

BOMA CDM Agreement



**BOMA Toronto CDM Program
Participant Agreement**

Contract Date	September 4, 2009
Building Address	
(street)	
(city)	
(prov)	
(postal code)	
Participant of Record	
(first name)	
(last name)	
(title)	
(company name)	
(phone)	
(fax)	
(email address)	
Contact Person	
(first name)	
(last name)	
(title)	
(phone)	
(fax)	
(email address)	

Standard Terms and Conditions

This Agreement between BOMA Toronto and the Participant witnesses that, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties mutually agree to be bound by the terms and conditions of this Agreement.

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions. Capitalized terms used herein, and not otherwise defined, have the following meanings:

“Advance Evaluation and Incentive Report” has the meaning ascribed thereto in Section 2.5;

“Agreement” means this agreement as amended, restated, or replaced from time to time, and for greater certainty, includes these Standard Terms and Conditions and Schedules “A”, “B”, and “C” hereto. Unless otherwise stated, references to Articles, Sections, and Schedules refer to the Articles, Sections, and Schedules of this Agreement, and the expressions “hereof”, “hereto”, “hereunder”, “hereby”, and similar expressions refer to this Agreement and not to any particular Article, Section, Schedule or other portion of this Agreement;

“Applicable Laws” means (i) applicable federal, provincial, or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations, and statutes; (ii) applicable orders, decisions, codes, judgments, injunctions, decrees, awards, and writs of any court, tribunal, arbitrator, Governmental Authority, or other Person having jurisdiction; (iii) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent, and approval issued by a Governmental Authority; and (iv) any requirements under or prescribed by applicable common law;

“Application” means the application and all documents related thereto submitted by the Participant to BOMA Toronto in respect of the Program, including all additional information and clarifications provided prior to the date hereof;

“Approved Measure” shall have the meaning ascribed thereto in Section 2.6;

“BOMA Toronto” means the Building Owners and Managers Association of the Greater Toronto Area, a not-for-profit corporation incorporated pursuant to the laws of the Province of Ontario;

“BOMA Toronto Event of Default” shall have the meaning ascribed thereto in Section 6.5;

“Building” means the structure located at the address identified in item 2 of the preceding pages and owned or operated by the Participant;

“Business Day” means any day of the year other than a Saturday, Sunday, or any other day on which banks are required or authorized to close in the Province of Ontario;

“Calculated Energy Reduction” means annual kWh reduction attributable to Eligible Project Measures calculated using the project evaluation criteria set by BOMA Toronto and calculated using direct savings only;

“Claims” means suits, claims, liabilities, damages, costs (including legal fees and disbursements), charges, and expenses;

“Eligibility Requirements” means those requirements established by BOMA Toronto and published in the Program Rules for eligibility in the Program;

“Final Evaluation and Incentive Report” shall have the meaning ascribed thereto in Section 3.2;

“FIPPA” shall have the meaning ascribed thereto in Section 7.5;

“FIPPA Records” shall have the meaning ascribed thereto in Section 7.5;

"Force Majeure Event" shall have the meaning ascribed thereto in Section 9.1;

"Good Construction and Engineering Practices" means any of the practices, methods, and activities adopted by a significant portion of the North American construction industry and engineering profession as good practices applicable to the design, building, and implementation of the Work or any of the practices, methods, or activities which, in the exercise of skill, diligence, prudence, foresight, and reasonable judgement by a prudent Person in light of the facts known at the time of the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition, and Applicable Laws;

"Governmental Authority" means any federal, provincial, or municipal government, parliament, or legislature, or any regulatory authority, agency, tribunal, commission, board, or department of any such government, parliament, or legislature, or any court or any other entity responsible for making laws, regulations, or rules having jurisdiction in the relevant circumstance;

"Incentive Payments" shall have the meaning ascribed thereto in Section 3.3;

"Installed Costs" means the design, audit, engineering, project management, equipment, installation, distribution, and commissioning costs (consistent with market pricing) of an Approved Measure, excluding any financing costs;

"kW" means kilowatts;

"kWh" means kilowatt hours;

"OPA" means the Ontario Power Authority, a corporation incorporated pursuant to the laws of the Province of Ontario;

"Participant" means the Party identified as the participant in item 3 of the preceding pages and its successors and permitted assigns;

"Participant Event of Default" shall have the meaning ascribed thereto in Section 6.3;

"Parties" means each Party to this Agreement;

"Party" means a party to this Agreement and its successors and permitted assigns;

"Person" is to be broadly interpreted, and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators, or other legal representatives of an individual in such capacity;

"Post-Installation Audit" shall have the meaning ascribed thereto in Section 3.2;

"Pre-Installation Audit" shall have the meaning ascribed thereto in Section 2.5;

"Program" means the BOMA Toronto CDM Program designed and delivered by BOMA Toronto under contract to the OPA;

"Program End Date" means the earlier of (i) March 31, 2010, and (ii) the date specified in a written notice delivered to the Participant by BOMA Toronto as the day upon which the Program shall terminate, such day being at least one hundred and fifty (150) days after the date of such notice;

"Program Manager" means the Person designated from time to time by BOMA Toronto to have overall responsibility for the delivery of the Program;

"Program Rules" means the rules established and maintained by BOMA Toronto in respect of the Program, as amended from time to time and published on the Program Website;

“Program Website” means the website established and maintained by BOMA Toronto for the Program;

“Project” has the meaning ascribed thereto in Section 2.6;

“Project Completion Report” means a detailed report of incentive projects recently completed, which shall include Calculated Energy Reduction, Verified Peak Demand Reduction, customer contact information, and Incentive Payment calculations and any other data required in an OPA approved data format;

“Project Evaluator” means independent qualified consultants retained by BOMA Toronto;

“Proposed Measure” means any measure proposed in Schedule “A” hereto or subsequently proposed by the Participant after the date hereof and designed to provide Verified Peak Demand Reduction and/or Calculated Energy Reduction;

“Term” has the meaning ascribed thereto in Section 6.1;

“Verified Peak Demand Reduction” means Participant kW load reductions from Approved Measures that take place during Ontario’s weekday on-peak and mid-peak summer season from time to time in effect (currently defined as 7am to 8pm from Monday to Friday between June and September);

“Work” has the meaning ascribed thereto in Section 2.8.

1.2 Headings. The inclusion of headings in this Agreement is for convenience of reference only and will not affect the construction or interpretation of this Agreement.

1.3 Number and Gender. Unless context requires otherwise, words importing the singular include the plural and vice versa, and words importing gender include all genders.

1.4 Currency. Except where otherwise expressly provided, all amounts referred to in the Agreement shall be denominated in Canadian Dollars, and any payment contemplated by this Agreement will be made by cash, certified cheque, or any other method that provides immediately available funds.

1.5 Business Days. If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.

ARTICLE 2 – PROGRAM

2.1 Program Participation. The Participant agrees to participate in the Program upon the terms of this Agreement.

2.2 Eligibility. The Participant represents and warrants that it fulfils the Eligibility Requirements as set out in the Program Rules as of the date hereof.

2.3 Compliance with Program Rules. The Participant agrees to comply with the Program Rules, as posted on the Program Website and as amended from time to time. BOMA Toronto shall use reasonable efforts to provide written notice to the Participant of any amendment to the Program Rules. Failure by BOMA Toronto to provide such notice shall not, in any event, excuse any non-compliance with or breach of the Program Rules.

2.4 Cooperation with BOMA Toronto. The Participant agrees to act in good faith to facilitate the delivery and the administration of the Program by BOMA Toronto. Without limiting the generality of the foregoing, the Participant agrees to provide access to the Building to the Project Evaluator as may be required from time to time to perform the Pre-Installation Audit, the Post-Installation Audit, a review of the Work, or an inspection of the Building. In addition, the Participant agrees to facilitate access to interval electricity data for the building, where available, for the purposes of program evaluation. This data should be for a period of 12 months prior to commencement of the Work and for 36 months following completion of the Work.

2.5 Review of Proposed Measures. BOMA Toronto shall use commercially reasonable efforts to cause a Project Evaluator to attend at the Building and to review each Proposed Measure set out in Schedule “A” hereto (the

"Pre-Installation Audit") within twenty-five (25) Business Days of the date hereof, and the Project Evaluator shall prepare, and submit to BOMA Toronto, a written report on the basis of such Pre-Installation Audit (the "**Advance Evaluation and Incentive Report**"), a sample of which report is attached hereto as Schedule "B".

2.6 Review of Advance Evaluation and Incentive Report. BOMA Toronto shall review and amend, as necessary, the Advance Evaluation and Incentive Report submitted by the Project Evaluator, and shall designate those Proposed Measures eligible for the Program (each an "**Approved Measure**"; collectively, the "**Project**"). The Participant acknowledges and agrees that nothing in this Agreement requires BOMA Toronto to approve a Proposed Measure.

2.7 Review of Report. BOMA Toronto shall provide the Advance Evaluation and Incentive Report to the Participant, as amended (where applicable). The Participant shall review the Advance Evaluation and Incentive Report provided by BOMA Toronto and shall provide to BOMA Toronto any written comment thereupon within ten (10) Business Days of receipt from BOMA Toronto. BOMA Toronto shall review any such comment and shall amend, as necessary and in its discretion, the Advance Evaluation and Incentive Report.

2.8 Performance of Work. The Participant agrees to perform such engineering, construction, and other activities required to install the Project (the "**Work**") at the Building. The Participant agrees not to commence the Work without the approval of the Program Manager. Upon receipt of such approval, the Participant shall use commercially reasonable efforts to commence the Work and to complete the Project as soon practicable thereafter.

2.9 Provincial and Municipal Incentives. The Participant shall not, during the Term, apply for or accept funding from any other provincial or local distribution company energy efficiency incentive program for an Approved Measure, for any group of Approved Measures, or for the Project, except with the approval of BOMA Toronto and the OPA (which approval can be withheld in the absolute discretion of each BOMA Toronto and the OPA).

2.10 Insurance. The Participant covenants to obtain and to maintain during the Term insurance covering such risks and in such amount as a prudent Person carrying out the Work would maintain. The Participant shall provide evidence of such insurance to BOMA Toronto upon request.

2.11 Compliance with Laws. The Participant agrees that it shall, and its activities and undertakings shall, at all times comply with all Applicable Laws in all material respects, and shall obtain and maintain all approvals from any Governmental Authority required to carry out the Work. The Participant agrees that any installed Approved Measure shall comply with all Applicable Laws.

2.12 Compliance with Good Construction and Engineering Practices. The Participant agrees that it shall, and its activities and undertakings shall, comply at all times with Good Construction and Engineering Practices.

2.13 Subcontractors. The Participant agrees that any subcontractors or other Person retained to perform the Work or otherwise assist in installing the Approved Measures shall comply with this Article 2.

2.14 Disclaimer. *Notwithstanding any other agreement, implied or written, the Participant acknowledges and agrees that nothing said or done by BOMA Toronto, a Project Evaluator, or any other Person designated to represent BOMA Toronto shall constitute a representation or warranty in respect of the feasibility, viability, advisability, or quality of a Proposed Measure, an Approved Measure, the Project, or the Work, whether separately or collectively, in any respect whatsoever. For greater certainty, any review or approval of a Proposed Measure, an Approved Measure, the Project, or the Work by BOMA Toronto, a Project Evaluator, or any other Person designated to represent BOMA Toronto is limited to the scope and the purpose of the Program and in no event shall be deemed a review or an approval of the engineering, construction, or other activities performed or to be performed in connection therewith.*

ARTICLE 3 – INSTALLATION OF APPROVED MEASURES AND PAYMENT

3.1 Notice to BOMA Toronto. The Participant shall provide written notice to BOMA Toronto of the installation of the Project as soon as reasonably practicable thereafter.

3.2 Inspection by Project Evaluator. BOMA Toronto shall use commercially reasonable efforts to cause a Project Evaluator to inspect the Project in respect of which the Participant has given notice pursuant to Section 3.1 within twenty (20) Business Days of receipt of such notice (the "**Post-Installation Audit**"), and the Project

Evaluator shall prepare, and submit to BOMA Toronto, a written report on the basis of such Post-Installation Audit (the "**Final Evaluation and Incentive Report**"), a sample of which report is attached hereto as Schedule "C".

3.3 Review of Final Evaluation and Incentive Report. BOMA Toronto shall review and amend, as necessary, the Final Evaluation and Incentive Report. BOMA Toronto shall determine the payments to which the Participant is entitled to receive for such Approved Measures ("**Incentive Payments**"). The Incentive Payments shall be equal to either:

- (i) \$400.00 per kW of Verified Peak Demand Reduction; or
- (ii) \$0.05 per kWh for Calculated Energy Reduction,

determined on a per Approved Measure basis and without duplication and subject to an aggregate maximum payment amount equal to forty percent (40%) of the Installed Costs of all Approved Measures.

3.4 Review of Final Report. BOMA Toronto shall provide the Final Evaluation and Incentive Report to the Participant, as amended (where applicable). The Participant shall review the Final Evaluation and Incentive Report provided by BOMA Toronto and shall provide to BOMA Toronto any written comment thereupon within ten (10) Business Days of receipt from BOMA Toronto. BOMA Toronto shall review any such comment and shall amend, as necessary and in its discretion, the Final Evaluation and Incentive Report. BOMA Toronto shall provide the Final Evaluation and Incentive Report, together with a Project Completion Report, to the OPA as soon as practicable thereafter.

3.5 OPA Payments. The Participant shall receive payment from the OPA of any Incentive Payments due hereunder within thirty (30) Business Days of the submission of a Project Completion Report and a Final Evaluation and Incentive Report by BOMA Toronto to the OPA.

3.6 Program Termination. The Participant acknowledges and agrees that, except with the approval of BOMA Toronto and the OPA (which approval can be withheld in the absolute discretion of each BOMA Toronto and the OPA), the Participant shall only be eligible to receive Incentive Payments for an Approved Measure which a Project Evaluator verifies as an Installed Approved Measure at least thirty (30) days prior to the Program End Date.

3.7 No Obligation. The Participant acknowledges and agrees that BOMA Toronto's acceptance of the Participant's Application and execution of this Agreement do not entitle the Participant to any Incentive Payments in respect of the Work or any Approved Measure, except as required by the terms of this Agreement.

ARTICLE 4 – REPRESENTATIONS

4.1 Representations of BOMA Toronto. BOMA Toronto represents to the Participant as follows:

- (i) BOMA Toronto has the requisite power, authority, and capacity to enter into this Agreement and to perform its obligations hereunder.
- (ii) This Agreement has been duly authorized, executed, and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency, and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the direction of a court of competent jurisdiction.
- (iii) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement, or other similar proceedings pending against, or being contemplated by BOMA Toronto, or, to the knowledge of BOMA Toronto, threatened against BOMA Toronto.
- (iv) There are no actions, suits, proceedings, judgments, rulings, or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of BOMA Toronto, threatened against BOMA Toronto, that could have a material adverse effect on BOMA Toronto.

4.2 Representations of the Participant. The Participant represents to BOMA Toronto as follows:

- (i) The Participant has the requisite power, authority, and capacity to enter into this Agreement and to perform its obligations hereunder.
- (ii) This Agreement has been duly authorized, executed, and delivered by it and constitutes a valid and binding obligation enforced against it in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency, and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the direction of a court of competent jurisdiction.
- (iii) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Participant, or, to the knowledge of the Participant, threatened against the Participant.
- (iv) There are no actions, suits, proceedings, judgments, rulings, or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Participant, threatened against the Participant, that could have a material adverse effect on the Participant.
- (v) All requirements for the Participant to make any declaration, filing, or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (vi) All statements, specifications, data, confirmations, and information set out in the Participant's Application are complete and accurate in all material respects and are hereby restated and reaffirmed by the Participant as representations made to BOMA Toronto as of the date hereof.
- (vii) All of the information set out in this Agreement is true and correct or to the extent that such information relates to Work yet to be undertaken or done is an accurate representation of the Participant's plans and designs.

ARTICLE 5 – INDEMNIFICATION

5.1 Indemnification of BOMA Toronto. The Participant agrees to indemnify and hold BOMA Toronto harmless from and against any and all Claims of any nature including, without limitation, any actions resulting from any injury or damage arising in any manner from performance of the Work, whether such Work is performed by the Participant or by a subcontractor or other Person retained by the Participant to perform the Work.

5.2 Indemnification of Participant. BOMA Toronto agrees to indemnify and hold the Participant harmless from and against any Claims arising out of the Program claimed by third parties, save and except for Claims attributable to the Participant.

5.3 Exclusion of Consequential Damages. Neither Party shall have any liability to the other Party whatsoever in respect of indirect, punitive, or consequential damages or loss, or for loss of profit, revenue, opportunity, or data.

ARTICLE 6 – TERM AND TERMINATION

6.1 Term. Subject to this Article 6, this Agreement shall be effective from the date first written above to the date upon which the OPA provides payment of all Incentive Payments due to the Participant pursuant to Article 3, provided however that this Agreement shall terminate upon the Program End Date if upon the date thereof the Participant is not entitled to any Incentive Payments under this Agreement.

6.2 Termination by Election. Either Party may terminate this Agreement upon at least thirty (30) days written notice to the other Party if, one hundred and eighty (180) days after the date hereof, BOMA Toronto has not designated any Proposed Measure as an Approved Measure. Such termination shall be effective as of the date specified in such notice, and neither Party shall have any right to claim damages against the other in respect of any termination effected pursuant to this Section 6.2.

6.3 Events of Default by the Participant. Each of the following shall constitute an event of default by the Participant (each a "Participant Event of Default"):

- (i) The Participant fails or ceases to satisfy any Eligibility Requirement if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from BOMA Toronto, unless excused from compliance with such Eligibility Requirement is waived in writing by BOMA Toronto.
- (ii) The Participant fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Participant Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from BOMA Toronto.
- (iii) The Participant fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent, or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a material adverse effect on the Participant and is not remedied within thirty (30) Business Days after receipt of written notice of such failure or cessation from BOMA Toronto.
- (iv) Any representation made by the Participant in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within fifteen (15) Business Days after receipt of written notice of such fact from BOMA Toronto.
- (v) The Participant fails or ceases to comply in any material respect with any Applicable Laws if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from BOMA Toronto.
- (vi) The Participant fails or ceases to comply with Good Construction and Engineering Practices in respect of the Work if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from BOMA Toronto.
- (vii) The Participant commits any act of fraud in relation to its Application, BOMA Toronto, or this Agreement, or any of the information provided by the Participant in its Application or in this Agreement is not true or correct in any material respect when given.
- (viii) By agreement, decree, judgement, or order of a Governmental Authority, the Participant agrees to be treated as or is adjudicated bankrupt or insolvent or any substantial part of the Participant's property is sequestered or subject to the appointment of any third party and such agreement, decree, judgement, order, or appointment continues in effect unrevoked, undischarged, and unstayed for a period of thirty (30) days after the entry or implementation thereof.
- (ix) The Participant dissolves, winds up, or liquidates, or makes an assignment for the benefit of its creditors generally under any insolvency legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any insolvency legislation.

6.4 Remedies of BOMA Toronto. If any Participant Event of Default (other than a Participant Event of Default referred to in 6.3 (viii) or (ix)) occurs and is continuing, BOMA Toronto may, in addition to all other remedies available at law or in equity:

- (i) terminate this Agreement upon written notice to the Participant; and/or
- (ii) request that the OPA suspend, withhold, or cancel any or all Incentive Payments payable to the Participant until such Participant Event of Default has been remedied to the satisfaction of BOMA Toronto, in its sole discretion.

Notwithstanding Section 6.4 upon the occurrence of a Participant Event of Default referred to in Sections 6.3 (viii) or (ix), this Agreement shall automatically terminate without notice, act, or formality, effective immediately before the occurrence of such Participant Event of Default.

6.5 Events of Default by BOMA Toronto. Each of the following shall constitute an Event of Default by BOMA Toronto (each a "**BOMA Toronto Event of Default**"):

- (i) BOMA Toronto fails to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within thirty (30) Business Days after written notice to BOMA Toronto of such failure.
- (ii) Any representation made by BOMA in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within fifteen (15) Business Days after receipt of written notice of such fact from the Participant.
- (iii) By agreement, decree, judgement, or order of a Governmental Authority, BOMA Toronto agrees to be treated as or is adjudicated bankrupt or insolvent or any substantial part of BOMA Toronto property is sequestered or subject to the appointment of any third party, and such agreement, decree, judgement, order, or appointment continues in effect unrevoked, undischarged, and unstayed for a period of thirty (30) days after the entry or implementation thereof.
- (iv) BOMA Toronto dissolves, winds up or liquidates, or makes an assignment for the benefit of its creditors generally under any insolvency legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any insolvency legislation.

6.6 Remedies of the Participant. If any BOMA Toronto Event of Default occurs and is continuing, then the Participant may, in addition to all other remedies available at law or in equity, terminate this Agreement upon written notice to BOMA Toronto.

ARTICLE 7 – RECORDS AND CONFIDENTIALITY

7.1 Confidential Information. The Parties acknowledge and agree that they may become privy to information received from the other Party. Each Party shall maintain the absolute confidentiality of the other Party's information and shall not disclose any such information for any reason whatsoever, and shall disclose such information to its officers, directors, and employees only to the extent necessary for the performance of its obligations under this Agreement. Each Party further agrees not to use any such information of the other Party, directly or indirectly, in any manner except as expressly permitted in this Agreement. Without limiting the generality of the foregoing, the Participant acknowledges and agrees that it may become privy to information of the OPA, and the Participant agrees to maintain the absolute confidentiality of such confidential information received, directly or indirectly, from the OPA. Notwithstanding the foregoing, a Party shall not have any obligation of confidentiality with respect to the information which:

- (a) is already in the public domain at the time of the Party's receipt thereof;
- (b) is at the time of disclosure, or thereafter comes, generally available through no act or omission of the Party;
- (c) is or becomes available to the Party from an independent third party, provided that such third party is not under an obligation of secrecy or confidentiality;
- (d) is authorized in writing by the Party with which generated or created the information to be disclosed.

Notwithstanding paragraph (d) above, the Participant shall not disclose information received, directly or indirectly, from the OPA without the prior written consent of the OPA.

7.2 Records Retention. The Participant and BOMA Toronto shall each keep complete and accurate records and all other data required for the purpose of the proper administration of this Agreement and, without limiting the generality of the foregoing, the Participant shall keep all records and other documentary evidence which may be necessary to establish, substantiate, or maintain its entitlement to any Incentive Payments payable by the OPA to the Participant pursuant to the terms of this Agreement, including, but not limited to, interval electricity data at the building level for the twelve (12) months prior to the Work and thirty-six (36) months after the Work.

7.3 Disclosure to the OPA. The Participant acknowledges and agrees that BOMA Toronto may provide to the OPA all information received by BOMA Toronto from the Participant, including such information which the Participant may mark or deem to be proprietary.

7.4 Use by the OPA. The Participant agrees that the OPA may use the Advance Evaluation and Incentive Report and the Final Evaluation and Incentive Report and any other information provided to it for future research, program, or marketing initiatives, provided that any information that is publicly released shall be of an aggregate or program-wide nature and shall not disclose any information specific to the Participant or its Project which might reasonably be considered to be commercially-sensitive.

7.5 FIPPA Compliance. The Participant acknowledges and agrees that the OPA is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) ("**FIPPA**") and that FIPPA applies to and governs all recorded information in any form or medium that is provided by or to the OPA, whether by or to the Participant or BOMA Toronto, for the purposes of this Agreement and that is in the custody or the control of the OPA ("**FIPPA Records**"). The OPA may be required to disclose FIPPA Records to third parties pursuant to FIPPA.

ARTICLE 8 – NOTICES

8.1 Method of Notice. Any notice, direction, consent, determination, or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent by facsimile or other similar means of electronic communication, in each case to the applicable address set out below:

(a) if to BOMA Toronto:

BOMA Toronto
20 Queen Street West, Suite 2012
Toronto, Ontario
M5H 3R3

Phone: (416) 596-8065
Facsimile: (416) 596-1085
Email: cstradling@bomatoronto.org
Attention: Mr. C. Stradling

(b) if to the Participant:

Participant of Record	
(first name)	
(last name)	
(title)	
(company name)	
(phone)	
(fax)	
(email address)	

8.2 Deemed Delivery. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of transmission by facsimile or other means of electronic communication, provided that such day in either event is a Business Day and the communication is so delivered or otherwise received before 4:30 p.m. (Toronto time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next Business Day.

8.3 Change of Contact Information. Any Party may from time to time change the contact information stipulated in Section 8.1 by giving notice to the other Party in the manner provided by Section 8.1. The Participant shall provide notice to BOMA Toronto of any change to the its contact information within two (2) Business Days of the effective date of such change.

ARTICLE 9 – MISCELLANEOUS

9.1 Force Majeure. If the performance of this Agreement, or any obligations hereunder, is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident or act of God; strikes or labour disputes; inability to procure or obtain delivery of parts, supplies, power or software from suppliers; failure, delay, interruption or other adverse impact caused by telecommunications carriers, internet service providers, and other intermediaries; war or other violence, any law, order proclamation, regulation, ordinance, demand or requirement of any Governmental Authority; or any other act or condition whatsoever beyond the reasonable control of the affected party (a "**Force Majeure Event**"), the party so affected, upon giving prompt notice to other party, will be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the party so affected will take all reasonable steps to avoid or remove such Force Majeure Event and will resume performance hereunder with dispatch whenever such causes are removed.

9.2 Emissions Credits. BOMA Toronto acknowledges and agrees that nothing in this Agreement shall be construed so as to deprive the Participant of title to or control of any emissions credits, carbon trading credits, or any similar credits which attach or accrue to the Project.

9.3 Inconsistency of Terms. In the event that any of the terms and provision of any other document issued by BOMA Toronto is in conflict or inconsistent with the terms and provisions of this Agreement, the terms and provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

9.4 Business Relationship. The relationship between BOMA Toronto and the Participant is that of independent contractors, and this Agreement shall not create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent, or any other relationship between the Parties.

9.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written. No conditions, warranties, representations, or other agreements exist between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise), except as specifically set out in this Agreement.

9.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein (excluding any rule or principle of the conflict of laws which might refer to such interpretation to the laws of another jurisdiction).

9.7 Successors and Assigns. This Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, legal personal representatives, successors (excluding any successors by reason of amalgamation or any statutory arrangement of any party), and permitted assigns.

9.8 Assignment. The Participant shall not assign this Agreement or any of the rights, interests, or obligations under this Agreement without the prior written consent of BOMA Toronto, which consent shall not be unreasonably withheld. The Participant consents to the assignment of this Agreement and any of the rights, interests, and obligations under this Agreement by BOMA Toronto to the OPA and/or its designee.

9.9 Amendment. Except as expressly provided in this Agreement, no amendment of this Agreement shall be effective unless executed in writing by the Parties.

9.10 Waiver. A waiver of any default, breach, or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound thereby. No waiver will be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach, or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach, or non-compliance under this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach, or non-observance (whether of the same or any other nature).

9.11 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

9.12 Survival. The provisions of this Agreement shall survive the execution and delivery of this Agreement and shall remain in full force and effect during the continuation hereof. All provisions of this Agreement which expressly or implicitly continue in effect after the termination or expiry hereof shall survive the termination or the expiration of this Agreement. For greater certainty, Article 4 and Article 5 shall survive any termination or expiry of this Agreement for a period of five (5) years.

9.13 Preparation of Agreement. The Parties expressly agree that any doubt or ambiguity in the meaning, application, or enforceability of any term or provision of this Agreement shall not be construed or interpreted against BOMA Toronto or in favour of the Participant when interpreting such term or provision by virtue of the fact that this Agreement was prepared by BOMA Toronto.

9.14 Time of Essence. Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

9.15 Further Assurances. Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be reasonably required in order to fully perform and to more effectively implement and carry out the terms of this Agreement. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

* * * * *

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

**BUILDING OWNERS AND MANAGERS
ASSOCIATION OF THE GREATER TORONTO
AREA**

By: _____

Name: C. Stradling

Title: Executive Vice President, BOMA

PARTICIPANT

By: _____

Name: _____

Title: _____

I have authority to bind the Participant.

By: _____

Name: _____

Title: _____

I have authority to bind the Participant.

**Schedule A
Proposed Measures**

BOMA CDM Agreement	CDM LOOKUP->project.project_id
Participant (company name)	LOOKUP->owner.name

		Existing Conditions		Proposed Conditions		Estimated Savings	
Measure	Incentive Metric	Peak Demand	Annual Consumption	Peak Demand	Annual Consumption	Peak Demand	Annual Consumption
Estimated Project Totals:						Total!	Total!

**Schedule B
Sample Advance Evaluation and Incentive Report**

BOMA CDM Agreement- _____

Participant: _____

		Existing Conditions		Proposed Conditions		Estimated Savings	
Measure	Incentive Metric	Peak Demand	Annual Consumption	Peak Demand	Annual Consumption	Peak Demand	Annual Consumption
Estimated Project Totals:							

Measurement and Verification Procedures (codes):

Project Evaluator:

Name : _____

Company : _____

Participant's Declaration:

I have reviewed the M&V Procedure(s) for this Project with the Project Evaluator. I accept the figures for existing and Proposed Conditions as presented in the table above. I acknowledge that I remain obliged to install the Project as submitted, subject to any modifications approved by BOMA Toronto in writing.

By: _____

Name: _____

Title: _____

Approved by BOMA Toronto this _____ day of _____, _____.

By: _____

Name: _____

Title: _____

**Schedule C
Sample Final Evaluation and Incentive Report**

BOMA CDM Agreement- _____

Participant: _____

		Existing Conditions		Proposed Conditions		Estimated Savings	
Measure	Incentive Metric	Peak Demand	Annual Consumption	Peak Demand	Annual Consumption	Peak Demand	Annual Consumption
Estimated Project Totals:							

Measurement and Verification Procedures (codes):

Project Evaluator:

Name : _____

Company : _____

Participant's Declaration:

I have reviewed the M&V Procedure(s) for this Project with the Project Evaluator. I accept the figures presented in the table above. I acknowledge that these figures, as approved and amended by BOMA Toronto, shall provide the basis for any Incentive Payments to which I may be entitled pursuant to the BOMA Toronto CDM Program Participant Agreement.

By: _____

Name: _____

Title: _____

Approved by BOMA Toronto this _____ day of _____, _____.

By: _____

Name: _____

Title: _____