# EDGE TAX CREDIT AGREEMENT

THIS AGREEMENT is entered into as of this 18th day of October 2018 (the "Effective Date") by and between the State of Illinois, acting by and through its Department of Commerce and Economic Opportunity (the "Department") and Diesel Radiator Co. and PHABB Partners, LLC ("Diesel" or the "Company," and together with the Department, the "Parties").

## Recitals

A. WHEREAS, the Illinois legislature enacted the Economic Development for a Growing Economy ("EDGE") Tax Credit Act, 35 ILCS 10/5-1, *et seq.*, as amended effective September 19, 2017 (the "Act"), which provides for the award of EDGE tax credits to businesses that locate or expand their operations and create jobs in the State of Illinois.

B. WHEREAS, under Section 5-10 of the Act, the Department is granted all powers necessary or convenient to carry out and effectuate the purposes and provisions of the Act.

C. WHEREAS, the Department promulgated rules related to the Act which are published at 14 Illinois Administrative Code, Subtitle C, Chapter I, Part 527, Section 527.10, *et seq.* (the "Rules").

D. WHEREAS, Section 5-50 of the Act and Section 527.80 of the Rules require that the Department enter into an agreement with an approved applicant for the EDGE tax credit containing certain required terms and conditions as well as any other provisions the Department determines appropriate.

E. WHEREAS, the Company seeks an EDGE tax credit for its business development located at 801 Estes Avenue, Elk Grove Village, Illinois, 1990 and 1985 Janice Avenue, Melrose Park, Illinois, 3030 Hirsch Avenue, Melrose Park, Illinois and 2701 United Lane, Elk Grove Village, Illinois (the "Project"), and the Department agrees to award an EDGE tax credit to the Company for the Project subject to the terms and conditions set forth herein.

F. WHEREAS, accordingly, pursuant to Section 5-50 of the Act and Section 527.80 of the Rules, the Parties hereto set forth their agreement containing those provisions as required by the Act and Rules and such other provisions as the Parties deem necessary or advisable under the circumstances relative to an award of an EDGE tax credit to the Company for the Project.

NOW, THEREFORE, in consideration of the mutual covenants, obligations, and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged and agreed to, the Parties hereto agree as follows.

## I. DEFINITIONS

The following definitions shall apply to this Agreement:

A. "Act" means the Economic Development for a Growing Economy Tax Credit Act, 35 ILCS 10/5-1, *et seq.*

B. "Agreement" means this EDGE Tax Credit Agreement.

C. "Application" means the Company's application for approval of the EDGE Credit for the Project as governed by Section 5-20 of the Act and Section 527.40 of the Rules.

D. "Capital Improvements" mean the purchase, renovation, rehabilitation, or construction of permanent land, buildings, structures, equipment and furnishings used directly for or in the Project, and any goods or services for the Project that are purchased and capitalized under GAAP, including any organizational costs and research and development costs incurred in Illinois. Capitalized lease costs for land, buildings, structures or equipment shall be included in "Capital Improvements" only if the lease term, including any extensions or options to extend, equals or exceeds the term of this Agreement, and provided that such lease costs are valued at their present value using the corporate interest rate prevailing at the time the Company filed its Application with the Department.

E. "Certificate of Verification" means the certificate issued by the Department pursuant to Section VI.C of this Agreement which authorizes the award of the Credit to the Company for a Taxable Year as contemplated by Section 5-55 of the Act and Section 527.90 of the Rules.

F. "Credit" means the credit issued to the Company against its annual liability for Illinois State Income Taxes pursuant to Section II.B, subject to the limitation set forth in Section II.C or otherwise in this Agreement.

G. "Director" means the Director of the Department.

H. "Full-Time Employee" means an individual who is employed by the Company for consideration for at least 35 hours each week or who renders any other services generally accepted by industry custom or practice as full-time employment. An individual for whom a W-2 is issued by a Professional Employer Organization ("PEO") is a full-time employee if employed in the service of the Company for consideration for at least 35 hours each week or who renders any other services generally accepted by industry custom or practice as full-time employment to the Company. In the event that the Company intends to include any individual as a Full-Time Employee based upon that individual providing services generally accepted by industry custom or practice rather than a minimum 35-hour work week for purposes of the Agreement, the Company must receive written approval from the Department prior to the first day of the Taxable Year for which such Credit is sought. Annually scheduled periods for inventory or repairs, vacations, holidays and paid time for sick leave, vacation or other leave shall be included in this computation of full-time employment. A person not employed by the Company on the last day of the Taxable Year is not a Full-Time Employee.

I. "GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time set forth in the opinions and pronouncements

of the American Institute of Certified Public Accountants ("AICPA") and the statements and pronouncements of the Financial Accounting Standards Board ("FASB"), or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, which are in effect at the date of this Agreement. "GAAP consistently applied" means GAAP as used and implemented by the Company applied on a consistent basis during the term of this Agreement.

J. "Illinois State Income Taxes" means all of the taxes imposed against the Company under subsections (a) and (b) of Section 201 of the Illinois Income Tax Act, 35 ILCS 5/101, *et seq.*

K. "Incremental Income Tax" means the total amount withheld during the taxable year from the compensation of New Employees and, if applicable, Retained Employees under Article 7 of the Illinois Income Tax Act (35 ILCS 5/101, *et seq.*) arising from employment at the Project during the Taxable Year, as reflected on the IRS forms W-2 for each New Employee and Retained Employee.

L. "New Employee" means a Full-Time Employee first employed by the Company in the Project and who is hired on or after the Effective Date of this Agreement.

1. The term "New Employee" shall not include any of the following:

   a) an employee of the Company who performs a job that was previously performed by another employee if that job existed for at least six (6) months before hiring the employee;

   b) an employee of the Company who was previously employed in Illinois by a Related Member (as that term is defined in Section 5.5 of the Act) of the Company and whose employment was shifted to the Company after the Company entered into this Agreement;

   c) an employee of the Company who was previously employed in Illinois by the Company and whose employment was shifted to the Project after the Company entered into this Agreement; or

   d) any individual who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, equity, capital, or value of the Taxpayer or a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, equity, capital, or value of the Company.

2. Notwithstanding the above, an employee shall be considered a New Employee under this Agreement if: (a) the employee performs a job that was previously performed by an employee who was treated under this Agreement as a New Employee and promoted by the Company to another

job; or (b) the employee fills a job vacancy that had been continuously vacant for the 184-day period immediately preceding the date of this Agreement. A job vacancy whose incumbent is on approved leave, is locked out or is on strike is not a vacancy.

M. "Payroll" shall mean the total salary and wages to be paid in a Taxable Year to a New Employee and Retained Employee.

N. "Person" means any individual, corporation, partnership, limited liability company, joint venture, association, trust, governmental body or any other entity.

O. "Placed in Service" means the earlier of (i) when the Project is in a state or condition of readiness and availability for specifically assigned functions or (ii) the last day of the second full Taxable Year after the Effective Date.

P. "Project" means the for-profit development at the location set forth above in Section E of the Recitals.

Q. "Project Costs" include all costs incurred or to be incurred by the Company directly related to the Project including, but not limited to, all: (i) Capital Improvements; (ii) infrastructure development costs; (iii) debt service except refinancing of current debt; and (iv) non-capitalized research and development, job training and education, lease, and relocation costs. The value of State or other governmental incentives, including discretionary tax credits, discretionary job training grants, or the interest savings of below market rate loans, shall not be included as Project Costs.

R. "Related Member" means a person that, with respect to the Taxpayer during any portion of the Taxable Year, is any one of the following:

1. An individual stockholder, if the stockholder and the members of the stockholder's family (as defined in Section 318 of the Internal Revenue Code, 26 U.S.C. § 318) own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of the Taxpayer's outstanding stock;

2. A partnership, estate, or trust of any partner or beneficiary, if the partnership, estate, or trust, and its partners or beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, equity, capital, stock, or value of the Taxpayer;

3. A corporation, and any party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code, 26 U.S.C. § 318, if the Taxpayer owns directly, indirectly, beneficially, or constructively at least 50% of the value of the corporation's outstanding stock;

4. A corporation and any party related to that corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code, 26 U.S.C. § 318, if the corporation and all such related parties own in the aggregate at least 50% of the profits, equity, capital, stock, or value of the Taxpayer; or

5. A person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code (26 U.S.C. § 1563), except, for purposes of determining whether a person is a Related Member under this paragraph, twenty percent (20%) shall be substituted for five percent (5%) wherever five percent (5%) appears in Section 1563(e) of the Internal Revenue Code.

S. "Retained Employee" means a Full-time Employee currently employed by the Company who continues to be employed during the term of this Agreement whose job duties are directly and substantially related to the Project. For purposes of this definition, "directly and substantially related to the Project" means at least two-thirds (2/3) of the employee's job duties must be directly related to the Project and the employee must devote at least two-thirds (2/3) of his or her time to the Project. The term "Retained Employee" does not include any individual who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, equity, capital, or value of the Taxpayer, or a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who has direct or indirect ownership interest of at least five percent (5%) of the profits, equity, capital or value of the Company.

T. "Rules" means the Department's rules promulgated under the Act, 14 Illinois Administrative Code, Subtitle C, Chapter I, Part 527, Section 527.10, *et seq*.

U. "Taxable Year" means any twelve (12) month consecutive accounting period for keeping records and reporting income and expenses. A Taxable Year shall mean a period beginning on January 1 and ending on December 31 if measured on a calendar year, or any other twelve (12) consecutive month period ending on the last day of any month except December. The foregoing does not preclude the Company from seeking a Credit for a short or stub Taxable Year in the event that either: (a) the Company was not in existence for an entire Taxable Year or (b) the Company changed its accounting period.

V. "Training Costs" means reasonable costs incurred to upgrade the technological skills of Full-Time Employees in Illinois and includes: curriculum development; training materials (including scrap product cost); trainee domestic travel expenses; instructor costs (including wages, fringe benefits, tuition and domestic travel expenses); rent, purchase or lease of training equipment; and other usual and customary training cots. "Training costs" do not include, except where the Company receives prior written approval of the Department, costs associated with travel outside the United States, wages and fringe benefits of employees during

periods of training, administrative costs related to Full-Time Employees of the Taxpayer, or amounts paid to an affiliate of the Company.

W. "Underserved Area" means a geographic area that meets one or more of the following conditions as determined by the Department: (1) the area has a poverty rate of at least twenty percent (20%) according to the latest federal decennial census; (2) seventy-five percent (75%) or more of the children in the area participate in the federal free lunch program according to the most recent reported statistics from the State Board of Education; (3) at least twenty percent (20%) of the households in the area receive assistance under the Supplemental Nutrition Assistance Program ("SNAP") according to the most recent reported statistics; or (4) the area has an average unemployment rate, as determined by the Illinois Department of Employment Security, that is more than one hundred twenty percent (120%) of the national unemployment average, as determined by the United States Department of Labor, for a period of at least two (2) consecutive calendar years preceding the date of the application.

X. "Unused Credit" means for any Taxable Year, the amount of Credit granted under Section II.B that the Company cannot or does not use to offset its Illinois State Income Taxes for that Taxable Year.

Y. "Wrongfully Exempted Illinois State Income Taxes" means any such Taxes not paid by the Company during such time as there exists an Event of Default described in Section VII.

## II. THE EDGE TAX CREDIT

A. Award. The Department hereby awards, subject to the terms and conditions of this Agreement, a Credit for the Company against its Illinois State Income Taxes imposed for a Taxable Year on or after January 1, 2018 in the amount and for the duration set forth in Sections II.B through II.D.

B. Amount. The amount of the annual Credit awarded to the Company shall, subject to the limitations contained in Section II.C and otherwise set forth in this Agreement, be equal to the following:

1. Unless otherwise determined by the Department, the annual Credit shall be equal to the lesser of: (1) the sum of (a) fifty percent (50%) of the Incremental Income Tax attributable to New Employees above the baseline of zero (0) existing Full-Time Employees at the Project and (b) ten percent (10%) of the Training Costs of New Employees; or (2) one hundred percent (100%) of the Incremental Income Tax attributable to New Employees at the Project above the baseline of zero (0) existing Full-Time Employees.

2. If the Department exercises its discretion to award Credits for Retained Employees as set forth in Section IV.D, then the maximum amount of the annual Credit may be increased by twenty-five percent (25%) of the Incremental Income Tax attributable to Retained Employees at the Project;

provided, however, that, in order to receive the increased benefit contemplated by this subsection II.B(ii), the Company must provide the additional evidence required under Section 5-25(b)(3) of the Act.

C. Limitations on Annual Credit. The amount of the annual Credit for a Taxable Year shall not exceed any of the following:

1. the Incremental Income Tax attributable to the Project for that Taxable Year;

2. the Company's Illinois State Income Taxes for that Taxable Year;

3. when aggregated with all prior Credits issued to the Company under this Agreement, the total amount of Project Costs incurred by the Company during the term of this Agreement as of the last day of the Taxable Year for which a Credit is sought by the Company; and

4. the total amount of Credits allowed to the Company in all Taxable Years shall not exceed the total amount of Project Costs incurred by the Company during the term of this Agreement.

D. Duration. The first Taxable Year for which the Company may claim the Credit shall be the first Taxable Year in which the Project is Placed in Service, and the total number of Taxable Years for which the Company shall receive the Credit under this Agreement shall be ten (10) years from the date the Project is Placed in Service.

E. Relocation. Notwithstanding anything in this Agreement to the contrary, the Company shall not be entitled to the Credit with respect to any jobs that the Company relocates from one site in Illinois to another site in Illinois as determined by the Department. Moreover, the Company shall not be entitled to the Credit with respect to any jobs resulting from acquisition, merger or any similar combination with another entity where such jobs existed in Illinois at the time of such acquisition, merger or similar combination.

F. Carryforward. Pursuant to Section 211(4) of the Illinois Income Tax Act, the Company may carryforward any Unused Credit and apply it to its Illinois State Income Taxes imposed in the five (5) Taxable Years following the Taxable Year in which there is Unused Credit so long as the Company is in compliance with the terms and conditions of this Agreement, and subject to the limitations on the total amount of Credits for all Taxable Years, as set forth in Sections IV.B through IV.D.

## III. TERM OF AGREEMENT

A. Base. This Agreement shall commence upon the Effective Date and shall continue in effect until terminated in accordance with Section III.B, provided that the total number of Taxable Years under this Agreement shall not exceed ten (10) years from the date the Project is Placed in Service.

B. Termination. This Agreement shall terminate upon any of the following:

1. the expiration of the Credit in accordance with Section II.D;

2. an Event of Default by the Company has occurred pursuant to Section VII and the Department determines to permanently revoke the Company's Credit pursuant to Section VIII;

3. the mutual consent of the Company and the Department;

4. the Company's election to terminate the Project and this Agreement; or

5. if at no time during the five (5) year period beginning on the Effective Date has the Company met the investment, job creation, or job retention requirements specified in Section IV or sought a Credit pursuant to the provisions of Section VI.

## IV. COMPANY COVENANTS

The Company hereby covenants to do the following:

A. Description of Project. The Company shall complete the Project as a for-profit business located at 801 Estes Avenue, Elk Grove Village, Illinois, 1990 and 1985 Janice Avenue, Melrose Park, Illinois, 3030 Hirsch Avenue, Melrose Park, Illinois and 2701 United Lane, Elk Grove Village, Illinois, and containing the following characteristics:

Diesel manufactures and remanufactures radiators, radiator cores and complete cooling packages. The Company seeks multi-site EDGE as they temporarily shift employees from their existing facilities located at 1990 and 1985 Janice Avenue, Melrose Park, Illinois, 3030 Hirsch Avenue, Melrose Park, Illinois and 2701 United Lane, Elk Grove Village, Illinois. The Company is proposing to purchase approximately 59,000 square feet of building space at 801 Estes Avenue, Elk Grove Village, Illinois. The Project will include Capital Improvements of [redacted] The Capital Improvements will consist [redacted] in acquisition and construction cost. The Project will create thirteen (13) new full-time jobs above the baseline of 98 existing full-time jobs. The Company had considered relocation to Terre Haute, Indiana.

B. Investment. The minimum dollar amount of Capital Improvements which the Company shall make with respect to the Project shall be [redacted]

C. New Employees. (i) The minimum number of New Employees associated with the Project shall be thirteen (13) Full-Time Employees by October 18, 2020 at the Project site above the baseline of 98 existing Full-Time Employees; and (ii) the Occupation and Payroll of each New Employee shall be substantially as set forth in the Schedule of New Employees as attached hereto as Exhibit A.

D. Retained Employees. (i) The minimum number of Retained Employees associated with the Project shall be zero (0); and (ii) the Occupation and Payroll of each Retained Employee shall be substantially as set forth in the Schedule of Retained Employees as attached hereto as Exhibit B.

E. Project Start-Up. The Project shall be Placed in Service by the Company, and the requirements of Sections IV.B through IV.D shall be met, by the end of the second full Taxable Year after the Effective Date. At all times after the Effective Date, upon reasonable notice, the Department shall have the right to inspect the Project and any aspect thereof, including without limitation the plans and specifications, construction and physical plant, equipment, and other attributes of the Project.

F. Maintenance of Operations. The Company shall maintain operations at the Project for a minimum of ten (10) years beginning on the date the Project is Placed in Service. In addition to any other rights the Department may have under the terms of this Agreement, in the event that the Company discontinues of operations at the Project, such discontinuation may subject the Company to certain statutory provisions, including:

1. Pursuant to the Corporate Accountability for Tax Expenditures Act, 20 ILCS 715, *et seq.*, a discontinuance of operations at the Project during the five-year period after the beginning of the first Taxable Year for which the Department issues a Certificate of Verification shall result in all Credits taken by the Company during such five-year period being deemed Wrongfully Exempted Illinois State Income Taxes and shall subject said Wrongfully Exempted Illinois State Income Taxes to the forfeiture provisions of Section VIII.D hereof.

2. Pursuant to Section 5-65 of the Act, discontinuance by the Company of operations at the Project during the term of this Agreement with the intent to terminate operations in the State of Illinois shall result in all Credits taken by the Company being deemed Wrongfully Exempted Illinois State Income Taxes and shall subject said Wrongfully Exempted Illinois State Income Taxes to the forfeiture provisions of Section VIII.D hereof.

G. Project Costs. Simultaneously with the execution of this Agreement, the Company shall disclose to the Department all of the Project Costs which the Company seeks to include for purposes of determining the limitation of the amount of the Credit pursuant to Section 5-30 of the Act and provide to the Department a Schedule of Project Costs in the form as attached hereto as Exhibit C.

H. Authorizations. The Company upon written request by the Department shall issue any necessary authorization to the appropriate federal, state or local authority for the release of information concerning the Project filed with any governmental agencies, with the information requested to include, but not be limited to, financial reports, tax returns or records relating to the Company or the Project.

I. Books and Records. The Company shall at all times keep proper books of record and accounts of the Project in accordance with GAAP consistently applied with the books, records or papers relating to the Project or this Agreement in the custody or control of the Company open for inspection, audit and copying by the Department upon reasonable notice.

J. Reporting. The Company shall submit progress reports in the format and in the timeframe required by the Department. On or before the date the Project is Placed in Service, the Company shall provide the Department with copies of any and all (i) executed agreements for the purchase of land and/or buildings, for building construction or renovation, and for rental or lease of any real property, and (ii) the Company's certification of Project Costs incurred with respect to the Project. For each Taxable Year after the Project is Placed in Service, the Company shall deliver a written report to the Department stating the following: (i) the number of New Employees and Retained Employees for the Taxable Year; (ii) the Incremental Income Tax attributable to the New Employees and Retained Employees; (iii) the Payroll associated with the New Employees and Retained Employees; (iv) the amount of Capital Improvements for the Project; (v) the total Payroll for the Project; (vi) the detail of the total Project Costs for the Project, including the amount of Capital Improvements; and (vii) any other information the Department requests in advance ("Annual Reports"). By April 15 of each taxable year in which the Company claims a Credit, the Company must also submit to the Department the reports required pursuant to Sections 57 and 58 of the Act.

K. Verification. The Company hereby grants the Department the authority to verify with any appropriate State agencies, including without limitation the Department of Revenue and the Department of Employment Security, any information disclosed by the Company to the Department in connection with the Company's Application, in the Annual Reports, or otherwise in connection with this Agreement.

L. Notice to the Department. The Company shall report in writing to the Department any of the following events not more than 30 days after the occurrence of such event: (i) the Company makes or receives a proposal for the transfer to a successor taxpayer of its obligation to pay Illinois State Income Taxes; (ii) the number of New Employees falls below the number set forth in Section IV.C(i); (iii) if applicable, the amount of Retained Employees falls below the number set forth in Section IV.D(i); (iv) the Company's total employee headcount in Illinois falls below the baseline set forth in Section IV.C(i); (v) the amount of the Payroll for New Employees falls below the amount set forth in Section IV.C(ii); (vi) if applicable, the amount of the Payroll for Retained Employees falls below the amount set forth in Section IV.D(ii); (vii) the amount of Capital Improvements falls below the amount set forth in Section IV.B; (viii) the Company intends to no longer maintain operations at the Project; (ix) the Project will not be Placed In Service in the time frame established in Section IV.E; (x) any of the Company's representations and warranties set forth in Section V are no longer true and correct; or (xi) the Company

has defaulted on any of its obligations under any grant, loan or other agreement with the State of Illinois or any governmental entity within the State of Illinois.

M. Legal Compliance. The Company agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, including all applicable environmental laws, with respect to the Project and this Agreement.

## V. COMPANY REPRESENTATIONS AND WARRANTIES

The Company hereby represents and warrants the following is true and correct and shall remain true and correct at all times during the term of this Agreement:

A. Organization of Company. The Company, a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois and the Company is legally qualified to transact business in Illinois. The Company has full power and authority to own or lease and to operate and use its assets and to carry on its business at the Project. There is no pending or threatened proceeding for the dissolution, liquidation, insolvency, or rehabilitation of the Company.

B. Information Submitted. All of the information the Company has submitted to the Department, including the information contained in or submitted with the Company's Application, was at the time of delivery of such information and still is and will continue to be true and accurate. All accounts, books, ledgers and other records of the Company have been fully, properly and accurately kept and completed in all material respects, and there are no material inaccuracies or discrepancies of any kind contained therein.

C. Authority to Bind.

1. This Agreement has been duly authorized, executed and delivered by the Company and is the legal, valid and binding obligation of the Company enforceable in accordance with its terms. The signatory for the Company represents that he or she has been duly authorized to execute this Agreement on behalf of the Company.

2. The Company has full power and authority to execute, deliver and perform this Agreement and any ancillary documents and to perform its respective obligations thereunder, and to consummate the transactions contemplated hereby. The Company has taken all actions necessary to authorize the execution and delivery of this Agreement, the performance of its respective obligations hereunder and the consummation of the transactions contemplated hereby.

D. No Violation. The execution and delivery of this Agreement and any ancillary documents, the performance by the Company of its obligations hereunder and the consummation by the Company of the transactions contemplated by this Agreement will not: (i) contravene any provision of the articles of incorporation or bylaws of the Company; (ii) violate or conflict with any law, statute, ordinance, rule,

regulation, decree, writ, injunction, judgment or court order of any governmental body or of any arbitration award which is either applicable to, binding upon or enforceable against the Company; (iii) conflict with, result in any breach of, or constitute a default (or an event which would, with the passage of time or the giving of notice or both, constitute a default) under any other agreement which is applicable to, binding upon or enforceable against the Company; or (iv) require the consent, approval, authorization or permit of, or filing with or notification to, any governmental body, any court or tribunal or any other Person.

E. Governmental Permits. The Company does, or will prior to the date the Project is Placed in Service, own, hold or possess all licenses, franchises, permits, privileges, immunities, approvals and other authorizations from a governmental body which are necessary to entitle it to own or lease, operate and use its assets located at the Project and to carry on and conduct its business at the Project, including, but not limited to, all required permits or licenses from any state or local governmental agencies and any required certifications from local or national boards or agencies indicating that the business of the Project is being conducted lawfully (herein collectively called "Governmental Permits"). The Company has performed its obligations under each Governmental Permit, or will when Governmental Permits are issued, and no event has occurred or condition or state of facts exists which (i) constitutes, or after notice or lapse of time or both, would constitute a breach or default under any such Governmental Permit, or (ii) permits, or after notice or lapse of time or both, would permit revocation or termination of any such Governmental Permit, or which might adversely affect in any material respect the rights of the Company under any such Governmental Permit. No notice of cancellation, of default or of any dispute concerning any Governmental Permit, or of any event, condition or state of facts described in the preceding sentence, has been received by, or is known to, the Company.

F. No Violation, Litigation or Regulatory Action.

1. The Company has complied in all material respects with all requirements of any laws or court orders, which are applicable to the business and assets of the Project.

2. There are no lawsuits, claims, suits, proceedings or investigations pending or, to the knowledge of the Company, threatened against or affecting the Company in respect of the assets or the business of the Project nor, to the knowledge of the Company, is there any basis for any of the same, and there is no lawsuit, suit or proceeding pending in which the Company is the plaintiff or claimant which relates to the business or assets of the Project.

3. There is no action, suit or proceeding pending or, to the knowledge of the Company, threatened which questions the legality or propriety of the transactions contemplated by this Agreement.

4. There has been no investigation conducted or charges, complaints or actions brought by the State of Illinois or any governmental body within the State of Illinois (including the Federal government) with respect to the Company or its officers and directors.

5. The Company and its officers and directors have not been the subject of any criminal investigations or charges.

6. The Company would not have Placed in Service the Capital Improvements and created or retained the requisite number of New Employees and Retained Employees without the benefits of the Credit. Proof of this shall include, but is not limited to, correspondence, financial plans and prospectuses, internal memoranda and other written documentation demonstrating the Company would not have taken the actions without the award of the Credit.

G. No Sexual Harassment Allegations or Complaints. To the knowledge of the Company, in the last five (5) years and at all times during the term of this Agreement, no allegations of sexual harassment have been made against any individual in that person's capacity as an officer or senior employee of the Company. A "senior employee" shall mean a person having supervisory responsibility for at least ten (10) employees, and "allegation" shall mean a complaint or charge filed with any government entity authorized to investigate claims of sexual harassment or a complaint filed in any court alleging sexual harassment.

## VI. ISSUANCE AND RETENTION OF CREDIT

A. Initial Issuance. To obtain the Credit for the first Taxable Year, the Company shall do the following on or before 90 days after the end of the first Taxable Year:

1. The Company shall notify the Department on the form attached hereto as Exhibit D (or substantially similar to such form) when all of the following has occurred: (a) the Project has been Placed in Service; (b) the Capital Improvements required by Section IV.B have been made; (c) the New Employees have been hired, including satisfying the applicable Payroll and Occupation obligations, as required by Section IV.C; and (d) if applicable, the minimum number of Retained Employees have been retained by the Company, including satisfying the applicable Payroll and Occupations obligations, as required by Section IV.D.

2. The Company shall provide to the Department proof as required by the Department, including but not limited to a certified attestation by the Company, payroll records and an audit performed by an independent, licensed certified public accounting firm, that the Company has done all of the following prior to the end of the first Taxable Year:

a) made the Capital Improvements specified in Section IV.B;

b) hired the New Employees specified in Section IV.C, accompanied by the information substantially in the form set forth in Exhibit E;

c) if applicable, retained the Retained Employees specified in Sections IV.D, accompanied by the information substantially in the form set forth in Exhibit E; and

d) achieved the level of Payroll in Illinois specified in Section IV.C(ii) and, if applicable, Section IV.D(ii) accompanied by the information substantially in the form set forth in Exhibit E.

B. Subsequent Issuances. To obtain the Credit for subsequent Taxable Years, the Company shall provide to the Department on or before 45 days after the end of each Taxable Year for which the Company seeks a Credit, such proof as required by the Department, including but not limited to a certified attestation by the Company that the Company has done all of the following:

1. maintained operations at the Project for the entire Taxable Year;

2. maintained the number of New Employees specified in Section IV.C(i), accompanied by the information substantially in the form set forth in Exhibit E;

3. if applicable, retained the Retained Employees specified in Sections IV.D, accompanied by the information substantially in the form set forth in Exhibit E

4. maintained the Occupations and Payroll of the New Employees specified in Section IV.C(ii) and, if applicable, Section IV.D(ii), accompanied by the information substantially in the form set forth in Exhibit E: and

5. remained in compliance with the terms and conditions of this Agreement.

C. Certificate of Verification. Within 60 days after the Department's receipt from the Company of the items described in Section VI.A or VI.B and another materials reasonably requested by the Department, and so long as the Company is in compliance with the terms and conditions of this Agreement at the time of issuance of the Certificate of Verification, the Department shall provide the Company with a Certificate of Verification which indicates the amount of the Credit issued to the Company and the Taxable Year for which the Credit was issued. In the event that the Company fails to submit the reports required by 35 ILCS 10/5-57 & 5-58, the Company may not receive a Certificate of Verification under Section VI.A or VI.B unless, and until, such reports are submitted to the Department.

D. Department of Revenue. The Company shall submit to the Illinois Department of Revenue a copy of the Director's Certificate of Verification for each Taxable Year that the Company claims the Credit, provided that the failure to submit a copy of

the Certificate with the Company's annual return filed for Illinois State Income Taxes shall not invalidate a claim for a Credit.

## VII. EVENTS OF DEFAULT BY THE COMPANY

Any one or more of the following occurrences shall constitute an Event of Default by the Company under this Agreement:

A. The Company's violation of or noncompliance with any of its covenants set forth in Section IV.

B. Any of the Company's representations and warranties set forth in Section V or otherwise herein or in the Company's Applications or submissions to the Department was at the time of execution of this Agreement, or is at any time during the term of this Agreement, false or misleading in any material respect.

C. The Company's failure to comply with any of the conditions set forth in Section VI.

D. The Company's breach of any other terms or conditions of this Agreement.

E. The Company's default under any other grant, loan or other agreement with the State of Illinois or any governmental entity in the State of Illinois.

F. The institution of any bankruptcy, foreclosure, receivership, assignment for the benefit of creditors or any other proceedings indicating that the Company may be insolvent or unable to continue as a going concern.

## VIII. REVOCATION AND SUSPENSION OF CREDIT

A. Once the Project has been Placed in Service, if the number of New Employees or Retained Employees is less than the minimum number set forth in Sections IV.C and IV.D, the allowance of the Credit shall be automatically suspended and the Company will be ineligible to receive any Certificate of Verification or use any previously issued Credits or Unused Credits until the number of New Employees and Retained Employees equals or exceeds the number set forth in Sections IV.C and IV.D. In the event of automatic suspension under this Section VIII.A, the Department shall notify the Illinois Department of Revenue of such automatic suspension as well as the effective date of such suspension.

1. Unless the Company disputes that it is in noncompliance with the minimum employment levels in Sections IV.C and IV.D, the Company acknowledges and agrees that any right to an administrative hearing pursuant to the Illinois Administrative Procedure Act, 5 ILCS 100/1-1, *et seq.* (the "APA"), is waived.

2. An automatic suspension will be lifted upon a showing by the Company that it has returned to compliance with the minimum employment levels in

Sections IV.C and IV.D, and the Department shall notify the Illinois Department of Revenue of the lifting of an automatic suspension so that the Company may resume using any previously issued Credits.

B. Subject to Section VIII.A, if there is an Event of Default by the Company under Section VII, the Director shall provide written notice to the Company of the alleged Event of Default, and allow the Company a hearing under the provisions of the APA. If, after notice and any hearing, the Director determines that an Event of Default exists, the Company shall have (60) days to cure the Event of Default, failing which, the Director shall issue to the Illinois Department of Revenue notice to that effect, stating the Noncompliance Date pursuant to Section 5-65 of the Act.

C. The Department shall notify the Company in writing that it is subject to revocation or suspension. Such notice shall include the reason for revocation or suspension, except in the case of an uncontested automatic suspension, and the date and location of a hearing to be held pursuant to Section 527.100 of the Rules.

D. Following revocation or suspension, the Department shall contact the Director of the Illinois Department of Revenue who shall bring proceedings against the Company to recover Wrongfully Exempted Illinois State Income Taxes, and the Company shall comply in all respects with the demands made by the Illinois Department of Revenue in such proceedings to promptly repay to the Illinois Department of Revenue any Wrongfully Exempted Illinois State Income Taxes and obtaining any other relief available.

## IX. CONFIDENTIALITY

A. Generally. As provided in Section 5-90(a) of the Act, any documentary materials or data made available or received by the Department or any agent or employee of the Department shall be deemed confidential and shall not be deemed public records to the extent that the materials or data consist of trade secrets, or confidential proprietary commercial or financial information regarding the operation or competitive position of the business conducted by the Company.

1. Each party agrees, to the extent permissible by law, that it will treat in confidence all documents, materials and other information which it shall have obtained regarding the other party during the course of the negotiations leading to the consummation of the transactions contemplated hereby, the investigation provided for herein and the preparation of this Agreement and other related documents (whether obtained before or after the date of this Agreement).

2. Such documents, materials and information shall not be communicated to any third Person (other than counsel, accountants, officers or advisors of the parties): *provided, however*, that the obligation of each party to treat such documents, materials and other information in confidence shall not apply to any information which: (i) is or becomes available to such party from a

source other than such party; (ii) is or becomes available to the public other than as a result of disclosure by such party or its agents; (iii) is required to be disclosed under applicable law or judicial process, but only to the extent it must be disclosed; or (iv) such party reasonably deems necessary to disclose to obtain any of the consents or approvals contemplated hereby.

B. Public Access to this Agreement.

1. Notwithstanding anything in this Agreement to the contrary, this Agreement (except for the signatories' signatures and, to the extent not known to the public, the Company's planned Capital Improvements and Project Costs and any anticipated wages information reflected in any of the Exhibits, hereafter collectively referred to as "Confidential Information") is considered a public record for the purposes of the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq*. The Department, in furtherance of its commitment to transparency and in compliance with Section 5-50 of the Act, will make this Agreement accessible via the Department's public website, with any references to the Confidential Information redacted, as early as two (2) business days following the last dated signature to this Agreement.

2. The Department may also make portions of reports submitted pursuant to Section VI and any Certificates of Verification available to the public, with Confidential Information redacted.

## X. INDEMNIFICATION

A. Generally. The Company agrees to indemnify, defend and hold harmless the State of Illinois, the Department, the Illinois Department of Revenue and their agents, officers and employees (the "Indemnitees") from any and all damages, losses, expenses, liabilities, claims and suits, including court costs, reasonable attorneys' fees and other expenses, caused by any act or omission of the Company and/or its subcontractors, agents, officers and employees, including any reasonable attorneys' fees and costs incurred by the Department as a result of the Company's breach or alleged breach of any of the provisions of this Agreement. The Indemnitees shall not provide any indemnification to the Company.

B. Notice of Claims. If the Indemnitees (collectively or individually, the "Indemnified Party") seek indemnification hereunder, notice shall be given to the Company (the "Indemnitor") within 15 days after the Indemnified Party receives notice of a claim that might be subject to indemnification hereunder(a "Claim Notice"), describing in reasonable detail the facts giving rise to any claim for indemnification hereunder and shall include in such Claim Notice (if then known) the amount or the method of computation of the amount of such claim, and a reference to the provision of this Agreement or any agreement, document or instrument executed pursuant hereto or in connection herewith upon which such claim is based; *provided, however*, that

failure to give such notice shall not relieve the Indemnitor of its obligations hereunder except to the extent it shall have been prejudiced by such failure.

C. Amount of Indemnification. After the giving of any Claim Notice pursuant hereto, the amount of indemnification to which the Indemnified Party shall be entitled shall be determined by a final judgment or decree of any court of competent jurisdiction. The judgment or decree of a court shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined. The Indemnified Party shall have the burden of proof in establishing the amount of indemnified damages suffered.

D. Defense of Claims.

1. The Indemnitor shall have the right to undertake, by counsel or other representatives of its own choosing, the defense of any claim against the Indemnified Party.

2. If after receiving the Claim Notice from the Indemnified Party, the Indemnitor shall elect not to undertake such defense, or within a reasonable time after receiving the Claim Notice from the Indemnified Party, shall fail to defend, as required by Section 10, the Indemnified Party (upon further written notice to the Indemnitor) shall have the right to undertake the defense, compromise or settlement of such claim, by counsel or other representatives of its own choosing, on behalf of and for the account and risk of the Indemnitor (subject to the right of the Indemnitor to assume defense of such claim at any time prior to settlement, compromise or final determination thereof) at Indemnitor's expense.

3. Anything in this Section 10 to the contrary notwithstanding: (a) the Indemnified Party shall have the right, at its own cost and expense, to have its own counsel to protect its own interests and participate in the defense, compromise or settlement of the claim; (b) the Indemnitor and the Indemnified Party shall not, without the written consent of the other, settle or compromise any claim or consent to entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnitor of a release from all liability in respect of such claim; (c) the Indemnified Party, by counsel or other representatives of its own choosing and at its sole cost and expense, shall have the right to consult with the Indemnitor and its counsel or other representatives concerning such Claim, and (d) the Indemnitor and the Indemnified Party and their respective counsel shall cooperate with respect to such Claim.

## XI. NON-DISCRIMINATION

Company shall comply with all applicable provisions of State and Federal constitutions, laws, regulations and judicial orders pertaining to nondiscrimination and equal employment opportunity including but not limited to:

A. the Illinois Human Rights Act, as now or hereafter amended (775 ILCS 5/1-101, *et seq.*); and

B. Article VI of the regulations of the Illinois Department of Human Rights (44 Ill. Admin. Code, Ch. 10, Part 750, *et seq.*), including the Equal Employment Opportunity Clause, which clause is hereby incorporated by reference, as published at Title 44, Chapter 10, Section 750.10 and Appendix A thereto in the Illinois Administrative Code.

## XII. SEXUAL HARASSMENT POLICIES AND REPORTS

A. The Company shall have written sexual harassment policies that shall include, at a minimum, the following information: (a) the illegality of sexual harassment; (b) the definition of sexual harassment under applicable law; (c) a description of sexual harassment, utilizing examples; (d) the Company's internal complaint process including penalties; (e) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Illinois Human Rights Commission; (f) direction on how to contact the Illinois Department of Human Rights and the Illinois Human Rights Commission; and (g) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act.

B. A copy of the policies described in XII.A shall be provided to the Department upon request.

C. By April 15 of each taxable year in which the Company claims a Credit, the Company must submit to the Department the report detailing the Company's sexual harassment policy as required by Sections 58 of the Act.

## XIII. ADA COMPLIANCE

A. The Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*) and the regulations thereunder (28 C.F.R. § 35.130) ("ADA") prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit, or service. As a condition of receiving this Agreement, the Company certifies that services, programs, and activities provided under this Agreement are and will continue to be in compliance with the ADA.

B. The Company further certifies that all facilities utilized by the Company in the performance of this Agreement comply with State accessibility laws.

## XIV. INTERNATIONAL ANTI-BOYCOTT CERTIFICATION

By signing this Agreement, the Company certifies that neither the Company nor any substantially-owned affiliate of the Company is participating or will participate in an international boycott pursuant to the International Anti-Boycott Certification Act, 30 ILCS 582/1, *et seq.*

## XV. STATE OF ILLINOIS DRUG-FREE WORKPLACE CERTIFICATION

The Company certifies and agrees that it shall comply with the requirements of the Drug-Free Workplace Act ("DFWA"), 30 ILCS 580/1, *et seq.*, effective January 1, 1992, and provide a drug-free workplace in and at the Project by doing all of the following:

A. Publication. The Company shall publish in a prominent place in the workplace and provide to all of its employees a statement notifying its employees as follows: (i) that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including cannabis, is prohibited in the Company's workplace; (ii) the specific actions that will be taken against employees for violations of such prohibition; and (iii) that as a condition of continued employment the employee will (a) abide by the terms of the statement, and (b) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

B. Program. The Company shall establish a drug-free awareness program to inform its employees of: (i) the dangers of drug abuse in the workplace; (ii) the Company's policy of maintaining a drug-free workplace; (iii) any available drug counseling, rehabilitation, and employee assistance programs; and (iv) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.

C. Notice. The Company shall notify the Department in writing within ten (10) days after (i) receiving notice from an employee that he or she has a criminal drug statute conviction for a violation occurring in the workplace, or (ii) otherwise receiving actual notice of such conviction.

D. Sanctions. The Company shall impose the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (i) take appropriate personnel action against the employee, up to and including termination; (ii) require such employee to satisfactorily participate in a drug use assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; or (iii) require other acts or conduct that may be required by Section 5 of the DFWA.

E. Good Faith. The Company shall make a good faith effort to maintain a drug-free workplace through the implementation of Sections 15A through E herein.

F. Assistance. The Company shall assist employees in selecting a course of action in the event drug counseling, treatment or rehabilitation is required and shall indicate that a trained referral team is in place.

G. False Certifications. False certification or violation of any of the certifications given under this Section 15 shall result in termination of this Agreement and suspension of the Credit, and may also result in sanctions including, but not limited to, debarment of the Company from doing further business with the State or any agency thereof, including the Department, for up to three (3) years.

## XVI. NOTICE TO PARTIES

Whenever any notice, statement or other communications shall be sent to the Department, the Illinois Department of Revenue or the Company, it shall be sent to the following address, unless otherwise specifically advised.

A. Notices to the Department shall be sent to:

Illinois Department of Commerce & Economic Opportunity
Attn: Teri Whitfield, Manager, EDGE Tax Credit Program
500 East Monroe Street - 4th Floor - Ridgely Bldg.
Springfield, Illinois 62701

B. Notices to the Illinois Department of Revenue shall be sent to:

Illinois Department of Revenue
Attn: Tiara Hearn, Internal Investigations Division
100 West Randolph Street
Chicago, Illinois 60601

C. Notices to Company shall be sent to:

Diesel Radiator Co.
Attn: Brian P. Cahill, President
1990 Janice Avenue
Melrose Park, Illinois 60160

## XVII. FURTHER ASSURANCES

The Company hereby agrees to execute and deliver such additional instruments and other documents and to take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement and the transactions contemplated hereby; provided such instruments, documents and actions do not increase the Company's financial risks, general obligations or liabilities, or reveal confidential or proprietary information. The Company hereby agrees to cooperate in the preparation and filing of all forms, notifications, reports and information (if any) required or reasonably deemed advisable pursuant to any law, rule or regulation and to use its reasonable efforts to agree on a method to overcome any objections by any governmental body to any such transactions, so long as it does not cause such party to incur additional costs other than legal fees or increase the Company's obligations or reveal confidential or proprietary information of the Company. The Company agrees to use its best efforts to obtain the authorizations required to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby.

## XVIII. MISCELLANEOUS

A. The Company shall not assign the whole or any part of this Agreement without the Department's prior written consent.

B. No delay or omission of the Department in exercising any right or remedy available under this Agreement shall impair any such right or remedy, or constitute a waiver of any default or an acquiescence thereto.

C. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, notwithstanding its choice of law rules to the contrary or any other state's choice of law rules and suit, if any, must be brought in the State of Illinois.

D. This Agreement and the Exhibits and Schedules referred to herein and the documents delivered pursuant hereto contain the entire understanding of the parties hereto with regard to the subject matter contained herein or therein, and supersede all prior agreements, understandings or letters of intent between or among any of the parties hereto. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties hereto; provided however, that in the event the Company has indicated in connection with its Application for the Credit an expectation of long-term growth for the Project beyond the minimum requirements set forth in Sections IV.B through IV.D, the Department reserves the right to amend Sections IV.B through IV.D's requirements to increase them consistent with the Company's indications.

E. Terms not otherwise defined in this Agreement shall have the meanings set forth in Section 5-5 of the Act and Section 527.20 of the Rules.

F. In the event the Department verifies with a State agency the amounts reported to the Department under Section IV.J, the Department shall issue a written statement to the Company stating the amounts have been verified.

G. If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby.

H. This Agreement is for the sole benefit of the Parties hereto and their heirs, executors, legal representatives, successors and assigns, and shall not be construed to confer any rights on any other Person.

I. This Agreement may be executed in counterparts, each of which shall be deemed an original and all which taken together shall constitute one and the same instrument.

* * *

**IN WITNESS WHEREOF**, the parties, by their duly authorized representatives, have executed this Agreement on the Effective Date set forth above.

**DIESEL RADIATOR CO.**

By: [redacted]

Its: [redacted]

Date: 01/08/2019

**THE STATE OF ILLINOIS, ACTING BY AND THROUGH ITS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY** [redacted]

Date: 1/10/2019

**PHABB PARTNERS, LLC**

By: [redacted]

Its: [redacted]

Date: 1/8/19

**EXHIBIT A**

**NEW EMPLOYEES**

Number of Full-Time employees to be hired within (2) years of Approval Letter:

| Company Name | Address | Permanent Full Time Employees | Average Annual W-2 Wages | Total Job Payroll |
|---|---|---|---|---|
| Diesel Radiator Co. | 1990 Janice Ave. Melrose Park, IL 60160 | | | |
| Diesel Radiator Co. | 1985 Janice Ave. Melrose Park, IL 60160 | | | |
| Diesel Radiator Co. | 3030 Hirsch Ave. Melrose Park, IL 60160 | | | |
| Diesel Radiator Co. | 2701 United Lane Elk Grove Village, IL 60007 | | | |
| Diesel Radiator Co. | 801 Estes Ave. Elk Grove Village, IL 60007 | | | |
| | Total of all locations | 13 | [redacted] | [redacted] |

**EXHIBIT B**

**RETAINED EMPLOYEES**

**Not applicable.**

**EXHIBIT C**

**PROJECT COSTS**

| Project Timeline | Project Item | Project Item Cost |
|---|---|---|
| Years 1-2 | | [redacted] |
| | Building & Land Acquisition | |
| | Equipment Purchases | |
| Total Years 1-2 | | |
| Years 3-10 | | |
| | Undetermined | |
| Total Years 3-10 | | |
| Grand Total | | |