERPRETATION1
3	2.	TERM & RESERVATION OF RIGHTS5
4	3.	ELECTRICITY EFFICIENCY and CONSERVATION ACTIVITIES.....5
5	4.	PRICE & PAYMENT6
6	5.	NOTIFICATION OF SIGNIFICANT CHANGES6
7	6.	SAFETY7
8	7.	PROTECTION OF PROPERTY.....7
9	8.	ENVIRONMENT7
10	9.	EFFICIENCYONE'S COVENANTS7
11	10.	SUBCONTRACTORS8
12	11.	CONFIDENTIAL AND PERSONAL INFORMATION.....9
13	12.	PERFORMANCE REQUIREMENTS AND EVALUATIONS9
14	13.	FORCE MAJEURE.....9
15	14.	INDEMNITY.....10
16	15.	LIMIT OF LIABILITY10
17	16.	INSURANCE11
18	17.	INTELLECTUAL PROPERTY.....12
19	18.	LIENS AND CLAIMS12
20	19.	DISPUTE RESOLUTION.....13
21	20.	DEFAULT AND TERMINATION13
22	21.	NOTIFICATIONS.....15
23	22.	AUDIT AND INSPECTION16
24	23.	ASSIGNMENT.....16
25	24.	SHARING OF DATA AND INFORMATION.....16
26	25.	COORDINATION MEETINGS AND REPORTS.....16
27	26.	GENERAL17

1	27.	SURVIVAL	18
---	-----	----------------	----

2 **List of Schedules**

3		
4	Schedule "A":	Electricity Efficiency and Conservation Activities
5	Schedule "B":	Compensation
6	Schedule "C":	Performance Requirements
7	Schedule "D":	Confidentiality Agreement
8	Schedule "E":	Approved EECA Plan

THIS AGREEMENT made as of the _____ day of _____, 2015 and effective as of the 1st day of January, 2016 (the "Effective Date").

BETWEEN:

NOVA SCOTIA POWER INCORPORATED,
a body corporate, organized under the laws
of the Province of Nova Scotia

(hereinafter called "NSPI")

- and -

EFFICIENCYONE,
a body corporate, organized under the laws of
Canada

(hereinafter called "EfficiencyOne")

WHEREAS:

- A. EfficiencyOne and NSPI are both public utilities pursuant to the Act; and
- B. Pursuant to the Act, EfficiencyOne has the exclusive right to supply NSPI with reasonably available, cost-effective Electricity Efficiency and Conservation Activities as the Franchise Holder; and
- C. Pursuant to the Act, NSPI is obligated to undertake cost-effective Electricity Efficiency and Conservation Activities that are reasonably available in an effort to reduce costs for its customers; and
- D. Pursuant to the Act, NSPI shall meet its obligations by entering into an agreement with the Franchise Holder for the supply of cost-effective Electricity Efficiency and Conservation Activities.

NOW THEREFORE witnesses that in consideration of the premises and the mutual covenants and obligations herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

1.1 The following terms shall be interpreted as follows in this Agreement:

- (a) "Act" shall mean the *Public Utilities Act*, R.S.N.S. 1989, c.380, as amended from time to time.
- (b) "Agreement" means this agreement between NSPI and EfficiencyOne including all Schedules attached hereto.
- (c) "Business Day" means Monday to Friday, except federal, provincial, and civic holidays within the Province of Nova Scotia.

- (d) **"Consequential Losses"** means consequential, special, incidental, multiple, exemplary or punitive damages including lost profits, whether such claim of lost profits is categorized as indirect, direct or consequential damages or under any alternative theory of recovery.
- (e) **"Contract Documents"** means without limitation, the following documents, including any amendments thereto agreed in writing by the parties:
- (i) this Agreement; and
 - (ii) all Schedules to the Agreement.
- (f) **"Contract Price"** has the meaning ascribed to it in Section 4.1.
- (g) **"EECA Plan"** means the plan prepared by EfficiencyOne and approved by the UARB and attached hereto as Schedule "E".
- (h) **"Electricity Efficiency and Conservation Activities"** or **"EECA"** means the electricity efficiency and conservation activities as identified in Schedule "A" attached hereto.
- (i) **"Event of Default"** has the meaning ascribed to it in Section 20.4.
- (j) **"Environmental Laws"** means all applicable federal, provincial, regional, municipal or local laws with respect to environmental matters contained in the statutes, regulations, rules, standards, requirements, ordinances, policies, guidelines, orders, approvals, notices, permits or directives having the force of law, in effect as at the date hereof and as may be brought into effect at future date.
- (k) **"Force Majeure Event"** means any event or circumstance not reasonably within the control of the Party affected which wholly or partly prevents the performance by that Party of its obligations under this Agreement, provided that such Party is in good faith unable to perform such obligations by any commercially reasonable substitute. A Force Majeure Event includes acts of God, war, riot, fire, explosion, flood, hurricane, epidemics, acts of governmental authorities, acts of terrorism. Notwithstanding anything else contained herein, a Force Majeure Event excludes (a) any event or circumstance causing direct or indirect delay in, or failure to perform any of a Party's obligations under this Agreement, attributable to a lack of reasonable diligence on the part of a Party or on the part of any vendor or subcontractor of a Party, including any event or circumstance which a Party or any vendor or subcontractor, acting diligently, could reasonably have been expected to foresee, avoid or overcome in the performance of its obligations; and (b) any event or circumstance caused by the breach of a Party's obligations or the fault or negligence of a Party or the fault or negligence of any vendor or subcontractor, or by violation of applicable laws or regulations by a Party or any of a Party's vendors or subcontractors. For certainty, adverse weather of any kind other than events specified above shall not be considered a Force Majeure Event.
- (l) **"Franchise"** has the meaning ascribed to it in the Act.
- (m) **"Franchise Holder"** has the meaning ascribed to it in the Act.

- (n) **"Governmental Authority"** means any federal, provincial, regional, municipal or local government or authority or other political subdivision thereof and entity or person exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government.
- (o) **"Hazardous Substances"** means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to Environmental Laws, including any contaminants, pollutants, petroleum or other hydrocarbons and their derivatives and by-products, dangerous substances or goods, including asbestos, liquid wastes, special wastes, toxic substances, hazardous or toxic chemicals, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to any Environmental Law, or any substance or material not inherently hazardous but which would, in sufficient quantities, be hazardous.
- (p) **"Indemnified Costs"** means all liabilities, claims, actions, causes of action, judgments, orders, damages, costs (including those incurred in connection with any investigation of site conditions or any clean-up, environmental remediation, removal or restoration work), expenses (including all reasonable consultant, expert and legal fees and expenses), fines, penalties, losses, or any resulting damages, harm or injuries to the person or property of any third parties or to any natural resources and for which the indemnified party is liable and has incurred losses. Without limiting the foregoing, Indemnified Costs shall include:
- (i) the costs of defending and/or counterclaiming or claiming over and against third parties in such manner as the indemnified party in its sole discretion may determine;
 - (ii) the costs relating to any governmental investigation, proceeding or claim; and
 - (iii) any costs, liabilities or damages arising out of a settlement of a claim by the indemnified party, with or without the consent of the indemnifying party.
- (q) **"Law"** means the common law, the law of equity and all federal or provincial statutes or municipal by-laws and all regulations, orders, directives, permits and licenses thereunder, which apply to or otherwise affect NSPI or EfficiencyOne with respect to the supply of the EECA, or the property of NSPI or EfficiencyOne, real or personal, or any part thereof, including the Act and all environmental, occupational, health and safety laws.
- (r) **"Liens Indemnities"** has the meaning ascribed to it in Section 19.1.
- (s) **"Liens and Claims"** has the meaning ascribed to it in Section 19.1.
- (t) **"Minister"** has the meaning ascribed to it in the Act.
- (u) **"Party"** means either EfficiencyOne or NSPI. **"Parties"** means EfficiencyOne and NSPI.
- (v) **"Personal Information"** shall mean the information provided by NSPI to EfficiencyOne pursuant to Section 79K of the Act.

- (w) **"Release"** or **"Released"** means a releasing, adding, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dispersing, dispensing, disposing or dumping.
- (x) **"Significant Changes"** means any proposed change to the EECA Plan for which the UARB orders or directs EfficiencyOne to obtain the approval of the UARB prior to the implementation of such proposed change.
- (y) **"Subcontractor"** means any contractor, supplier or consultant hired by EfficiencyOne in accordance with this Agreement to perform any portion of the EECA.
- (z) **"Term"** has the meaning ascribed to it in Section 2.1.
- (aa) **"UARB"** means the Nova Scotia Utility and Review Board.
- 1.2 Unless otherwise specified in this Agreement or unless the context otherwise requires:
- (a) words of any gender include each other gender;
- (b) using the singular or plural number also include the plural or singular number, respectively;
- (c) the insertion of headings in this Agreement is for convenience only and shall not be construed so as to affect the interpretation or construction of this Agreement;
- (d) the terms "hereof," "herein," "hereto," "hereunder" and words of similar or like import refer to this entire Agreement and not to any particular Section, Schedule or other subdivision of this Agreement;
- (e) references to a particular "Section" or "Schedule" are, unless otherwise noted, references to that Section of, or Schedule to this Agreement;
- (f) the words "include," "includes" and "including" shall be deemed to be followed by "without limitation" or "but not limited to";
- (g) references to any applicable law, legislation or regulation shall be construed as a reference to such law, legislation or regulation as each may be in effect from time to time;
- (h) references to any agreement or document (including this Agreement) shall (i) include all Schedules, appendices, and other attachments thereto, and (ii) be construed at the particular time as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;
- (i) references to (i) days shall refer to calendar days unless Business Day is specified, (ii) weeks and months shall refer to calendar weeks and months, respectively, and (iii) years shall refer to calendar years;
- (j) in computing any period of time prescribed or allowed under this Agreement, the day of the act, event or default from which the designated period of time begins

to run shall be included. If the last day of the period so computed is not a Business Day, then the period shall run until the close of business on the next Business Day;

(k) the Contract Documents are complementary, and what is required by any one shall be as binding as if required by all;

(l) words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings; and

(m) as both Parties were actively involved in preparing the terms and conditions of this Agreement and as they both had access to and relied upon counsel in this process, there shall be no presumption that any one or the other Party prepared this Agreement and no provision of this Agreement shall be construed against either Party based upon the process of preparation of proposals and drafts of the Agreement.

1.3 If there is a conflict within the Agreement, the order of precedence of documents, from highest to lowest, shall be:

(a) Sections 1 to 27;

(b) Schedule "A" – Electricity Efficiency and Conservation Activities; and

(c) all other Schedules.

2. TERM & RESERVATION OF RIGHTS

2.1 The term of this Agreement shall be three (3) years from the Effective Date and shall automatically terminate on December 31, 2018 unless terminated earlier in accordance with the terms of this Agreement and the Act (the "**Term**").

2.2 During the Term, NSPI shall purchase from EfficiencyOne and EfficiencyOne shall supply to NSPI, the EECA in accordance with the terms and conditions of this Agreement and the Act.

2.3 Notwithstanding anything contained herein, and subject to any requirement for review or approval by the UARB, nothing contained in this Agreement shall in any way effect the rights of NSPI pursuant to Section 79I(3) of the Act.

3. ELECTRICITY EFFICIENCY and CONSERVATION ACTIVITIES

3.1 For the Term of this Agreement, EfficiencyOne will,

(a) provide the EECA in accordance with this Agreement;

(b) provide sufficient resources to enable EfficiencyOne to perform its obligations on time and in accordance with this Agreement;

(c) carry out the EECA in a professional, expeditious and economical manner, in accordance with the Act;

(d) manage the EECA in an efficient manner; and

(e) perform and supply the EECA in a safe and environmentally sound manner and in compliance with applicable Law.

3.2 The Parties acknowledge and agree that EfficiencyOne shall be solely responsible for the delivery of the EECA Plan. For greater certainty and notwithstanding the attachment of the EECA Plan as Schedule "E" – Approved EECA Plan, NSPI shall have no liability with respect to the EECA Plan saving and excepting any liability which may arise as a result of NSPI's failure to comply with the Act.

4. PRICE & PAYMENT

4.1 NSPI agrees to pay EfficiencyOne for EECA as set out in Schedule "B" – Compensation (the "Contract Price").

4.2 The Contract Price shall constitute full compensation for the EECA, and no additional compensation shall be payable to EfficiencyOne arising out or resulting from any productivity losses, overhead or indirect costs or other costs and expenses of any kind whatsoever.

4.3 NSPI shall make monthly payments on the first Business Day of each month in accordance with Schedule "B" to EfficiencyOne on account of the Contract Price when due, together with ~~applicable taxes~~ applicable HST. EfficiencyOne will submit an invoice to NSPI in advance of the payment date referenced in Schedule "B".

4.4 Unless otherwise indicated all dollar amounts referred to in this Agreement are in lawful money of Canada.

4.5 If applicable, payments shall be subject to harmonized sales tax (as defined in the *Excise Tax Act* (Canada)) ("HST"). No additional taxes (foreign or domestic), customs, duties or brokerage fees shall apply.

4.6 If applicable, NSPI will withhold from payments to EfficiencyOne any amounts required to be withheld under applicable Laws and treaties in respect of services rendered in Canada by a non-resident and may remit them to the relevant authority. Where available, statutory withholding may be waived if EfficiencyOne delivers to NSPI a formal waiver of the withholding requirement issued and signed by Canada Revenue Agency. The Parties shall cooperate at all times to ensure that all proper withholdings are deducted from payments and if any withholdings are overlooked then such withholdings may be deducted from later payments.

5. NOTIFICATION OF SIGNIFICANT CHANGES

5.1 EfficiencyOne shall provide notice of Significant Changes to NSPI at the same time as EfficiencyOne makes application to the UARB for the approval of the Significant Changes. Subject to the terms of the Act and the general discretion of the UARB under the Act, NSPI shall, have the right to make written submissions to the UARB on any such Significant Changes to the EECA Plan.

6. SAFETY

6.1 EfficiencyOne shall at all times be responsible for safety and loss management in the supply or performance of the EECA.

6.2 EfficiencyOne shall ensure that all employees, Subcontractors, agents and representatives of EfficiencyOne comply with all federal, provincial and municipal health, safety and environmental statutes, regulations, policies and guidelines and all health, safety and environmental rules as prescribed by EfficiencyOne.

7. PROTECTION OF PROPERTY

7.1 EfficiencyOne shall take all commercially reasonable steps to protect the property of NSPI's customers and other third parties from damage which may occur as the result of the performance of the EECA.

7.2 Should EfficiencyOne damage the property of NSPI's customers or property of other third parties while performing the EECA, EfficiencyOne shall make good such damage at EfficiencyOne's expense and shall indemnify NSPI from and against all liabilities, claims, damages, settlements, awards, costs, expenses and proceedings incurred by NSPI or its servants, employees and/or agents in respect of such damage, except to the extent such damage occurs as a result of the negligent acts of NSPI or those for which NSPI is responsible at Law.

8. ENVIRONMENT

8.1 EfficiencyOne and its Subcontractors shall at all times comply with all Environmental Laws that apply in any way to the supply or performance of the EECA. EfficiencyOne and its Subcontractors shall not cause, permit or suffer the Release of a Hazardous Substance in contravention of any Environmental Laws.

8.2 Notwithstanding any other provision in this Agreement (and in addition to any other right to indemnity held by NSPI under the terms of the Agreement) EfficiencyOne shall indemnify NSPI, NSPI's parent, their respective subsidiaries, affiliates and related companies, and their respective officers, directors, employees, agents and shareholders, and agrees to hold each of them harmless from and against any and all Indemnified Costs resulting from any Release of any Hazardous Substance which is caused or contributed to by EfficiencyOne or its Subcontractors or any breach of any Environmental Law by EfficiencyOne or its Subcontractors.

9. EFFICIENCYONE'S COVENANTS

9.1 EfficiencyOne warrants, covenants and agrees with NSPI that:

- (a) it has all requisite capacity and authority to execute, deliver and perform its obligations under this Agreement;
- (b) this Agreement has been duly and validly executed and delivered by EfficiencyOne and constitutes a legal, valid and binding obligation of EfficiencyOne enforceable against EfficiencyOne in accordance with its terms;
- (c) to its knowledge, there is no matter, thing or event, including without limitation, any litigation, proceeding, breach, default or financial circumstance that would

adversely affect EfficiencyOne's ability to perform its obligations under this Agreement;

(d) it will furnish all labour, materials, products, tools, and other necessary components necessary to perform and provide the EECA, unless otherwise provided herein;

(e) it shall diligently perform or cause to be performed the EECA in a proper and workmanlike manner;

(f) it has the skills, expertise and resources to carry out the EECA and to comply, observe and perform the obligations to which it is subject in accordance with the terms of this Agreement;

(g) prior to commencing any work hereunder, it shall obtain and maintain all permits, licenses and notices that a prudent supplier acting in accordance with industry standards would be required to obtain, maintain and provide in comparable circumstances and shall comply with all applicable Laws, ordinances, rules, regulations, codes and orders of any and all authorities having jurisdiction which are or become in force during the Term in respect of the EECA;

(h) it will comply with applicable federal, provincial and municipal statutes, regulations and bylaws pertaining to the EECA performed by or on behalf of EfficiencyOne under this Agreement. EfficiencyOne shall be responsible for ensuring similar compliance by any suppliers and Subcontractors;

(i) it is the Franchise Holder pursuant to the Act;

(j) it is not a non-resident of Canada for the purposes of the *Income Tax Act*;

(k) it will execute or cause to be made, done and executed all further acts, deeds, assurances, agreements, instruments or other documents as may be reasonably required to ensure fulfillment of the terms of this Agreement;

(l) the EECA shall be delivered and performed by individuals duly licensed and authorized by Law, if applicable, to perform said undertakings;

(m) the EECA shall be delivered and performed solely by EfficiencyOne or its Subcontractors and EfficiencyOne acknowledges that EfficiencyOne shall at all times remain responsible for the proper completion of this Agreement; and

(n) upon becoming aware of a potential disruption having a material impact in the supply of the EECA, EfficiencyOne shall provide notification to the UARB and NSPI.

10. SUBCONTRACTORS

10.1 EfficiencyOne shall be permitted to subcontract the performance of any part of the EECA without the prior written approval of NSPI.

10.2 Where EfficiencyOne subcontracts any part of the EECA, EfficiencyOne shall preserve and protect the rights of the Parties under this Agreement with respect to the EECA to be supplied or performed under subcontract, and shall be as fully responsible to NSPI

for the acts and omissions of Subcontractors and of persons directly or indirectly employed by them, as if they were acts and omissions of persons directly employed by EfficiencyOne.

10.3 Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and NSPI.

11. CONFIDENTIAL AND PERSONAL INFORMATION

11.1 The Parties have executed or agree to execute the confidentiality agreement attached hereto as Schedule "D" - Confidentiality ("**Confidentiality Agreement**").

11.2 EfficiencyOne shall be responsible for all physical and electronic security required to ensure the security of the Personal Information which has been provided by NSPI to EfficiencyOne.

11.3 EfficiencyOne shall indemnify and hold harmless NSPI for any liabilities, claims, damages, settlements, awards, costs, expenses and proceedings incurred by NSPI or its servants, employees and/or agents in consequence of EfficiencyOne's misuse of the Personal Information or any disclosure, whether intentional, inadvertent, negligent or otherwise of any of the Personal Information by EfficiencyOne contrary to the terms of this Agreement or the Act.

12. PERFORMANCE REQUIREMENTS AND EVALUATIONS

12.1 EfficiencyOne's performance under the terms of this Agreement shall be measured in accordance with the performance requirements established by the UARB pursuant to Section 79M of the Act as set out in Schedule "C" – Performance Requirements.

13. FORCE MAJEURE

13.1 Neither Party shall be in breach of its obligations under this Agreement where failure to perform or delay in performance of any obligation is due, wholly or in part, to a Force Majeure Event.

13.2 Each Party shall notify the other Party promptly of any Force Majeure Event and shall take reasonable steps to minimize the impact of the failure or the delay and to resolve the event or occurrence that has given rise to the Force Majeure Event in order to resume performance. The time for performing an obligation as a result of Force Majeure Event shall be extended for the period lost, subject to the condition that the Term of this Agreement shall not be extended as a result of any Force Majeure Event.

13.3 Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such Force Majeure Event. The Parties shall take all reasonable steps to ensure normal performance under this Agreement, including the resumption of any disrupted obligations.

13.4 For certainty, in no case shall the failure or omission of EfficiencyOne to carry out or observe any of the terms, provisions, or conditions of this Agreement or any negligent act or omission of EfficiencyOne, or others for whom EfficiencyOne is responsible constitute an event of Force Majeure or result in an extension of the time to perform the EECA.

14. INDEMNITY

14.1 EfficiencyOne shall assume all risk of loss, damage or injury, including death, to person or property, caused by its directors, officers, employees, Subcontractors, agents or representatives, and agrees not to make or bring any claim, action or demand against NSPI or its directors, officers, servants, agents, or employees in respect of such loss, damage or injury excepting such loss, damage or injury caused by the negligence or wilful misconduct of NSPI or NSPI's directors, officers, servants, agents or employees.

14.2 EfficiencyOne agrees to indemnify and save harmless NSPI, its directors, officers, servants, agents, or employees, and their heirs, executors, administrators, successors and assigns, or any of them, from and against any liabilities, losses, expenses (including legal costs on a solicitor-client basis), claims, demands, actions, and causes of action, whatsoever suffered by NSPI by reason of, or in any way arising out of or in connection with a breach of this Agreement by EfficiencyOne excepting only to the extent caused by the negligence or wilful misconduct of NSPI or NSPI's directors, officers, servants, agents or employees.

14.3 NSPI agrees to indemnify and save harmless EfficiencyOne, its directors, officers, servants, agents, or employees, and their heirs, executors, administrators, successors and assigns, or any of them, from and against any liabilities, losses, expenses (including legal costs on a solicitor-client basis), claims, demands, actions, and causes of action, whatsoever suffered by EfficiencyOne by reason of, or in any way arising out of or in connection with a breach of this Agreement by NSPI excepting only to the extent caused by the negligence or wilful misconduct of EfficiencyOne or EfficiencyOne's directors, officers, servants, agents or employees.

14.4 The provisions set forth in this Section shall apply and be effective with respect to any claim, cause of action, or legal theory whatsoever including without limitation, claims based upon breach of contract, failure to meet performance guarantees, tort (including negligence) and strict liability.

14.5 EfficiencyOne shall defend, indemnify and hold harmless NSPI from any claim, suit, cause of action, judgment, cost or expense (including legal fees) based on a claim by a third party that any intellectual property which is part of the EECA or supply or performance of EfficiencyOne's obligations under this Agreement infringes any patent, copyright, trade secret or other intellectual property right, provided the EfficiencyOne is promptly notified of such claim and is given complete authority for defense of same. EfficiencyOne shall pay all damages, costs and expenses resulting from such a claim, including legal fees and settlement costs, but shall not be responsible for any cost, expense or compromise incurred by NSPI without EfficiencyOne's prior consent.

15. LIMIT OF LIABILITY

15.1 Neither Party shall be liable to the other Party for any Consequential Losses with respect to the performance or non-performance under this Agreement or for any actions undertaken in connection with or related to this Agreement.

15.2 EfficiencyOne's total liability to NSPI with respect to the performance or non-performance under this Agreement or for any actions undertaken in connection with or related to this Agreement shall be limited to the greater of the sum of two million dollars (\$2,000,000) or the proceeds of the applicable insurance policies taken out by

EfficiencyOne under this Agreement ("**EfficiencyOne Limit of Liability**") provided that the EfficiencyOne Limit of Liability shall not apply to:

- (a) indemnification of NSPI by EfficiencyOne under the terms of this Agreement for any third party claims (including but not limited to EfficiencyOne's obligations pursuant to Sections 7.2, 8.2, 11.3, 14.5 and 18.1);
- (b) any wilful misconduct or fraud of EfficiencyOne or its employees, agents or representatives; and
- (c) any obligation on the part of EfficiencyOne to refund in whole or in part the Contract Price pursuant to this Agreement or the Act.

15.3 NSPI's total liability to EfficiencyOne with respect to the performance or non-performance under this Agreement or for any actions undertaken in connection with or related to this Agreement shall be limited to the sum of two million dollars (\$2,000,000) ("**NSPI Limit of Liability**") provided that the NSPI Limit of Liability shall not apply to:

- (a) any wilful misconduct or fraud of NSPI or its employees, agents or representatives; and
- (b) NSPI's liability for payment of the Contract Price pursuant to the Agreement or the Act.

16. INSURANCE

16.1 EfficiencyOne shall obtain, maintain and pay for, during the entire Term of this Agreement, the following minimum insurance coverage as follows, such insurance as it relates to this Agreement shall be in a form and from an insurer acceptable to NSPI:

- (a) General liability insurance shall be in the name of EfficiencyOne and shall name NSPI as an additional insured and shall have limits of not less than five million dollars (\$5,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. Such insurance shall be primary and non-contributing with, and not in excess of, any other insurance available to NSPI.
- (b) Environmental impairment insurance with limits of not less than five million dollars (\$5,000,000);
- (c) Automobile liability insurance in respect of licensed vehicles shall have limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury, death, and damage to property. For automobiles not owned or operated by or on behalf of EfficiencyOne the insurance shall be in the form of a standard non-owned automobile policy and shall include standard contractual liability endorsement. For automobiles owned or operated by or on behalf of EfficiencyOne the insurance shall be in the form of a standard owner's form automobile policy and shall provide third party liability and accident benefits insurance covering licensed vehicles owned or operated by or on behalf of EfficiencyOne.
- (d) Property Insurance covering all loss of or damage to EfficiencyOne's property and equipment of EfficiencyOne or for which EfficiencyOne is legally liable or

responsible used in performance of the EECA for the full replacement value, which insurance shall not allow subrogation claims by the insurer against NSPI.

(e) To the extent that the EECA includes the provision of professional services, professional liability errors and omissions insurance covering all claims arising out of errors and omissions of EfficiencyOne in the performance of professional services as part of the EECA with a limit of two million dollars (\$2,000,000). In the event other claims erode EfficiencyOne's professional errors and omissions insurance below two million dollars (\$2,000,000), in the annual aggregate, EfficiencyOne agrees to reinstate the limit.

(f) Workers' compensation to the full extent required in Nova Scotia and wherever EfficiencyOne's personnel contracts of employment are made or are expressed to be made.

16.2 If EfficiencyOne fails to effect or keep in force any of the foregoing insurances, NSPI may, without prejudice to any other right or remedy, effect such insurance and pay the premiums due and recover the same as a deduction from any other monies due to EfficiencyOne under this Agreement.

16.3 EfficiencyOne shall be responsible to pay deductible amounts and for determining the deductible amount in respect of each policy. EfficiencyOne shall not violate, nor knowingly permit to be violated, any conditions of the policies maintained according to the provisions of this Section, and it shall be EfficiencyOne's duty and responsibility to impose upon each Subcontractor the same responsibilities and obligations imposed upon EfficiencyOne under such provisions.

16.4 EfficiencyOne agrees to provide proof of insurance to NSPI on an annual basis. Such proof shall be in the form of a certificate of insurance signed by EfficiencyOne's insurance broker.

17. INTELLECTUAL PROPERTY

17.1 NSPI acknowledges that all branding, trade and business marks of EfficiencyOne used in the course of provision of EECA pursuant to this Agreement, (the "EfficiencyOne Brands") are, and shall remain, the sole and exclusive property of EfficiencyOne and shall not be used by NSPI without EfficiencyOne's express consent. Upon termination of this Agreement, NSPI shall immediately upon instruction from EfficiencyOne return or destroy, as instructed by EfficiencyOne, the EfficiencyOne Brands.

17.2 Any trademarks, brands, logos or other branding or trade or business marks used in NSPI's business ("**NSPI Brands**") shall remain the sole and exclusive property of NSPI and shall not be used by EfficiencyOne for any purpose except in connection and as necessary for the provision of the EECA. Upon termination of this Agreement, EfficiencyOne shall immediately upon instruction from NSPI return or destroy, as instructed by NSPI, the NSPI Brands.

18. LIENS AND CLAIMS

18.1 EfficiencyOne shall indemnify and hold harmless NSPI, NSPI's parent and their subsidiaries and affiliates (collectively the "**Lien Indemnitees**" or singularly "**Lien Indemnitee**") and defend each of them from and against any and all losses and costs arising out of any and all claims for payment, liens, attachment or any other process,

filed against any property of the Lien Indemnitees by or in respect of a Subcontractor of any tier or any other party providing work, materials in respect of the EECA or any part thereof (referred to in this Section as "**Liens or Claims**"), including solicitor and client fees and expenses incurred by NSPI in discharging any such Liens or Claims or similar encumbrances.

18.2 EfficiencyOne shall discharge promptly any Liens or Claims. If EfficiencyOne does not promptly satisfactorily discharge such Liens or Claims, NSPI at its sole option may (i) require EfficiencyOne to pay, within five (5) Business Days after request by NSPI, or (ii) subject to any requirements of the *Builders' Lien Act* of Nova Scotia, offset against any holdback or other amounts due or to become due to EfficiencyOne, all costs and expenses incurred by NSPI or other Lien Indemnatee in causing the release of, paying or settling such Liens or Claims. EfficiencyOne shall have the right to contest any such Liens or Claims, provided it first provides to NSPI a bond or other assurance of payment reasonably satisfactory to NSPI in the amount of such Liens or Claims and in form and substance reasonably satisfactory to NSPI. In no circumstance whatsoever shall NSPI be liable for a greater amount than the amount payable by NSPI to EfficiencyOne.

19. DISPUTE RESOLUTION

19.1 In the event of a dispute in connection with this Agreement, a senior representative of EfficiencyOne and a senior representative of NSPI shall promptly meet to discuss and resolve the dispute and the Parties shall have thirty (30) days to resolve the dispute (or ten (10) days if either Party notifies the other Party that the matter requires urgent resolution).

19.2 Unless the parties agree otherwise, in the event resolution cannot be achieved in accordance with Section 19.1 of this Agreement, then such dispute or difference shall be referred to the UARB in accordance with Section 79P of the Act.

19.3 Notwithstanding any dispute, EfficiencyOne shall diligently carry out the EECA, and shall not suspend, impair, interfere with, restrict or discourage the prompt completion of any portion of the EECA, unless specifically authorized to do so by the UARB. .

20. DEFAULT AND TERMINATION

20.1 This Agreement may be terminated immediately by either Party, in whole or in part, upon the happening of one or more of the following events:

(a) EfficiencyOne's Franchise is terminated and the Agreement has not been assigned by the Minister; or

(b) The UARB approves the termination of the Agreement.

In the event of a termination pursuant to this Section 20.1, neither Party shall be entitled to any compensation or damages for any Consequential Losses as a result of such termination. Immediately upon receipt of such termination notice, EfficiencyOne will discontinue all EECA under this Agreement and will only finish such portions of the EECA as may be necessary to preserve and protect the EECA already in progress. Such termination does not relieve either Party from any of their respective obligations under this Agreement for EECA provided up to the date of termination. Any claim for payment by EfficiencyOne must be asserted within thirty (30) days from the date of such termination.

- 20.2 Notwithstanding any other provision in this Agreement, in the event this Agreement is terminated in accordance with Section 20.1(a), EfficiencyOne shall:
- (a) Immediately return all monies paid on account of the Contract Price which amounts have not been legitimately incurred or subject to contractual commitments for expenditure which cannot otherwise be mitigated to NSPI; and
 - (b) Provide to NSPI all reasonable required termination assistance to allow the EECA provided under this Agreement to continue and to facilitate the orderly transition of the EECA to NSPI or any third party as directed by NSPI, provided that EfficiencyOne shall be entitled to commercially reasonable payment for such transition services on a time and material basis.
- 20.3 The Parties acknowledge that this Agreement is subject to the general supervision of the UARB.
- 20.4 A Party shall be determined to be in default of its obligations under this Agreement if (each a “**Event of Default**”):
- (a) it is in breach of any material term or condition of this Agreement, which breach is not cured by the Party within thirty (30) days after written notice from the other Party;
 - (b) it assigns this Agreement other than as permitted by the Act and/or the UARB;
 - (c) any representation or warranty made by either Party shall prove to be untrue when made in any material respect;
 - (d) there is a sale, transfer or relinquishment, voluntary or involuntary, by operation of law or otherwise, of legal control of the business of either Party except for a transfer to a related corporation or a transfer resulting from a merger, acquisition, amalgamation or reorganization, or, in the case of EfficiencyOne, a change in the Membership of the corporation;
 - (e) Either Party sells, transfers or assigns all or substantially all of its assets;
 - (f) a petition in bankruptcy is filed with respect to either Party; or
 - (g) any proceeding is commenced under any bankruptcy or insolvency legislation or under any other federal, state or provincial law relating to insolvency or bankruptcy, the adjudication of either Party as a bankrupt, the appointment by any competent court having jurisdiction of a temporary or permanent receiver, trustee or other officer having similar powers over either Party its business or assets, or the making of any assignment by either Party for the benefit of its creditors.
- 20.5 If a breach notified pursuant to Sections 20.3(a) cannot be corrected within the period required therein, the defaulting Party shall not be in breach or violation if it:
- (a) commences and diligently and continuously carries out the correction of the breach or violation within the specified time;

(b) provides to the non-defaulting Party, and the UARB an acceptable plan for such correction; and

(c) corrects the breach or violation in accordance with such plan.

20.6 Upon the occurrence of an Event of Default, the non-defaulting Party may apply to the UARB to terminate this Agreement in whole or in part.

21. NOTIFICATIONS

21.1 All notices to be given to either Party under this Agreement shall be written and addressed to the NSPI and to EfficiencyOne as follows:

To NSPI:

Nova Scotia Power Incorporated
1223 Lower Water Street
PO Box 910
Halifax, NS B3J 3S8
Attention: Corporate Secretary
Facsimile: (902) 428-6171

To EfficiencyOne:

EfficiencyOne
230 Brownlow Avenue
Suite 300
Dartmouth, NS B3B 0G5
Attention: CEO
Facsimile: (902) 470-3599

21.2 All notices may be sent by facsimile, a nationally recognized overnight courier service, first class mail or hand delivered. Notice shall be given when received by the addressee on a Business Day. In the absence of proof of the actual receipt date, the following presumptions will apply:

(a) Notices sent by facsimile shall be presumed to have been received upon the sending Party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. (local time for the recipient) on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day.

(b) Notice by overnight courier shall be presumed to have been received on the next Business Day after it was sent.

(c) Notice by first class mail shall be presumed delivered five (5) Business Days after mailing.

21.3 Either Party may modify its address for notices by advance written notice to the other Party.

22. AUDIT AND INSPECTION

22.1 EfficiencyOne shall, during the Term and for a period of thirty-six (36) months thereafter, keep accurate records of all EECA supplied to NSPI, as necessary to determine that the EECA was provided in accordance with the terms and conditions of this Agreement.

22.2 NSPI shall have the right to apply to the UARB to request access to any of the records referred to in 22.1.

22.3 NSPI shall have the right to apply to the UARB to inspect or observe the EECA at all times, whether using its own forces or those of a designated third party. EfficiencyOne shall facilitate such inspections and provide sufficient, safe and proper facilities at all times for inspection of the EECA.

23. ASSIGNMENT

23.1 Neither Party shall assign all or any portion of this Agreement without the prior written approval of the UARB and/or the Minister as the situation requires.

24. SHARING OF DATA AND INFORMATION

24.1 EfficiencyOne shall work co-operatively with NSPI to provide NSPI with information and data from time to time in order to assist NSPI with planning and load forecasting as may be reasonably required by NSPI. For greater certainty, such information and data shall be consistent with the past practices of the Parties.

24.2 In the event of a dispute regarding any request for information by NSPI, NSPI shall have the right to apply to the UARB to request access to the information and data referred to in 24.1.

25. COORDINATION MEETINGS AND REPORTS

25.1 During the Term of this Agreement, EfficiencyOne shall prepare and deliver to the UARB and NSPI a quarterly report (the "Quarterly Report") in a form acceptable to the UARB.

25.2 EfficiencyOne shall prepare and deliver to the UARB and NSPI an annual report (the "Report") in a form acceptable to the UARB. For greater certainty, the Report shall summarize and provide details as to the EECA and milestones achieved in the prior year, contain a discussion and analysis of major discrepancies relative to the EECA Plan's intent and forecasts, EfficiencyOne's financial statement for the previous year with respect to the EECA, evaluation reports and a summary of planned versus actual savings and costs for each metric.

25.3 The Parties agree that ongoing coordination and regular communication between NSPI and EfficiencyOne is important in order to ensure effective planning. To that end, the Parties shall meet quarterly or as otherwise agreed upon to discuss the provision of the EECA.

25.4 Notwithstanding ss. 25(1) and (2), EfficiencyOne shall provide evaluation and reporting in accordance with s. 5 of the Consensus Agreement among EfficiencyOne, NSPI,

Formatted: Indent: Left: 0 cm,
Hanging: 1.27 cm, No bullets or
numbering

Consumer Advocate, Small Business Advocate, Industrial Group, Affordable Energy Coalition and Ecology Action Centre, dated June 16, 2015, pursuant to the UARB's decision of August 12, 2015 (M06733).

26. GENERAL

26.1 This Agreement shall only be renewed in accordance with the provisions of the Act.

26.2 This Agreement shall extend to, be binding upon and enure to the benefit of the respective successors and permitted assigns of the Parties hereto.

26.3 EfficiencyOne will be an independent contractor. EfficiencyOne shall not act as an agent for NSPI, bind NSPI to any obligation with a third party, nor hold itself out as having authority to bind or obligate NSPI. None of the persons engaged by EfficiencyOne or any of its Subcontractors in the performance of the EECA will be considered employees of NSPI.

26.4 This Agreement shall be deemed to have been made in and shall be governed by, construed and interpreted in accordance with the laws of the Province of Nova Scotia and the laws of Canada, as applicable therein. Where the provisions of this Agreement or the Act permit or require a matter to be referred to or proceeded with before a court, or in any other case where the Parties bring a matter in respect of this Agreement before a court, the Parties irrevocably attorn to the jurisdiction of the Supreme Court of Nova Scotia.

26.5 No consent or waiver, express or implied, by any Party to this Agreement of any breach or default by any other Party in the performance of its obligations under this Agreement or of any of the terms, covenants or conditions of this Agreement shall be deemed or construed to be a consent or waiver of any subsequent or continuing breach or default in such Party's performance.

26.6 Time shall be of the essence for purposes of this Agreement.

26.7 This Agreement, upon approval by the UARB, shall represent the entire Agreement between the Parties with respect to the subject matter hereto and shall not be modified, varied or amended except by an instrument in writing signed by the Parties and approved by the UARB or as ordered or directed, by the UARB at any time.

26.8 Should any provision of the Agreement be declared by a judicial or other competent authority to be unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

26.9 The Parties acknowledge that this Agreement and all related documents shall be in English.

26.10 This Agreement may be executed by the Parties in counterparts, each of which when so executed and delivered shall be deemed to be an original and when taken together shall be deemed to be one and the same instrument. The electronic delivery, including, without limitation, by email or facsimile transmission, of any signed original of this Agreement shall be the same as the delivery of an original.

27. SURVIVAL

27.1 Subject to the provisions of the Act, all provisions of this Agreement which by their express terms or nature are continuing shall survive the expiration or termination of this Agreement, including, without limitation, this provision, and the provisions relating to the EECA Plan (s. 3.2), EfficiencyOne's covenants (s.9), confidentiality (s. 11), indemnity (s.14), intellectual property (s. 17), notification (s. 21) and general provisions (s. 26) as well as any provisions which are required to determine, or which exclude or limit, any liability or which are otherwise required to give effect to or interpret any such provisions which are continuing.

[Remainder of page intentionally left blank]

1

2

3

4 **IN WITNESS THEREOF**, the Parties have duly executed this Agreement, in duplicate, as of the
5 date set forth above.

Witness

Witness

Witness

Witness

NOVA SCOTIA POWER INCORPORATED

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

EFFICIENCYONE

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

6

7

SCHEDULE A

ELECTRICITY EFFICIENCY AND CONSERVATION ACTIVITIES

~~[THE PARTIES HAVE NOT REACHED AGREEMENT ON THIS SCHEDULE.]~~

Schedule A

Electricity Efficiency and Conservation Activities

The figure below identifies the scope of savings (3-year Cumulative Annual Net Energy and Net Peak Demand Savings) associated with carrying out EECA's over the Term.

	<u>Cumulative Annual Net Energy Savings at Generator over the Term (GWh)</u>	<u>Cumulative Annual Net Peak Demand Savings at Generator over the Term (MW)</u>
<u>Performance Targets*</u>	<u>405.9</u>	<u>62.5</u>

The above performance targets will be achieved in accordance with the EECA Plan set out in Schedule E, having regard to the flexibility to amend as permitted by the Consensus Agreement as adopted by the Board.

* For certainty, in accordance with the performance requirements set out in Schedule "C" attached hereto, EfficiencyOne shall be deemed to be in substantial compliance with the approved Performance Targets if 90 percent (90%) or greater achievement is reached on both Performance Targets. If less than 90 percent (90%) of either Performance Target is achieved, a regulatory process will be triggered.

SCHEDULE B

COMPENSATION

[THE PARTIES HAVE NOT REACHED AGREEMENT ON THIS SCHEDULE.]

Schedule B (Page 1 of 2)

Compensation

I. Net Contract Price

The figure below identifies the net Contract Price to be paid by NSPI allocated for each year of the Term.

	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Total</u>
<u>UARB Approved</u>	<u>\$33,210,000</u>	<u>\$34,020,000</u>	<u>\$34,920,000</u>	<u>\$102,150,000</u>
<u>Balance Adjustment¹</u>	<u>(\$8,518,030)</u>	<u>nil</u>	<u>nil</u>	<u>(\$8,518,030)</u>
<u>Net Contract Price to be Paid by NSPI²</u>	<u>\$24,691,970</u>	<u>\$34,020,000</u>	<u>\$34,920,000</u>	<u>\$93,631,970</u>

The Parties acknowledge that any surplus realized by EfficiencyOne in delivering the Performance Targets at the end of the Term shall be reported to the UARB and refunded to NSPI unless EfficiencyOne is directed otherwise by the UARB.

¹ The term "Balance Adjustment" refers to the 2014 surplus of DSM funds in the amount of \$8,518,030 that is to be returned by EfficiencyOne in accordance with the UARB-approved cost-allocation methodology. The return of the Balance Adjustment is to be accounted for through a reduction in the payment of the 2016 portion of the Contract Price.

² The Parties acknowledge that the portion of Contract Price approved by the UARB for 2016 is to be reduced by the amount of the Balance Adjustment. As such, the amount to be paid by NSPI to EfficiencyOne in 2016 shall not exceed \$24,691,970 and the total amount to be paid by NSPI over the Term shall not exceed \$93,631,970.

Schedule B (Page 2 of 2)

Compensation

II. Payments

In accordance with Section 4.3 of the Agreement, the monthly payments to be made by NSPI to EfficiencyOne over the Term, accounting for the Balance Adjustment, shall be as set out below. The monthly payment amounts referred to following are exclusive of required HST. HST shall be remitted to EfficiencyOne in addition to these monthly amounts.

<u>On the First Business Day of:</u>	<u>2016</u>	<u>2017³</u>	<u>2018⁴</u>	<u>Total</u>
<u>January</u>	<u>\$0</u>	<u>\$2,900,436</u>	<u>\$2,977,167</u>	<u>-</u>
<u>February</u>	<u>\$0</u>	<u>\$2,641,338</u>	<u>\$2,711,215</u>	<u>-</u>
<u>March</u>	<u>\$0</u>	<u>\$2,833,345</u>	<u>\$2,908,301</u>	<u>-</u>
<u>April</u>	<u>\$2,596,090</u>	<u>\$3,010,077</u>	<u>\$3,089,709</u>	<u>-</u>
<u>May</u>	<u>\$2,483,522</u>	<u>\$2,544,095</u>	<u>\$2,611,400</u>	<u>-</u>
<u>June</u>	<u>\$2,307,508</u>	<u>\$2,363,788</u>	<u>\$2,426,322</u>	<u>-</u>
<u>July</u>	<u>\$2,368,453</u>	<u>\$2,426,220</u>	<u>\$2,490,406</u>	<u>-</u>
<u>August</u>	<u>\$2,388,522</u>	<u>\$2,446,778</u>	<u>\$2,511,508</u>	<u>-</u>
<u>September</u>	<u>\$3,029,041</u>	<u>\$3,102,920</u>	<u>\$3,185,008</u>	<u>-</u>
<u>October</u>	<u>\$3,953,232</u>	<u>\$4,049,652</u>	<u>\$4,156,786</u>	<u>-</u>
<u>November</u>	<u>\$2,796,894</u>	<u>\$2,865,111</u>	<u>\$2,940,907</u>	<u>-</u>
<u>December</u>	<u>\$2,768,709</u>	<u>\$2,836,238</u>	<u>\$2,911,271</u>	<u>-</u>
<u>Total</u>	<u>\$24,691,970</u>	<u>\$34,020,000</u>	<u>\$34,920,000</u>	<u>\$93,631,970</u>

³ The 2017 payments owing by NSPI will be reduced to reflect any 2015 under-spending by EfficiencyOne, if any, against the 2015 UARB-approved DSM Resource Plan, together with any 2014 Balance Adjustment interest earned in 2015.

⁴ The 2018 payments owing by NSPI will be reduced to reflect any Balance Adjustment interest earned in 2016.

SCHEDULE C

SCHEDULE C (PAGE 1 OF 2)

Performance Requirements

I. UARB-APPROVED PERFORMANCE STANDARD TARGETS, THRESHOLDS, AND INDICATORS⁵

[As approved by the UARB]

a) Performance Targets and Thresholds:

- i. Performance Targets are set over the three-year contract period, rather than annually.
- ii. EfficiencyOne is deemed to be in substantial compliance with the UARB-approved Plan Performance Targets if 90 percent or greater achievement is reached on the two Performance Targets as listed below. If less than 90 percent of any Performance Target is achieved, a regulatory process will be triggered.

b) Performance Targets consist of:

- i. Cumulative annual energy savings
- ii. Cumulative annual peak demand savings

c) Performance Indicators (for UARB reporting) consist of:

- i. Annual incremental energy savings (reported by program)
- ii. Cumulative annual energy savings (reported by program)
- iii. Lifetime savings (once methodology is developed) (reported by program)
- iv. Annual incremental peak demand savings (reported by program)
- v. Cumulative annual peak demand savings (reported by program)
- vi. Total ratepayer benefits (once methodology is developed)
- vii. Total spending (reported by program and rate class)

Formatted: Normal, Indent: Left: 0.63 cm, Hanging: 0.62 cm, Space After: 10 pt, Don't add space between paragraphs of the same style, Line spacing: Multiple 1.15 li, Numbered + Level: 1 + Numbering Style: I, II, III, ... + Start at: 1 + Alignment: Left + Aligned at: 0.63 cm + Indent at: 1.9 cm, Don't adjust space between Latin and Asian text

Formatted: Font: +Body (Calibri), 12 pt, English (U.S.)

Formatted: Font: +Body (Calibri), 12 pt, Underline, English (U.S.)

⁵ These Performance Targets, Indicators and Thresholds were established under the terms of the Consensus Agreement among EfficiencyOne, NSPI, the Consumer Advocate, the Small Business Advocate, the Industrial Group, the Affordable Energy Coalition and the Ecology Action Centre, dated June 16, 2015, which was approved by the UARB in its Decision dated August 12, 2015 (M06733).

viii. Customer satisfaction

Schedule C (Page 2 of 2)
Performance Requirements

ix. An analysis of the impact on rates through the implementation of the 2016-2018 programs will be included as part of EfficiencyOne's historical-looking rate and bill impact analysis, filed by October 31st of each year.

x. Reporting on low income program participation, expenditures, and savings through a variety of methods, including estimation based on geographic census information.

d) For the Performance Indicators reported by program, EfficiencyOne will also report on them by rate class, as soon as available, but not later than within its Q3 report to the UARB.

Formatted: Font: +Body (Calibri), English (U.S.)

Formatted: Space After: 10 pt, Line spacing: Multiple 1.15 li

SCHEDULE D

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AGREEMENT made this ____ day of _____, 2015

Between:

EfficiencyOne, hereinafter "EfficiencyOne"

Party of the First Part

And

Nova Scotia Power Incorporated, hereinafter "NSPI"

Party of the Second Part

Whereas the Parties have entered into a Supply Agreement for Electricity Efficiency and Conservation Activities made effective as of January 1, 2016 ("Supply Agreement") whereby Efficiency One is to provide EECA (as that term is defined in the Supply Agreement) to NSPI;

And whereas in accordance with the Supply Agreement, and the Electricity Efficiency and Conservation Act (Nova Scotia) and the Public Utilities Act (Nova Scotia) (together hereinafter referred to as the "Legislation"), and as may be directed by the Nova Scotia Utility and Review Board, and as may be further agreed between the Parties, the Parties will be receiving, reviewing, and analyzing Confidential Information from each other;

And whereas the Parties wish to clarify the manner in which any Confidential Information disclosed by one Party ("Disclosing Party") to the other is to be treated by the recipient of the Confidential Information ("Recipient");

In consideration of the agreements of the Parties set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Confidential Information

1. The Parties agree that for the purpose of this Agreement "Confidential Information" means all information, regardless of the form in which it is communicated or maintained and prepared by the Disclosing Party, and is disclosed directly or indirectly to the Recipient, pursuant to the Supply Agreement, the Legislation, as directed by the Nova Scotia Utility and Review Board or as otherwise agreed between the Parties. Confidential Information includes, but is not limited to the following: all reports analyses, notes, memoranda, correspondence, spreadsheets, drawings, survey plans, maps, contracts, commercial arrangements, intellectual property, trade secrets, corporate strategies, business plans or other information that is based on, contain or reflect any Confidential Information, material, whether printed or electronic, which has been designated by the Disclosing Party as confidential information, including proprietary information and other commercially sensitive information. This includes but is not limited to information which has been or may be filed with the Nova Scotia Utility and Review Board ("the Board") in confidence in answer to Information Requests and any further material that may be filed with the Board in confidence whether in response to future Information Requests or otherwise, and whether printed or electronic. Confidential Information shall also include any explanation or other information provided by either Party to the Recipient concerning the foregoing and which has been identified by the Party providing the information as confidential at the time it is initially provided, whether printed or electronic. Confidential Information may also include any password or other information necessary to access electronic copies of Confidential Information.

Permitted Scope of Use

2. The Recipient may use the Confidential Information solely for the purposes of providing or receiving EECA, as the case may be, in accordance with the Legislation and the Supply Agreement and for no other reason or purpose.

No Obligation to Disclose

3. This Agreement does not obligate either Party to disclose any Confidential Information to the other.

Protection of Confidential Information

4. The Recipient shall hold the Confidential Information in strict confidence and shall strictly protect the Confidential Information from all harm, loss, theft, reproduction and unauthorized access, employing at least the same degree of care that the Recipient employs to protect its own confidential information of a similar nature, but in any event, not less than reasonable care. The Recipient shall ensure that such Confidential Information is not disclosed, published,

released, transferred or otherwise made available in any form to, for the use or benefit of, any person except as provided in this Agreement.

Acknowledgements

5. The Recipient acknowledges that the Confidential Information is confidential and a trade secret and is owned by the Disclosing Party and is highly valuable and material to the interests, business and affairs of the Disclosing Party and that any unauthorized disclosure thereof by the Recipient would be detrimental to the Disclosing Party.

Permitted Disclosures

6. The Recipient shall be permitted to disclose relevant aspects of the Confidential Information to its employees and professional advisors to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations; provided, however, that prior to such disclosure the Recipient shall inform such persons and parties of the confidential nature of the Confidential Information and each such person or party signs the undertaking attached to this Confidentiality Agreement. The Recipient shall inform the Disclosing Party of the name of each person to whom it has disclosed the Confidential Information in accordance with this provision and shall provide to the Disclosing Party the signed undertaking. The Recipient shall be fully responsible for ensuring that any such persons to whom it discloses the Confidential Information complies with the confidentiality obligations contained in this Agreement and shall be liable for any breach of this Agreement by such persons.

7. The non-disclosure obligations in this Agreement shall not restrict any disclosure by the Recipient pursuant to any applicable law or an order of any court of competent jurisdiction or regulatory body with regulatory responsibilities over the Recipient, provided that the Recipient shall provide the Disclosing Party with prompt prior written notice of its obligation to disclose so that the Disclosing Party may seek a protective order or other appropriate remedy concerning the disclosure of its Confidential Information and/or waive compliance with the confidentiality provisions of this Agreement. In addition, the Recipient shall take reasonable steps, to the extent permitted by law, to remove from the Confidential Information that is required to be disclosed, any information that is commercially sensitive to the Disclosing Party. In the event of an order for disclosure by a court of competent jurisdiction or regulatory body with regulatory responsibilities over the Recipient, the Recipient shall first notify the Disclosing Party of such order and allow the Disclosing Party not less than ten (10) days to remove any such information that is commercially sensitive.

Term

8. The term of this Agreement shall commence on the effective date of the Supply Agreement unless superceded by another form of writing, and notwithstanding the return of any Confidential Information or any other event, shall continue in full

force and effect for a period of FIVE (5) years from the effective date of this Agreement.

Equitable Remedy

9. The Recipient acknowledges that any unauthorized use of the Confidential Information or any breach of its obligations under this Agreement will result in irreparable harm to the Disclosing Party which cannot be adequately compensated for by damages. Neither the Recipient, nor any term in this Agreement, shall interfere with, delay, or prevent the Disclosing Party from seeking an interim and interlocutory equitable remedy to enforce any provision of this Agreement. The Recipient agrees not to oppose an application for equitable relief by the Disclosing Party in such circumstances. Any such relief or remedy shall not be exclusive, but shall be in addition to all other available legal or equitable remedies. The Recipient agrees that the provisions of this Section are fair and reasonable in the commercial circumstances of this Agreement. This Article shall survive the termination of this Agreement.

Return of Information

10. On the earlier of either thirty (30) days following the termination of the Supply Agreement or at the written request of the Disclosing Party (and unless superceded by another form of writing), the Recipient shall return or destroy (at the Disclosing Party's direction) and delete from all electronic devices all Confidential Information provided to it, including all copies (and all notes and documents prepared by the Recipient that may incorporate same) and still in the Recipient's possession (and otherwise under its control or in the possession of other persons to whom it has been provided as permitted hereunder) and, if requested by the Disclosing Party, shall provide written confirmation to the Disclosing Party to that effect. Notwithstanding the forgoing, the Recipient shall be entitled to retain the Confidential Information in one legal file copy that may be retained solely for the determination of its legal obligations under this Agreement.

Residual Information

11. The Recipient or its designate or any other person having access to the Confidential Information pursuant to this Agreement shall not, during and after the termination of this Agreement, use in its business any Residual Information. "Residual Information" means the ideas, know-how and techniques that would be retained in the unaided memory of an ordinary person skilled in the art, not intent on appropriating the proprietary information of the disclosing party, as a result of such person's access to, use, review, evaluation, or testing of the Confidential Information of the disclosing party for the purposes described herein. An employee's memory is unaided if the employee has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it.

Limited Rights

12. The Recipient agrees that no rights are granted to Recipient other than the limited rights to use the Confidential Information on the terms of this Agreement. For certainty, no license is granted under this Agreement (directly or indirectly) under any patent, discovery, copyright, or other intellectual or industrial property right now or in the future.

Indemnity

13. The Recipient shall indemnify and hold the Disclosing Party harmless from any and all loss, liability, cost or expense (including, without limitation, solicitor's costs on a solicitor and client basis and all other costs of defence) caused in whole or in part by the Recipient's breach of any provision of this Agreement. This Article shall survive the termination of this Agreement.

Governing Law

14. This Agreement is governed and shall be construed in accordance with the laws of the Province of Nova Scotia.

General Provisions

15. This Agreement is binding on the Parties, their administrators, successors, executors and assigns.

Executed and delivered this ____ day of _____, 2015.

EfficiencyOne

Nova Scotia Power Incorporated

By: _____

By: _____

Name:

Name:

Title:

Title:

SCHEDULE "A" to CONFIDENTIALITY AGREEMENT

UNDERTAKING

I _____, HAVE READ AND
AGREE TO ABIDE AND AM BOUND BY THE TERMS AND CONDITIONS SET
OUT IN THE CONFIDENTIALITY AGREEMENT DATED THE ____ DAY OF
____ BETWEEN EFFICIENCYONE AND NOVA SCOTIA
POWER INCORPORATED.

Dated the ____ day of _____ 2014.

Witness

Name:

Recipient Designate

SCHEDULE E

APPROVED EECA PLAN

[As approved by the UARB]