

# BIZENERGYSAVER PROGRAM PARTICIPANT AGREEMENT

## References to "you" or "your" in this Agreement are references to the Participant.

This participant agreement between you and the IESO (this "**Agreement**") governs your participation in the Save on Energy – Local Initiatives Program – BizEnergySaver Program (the "**BizEnergySaver Program**"). The BizEnergySaver Program is offered and funded by the Independent Electricity System Operator ("**IESO**"). By signing and submitting this Agreement, you confirm your consent to, and agree to comply with and be bound by the terms of this Agreement.

All capitalized terms not defined herein will have the meaning given to them in the version of the BizEnergySaver program requirements in force at the time that the applicable Work Order was executed (the "**Program Requirements**").

If the IESO accepts this Agreement, you will be eligible to receive an Instant Discount on each installed Eligible Measure, calculated in accordance with the Program Requirements, to offset a portion of the total Measure Cost (you will be responsible for paying the Participant Contribution).

In consideration of the installation of the Eligible Measures and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, you agree to the following terms and conditions:

1. You represent and warrant that (a) you have all required rights and authority to participate in the BizEnergySaver Program, allow for the installation of the Eligible Measures and to carry out all other obligations in this Agreement; (b) you have met all Participant Eligibility Criteria as outlined in the Program Requirements; (c) you have received an Assessment at for the BizEnergySaver Program no charge; and (d) you have not received, are not already receiving or will not receive any financial incentives for electrical energy savings or the installation of measures generally funded by energy ratepayers or taxpayers in the Province of Ontario (including through any other IESO Save on Energy program), or any rebates from manufacturers or wholesalers or other supply chain participants for any of the Eligible Measures to be installed pursuant to the BizEnergySaver Program.
2. The IESO may subcontract any of its responsibilities under this Agreement to the Program Delivery Agent. The IESO or Program Delivery Agent may refuse to provide and install any of the Eligible Measures at any time and for any reason, including, but not limited to, Facility conditions that would prevent energy efficient products or devices from resulting in electricity and peak demand savings, a failure to meet the eligibility criteria of the

BizEnergySaver Program, safety concerns or a lack of funds available to the BizEnergySaver Program.

3. The IESO reserves the right to determine the eligibility requirements for your participation in the BizEnergySaver Program and to verify compliance with such eligibility requirements.
4. You agree to provide the IESO, the Program Delivery Agent or any of their respective subcontractors, access to the Facility to install the Eligible Measures, provided that you have entered into this Agreement and signed the Work Order(s) within 90 days of the Assessment date or the termination date of the BizEnergySaver Program, whichever is earlier.
5. You agree that you will not: (a) remove the Eligible Measures before the end of their expected service life, unless the equipment fails, and (b) move, tamper with, disable or damage the Eligible Measures. Any failure to comply with this obligation will be at the Participant's sole risk for any and all damages or injuries that may result.
6. You authorize the IESO, the Program Delivery Agent or any of their respective subcontractors to install the Eligible Measures at the Facility and to remove and dispose of the existing equipment that is to be replaced.
7. You represent and warrant that the installation of Eligible Measures will only commence after the Work Order(s) and this Agreement have been signed.
8. You have reviewed the Work Order and confirm that all information contained in it is true, complete and accurate. In particular, you confirm that the equipment listed in the Work Order under: (a) "Existing Equipment" accurately describes the current equipment to be replaced, and (b) "Eligible Measure" accurately describes the new energy efficient equipment to be installed.
9. You acknowledge that the Work Order also needs to be signed by you again, following the completion of the installation of Eligible Measures in a Work Order.
10. By Participating in the BizEnergySaver Program you are eligible to receive an Instant Discount for the installation of each Eligible Measure identified in a Work Order, calculated in accordance with the Program Requirements. You will be responsible for paying the Participant Contribution (that is, the remainder of the Measure Cost for each Eligible Measure to be installed) calculated in accordance with the Program Requirements to the Program Delivery Agent or their respective subcontractors.
11. All Eligible Measures have a 1-year parts and labour warranty period from the date of installation of the Eligible Measure. You agree that any parts and labour warranty claims made by you within the 1-year period following the date of installation will be directed to the Program Delivery Agent or its subcontractors. To the extent that any additional manufacturer warranties are available beyond the 1-year parts and labour warranty period,

you agree that any such warranty claims made by you will be directed to the product manufacturer.

12. Environmental Attributes.

- (a) All right, title and interest in and to all benefits or 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 electricity savings for which an incentive has been provided, 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 (collectively, the "**Electricity Savings Environmental Attributes**") will be allocated on a proportionate basis, with the IESO owning an amount equal to the total quantity of Electricity Savings Environmental Attributes multiplied by the Environmental Attribute Funding Percentage (the result being the "**IESO Environmental Attributes**") and the Participant owning the remaining quantity of Electricity Savings Environmental Attributes (the "**Participant Environmental Attributes**"), where Environmental Attribute Funding Percentage means, in respect of an Eligible Measure purchased and installed, the total incentive amount provided to the Participant and funded by the IESO in respect of the Eligible Measure(s), divided by the total amount of actual costs incurred by the Participant that meet the eligibility requirements for such costs set out under these terms and conditions, multiplied by 100, and expressed as a percentage.
- (b) You agree to notify the IESO in writing prior to assigning, transferring, encumbering, submitting for compliance purposes, trading or otherwise using (collectively, "**realizing**") any of the Participant Environmental Attributes, with such notice to include: (i) the quantity of Participant Environmental Attributes to which the Participant believes it is entitled; (ii) the quantity of Electricity Savings Environmental Attributes and the Environmental Attributes Funding Percentage used to determine the quantity of Participant Environmental Attributes; and (iii) supporting calculations and data used to determine the total quantity of Electricity Savings Environmental Attributes and the Environmental Attribute Funding Percentage.
- (c) You agree that all right, title and interest in and to all benefits or entitlements associated with the IESO Environmental Attributes are hereby transferred and assigned by the Participant to, or to the extent transfer or assignment is not permitted, held in trust for, the IESO and its successors and assigns.
- (d) The IESO will be entitled to unilaterally and without consent deal with such IESO Environmental Attributes in any manner it determines. You acknowledge that the IESO will contact the Participant prior to realizing on any IESO Environmental Attributes.
- (e) You agree that you will, from time to time, upon written direction of the IESO, take all such actions and do all such things necessary to:

- (i) effect the transfer and assignment to, or holding in trust for, the IESO all rights, title and interest in all IESO Environmental Attributes; and
  - (ii) certify, obtain, qualify and register with the relevant authorities or agencies IESO Environmental Attributes that are created and allocated or credited pursuant to applicable laws and regulations from time to time for the purpose of transferring such IESO Environmental Attributes to the IESO. The Participant will be entitled to reimbursement by the IESO of the cost of complying with such a direction provided that the IESO, acting reasonably, has approved such cost of compliance in writing prior to the cost being incurred and provided that such reimbursement will be limited to: (x) the total amount of such cost of compliance that have been approved in advanced by the IESO, multiplied by (y) the applicable Environmental Attributes Funding Percentage.
13. You acknowledge and agree that: (i) you have independently assessed the risk of participating in the BizEnergySaver Program; (ii) the IESO makes no representation or warranty, and assumes no liability with respect to quality, safety, performance, fitness for a particular purpose or other aspect of any design, system, equipment or appliance installed pursuant to this Agreement and expressly disclaims any such representation, warranty or liability; (iii) the energy cost savings and other benefits described in connection with the BizEnergySaver Program are based on estimates, and actual results may differ; and (iv) the Eligible Measures are intended for use only as directed and improper use may result in injury or damage.
14. You agree to participate in any survey, studies, process interviews, audits, evaluations or verifications conducted by the IESO, the Program Delivery Agent, or any of their respective agents or subcontractors (the "**Program Operators**") in connection with the BizEnergySaver Program, including for the purposes of the proper administration, monitoring and verification of this Agreement or evaluation of the BizEnergySaver Program, and will provide to them reasonable access to the Facility and any relevant documentation and records for such purpose. You further acknowledge and agree to allow inspections to be conducted in the Facility by the Program Operators if your Facility is selected for a quality assurance and quality control review, and will provide reasonable access to the Facility and any relevant documentation and records for such purpose.
15. You hereby: (a) consent to the collection, use, disclosure and other handling of any information provided by you to the Program Operators, including but not limited to, records showing historical energy use and consumption, Facility name, address and phone number and electricity account number (collectively, the "**Participant Information**") by the Program Operators for purposes relating to the operation, administration or assessment of the Save on Energy – Local Initiatives Program (which includes the BizEnergySaver Program) or any successor program, and in connection with any reporting activities relating to the Local Initiatives Program (including the BizEnergySaver Program) or any successor program,

which such use will include, without limitation: (i) sharing of Participant Information among the Program Operators and your local distribution company; (ii) use by the Program Operators of the Participant Information provided by the Participant to conduct, analyze and report on the results of the Local Initiatives Program (including the BizEnergySaver Program) and to conduct surveys and modify the Local Initiatives Program (including the BizEnergySaver Program) based on such surveys; and (iii) disclosure to the Ontario Energy Board, the Ontario Ministry of Energy or the Environmental Commissioner of Ontario and/or any of their respective successors; (b) acknowledge that the Participant Information may be accessible to third parties under the *Freedom of Information and Protection of Privacy Act* (Ontario); (c) consent to the Program Operators contacting you directly, including by email and other electronic communications, in connection with surveys, studies and audits. Pursuant to Canada's anti-spam legislation (hereinafter referred to as "**CASL**"), the IESO is hereby requesting your "Express Consent" (as that term is defined in CASL and its associated regulations) to contact you at the electronic address provided in this Agreement for the purposes of administering and collecting market research data related to the Local Initiatives Program (which includes the BizEnergySaver Program). You hereby also consent to the use, disclosure and other handling of the following Participant Information collected in connection with your participation in the BizEnergySaver Program, by the IESO for the purpose of verifying your compliance with the eligibility requirements of other IESO-administered electricity conservation and demand management programs, including any successor program to the BizEnergySaver Program, that you have applied, or may apply, to participate in: Facility name, address, phone number and contact information of the Participant. If you wish to receive email communications from the IESO in connection with future conservation programs, customer satisfaction surveys and other related purposes, you can register for the business newsletter by clicking here <https://saveonenergy.ca/For-Business-and-Industry#Business-Newsletter>. You may withdraw your consent at any time. You may also reach the IESO at 120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1; [www.ieso.ca](http://www.ieso.ca); [www.saveonenergy.ca](http://www.saveonenergy.ca); or (905) 403-6900.

16. The IESO is committed to protecting the personal information in its custody or control in accordance with applicable privacy laws. You may access the IESO's privacy policy at <http://www.ieso.ca/Privacy>.
17. If the Participant is an owner or operator of a Facility which permits tenants to occupy rental units subject to the *Residential Tenancies Act, 2006* (Ontario) (the "**RTA**"), the Participant will not use the Instant Discounts or the Eligible Measures provided under the BizEnergySaver Program as a basis for applying to the Board (as defined in the RTA) for an increase in the annual rent amounts paid by such tenants above the annual rent-increase guideline permitted under the RTA.

18. Limitation of Liability.

(a) Neither the IESO nor any of its officers, directors, or employees will be liable to the Participant for any claims, demands, costs, losses or damages of any kind whatsoever relating to, or howsoever arising in connection with, the performance, purported performance or non-performance of this Agreement or any activities related thereto, and whether these may arise in contract, tort or under any other cause of action, including, without limiting the generality of the foregoing, any and all direct, indirect, special or consequential damages, costs or losses arising from (i) the procurement, installation or use of the Eligible Measures (whether in accordance with the manufacturer's instructions or otherwise) and (ii) from any negligent acts or omissions or misconduct by the Program Delivery Agent, its subcontractors, or its Installers; and the Participant hereby irrevocably releases the IESO and its officers, directors and employees from and against any and all of the foregoing.

(b) Subject to the exceptions set out below in this Section 18(b), the Program Delivery Agent will not be liable to the Participant for any direct, indirect, special or consequential damages, costs or losses arising from the procurement, installation or use of the Eligible Measures, whether in accordance with the manufacturer's instructions or otherwise. Exceptions: the limitations to the Program Delivery Agent's liability described in the immediately preceding sentence will not apply to any action, claim or loss arising out of, related or attributable to: (i) property damage, or bodily or personal injury (up to and including death) caused or contributed to by the Program Delivery Agent, its subcontractors or its Installers; or (ii) any negligent acts or omissions or willful misconduct in connection with the performance, purported performance or non-performance of any Assessment or installation by the Program Delivery Agent, its subcontractors or its Installers.

19. Except as otherwise provided, this Agreement constitutes the entire agreement between the Participant and the IESO in connection with its subject matter and supersedes all prior representations, communications and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement. Nothing in this Agreement will be deemed to constitute a partnership or joint venture or create any fiduciary relationship between the IESO and the Participant. The terms and conditions of this Agreement are subject to change by the IESO at any time. 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. The invalidity, unenforceability or illegality of any provision in this Agreement will not, to the extent permitted by applicable laws, affect the validity, enforceability or legality of any other provision of this Agreement which will remain in full force and effect.

20. This Agreement will enure to the benefit of and be binding upon the Participant and each of its respective successors and assigns. You may not assign this Agreement without obtaining the prior written consent of the IESO.
21. This Agreement may be executed and delivered electronically and the IESO may rely upon all such signatures as though such signatures were original signatures. This Agreement may be executed in any number of counterparts and all such counterparts will, for all purposes, constitute one agreement binding on both parties, provided that each party has signed at least one counterpart.

I, the undersigned, certify that I understand and agree to the terms and conditions of this Agreement and that I have the authority to bind the Participant.

Participant Email Address: \_\_\_\_\_

Participant Legal Entity Name: \_\_\_\_\_

Signature \_\_\_\_\_

Authorized Signatory Name: \_\_\_\_\_

Authorized Signatory Title: \_\_\_\_\_

Date: \_\_\_\_\_