
EXISTING BUILDING COMMISSIONING PROGRAM COMMISSIONING PROVIDER PARTICIPATION AGREEMENT

This Commissioning Provider Participation Agreement Cover Page (the "**Cover Page**") must be filled out and executed by the representative (identified below) of any commissioning provider wishing to participate in the Existing Building Commissioning Program (the "**Program**") administered by the IESO. Such representative must be authorized to represent and bind the Commissioning Provider.

Commissioning
Provider Legal Name:

Commissioning
Provider Business
Name (if applicable
and different from
above):

Representative:

Address:

City/Town:

Postal Code:

Telephone:

Facsimile:

Email:

This COMMISSIONING PROVIDER PARTICIPATION AGREEMENT (the "**Agreement**") is made as of the date of issuance of the Notice of Approval (the "**Effective Date**").

BETWEEN:

(the "**Commissioning Provider**")

-and-

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

(the "**IESO**")

RECITALS:

WHEREAS, the IESO is offering and administering the Save on Energy – Existing Building Commissioning Program to incentivize building owners to undertake re-commissioning services at their existing facilities.

AND WHEREAS, the Commissioning Provider wishes to participate in the Program as a third party service provider on the Qualified Commissioning Providers List to provide building commissioning and other related services to Applicants and Participants.

AND WHEREAS, the IESO has appointed CLEAResult Canada Inc. (the "**Service Provider**") to administer the Program.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Commissioning Provider and the IESO hereby agree as follows:

1. Definitions

The following capitalized terms shall have the meanings stated below when used in this Agreement:

"Applicant" means a person that has made an application to be a Participant in the Program or who is seeking to participate in the Program.

"Application" means an application (including all supporting documentation) for funding of a Participant Incentive under the Program, which is in the form specified by the IESO on the Program Website and executed by the Applicant.

“Brand Guidelines” means the IESO’s branding guidelines, provided to the Commissioning Provider from time to time.

“Claims” has the meaning set out in Section 14.

“Commissioning Provider Information” has the meaning set out in Section 16(b).

“Commissioning Provider Orientation” has the meaning set out in Section 2(d)(iii).

“Cover Page” has the meaning set out on the Cover Page.

“Customer Information” has the meaning set out in Section 8(a)(i).

“Energy Conservation Measure” or **“ECM”** means an action taken which is intended to reduce electricity consumption at a facility of a Participant, which complies with the applicable Program Eligibility Criteria.

“Environmental Attributes” has the meaning set out in Section 12.

“M&V Guide” means the document containing the procedures for measurement & verification applicable to the Program and made available at the Program Website.

“Notice of Approval” means the notice issued by the Service Provider or the IESO, which provides the IESO’s approval of the addition of the Commissioning Provider to the Qualified Commissioning Providers List.

“Participant” means, in respect of the Program, a person whose Application has been approved by the IESO, and who has entered into a Participant Agreement to be eligible to receive a Participant Incentive.

“Participant Agreement” means, in respect of the Program, any one or more agreements or terms and conditions that an eligible person entitled to receive a Participant Incentive must enter into or agree to be bound by in order to participate in the Program or to receive such Participant Incentive.

“Participant Incentive” means, in respect of the Program, the financial incentives paid or payable to the Participant in accordance with the Participant Agreement.

“Program” has the meaning set out on the Cover Page.

“Program Eligibility Criteria” means the eligibility criteria set out in the Program Requirements, which a Participant must meet to participate in the Program.

“Program Operator” has the meaning set out in Section 7(a)(i).

"Program Phases" means, collectively, the Investigation Phase, the Implementation Phase and the Persistence Phase of the Program, each as defined in the Program Requirements.

"Program Phase" means any one of the Program Phases, as applicable.

"Program Requirements" means the IESO Program Requirements – Existing Building Commissioning published on the Program Website, as may be amended from time to time.

"Program Website" means the IESO's Save On Energy website at <https://SaveONEnergy.ca/ebcx>.

"Qualified Commissioning Providers List" means the list of qualified commissioning providers authorized by the IESO to deliver commissioning services to Applicants and Participants in connection with the Program.

"Save on Energy" is an IESO trademark in connection with energy efficiency programs offered by the IESO.

"Services" means the deliverables, products and services delivered by the Commissioning Provider in connection with the Program, including the commissioning and other services delivered to the Applicants and Participants. For clarity, the performance of the Services may include the implementation of ECM measures by the Commissioning Provider at the facility of a Participant.

"Service Provider" has the meaning set out on the Cover Page.

"Statement of Work Sample" means a sample scope of services for the contract between an Applicant or Participant, as the case may be, and the Commissioning Provider, which is made available on the Program Website for reference purposes.

"Terms and Conditions" has the meaning set out in Section 2(d)(i).

2. Commissioning Provider Eligibility Criteria

- (a) The Commissioning Provider hereby agrees and understands that it will only be authorized and retained to participate in the Program as a commissioning provider (and be retained on the Qualified Commissioning Providers List) upon the satisfaction and continued satisfaction of the following conditions: (i) meeting the qualifications requirements identified in Section 2(c); and (ii) compliance with this Agreement and any other documentation required pursuant to the terms of this Agreement that is submitted by the Commissioning Provider and approved by the IESO.
- (b) The Commissioning Provider hereby represents and warrants now and each time that an Application is submitted identifying the Commissioning Provider, that:

- (i) each Commissioning Provider personnel performing Services, whether employed, contracted or otherwise used by the Commissioning Provider, possesses any licenses required by applicable laws and any other required qualifications identified in the Terms and Conditions;
 - (ii) the Commissioning Provider possesses a valid letter of clearance from the Ontario Workplace Safety & Insurance Board (unless the Commissioning Provider is a sole proprietor);
 - (iii) the Commissioning Provider maintains, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater (or the equivalent), valid: (A) general liability insurance (for third party bodily injury, personal injury and property damage) with coverage limits in the amount of at least equal to \$2 million per occurrence; (B) automobile insurance with limits of at least \$1 million per occurrence; and (C) professional liability insurance with limits of at less than \$2,000,000 per claim and with an aggregate limit of not less than \$5,000,000 within any policy year;
 - (iv) the Commissioning Provider has submitted proof of each of the foregoing insurance to the IESO;
 - (v) the Commissioning Provider is duly qualified and able to perform the Services, in accordance with the requirements of all applicable laws; and
 - (vi) all information provided by the Commissioning Provider to the IESO and any Applications prepared by, or related to, the Commissioning Provider are true, accurate and complete, and not misleading.
- (c) The key personnel of the Commissioning Provider engaged in the performance of commissioning or other technical Services will possess at least one of the qualifications (and be in good standing):
- (i) Association of Energy Engineers (AEE): Certified Building Commissioning Professional (CBCP);
 - (ii) AEE Existing Building Commissioning Professional (EBCP);
 - (iii) NRCAN Advanced Recommissioning training and certification (delivered through CIET);
 - (iv) American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE): Building Commissioning Professional (BCxP)
 - (v) Building Commissioning Association (BCxA): Certified Commissioning Professional or Certified Commissioning Firm (CCP or CCF);

- (vi) Canada Institute for Energy Training (CIET): Advanced Building Recommissioning Training Program;
- (vii) AABC Commissioning Group (ACG): Certified Commissioning Authority (CxA) Certification; or
- (viii) National Environmental Balancing Bureau (NEBB): Commissioning Process Professionals (CxPP).

Within thirty (30) days of the Effective Date, the Commissioning Provider will provide the IESO with a list of such key personnel. The Commissioning Provider will promptly notify the IESO in writing of any changes to the individuals on such list.

- (d) The Commissioning Provider will, within thirty days of signing this Agreement:
 - (i) have informed itself of, and be familiar with, all of the terms and conditions of the Program (the "**Terms and Conditions**"), including the Program Requirements, M&V Guide, form of Participant Agreement and the rules and eligibility criteria for the Program, which all can be found at the Program Website;
 - (ii) name the IESO and Province of Ontario as additional insured on their general liability insurance policy; and
 - (iii) have completed the orientation in respect of the Program in accordance with the Terms and Conditions or as otherwise directed by the IESO (the "**Commissioning Provider Orientation**").

3. Describing the Program and Working with Applicants and Participants

- (a) The Commissioning Provider will:
 - (i) when making initial contact with an Applicant immediately and truthfully give the name of the Commissioning Provider to the Applicant, and if initiating such contact, state that the Commissioning Provider is offering the Applicant the opportunity to procure services from the Commissioning Provider to assist the Applicant in connection with the preparation of an Application and any further participation in the Program (if such Application is approved by the IESO);
 - (ii) prior to contracting for or agreeing to perform any Services for an Applicant:
 - A. present the Terms and Conditions to the Applicant (including the Program Requirements and form of Participant Agreement) and describe the process for submitting the Application pursuant to Section 5;

- B. present the Statement of Work Sample to the Applicant as an example of the services which the Applicant could engage the Commissioning Provider to perform;
 - C. provide the Applicant with sufficient opportunity to read the Terms and Conditions, Statement of Work Sample and information on the Program Website; and
 - D. clearly present the contract (including pricing) under which the Commissioning Provider proposes an Applicant engage the Commissioning Provider for the performance of the Services. Such contract may, at the Commissioning Provider's discretion, include the Statement of Work Sample. The Commissioning Provider is not obligated to include the Statement of Work Sample in such contract if it complies with its obligations under Section 3(a)(ii)(B);
- (iii) clearly describe to the Applicants the amounts of the Participant Incentives they could potentially be eligible to receive for participating in the Program based on the Participant Incentive descriptions and calculations in the Program Requirements;
 - (iv) advise Applicants of the maximum amounts of the Participant Incentives they could potentially be eligible to receive if they meet the Program Eligibility Criteria and follow the processes set out in the Terms and Conditions;
 - (v) only market the Program and otherwise work with Applicants who the Commissioning Provider reasonably believes have a high likelihood of completing all Program Phases and implementing ECMs and their facility which deliver energy savings;
 - (vi) verify for the Applicant that an ECM recommended by the Commissioning Provider or proposed by an Applicant for implementation is eligible for a Participant Incentive under the Program, by confirming that such ECM complies with the applicable Program Eligibility Criteria and the other applicable requirements of the Terms and Conditions;
 - (vii) where applicable to the Services or any part of the Services (including the implementation of the ECMs), offer a warranty to all Applicants and Participants in respect of such Services for a period of not less than one (1) year after the completion of the Services;
 - (viii) be transparent with data and models used in connection with any Participant Incentive;

- (ix) strive for accuracy in any claims of energy savings made to Applicants or included in the reports required in connection with each Participant Incentive;
- (x) distribute to Applicants and Participants any and all notices or other information provided to the Commissioning Provider by the IESO from time to time in relation to the Program; and
- (xi) ensure each ECM is implemented in accordance with all applicable laws and legal requirements, and in accordance with any applicable requirements of the Terms and Conditions.

4. Invoices and Compensation

- (a) The Commissioning Provider must provide Participants with invoices, each of which will show: (i) the Commissioning Provider's name; (ii) the Ontario address of the facility at which the ECMs were implemented and any other location where the Services were performed; (iii) the dates of implementation of the ECMs and performance of any other Services; (iv) the description of the ECMs implemented and any other Services performed; (v) the Program Phase which the Services pertain to; and (vi) the full itemized amount actually paid by the Participant for the implementation of the ECMs and performance of any other Services (including any third party costs), all of which must be clearly legible to be valid.
- (b) The Commissioning Provider acknowledges and agrees that:
 - (i) the Commissioning Provider shall not be entitled to any payment from the IESO for the Commissioning Provider's participating in the Program (including for the performance of any Services);
 - (ii) the Commissioning Provider will be compensated for the performance of the Services by the Applicant or Participant, as the case may be; and
 - (iii) the Participant Incentive is paid by IESO to the Participant to offset the costs incurred for the Services and any other costs incurred by the Participant to participate in the Program. Once the costs of the Services are agreed upon in the contract between the Participant and the Commissioning Provider, the Commissioning Provider shall not increase the costs of the Services based on the actual amount of the Participant Incentive paid to the Participant.

5. Submitting the Application and other Program Documents

- (a) The Commissioning Provider will:
 - (i) explain to the Applicant the process for preparing and submitting the Application, and the process for submitting invoices;

- (ii) advise the Applicant that all Applications must be executed by the Applicant and submitted in accordance with the Terms and Conditions (including any timelines identified therein);
 - (iii) prepare the documents as identified in the Program Requirements as to be prepared by the Commissioning Provider (including the reports required in connection with each Participant Incentive);
 - (iv) coordinate with the Applicant to ensure that any documents identified in the Program Requirements as to be submitted by the Applicant (including the reports required in connection with each Participant Incentive) are submitted by the Applicant in a timely manner and otherwise in accordance with the Terms and Conditions; and
 - (v) ensure the Applicants and Participants are provided with multiple copies of all documents prepared by the Commissioning Provider for submission to the IESO in connection with the Program, as documentation submitted to the IESO will not be returned.
- (b) If an Application is not accepted by the IESO for participation in the Program, the Commissioning Provider will help the Applicant find other Save on Energy programs that could be applicable for them.

6. Applicant and Participant Satisfaction

- (a) The Commissioning Provider will:
- (i) provide to all Applicants and Participants in writing all written offers, contracts and the contact information of the Commissioning Provider;
 - (ii) not exert undue pressure on any Applicant or Participant, including any pressure to participate in the Program or to engage the Commissioning Provider for the performance of any Services;
 - (iii) ensure that Participants are satisfied with the performance of the Services; and
 - (iv) instruct Participants on the proper use of the implemented ECMs.
- (b) If any Applicant or Participant makes a complaint to the Commissioning Provider regarding the conduct of the Commissioning Provider, the Participant Agreement, the contract between the Applicant or Participant, as applicable, and the Commissioning Provider or any other matter related to the Commissioning Provider, the Commissioning Provider must expeditiously investigate the complaint and take all appropriate and necessary steps to resolve the complaint in accordance with any

applicable terms of such contract. If the complaint is not resolved to the satisfaction of the Applicant or Participant, as the case may be, the Commissioning Provider shall provide the Applicant or Participant the contact information of the IESO.

- (c) In cases where an Applicant or Participant complaint has been referred to the Commissioning Provider from the IESO and resolution of that complaint is reached, the Commissioning Provider shall implement the resolution immediately in accordance with any applicable terms of the contract between the Applicant or Participant, as applicable, and shall confirm such implementation, in writing, with the IESO.

7. No Misrepresentation of IESO Relationship

- (a) The Commissioning Provider will not say or do anything that indicates directly or indirectly to any person (including the Applicants and Participants) that:
 - (i) the IESO, the Service Provider or the Province of Ontario or their respective representatives, affiliates, third party service providers and agents (collectively, the “**Program Operators**” and each, individually, a “**Program Operator**”) endorses or recommends the Commissioning Provider, or guarantees or assumes responsibility for the conduct of, or performance of the Services provided by, the Commissioning Provider, nor for any damages or losses caused by, or claims or liabilities arising in connection with, the Commissioning Provider, the Services or the Commissioning Provider’s participation in the Program
 - (ii) there is any relationship of agency, partnership, joint venture or otherwise between the Commissioning Provider and any of the Program Operators or any governmental authority (including that the Commissioning Provider is a representative of the Save on Energy brand).

8. Personal Information and Privacy

- (a) The Commissioning Provider acknowledges and agrees that it will:
 - (i) be collecting, using, disclosing and/or otherwise processing information about Applicants and Participants (“**Customer Information**”) in its role as a service provider to the Applicants and Participants (and not on behalf of the IESO);
 - (ii) comply with all federal and provincial privacy legislation applicable to the Commissioning Provider when collecting, using, disclosing or otherwise processing Customer Information;

- (iii) not collect, use, disclose or otherwise process Customer Information unless it has obtained all consents necessary for such collection, use, disclosure or other processing of Customer Information;
- (iv) not collect, use, disclose or otherwise process Customer Information for any purpose other than providing Services to the Applicants and Participants in connection with the Program; and
- (v) implement physical, technical, administrative and other organizational measures to safeguard the Customer Information against loss, theft, damage or unauthorized or unlawful access or processing, including in the event of a disruption, disaster or failure of the Commissioning Provider's primary systems or operational controls.

9. General Obligations

- (a) The Commissioning Provider will:
 - (i) support the stated objectives of the Program (including guiding the Applicants and Participants through the Program, identifying and proposing ECMs to Applicants and Participants and conducting measurement, reporting and verification for Participants);
 - (ii) comply with all requirements of the Commissioning Provider Orientation;
 - (iii) not make any offer or provide any promotional material to an Applicant or Participant that is inconsistent with the terms and conditions of this Agreement or the Program; and
 - (iv) not make any statement or take any action in respect of the Program or any ECM that is false, misleading, likely to mislead or not in good faith.
- (b) Without limiting the generality of Section 7, the Commissioning Provider will market the Program to prospective Applicants. When engaging in such marketing, the Commissioning Provider will use Save on Energy branding, which must be approved by the IESO before use. Any customer-facing Program marketing materials must meet the Brand Guidelines and must be reviewed and approved by the IESO prior to distribution. The Commissioning Provider will conduct itself in a responsible and professional manner that is consistent with the IESO brand and which protects the IESO from the risk of reputational harm. The IESO will provide the Commissioning Provider with a copy of its Brand Guidelines.

10. Terms and Termination

- (a) Unless earlier terminated as provided in this Section 10 or pursuant to Section 11, this Agreement will expire on December 31, 2027. Sections 10, 12, 14, 15 and 16 and the applicable provisions of Sections 8, 17 and 19 of this Agreement will survive the termination of this Agreement.
- (b) The Commissioning Provider may terminate this Agreement at any time upon written notice to the IESO, provided that in the event of such termination, the Commissioning Provider will continue to work with the IESO and any Applicant or Participant as necessary to complete any Services in respect of the Program undertaken by the Commissioning Provider under a contract with an Applicant or Participant.
- (c) The Commissioning Provider agrees and acknowledges that its participation in the Program (including inclusion on the Qualified Commissioning Providers List) is at the sole and absolute discretion of the IESO. The IESO may terminate this Agreement, for any reason whatsoever, with or without providing reasons, upon 30 days' notice to the Commissioning Provider. The effective date of the termination shall be specified in such notice.
- (d) The IESO may terminate this Agreement, effective immediately, in the event of any breach by the Commissioning Provider of this Agreement, including any misrepresentation by the Commissioning Provider to the IESO or any Applicant or Participant, any failure to meet the eligibility criteria set out in Section 2(c), any failure to meet or comply with any requirement contained herein, or in the Commissioning Provider Orientation, any misuse of the IESO's intellectual property, any fraud or suspected fraud by the Commissioning Provider. Any such termination of this Agreement by the IESO in the event of any breach by the Commissioning Provider is in addition to any other remedies available to the IESO at law or in equity and any failure by the IESO to terminate this Agreement shall be without prejudice to the IESO in exercising any such remedies.
- (e) The IESO reserves the right to cancel the Program at any time in its sole and absolute discretion, in which case this Agreement will be terminated, effective immediately, without a requirement for notice to be provided to the Commissioning Provider.
- (f) If this Agreement is terminated the Commissioning Provider will be automatically removed from the Qualified Commissioning Providers List.

11. Form of Program Rules and Commissioning Provider Participation Agreement

- (a) The IESO intends to review and amend, as considered necessary or advisable, the rules and eligibility requirements for the Program and the form of commissioning provider participation agreement applicable to the Program from time to time. The IESO may make such an amendment in response to changes in ministerial directions, changes in applicable laws, changes in market conditions or any other circumstances as it deems necessary or advisable in its sole and absolute discretion. Notice of any amendment will be posted on the Program Website for such time period, if any, prior to the effective date of such amendment, as circumstances may permit.
- (b) In the event that the form of the commissioning provider participation agreement is amended by the IESO, the IESO may by notice to the Commissioning Provider, request that the Commissioning Provider enter into the revised form of commissioning provider participation agreement within the time period designated by the IESO in such notice, in which case this Agreement will be terminated and superseded by the amended commissioning provider participation agreement once executed and provided by the Commissioning Provider. In the event that the Commissioning Provider fails to provide the IESO with an executed copy of the amended commissioning provider participation agreement within the time period provided, the IESO may terminate this Agreement with notice to the Commissioning Provider.

12. Environmental Attributes

The Commissioning Provider hereby agrees that all right, title and interest in and to all benefits and entitlements associated with decreased environmental impacts now or in the future, direct or indirect, arising as a result of, relating to or in connection with the ECMs for which a Participant Incentive has been paid, and the right to quantify and register these, including any energy efficiency certificate, renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance in respect thereof (collectively, "**Environmental Attributes**") are hereby transferred and assigned by the Commissioning Provider to, or to the extent transfer or assignment is not permitted, held in trust for, the IESO and its successors and assigns or any such person as the IESO may designate. The IESO, or such person as the IESO may have designated, will be entitled, unilaterally and without the Commissioning Provider's consent, to deal with such Environmental Attributes in any manner that they determine.

13. Evaluation, Monitoring and Verification; Audit

The Commissioning Provider will participate in any surveys, studies, audits, reporting, evaluations or verifications and any other evaluation, measurement or verification activities conducted by the Program Operators in connection with the Program, including for the

purpose of proper administration, compliance, monitoring and verification of this Agreement or evaluation of the Program, and will provide to the Program Operators reasonable access to the Commissioning Provider's records and premises for such purposes.

The Commissioning Provider consents to the Program Operators contacting the Commissioning Provider directly, including by phone, email and other electronic communication, in connection with surveys, studies, audits, and reporting for the purposes of this Section 13.

14. Indemnity

The Commissioning Provider will indemnify, defend and save harmless each of the Program Operators, each of their affiliates and each of their respective directors, officers and employees from any and all liability, loss, costs, damages, penalties and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings ("**Claims**"), by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by, attributable to resulting from, or arising out of the actions or omissions of the Commissioning Provider or its directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors.

15. Limitation of Liability

Notwithstanding anything contained herein to the contrary, in no event will either the Commissioning Provider or the IESO be liable for the indirect, consequential, exemplary, punitive or special damages or for loss of profit or diminution of value or loss of use of any property, even if such party has been advised of the possibility of such damages in advance. Nothing in this section 15 shall limit Commissioning Provider's liability for its breach of section 8 or 16.

16. Access to and Correction of Personal Information, Disclosure, Consent To Use Information and Other Communications

- (a) The IESO is a not-for-profit corporation without share capital established under the *Electricity Act, 1998*. The *Ontario Energy Board Act, 1998* and sections 6(1)(i) and 6(1)(p) of the *Electricity Act, 1998*, gives the IESO the authority to collect and use personal information about a Commissioning Provider. The IESO complies with the privacy protection rules contained in *Freedom of Information and Protection of Privacy Act* (Ontario). For information about the IESO's general personal information practices, please refer to its privacy policy at www.ieso.ca/en/privacy. If a Commissioning Provider would like to access, update or correct their personal information that is demonstrated to be inaccurate, or if the Commissioning Provider has any questions or concerns about IESO's privacy practices, the Commissioning

Provider's personal information or the administration of the FIPPA, the Commissioning Provider may contact the IESO at:

Independent Electricity System Operator
Attention: Privacy Officer
120 Adelaide Street West, Suite 1600
Toronto, ON M5H 1T1
Phone: 416-969-6277
Fax: 416- 969-6383
E-mail: privacy@ieso.ca

- (b) The Commissioning Provider understands and agrees that by signing this Agreement it hereby consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators, including personal information, (collectively, "**Commissioning Provider Information**") by the Program Operators for purposes relating to the operation, administration or assessment of the Program or this Agreement (including verification of compliance and dispute resolution), and in connection with any reporting, follow-up surveys, studies, audits, evaluations, measurements, verifications or investigations relating to the Program which shall include, without limitation: i) sharing of Commissioning Provider Information among the Program Operators; ii) use by the Program Operators of the Commissioning Provider Information provided by the Commissioning Provider to conduct, analyze and report on the results of surveys, and to modify the Program based on such surveys; and iii) disclosure to the Ontario Energy Board, the Ontario Ministry of Energy and Electrification or the Auditor General of Ontario or their respective successors.

Commissioning Provider Information includes both information that the Commissioning Provider provides to IESO and information about the Commissioning Provider's performance provided by Applicants and Participants and information about the Commissioning Provider's rating and consumer satisfaction records (including complaints and compliance issues) as maintained by the Better Business Bureau.

The Commissioning Provider hereby consents to the disclosure by the IESO of Commissioning Provider Information to local electricity utilities or local distribution companies and to the IESO receiving information related to the Commissioning Provider that is collected by local electricity utilities or local distribution companies, required for the purpose of administering (which includes marketing and outreach activities) and assessing the Program and/or other Save on Energy programs and to determine the Applicant's eligibility to receive a Participant Incentive by ensuring the Applicant meets the eligibility requirements set out in the Program Requirements and

does not receive more than one financial incentive funded by the IESO for the same Measure.

- (c) The Commissioning Provider hereby acknowledges that the Commissioning Provider Information may be accessible to third parties under the *Freedom of Information and Protection of Privacy Act* (Ontario) or the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario).
- (d) By signing this Agreement, you agree that you are providing your “express consent” (as that term is described in Canada’s Anti-Spam Legislation (CASL) and its associated regulations) for the IESO (or its service providers or your local electricity utility or local distribution company, on the IESO’s behalf) to contact you at the email address identified in this Agreement for the purpose of receiving electronic communications regarding the IESO’s Save on Energy programs, events and ways to save on energy. You may withdraw your consent at any time or manage your subscription preferences [here](#). If you have any questions, you may also reach the IESO at: 120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1; www.ieso.ca; www.saveonenergy.ca; or 905 403-6900.

17. Relationship of the Parties

- (a) The Commissioning Provider understands and agrees that nothing in this Agreement will be construed by the parties hereto, or by any third party (including the Applicants and Participants), as creating a partnership, joint venture, or agency relationship between the Commissioning Provider and any of the Program Operators.
- (b) Except as provided in Section 6, 13, 14 and 16, this Agreement is solely for the benefit of:
 - (i) the IESO, and its successors and assigns, with respect to the obligations of the Commissioning Provider under this Agreement; and
 - (ii) the Commissioning Provider, and its successors and permitted assigns, with respect to the obligations of the IESO under this Agreement

and this Agreement will not be deemed to confer upon or give to any other person any claim or other right or remedy. The Commissioning Provider appoints the IESO as the trustee for the other Program Operators of the applicable provisions set out in this Agreement, including Sections 6, 13, 14 and 16.

18. Notice

- (a) Any notice, unless expressly provided otherwise, must be in writing and is to be given by e-mail, mail or personal delivery. Any notice, if sent by e-mail, is deemed to

have been received on the business day following the day of sending, or if delivered by mail or personal delivery is deemed to have been received on the day it is delivered to the applicable address (or the following business day, if it was delivered on a day that is not a business day). Either party may, by notice of change of address to the other party, change the address to which its notices are to be sent.

- (b) Notice contact information for the Commissioning Provider is provided on the Cover Page. Notice contact information for the IESO is as follows:

CLEAResult
2000 SW First Avenue, Suite 220
Portland, OR 97201
USA
Attention: Program Manager
E-mail: EBCx@ieso.ca (with a copy to legal@clearesult.com)

with a copy to:

Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
Attention: Supervisor, Business Program Performance, Custom
Email: Conservationcontracts@ieso.ca (with a copy to general.counsel@ieso.ca)

19. Miscellaneous

- (a) The IESO reserves the right to engage a third party service provider (including the Service Provider), at any time, to exercise or perform any of the IESO's rights or obligations under this Agreement, in full or in part, including with respect to the administration of the Program. The Commissioning Provider shall cooperate with the any such third party service provider and provide such third party service provider with any required data and information.
- (b) Except as otherwise provided, this Agreement and the Notice of Approval constitutes the entire agreement between the Commissioning Provider and the IESO in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.
- (c) Except as provided in Section 11, this Agreement may not be varied, amended or supplemented except by an agreement in writing signed by the Commissioning Provider and the IESO.

- (d) This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (e) This Agreement will not be assigned by the Commissioning Provider to another person except with the prior written consent of the IESO, which consent may not be unreasonably withheld or delayed. This Agreement will enure to the benefit of and be binding upon the Commissioning Provider and the IESO and their respective successors and permitted assigns.
- (f) Each of the Commissioning Provider and the IESO will, from time to time, on written request of the other, do all such further acts and execute and deliver or cause to be done, executed and delivered all such further things as may be reasonably required in order to fully perform and to more effectively implement this Agreement or the requirements of the Program.
- (g) The invalidity, unenforceability or illegality of any provision in this Agreement will not, to the extent permitted by applicable law, affect the validity, enforceability or legality of any other provision of this Agreement, which will remain in full force and effect.
- (h) The insertion of headings is for convenience of reference only and will not affect the interpretation of this Agreement. The terms "hereof", "hereunder", and similar expressions refer to this Agreement and not to any particular Section or other part of this Agreement. Unless otherwise indicated, any reference in this Agreement to a Section refers to the specified section of this Agreement. The word "including" means "including without limitation", and the words "include" and "includes" have a corresponding meaning.
- (i) Prior to the issuance of the Notice of Approval, no binding obligations are created between the IESO and the Commissioning Provider. Upon the issuance of the Notice of Approval, this Agreement shall be binding upon both parties.

IN WITNESS WHEREOF the Commissioning Provider has executed this Agreement by its duly authorized respective representative(s) and agrees to be bound by this Agreement upon the issuance of a Notice of Approval.

By:

Commissioning
Provider Legal Name:

Signatory Signature:

Signatory Name:

Title:

I have authority to bind the Commissioning Provider