

NRCAN-IESO COLLABORATIVE ENERGY MANAGER PROGRAM

PARTICIPANT AGREEMENT

THIS AGREEMENT made as of the [DAY] day of [MONTH], [YEAR] (the “Effective Date”),

BETWEEN:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a corporation governed by the laws of the Province of Ontario,

(the “IESO”)

- and -

[LEGAL NAME OF THE PARTICIPANT], a [LEGAL FORM OF THE PARTICIPANT] governed by the laws of [JURISDICTION OF THE PARTICIPANT] (the “Participant”)

(each of the IESO and the Participant may be referred to as a “Party” and, collectively, the “Parties”).

WHEREAS the Participant wishes to access funding made available through NRCAN-IESO Collaborative Energy Manager Program for the purpose of employing an Energy Manager in a Small or Medium-sized Enterprise;

AND WHEREAS the Participant reasonably expects that it can deliver the Minimum Annual Savings Target;

AND WHEREAS the IESO has approved the Participant’s application for an Energy Manager;

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 Parties agree as follows:

1. Defined Terms

All capitalized terms not herein defined will have the meanings given in Schedule “A”.

2. Minimum Annual Savings Target, Participant Incentive and Payment

- (a) In the Funding Period, the Energy Manager will implement Projects that result in a minimum of a 3% reduction in the annual total electricity (kWh) and natural gas (m3) use at the Participant’s Facility or Facilities, aggregated and reported in gigajoules (GJ) (the “**Minimum Annual Savings Target**”), for which Energy Savings will persist, at a minimum, for one (1) year after the Annual Report has been submitted.
- (b) The maximum Participant Incentive amount payable in the Funding Period is equal to 75% of the Cost of Hiring an Energy Manager incurred in the Funding Period, up to a maximum of \$80,000, and in no event will the IESO be obligated to pay any additional amounts to the Participant.
- (c) In the Funding Period, the Participant is eligible to receive the following Participant Incentive subject to this Section 2 and Section 5, and the Participant satisfying all of its obligations herein contained:
 - (i) the Participant shall provide to the IESO a report outlining the total anticipated Costs of Hiring the Energy Manager for the Funding Period (the “**Estimated Costs**”). The Participant shall provide

such report at the time the Participant confirms the employment of the Energy Manager, in accordance with Section 3(b).

- (ii) Within thirty (30) calendar days upon notice to the IESO of the Energy Manager's employment start date and the provision of the report set out in Section 2(c)(i), provided that the Participant is not in breach of any of its obligations under this Agreement, the Participant may submit an invoice for an amount equal to 60% of the anticipated Participant Incentive based on the Estimated Costs for the Funding Period.
 - (iii) Six (6) months following the employment start date, provided that the Participant is not in breach of any of its obligations under this Agreement, the Participant may submit an invoice for an amount equal to 35% of the anticipated Participant Incentive based on the Estimated Costs for the Funding Period.
 - (iv) After April 1, 2021 but before April 30, 2021, provided the Participant is not in breach of any of its obligations under this Agreement, the Participant may submit an invoice for an amount equal to 5% of the anticipated Participant Incentive based on the Estimated Costs for the Funding Period.
 - (v) At the end of the Funding Period, the Participant shall include as part of its Annual Report: (a) a declaration of the Costs of Hiring actually incurred during the Funding Period; and (b) a copy of the Energy Manager's employment offer letter. If the Participant incurs Costs of Hiring for an applicable Funding Period in an amount that differs from its Estimated Costs, the IESO shall reconcile the Participant Incentive payable and the amount paid to the Participant based on the Estimated Costs, and, if applicable, the Participant shall repay any excess amount it received. The IESO may set off such amount from any invoice issued pursuant to this Agreement.
 - (vi) Notwithstanding the foregoing, the Participant shall not submit any invoices after the final date to submit an invoice for pursuant to Section 2(c)(iv), and the IESO shall have no obligation to pay any invoices submitted after such date.
 - (vii) If the Recipient fails to obtain the IESO's approval of its Annual Report, the Recipient shall repay any incentive received for the Funding Period.
- (d) All payments hereunder will be made in Canadian dollars by cheque or by electronic funds transfer to the Participant's account or such other mode of payment at the sole discretion of the IESO.
 - (e) All payments hereunder are conditional on the Participant providing an invoice to the IESO together with sufficient documentation to support and substantiate the payment of the Participant Incentive, in accordance with the achievement of milestones as set out in Section 2(c).
 - (f) In addition to the Participant Incentive, the IESO will pay any Applicable Taxes on the Participant Incentive. The Participant will provide to the IESO sufficient supporting documentation, as requested by the IESO, to facilitate and support claiming input tax credits in respect of the Participant Incentive. In addition, if the IESO has reasonable grounds to commence a discussion, negotiation or challenge, in any manner whatsoever, with a tax authority regarding the validity of any Applicable Taxes imposed on the Participant Incentive, the Participant will provide such reasonable assistance as may be required by the IESO with such discussion, negotiation or challenge. For greater certainty, in no event shall the IESO be relieved of its obligations under this Agreement, including the IESO's obligation to pay Applicable Taxes as provided hereunder, pending the outcome of any discussion, negotiation or challenge with a tax authority.

3. Participant's Obligations

In addition to all other obligations contained in this Agreement, the Participant will fulfill the following obligations, unless otherwise approved by the IESO:

- (a) engage an Energy Manager within three (3) months of executing this Agreement, to complete, at a minimum, the Energy Manager Duties (Schedule “E”);
- (b) employ the Energy Manager on a full time basis for at least the duration of the Funding Period and the Participant shall, as soon as reasonably practicable, provide notice to the IESO confirming that the Participant has employed an Energy Manager;
- (c) ensure that the Energy Manager meets the Energy Manager Eligibility Criteria (Schedule “F”) and has the demonstrated technical ability to perform the Energy Manager Duties (Schedule “E”);
- (d) if the Energy Manager is a current employee of the Participant, the Participant will provide to the IESO a written commitment, from a senior officer, that such employee’s previous job has been or will be filled by another employee;
- (e) provide suitable operational support and work supplies to the Energy Manager to allow the Energy Manager to perform the Energy Manager Duties (Schedule “E”);
- (f) undertake Commercially Reasonable Efforts to achieve the Minimum Annual Savings Target, as evidenced by implemented Projects, documented in the Annual Report and confirmed by the Technical Reviewer;
- (g) ensure that at least 10% of the Confirmed Annual Energy Savings is attributed to new Projects arising from or related to the Energy Manager Duties and is not financed by any incentives received from the IESO, Enbridge Gas, the Province of Ontario, or the Government of Canada;
- (h) immediately report to the IESO of any financial incentives received from IESO, Enbridge Gas, the Government of Canada, any Provincial/Territorial Government, or any Municipal Government in addition to the Participant Incentive, to be used for the purposes of the Costs of Hiring an Energy Manager; and
- (i) immediately advise the IESO of any changes to the Project(s) or employment of the Energy Manager that may impact either:
 - (i) the payment of the Participant Incentive under this Agreement; or
 - (ii) the achievement of the Minimum Annual Savings Target.

The Participant represents and warrants that the Energy Manager is not being employed or retained by the IESO or their respective successors or assigns and that the Participant will have no claim against the IESO or their respective successors in respect of its employment of the Energy Manager by the Participant and shall indemnify, defend and hold the IESO and their respective affiliates, and each of their respective directors, officers, employees, shareholders, advisors, and agents harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest on, any and all related actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and all connected reasonable lawyers' fees and reasonable disbursements) asserted by a third party against or suffered by the Participant relating to, in connection with, resulting from, or arising out of the negligence or wilful misconduct of the Energy Manager.

4. Energy Manager Continuing Training

The Energy Manager may be required to participate in workshops, seminars and/or training programs, as directed by the IESO, and the Participant will ensure that the Energy Manager attends such programs.

5. Reporting Obligations

- (a) The Participant will ensure that the Energy Manager prepares and delivers the following documents to the Technical Reviewer:

- (i) an Energy Management Plan for the Facility, no later than two (2) months following the commencement of the Funding Period;
 - (ii) a Second Quarter Report no later than five (5) months following the commencement of the Funding Period;
 - (iii) an Annual Report within (30) calendar days before the end of the Funding Period. The Annual Report must indicate whether the required Minimum Annual Savings Target has been achieved;
 - (iv) any other information requested by the IESO, including information or documentation demonstrating the Participant's ability to meet the Minimum Annual Savings Target or confirming Project Energy Savings and/or in-service dates.
- (b) The IESO and/or the Technical Reviewer will review the Energy Management Plan, the Second Quarter Report and the Annual Report (collectively, the "**Reports**") to ensure timely filing and completeness and to assess Energy Savings and progress from the previous Reports. If the IESO does not approve a Report, the IESO will provide comments and such document must be revised by the Participant in order to address the noted deficiencies and obtain the IESO's approval of such revised Report.

6. **Communication with Technical Reviewer**

The Participant will cooperate and provide, on a timely basis, any requested information to the IESO and/or the Technical Reviewer should the IESO or the Technical Reviewer require clarification from the Participant related to any Reports or information required under this Agreement.

7. **Term, Termination and Survival**

- (a) This Agreement commences on the Effective Date and expires at the end of the Funding Period, (the "**Term**"), unless terminated earlier in accordance with the terms of this Agreement. The Term of the Agreement may be extended by the IESO, acting in its sole and absolute discretion, upon written notice to the Participant. Any extension is subject to the Participant being in compliance with its obligations herein, and provided the NRCAN-IESO Collaborative Energy Manager Program remains available.
- (b) The Funding Period commences as of the employment start date of the Energy Manager and expires on the date which is 12 months thereafter, unless terminated earlier in accordance with the terms of this Agreement. After the expiry of the Funding Period, the IESO, acting in its sole and absolute discretion, may extend funding to the Participant for an additional 12-month Funding Period, or shorter, upon written notice. Any extension is subject to the Participant being in compliance with its obligations herein, provided the NRCAN-IESO Collaborative Energy Manager Program remains available, and subject to the expiration or termination of this Agreement.
- (c) For certainty, after the Funding Period expires or is earlier terminated, the IESO will not be required to pay and the Participant will not be eligible for a Participant Incentive, in part or in full, for any period during the Term following such date. In the case of early termination, the Participant shall promptly inform the IESO of the Costs of Hiring incurred to the effective date of termination and the IESO shall conduct a reconciliation in accordance with Section 2(c)(v).
- (d) The IESO may terminate this Agreement or the Funding Period immediately, or withhold the Participant Incentive, in part or in full, where any of the following occurs:
 - (i) the Participant fails to have an Energy Manager in place for a period of sixty (60) calendar days;

- (ii) the Participant fails to observe or perform any obligation required to be observed or performed under this Agreement and such failure continues for a period of thirty (30) calendar days after the delivery of written notice by the IESO to the Participant to cure such failure;
 - (iii) the Participant fails to undertake Commercially Reasonable Efforts to achieve the Minimum Annual Savings Target for the Funding Period of this Agreement; or
 - (iv) the Participant becomes or is declared Insolvent, becomes the subject of any proceeding related to its liquidation or insolvency which is not dismissed within ninety (90) calendar days, or makes an assignment for the benefit of creditors.
- (e) Upon termination of this Agreement pursuant to Section 7(d), the Participant will promptly repay any payments already paid under this Agreement for the Funding Period, together with interest from the date of demand at the Interest Rate.
 - (f) The IESO may also terminate this Agreement upon sixty (60) calendar days' notice by the IESO.
 - (g) If the NRCAN-IESO Collaborative Energy Manager Agreement is terminated, this Agreement shall be automatically terminated. The IESO shall use Commercially Reasonable Efforts to fulfill its obligations under the NRCAN-IESO Collaborative Energy Manager Agreement.
 - (h) Sections 2, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 24 and 28, and such other provisions as are necessary for the interpretation thereof and any other provisions hereof, the nature and intent of which is to survive termination or expiration of this Agreement, will survive the expiration or termination of this Agreement.

8. Environmental Attributes

All right, title and interest in and to all benefits or entitlements associated with Environmental Attributes arising in relation to the electricity savings funded by an amount paid under this Agreement are hereby unconditionally and absolutely transferred and assigned, or to the extent transfer or assignment is not permitted, held in trust for, by the Participant to, or in favour of, the IESO. The Participant acknowledges that the IESO may direct the Participant to take such actions and do all such things necessary to certify, obtain, qualify and register with the relevant authorities or agencies such Environmental Attributes for the purpose of transferring, assigning, or holding in trust, such Environmental Attributes to and for the IESO and the Participant shall comply with such directions, and the Participant will be entitled to reimbursement of the cost of complying with such direction, provided that the IESO, acting reasonably, has approved such cost in writing prior to the cost being incurred by the Participant.

9. Representations and Warranties

The Participant represents and warrants to the IESO as follows, and acknowledges that the IESO is relying on such representations and warranties in entering into this Agreement:

- (a) the Participant would not have undertaken the employment of an Energy Manager without the Participant Incentive;
- (b) the Participant is a Customer and/or operates the Facility of a Customer;
- (c) the Participant meets the Program Eligibility Criteria (Schedule "D");
- (d) the Participant has the potential to deliver the Minimum Annual Savings Target;
- (e) the Participant is not Insolvent;

- (f) the Participant has executed and delivered the Release, Waiver and Consent, and has not taken any actions to amend or suspend it or to terminate its existence and it continues in full force and effect as of the date hereof; and
- (g) the Participant is acting on its own behalf.

The representation made in Section 9(a) is provided as of the Effective Date of this Agreement. All other representations and warranties provided in this Section 9 will be continuing throughout the Term of this Agreement, and any change in the accuracy of such representations and warranties will immediately be communicated by the Participant to the IESO.

10. Evaluation, Monitoring and Verification; Audit

- (a) The performance and administration of this Agreement will be subject to the IESO EM&V Protocols and Requirements and the International Performance Measurement & Evaluation Protocol (IPMVP), which will include evaluation of the effectiveness of this Agreement in meeting the objectives of the NRCAN-IESO Collaborative Energy Manager Program. In furtherance of the IESO EM&V Protocols and Requirements and IPMVP, the Participant will cooperate with the IESO and their respective designates and will make available such information in the form and with the frequency as may be reasonably prescribed, including with respect to historical electricity and natural gas consumption.
- (b) The Participant and the IESO will both keep complete and accurate books, accounts and records and all other data required by each of them respectively for the purpose of proper administration, monitoring and verification of this Agreement, including all data, analysis and information relating to the outputs and outcomes of the Projects or documentation to substantiate the persistence of the Energy Savings achieved during the Term, and all such records and data will be maintained during the Term of this Agreement and for the period of time thereafter which is the greater of seven years and the period of time specified under Laws and Regulations. On reasonable notice, at any time during normal business hours, the Participant will provide reasonable access to the IESO, and/or their respective designates, to any premises where the Projects or Measures are implemented and to such books, accounts, records and data and: (A) at the reasonable request of the IESO, make available to the IESO, and/or their respective designates, the personnel of the Participant and its subcontractors involved in the operation of the Participant's business and the maintenance of such books, accounts, records and data referred to above for the purposes of this Section 10; (B) permit the IESO, the government of Canada and/or their respective designates to examine and audit and take copies and extracts from such documents; and (C) expressly consents to the IESO to share such books, accounts, records and data with the Government of Canada for the purposes of accounting, reporting, auditing, and evaluation of the NRCAN-IESO Collaborative Energy Manager Program.

11. No Warranty

Except as specifically set forth or referenced in this Agreement, there are no representations, warranties, or conditions of either Party, express, implied, statutory or otherwise, regarding any matter, including any implied warranties or conditions of quality or fitness for a particular purpose. Without limiting the generality of the foregoing, the Participant acknowledges that its participation in the NRCAN-IESO Collaborative Energy Manager Program hereunder is based on its own assessment of the NRCAN-IESO Collaborative Energy Manager Program and not on any reliance on anticipated or projected results, and that such participation may not result in the achievement of any Energy Savings, which is expressly disclaimed by the Participant.

12. Limitation of Liability and Indemnity

- (a) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY: (A) IN NO EVENT WILL THE PARTICIPANT BE ENTITLED TO RECOVER FROM THE IESO OR ANY OTHER INDEMNIFIED PARTY (AS DEFINED IN SECTION 12(b) BELOW) FOR ANY LIABILITIES, DAMAGES, OBLIGATIONS, PAYMENTS, LOSSES, COSTS OR

EXPENSES UNDER OR IN RELATION TO THIS AGREEMENT: (I) ANY AMOUNT IN EXCESS OF THE ACTUAL COMPENSATORY DIRECT DAMAGES, COURT COSTS AND REASONABLE LAWYERS' AND OTHER ADVISORS' FEES SUFFERED OR INCURRED BY THE PARTICIPANT AND IN ANY EVENT LIMITED TO THE PARTICIPANT INCENTIVE PAID BY THE IESO HEREUNDER; OR (II) DAMAGES (WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL OR OTHERWISE) FOR (X) LOSS OF PROFIT, OR (Y) DIMINUTION OF VALUE OR LOSS OF USE OF ANY PROPERTY; AND (B) THE IESO AND THE INDEMNIFIED PARTIES (AS DEFINED IN SECTION 12(b) BELOW) WILL NOT BE LIABLE TO THE PARTICIPANT, ITS SUCCESSORS OR ASSIGNS OR ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS OR REPRESENTATIVES, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE UNDER OR IN RELATION TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY.

- (b) The Participant (the “**Indemnifying Party**”) will indemnify, defend and hold, the IESO, the Government of Ontario, the members of the Government of Ontario’s Executive Council, the Government of Canada, and their respective affiliates, and each of the foregoing Person’s respective directors, officers, employees, shareholders, advisors, third party service providers and agents (including contractors and their employees) (collectively, the “**Indemnified Party**”) harmless from and against any and all Claims, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers’ fees and reasonable disbursements in connection therewith) (each, an “**Indemnifiable Loss**”), asserted against or suffered by the Indemnified Party relating to, in connection with, resulting from, or arising out of (i) any Claim by, or occurrence or event related to, any third party involved in the activities of any Project or Measure; (ii) the negligence or wilful misconduct of the Participant; and/or (iii) otherwise as a result of or arising out of this Agreement . The IESO will hold the benefit the Participant’s obligations under this Section 12 in the IESO’s own right and, in trust, for the benefit of any other Indemnified Party.

13. **Confidentiality**

- (a) Each Party will, in its capacity as a Receiving Party:
- (i) not use or reproduce Confidential Information of the Disclosing Party for any purpose, other than as and to the extent expressly permitted under this Agreement or as may be reasonably necessary for the exercise of its rights or the performance of its obligations set out in this Agreement;
 - (ii) not disclose, provide access to, transfer or otherwise make available any Confidential Information of the Disclosing Party except as expressly permitted in this Agreement; and
 - (iii) take all measures reasonably required to maintain the confidentiality and security of all Confidential Information of the Disclosing Party that it handles.
- (b) The Receiving Party may disclose Confidential Information of the Disclosing Party:
- (i) to a third party that is not a Representative of the Receiving Party if and to the extent required by a Governmental Authority or otherwise as required by Laws and Regulations, provided that the Receiving Party must first give the Disclosing Party notice of such compelled disclosure (except where prohibited by Laws and Regulations from doing so) and must use Commercially Reasonable Efforts to provide the Disclosing Party with an opportunity to take such steps as it desires to challenge or contest such disclosure or seek a protective order. Thereafter, the Receiving Party may disclose the Confidential Information of the Disclosing Party, but only to the extent required by Laws and Regulations and subject to any protective order that applies to such disclosure; and

- (ii) to:
- A. its accountants, internal and external auditors and other professional advisors if and to the extent that such Persons need to know such Confidential Information in order to provide the applicable professional advisory services relating to the Receiving Party's business;
 - B. potential permitted assignees or successors of the Receiving Party if and to the extent that such Persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other transaction or transfer involving the business, assets or services provided by the Receiving Party; and
 - C. employees of each Party and its other Representatives if and to the extent that such Persons need to know such Confidential Information to perform their respective obligations under this Agreement;

provided that any such Person is aware of the provisions of this Section 13 and has entered into a written agreement with the Receiving Party that includes confidentiality obligations in respect of such Confidential Information that are no less stringent than those contained in this Section 13.

(c) Without limiting the foregoing, each Party acknowledges and agrees that:

- (i) the IESO will Handle reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, disclosed, provided or made available to the IESO on an ongoing basis as part of its participation in the NRCAN-IESO Collaborative Energy Manager Program or other CDM programs offered by the IESO or other DSM programs offered by Enbridge Gas and may do so without further notice to or further consent of the Participant; and the IESO may disclose and provide reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, to the OEB, local distribution or utility companies, the Government of Canada, the Ontario Ministry of Energy, Northern Development and Mines and the Office of the Auditor General of Ontario for Handling by such entities provided that the IESO, as the case may be, has in place with any such Person a written agreement that includes confidentiality obligations in respect of such Confidential Information that are comparable to those contained in this Section 13;
- (ii) the IESO (or its service providers) may disclose information of the Participant, including Confidential Information, to or receive such information from other third parties administering or implementing CDM or DSM programs funded by a Governmental Authority (whether administered via the IESO, a local electricity or gas distributor, the Provincial or Federal Government or any other party), and may do so without further notice to or further consent of the Participant, for the purpose of administering the NRCAN-IESO Collaborative Energy Manager Program and determining Participant eligibility for a Participant Incentive in the NRCAN-IESO Collaborative Energy Manager Program;
- (iii) this Agreement and all Confidential Information in the possession or control of the IESO or the Participant are subject to Laws and Regulations that include the access provisions of FIPPA and that as a result, third parties may obtain access to each Party's Confidential Information. Moreover, the IESO and its Representatives are subject to FIPPA, which applies to and governs all recorded information in any form or medium that is provided by the IESO, respectively, or its Representatives to the Participant or provided by the Participant to the IESO, respectively, or its Representatives for the purposes of this Agreement, or created by the Participant in the

performance of this Agreement, and that is in the custody or control of the IESO, as the case may be (collectively, the “**Records**”), and may require the disclosure of such Records to third parties;

- (iv) each Party is responsible for ensuring that its agreements with Representatives contemplate and permit such potential access or disclosure, and will be fully liable to any such Representatives for any Claim arising out of or relating to such access;
- (v) the IESO and the Government of Canada may at any time make public the Participant’s participation in the NRCAN-IESO Collaborative Energy Manager Program and data relating to the Energy Manager, including the achievement of Energy Savings, the Minimum Annual Savings Target, Performance Incentive, a description of the Projects identified by the Energy Manager and the implementation of such Projects by the Participant, aggregated with other studies in a manner intended to report on the NRCAN-IESO Collaborative Energy Manager Program; and
- (vi) the Participant shall acknowledge the financial assistance provided by IESO and the Government of Canada through the NRCAN-IESO Collaborative Energy Manager Program in all public communications produced as part of their Project(s), including news releases, public displays, or media events, provided that the Participant obtains the IESO’s prior written consent. The Participant shall use Commercially Reasonable Efforts to give the IESO (4) weeks advance written notice to give the IESO with a reasonable opportunity to review, comment on, and approve all such public communications.

14. Injunctive Relief

Each Party acknowledges that any violation of the provisions of Section 13 may cause irreparable damage or injury to the other Party (including, in the case of the IESO, any of the other Indemnified Parties), the exact amount of which may be impossible to ascertain, and that, for such reason, in addition to any other remedies available to such Party (including, in the case of the IESO, any of the other Indemnified Parties), such Party (including, in the case of the IESO, any of the other Indemnified Parties) is entitled to proceed immediately to court in order to obtain, and the other Party will consent to, interim, interlocutory, and final injunctive relief restraining the other Party from breaching, and requiring the other Party to comply with, its obligations under Section 13, without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made. Nothing in this Section 14 will be construed to limit the right of a Party (including, in the case of the IESO, any of the other Indemnified Parties) to obtain injunctive relief in any other circumstance in which it may be otherwise entitled to such relief.

15. FIPPA Compliance

To the extent that the IESO must comply with disclosure obligations under FIPPA, the Participant agrees (without limiting its obligation set out in Section 13):

- (a) to keep the Records in its possession secure;
- (b) to provide the Records to the IESO, as the case may be, within seven calendar days of being directed to do so by the IESO, as the case may be, for any reason under FIPPA, including an access request or privacy issue; and
- (c) to implement other specific security measures that in the reasonable opinion of the IESO, as the case may be, would improve the adequacy and effectiveness of the Participant’s measures to ensure, for the purposes of FIPPA, the security and integrity of the Records held in the Participant’s possession.

16. Dispute Resolution

If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties will promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery

of such notice, a senior representative from each Party will meet, either in person or by telephone, to attempt to resolve the dispute. Each senior Representative will be prepared to propose a solution to the dispute. If, following such efforts, the dispute is not resolved, the dispute will be settled by arbitration pursuant to Schedule "B" of this Agreement.

17. Impact Assessment and Duty to Consult

- (a) The Parties are satisfied that any legal duty to consult with Aboriginal groups affected by the Projects, and where appropriate, to accommodate Aboriginal groups' concerns has been met and continues to be met. If as a result of changes to the nature or scope of any Projects the Government of Canada determines that a legal duty to consult is triggered, the Participant agrees that all of the IESO's obligations pursuant to this Agreement, including the payment of any Participant Incentive, will be suspended from the moment that the IESO informs the Participant that the Government of Canada has determined that a legal duty to consult arises until such time as the Government of Canada is satisfied that the duty to consult has been met and continues to be met.
- (b) The Participant represents and warrants that the Measures and Projects are not a "designated project" nor a "project" according to the *Canadian Environmental Assessment Act, 2012* or the *Impact Assessment Act*.
- (c) The Participant shall provide any information about its Projects and Facilities as requested by IESO in order to assist the satisfaction of the Government of Canada's obligations under the *Canadian Environmental Assessment Act, 2012* or the *Impact Assessment Act*.
- (d) In the event that the NRCAN-IESO Collaborative Energy Manager Program is deemed a "designated project" or "project" under the *Canadian Environmental Assessment Act, 2012* or the *Impact Assessment Act, 2019*, and upon notice thereof from the IESO, the Participant agrees:
 - (i) To comply with all conditions arising out of an environmental assessment in respect of any Projects carried out on federal lands, in accordance with the provisions of the *Canadian Environmental Assessment Act, 2012* or the *Impact Assessment Act*, including any conditions requiring the implementation of mitigation measures and any follow up program.
 - (ii) that payment of the Participant Incentive and any other of the IESO's obligations under this Agreement will be suspended until the environmental assessment or impact assessment is completed and a determination is made that the Participant's Project as modified is unlikely to result in any adverse environmental effects; and
 - (iii) in the event of a change that would trigger a reassessment or further environmental assessment or impact assessment of the Participant's Project under the *Canadian Environmental Assessment Act, 2012* or the *Impact Assessment Act*, the payment of the Participant Incentive and any other of the IESO's obligations under this Agreement will also be suspended until the reassessment is completed and a determination is made that the Participant's Project as modified is unlikely to result in any adverse environmental effects.

18. **Appropriation**

In the event of a reduction or cancellation of the Government of Canada's funding as part of the NRCAN-IESO Collaborative Energy Manager Program due to government appropriation measures, and upon reasonable written notice thereof, the Parties agree to amend this Agreement and the Participant Incentive to take into account the reduction or cancellation.

19. **Intellectual Property**

The Participant hereby grants to IESO a non-exclusive, irrevocable, world-wide, free and royalty-free license in perpetuity to use and modify all intellectual property that arises in the course of this Agreement.

20. **Schedules**

The following schedules are hereby incorporated in and form part of this Agreement:

Schedule "A" - Definitions

Schedule "B" - Arbitration Provisions

Schedule "C" – Form of Release, Waiver and Consent

Schedule "D" – Program Eligibility Criteria

Schedule "E" – Energy Manager Duties

Schedule "F" – Energy Manager Eligibility Criteria

21. **Headings**

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 Article, Section, Schedule or other part hereof. Unless otherwise indicated, any reference in this Agreement to an Article, Section or Schedule refers to the specified article or section of, or schedule to, this Agreement.

22. **Entire Agreement**

Except as otherwise provided, this Agreement, together with the attached Schedules and signed Release, Waiver and Consent form, constitutes the entire agreement between the Parties 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.

23. **Amendments**

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by both of the Parties.

24. **Governing Law and Attornment**

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. For the purpose of all legal proceedings, this Agreement will be deemed to have been made and performed in the Province of Ontario and the courts of the Province of Ontario will have exclusive jurisdiction to entertain any action arising under this Agreement. The IESO and the Participant each hereby attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

25. Successors and Assigns

This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and assigns. This Agreement may not be assigned by the Participant except with the prior written consent of the IESO, which consent may be unreasonably withheld or delayed.

26. Further Assurances

Each of the Parties will, from time to time, on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed and delivered all such further things as may be reasonably required in order to fully perform and to more effectively implement the terms of this Agreement.

27. Severability

The invalidity, unenforceability or illegality of any provision in this Agreement will not, to the extent permitted by Laws and Regulations, affect the validity, enforceability or legality of any other provision of this Agreement, which will remain in full force and effect.

28. Third Party Beneficiaries

Except as provided in Sections 8, 10, 12, 13, 14, 15 and this Section 28, this Agreement is solely for the benefit of:

- (a) the IESO and its successors and assigns, with respect to the obligations of the Participant under this Agreement, and
- (b) the Participant 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.

29. No Partnership, etc.

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.

30. Force Majeure

The IESO shall not be in default and shall not be deemed to be in default, of its obligations in this Agreement by reason of delay or of failure or inability to perform its obligations hereunder where the said delay, failure or inability is due solely to any cause which is unavoidable or beyond the reasonable control of the IESO, including without limitation any act of God or other cause, including the COVID-19 pandemic, which frustrates the performance of the IESO's obligations in this Agreement.

31. Notices

Any notice to be given under this Agreement unless expressly provided otherwise herein must be in writing and will be given by facsimile or e-mail or other means of electronic communication or by hand-delivery as provided. Any notice, if sent by facsimile or e-mail or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received on the Business Day it is delivered to the applicable address noted below. Either Party may, by notice of change of address to the other Party, change its address to which notices are to be sent. Notices and other communications must be addressed as follows:

If to the IESO:

Address: 120 Adelaide Street West, Suite 1600
Toronto, ON M5H 1T1
Attention: NRCAN-IESO Collaborative Energy Manager Program
E-mail: energymanagers@ieso.ca

If to the Participant:

Address: ●
Telephone: ●
Attention: ●
Fax: ●
E-mail: ●

32. Counterparts

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.

33. Facsimile/Electronic Signatures

This Agreement may be executed and delivered by facsimile transmission or by any other method of electronic transmission and the Parties may rely upon all such signatures as though such signatures were original signatures.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF the Parties have executed this Agreement by their duly authorized respective representative(s) as of the date first above written.

Per:

Per:

Name:

Name:

Title:

Title:

Per:

Per:

Name:

Name:

Title

Title:

[I/We] have authority to bind the IESO

[I/We] have authority to bind the Participant

Dated: _____

Dated: _____

SCHEDULE "A" DEFINITIONS

In this Agreement, the following terms will have the following meanings:

"Agreement" means this Participant Agreement, including all recitals and Schedules, as it or they may be amended, restated or supplemented from time to time.

"Annual Report" means the report of energy management activities of a Participant and the Costs of Hiring the Energy Manager, including documentation to substantiate Energy Savings, completed by the Energy Manager and delivered to the IESO within thirty (30) days before the end of the Funding Period, in the form made available by the IESO from time to time.

"Applicable Taxes" means any applicable HST and any other applicable sales or use taxes.

"Business Day" means a day, other than a Saturday or a Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

"CDM" means electricity conservation and demand management.

"Claim" means any actual, threatened or potential civil, criminal, administrative, regulatory, arbitral or investigative demand, allegation, action, suit, investigation or proceeding or any other claim or demand, whether in contract, tort or otherwise.

"Commercially Reasonable Efforts" means all efforts which may be required to enable a Person, directly or indirectly, to satisfy, consummate, complete or achieve a condition, transaction, activity, obligation or undertaking contemplated by this Agreement and which do not require such Person to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the purpose of, and the condition, transaction, activity, obligation or undertaking contemplated by, this Agreement.

"Confidential Information" of a Party means any and all information of such Party or any of its affiliates, licensors, customers and employees or other service providers, and information on the Energy Manager Application, and, in the case of the IESO, includes the Governmental Authorities (the **"Disclosing Party"**) that has or will come into the possession or knowledge of the other Party, or any of their respective affiliates, licensors, customers and employees or other service providers and, in the case of the IESO, includes the Government Authorities (the **"Receiving Party"**) in connection with or as a result of entering into this Agreement, including information concerning the Disclosing Party's past, present or future customers, suppliers, technology, electricity usage or business. Notwithstanding the foregoing, "Confidential Information" does not include information that is:

- (a) publicly available when it is received by or becomes known to the Receiving Party or that subsequently becomes publicly available other than through a direct or indirect act or omission of the Receiving Party (but only after it becomes publicly available);
- (b) established by evidence to have been already known to the Receiving Party at the time of its disclosure to the Receiving Party and is not known by the Receiving Party to be the subject of an obligation of confidence of any kind;
- (c) independently developed by the Receiving Party without any use of or reference to the Confidential Information of the Disclosing Party as established by evidence that would be acceptable to a court of competent jurisdiction; or
- (d) received by the Receiving Party in good faith without an obligation of confidence of any kind from a third party who the Receiving Party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence of any kind, but only until the Receiving Party subsequently comes to have reason to believe that such information was subject to an obligation of confidence of any kind when originally received;

provided, however, that, for the purposes of this Agreement, all Personal Information concerning any Participant will constitute Confidential Information, whether or not it falls into one of the exceptions set out in clause (a) through (d) of this definition.

"Confirmed Annual Energy Savings" are the Energy Savings confirmed by the Technical Reviewer and approved by the IESO as in-service during the Funding Period and persisting for a minimum of one (1) year.

"Cost(s) of Hiring" means the actual costs incurred by the Participant, with no mark up of any kind, in the employment of the Energy Manager. For greater certainty Cost of Hiring shall only include salary and benefits, annual professional membership dues required to keep a professional status recognized by law, and fees for professional training.

"Customer" means an electricity consumer whose Facility or Facilities are directly connected to, or behind the meter of another electricity consumer connected to: (a) the IESO-controlled grid; or (b) a Distribution System.

“Disclosing Party” has the meaning given to it in the definition of “Confidential Information”.

“Distribution System” means a system connected to the IESO-Controlled Grid for distributing electricity at voltages of 50 kV or less and includes any structures, equipment or other thing used for that purpose.

“DSM” means natural gas demand side management.

“Effective Date” has the meaning ascribed to that term at the top of this Agreement.

“Enbridge Gas” means the natural gas distribution company in Ontario, also responsible for delivery of natural gas DSM programs to natural gas customers.

“Energy Management Plan” means a document, substantially in the form made available by the IESO completed by the Energy Manager describing the activities and plans required to reduce natural gas and/or electricity consumption and/or peak demand in such Participant’s Facility or Facilities and detailing how the Participant is demonstrating leadership in the area of energy conservation by, among other things, developing conservation policies and establishing employee, community and peer-to-peer awareness programs.

“Energy Manager” means an energy manager, funded by IESO, who meets the Energy Manager Eligibility Criteria that is employed by a Participant and whose primary responsibility is to propose and lead methodologies and processes to reduce energy consumption in a Facility.

“Energy Manager Application” means an application submitted by the Participant to access funding for the employment of an Energy Manager as may be approved by the IESO in its absolute and sole discretion.

“Energy Manager Duties” means the minimum duties of the Energy Manager, substantially as set out in Schedule “E” to this agreement.

“Energy Manager Eligibility Criteria” means the eligibility requirements the Energy Manager must meet in order for the Participant to be eligible for a Participant Incentive, as set out in Schedule “F” to this agreement.

“Energy Manager Program” means the Save on Energy program designed to provide funding to a Participant for the purpose of employing an Energy Manager.

“Energy Savings” means the estimated, determined, or actual gigajoule (GJ) reduction in annual electricity and/or natural gas consumption from a Project or Projects initiated and/or implemented during the Funding Period.

“Environmental Attributes” means all benefits and entitlements associated with a Facility or Measure having decreased environmental impacts resulting from the employment of an Energy Manager, including:

- (a) all rights to any fungible or non-fungible attributes, whether arising from a Facility or Measure itself, from the interaction of a Facility or a measure with a Distribution System or the IESO-Controlled Grid or because of Laws and Regulations or voluntary programs established by any Governmental Authority;
- (b) all rights relating to the nature of the energy source as may be defined and awarded through Laws and Regulations or voluntary programs; and specific Environmental Attributes include ownership rights to any applicable credits, entitlements or other instruments resulting from the interaction of a Facility or a Measure with a Distribution System or the IESO-Controlled Grid or as specified by Laws and Regulations or voluntary programs;
- (c) all rights to quantify and register the foregoing with competent authorities; and
- (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing.

“Estimated Costs” has the meaning ascribed to that term in Section 2(c)(i).

“Facility” or **“Facilities”** means the building(s), premises or lands, or part thereof, owned or occupied by the Participant and in respect of which such Participant is participating in the NRCAN-IESO Collaborative Energy Manager Program.

“FIPPA” means the *Freedom of Information and Protection of Privacy Act* (Ontario).

“Funding Period” means the 12-month or shorter period beginning on the Energy Manager’s employment start date that the Participant is eligible to receive a Participant Incentive, as may be extended for an additional 12-month funding period or shorter by the IESO, acting in its sole discretion.

“Governmental Authority” means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making

entity, having jurisdiction in the relevant circumstances, including the IESO, the OEB, the Electrical Safety Authority, the office of the Auditor General of Ontario, and any Person acting under the authority of any of the foregoing, but excluding the IESO.

“**Handle**” or “**Handling**” means to access, receive, collect, use, store, process, record, disclose, transfer, retain, dispose of, destroy, manage or otherwise handle.

“**HST**” means any tax payable under Part IX of the *Excise Tax Act* (Canada).

“**IESO**” means the Independent Electricity System Operator of Ontario established under Part II of the *Electricity Act, 1998* (Ontario), or its successor.

“**IESO-Controlled Grid**” has the meaning ascribed to it by the IESO Market Rules.

“**IESO EM&V Protocols and Requirements**” means the methods and processes that the IESO develops for the evaluation, measurement and verification of CDM or DSM programs and initiatives, as such methods and processes may be amended from time to time. This protocol can be found on the IESO website: <http://www.ieso.ca/-/media/Files/IESO/Document-Library/conservation/EMV/2019/IESO-EMV-Protocols-and-Requirements-V3-1Apr2019-vf.pdf?la=en>.

“**IESO Market Rules**” means the rules made under section 32 of the *Electricity Act, 1998* (Ontario), together with all market manuals, policies and guidelines issued by the IESO.

“**Intellectual Property**” means any intellectual property recognized by law, as well as any intellectual property right protected through legislation, including those that govern patents, copyrights, trademarks, and industrial designs.

“**Interest Rate**” means the Bank Rate, as defined in the *Interest and Administrative Charges Regulations*, in effect on the due date, plus 300 basis points, compounded monthly.

“**Insolvent**”, in respect of a Person, means a Person:

- (a) who is for any reason unable to meet its obligations as they generally become due or otherwise acknowledges its insolvency;
- (b) who has ceased paying its current obligations in the ordinary course of business as they generally become due;
- (c) who has ceased to carry on business in the ordinary course;
- (d) who institutes any proceeding, takes any corporate action, or executes any agreement to authorize its participation in or the commencement of any proceeding seeking: (a) to adjudicate it a bankrupt or insolvent; (b) liquidation, dissolution, winding-up, reorganization, arrangement, protection, relief or composition of it or any of its property or debts or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or (c) appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its properties and assets; or
- (e) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing due.

“**Laws and Regulations**” means:

- (a) applicable multi-national, international, federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- (b) applicable orders, decisions, codes, manuals, interpretation bulletins, judgments, injunctions, decrees, awards, directives and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority; and
- (d) any requirements under or prescribed by applicable common law.

“**Measures**” means: (i) any activity undertaken for the primary purpose of obtaining or effecting, directly or indirectly, CDM or DSM, including the installation, retrofit, replacement, modification or commissioning of equipment, systems, processes or behaviours that consume or result in the consumption of electricity and/or natural gas; or (ii) any equipment, system or product related to the foregoing.

“**Minimum Annual Savings Target**” has the meaning ascribed to that term in Section 2(a).

“**NRCAN**” means Her Majesty the Queen in Right of Canada, as represented by the Minister of Natural Resources.

“**NRCAN-IESO Collaborative Energy Manager Agreement**” means the agreement between the IESO and NRCAN outlining the terms and funding for the NRCAN-IESO Collaborative Energy Manager Program.

“**NRCAN-IESO Collaborative Energy Manager Program**” means the collaborative program between NRCAN and the IESO which leverages the IESO Save on Energy® Energy Manager Program, designed to provide funding to a Participant for the purpose of employing an Energy Manager in a Small or Medium-sized Enterprise.

“**OEB**” means the Ontario Energy Board or its successor.

“**Party**” means the Participant or the IESO.

“**Participant Incentive**” means 75% of the Costs of Hiring an Energy Manager for one (1) year, up to a maximum of \$80,000.

“**Person**” means a natural person, firm, trust, partnership, association, unincorporated organization, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

“**Personal Information**” means information about identifiable individual or other information that is subject to any Privacy Laws.

“**Privacy Laws**” means all federal, provincial, state, municipal or other applicable statutes, laws or regulations of any Governmental Authority in any jurisdiction governing the Handling of information about an identifiable individual, including the *Personal Information and Protection of Electronic Documents Act (Canada)*, FIPPA, MFIPPA and equivalent provincial legislation.

“**Program Eligibility Criteria**” means the eligibility criteria the Participant must meet to the satisfaction of the IESO to be eligible for a Participant Incentive, as set out in the Schedule “D” to this agreement.

“**Project(s)**” means one or more Measures, which, when implemented in respect of a Facility, are expected to deliver Energy Savings towards the Minimum Annual Savings Target.

“**Receiving Party**” has the meaning given to it in the definition of “Confidential Information”.

“**Records**” has the meaning ascribed to that term in Section 13(c)(iii).

“**Release, Waiver and Consent**” means the release and waiver and consent substantially in the form of Schedule “C”, executed by the Participant in favour of the IESO, among others, and submitted by the Participant.

“**Reports**” means, collectively, the set of reports to be submitted to the IESO and/or the Technical Reviewer, including the Energy Management Plan, the Second Quarter Report and the Annual Report.

“**Representative**” means, in respect of one of the Parties, any one of that Party’s employees, officers, directors, shareholders, contractors, agents, representatives and advisors.

“**Second Quarter Report**” means the report of energy management activities of a Participant, including documentation to substantiate claimed Energy Savings, completed by an Energy Manager and delivered to the IESO within eight (8) months following the commencement of the Funding Period, in the form made available by the IESO from time to time.

“**Small or Medium-sized Enterprise**” means any business establishment with 0 to 499 employees

“**Technical Reviewer**” means the IESO or an organization contracted by the IESO, for the purpose of delivering services such as but not limited to reviewing information submitted by Participants and determining Confirmed Annual Energy Savings.

“**Term**” has the meaning ascribed to that term in Section 7(a).

SCHEDULE "B"
ARBITRATION PROVISIONS

- (a) Subject to and in accordance with the provisions of this Schedule "B", any and all differences, disputes, Claims or controversies arising out of or in any way connected with this Agreement, whether arising before or after the expiration or termination of this Agreement, (including any dispute as to whether an issue is arbitrable) will be resolved by arbitration before a single arbitrator (the "**Arbitrator**") pursuant to the *Arbitration Act, 1991* (Ontario) and otherwise in accordance with the laws of the Province of Ontario.
- (b) A Party desiring arbitration hereunder will give written notice of arbitration to the other Party containing a concise description of the matter submitted for arbitration ("**Notice of Arbitration**"). If the Parties fail to jointly appoint an Arbitrator within 20 days thereafter, an Arbitrator will be designated by a judge of the Ontario Superior Court of Justice upon application by either Party. The Arbitrator may determine all questions of law, fact and jurisdiction with respect to the dispute or the arbitration (including questions as to whether a dispute is arbitrable) and all matters of procedure relating to the arbitration. The Arbitrator may grant legal and equitable relief (including injunctive relief), award costs (including legal fees and the costs of the arbitration), and award interest.
- (c) The arbitration will be conducted in English in the City of Toronto (unless otherwise agreed to by the Parties) at such place therein and time as the Arbitrator may fix and, failing agreement thereto by the Parties, in accordance with such procedures as the Arbitrator will determine, in accordance with the principles of natural justice. The arbitration and all matters arising directly or indirectly therefrom will be kept strictly confidential by the Parties and will not be disclosed to any third party except as may be compelled by law.
- (d) The Arbitrator's written decision will be delivered to each of the Parties within 60 days following the conclusion of the arbitration hearing. The costs of any arbitration hereunder will be borne by the Parties in the manner specified by the Arbitrator in his or her decision. The decision of the Arbitrator will be final and binding upon the Parties in respect of all matters relating to the arbitration, the conduct of the Parties during the proceedings and the final determination of the issues in the arbitration. There will be no appeal from the decision of the Arbitrator to any court, except on the grounds that the conduct of the Arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario), or solely on a question of law as provided for in such act. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.
- (e) Submission to arbitration under this Schedule "B" is intended by the Parties to preclude any action in matters which may be arbitrated hereunder, save and except for enforcement of any arbitral award hereunder.

SCHEDULE "C"
FORM OF RELEASE, WAIVER AND CONSENT

RELEASE, WAIVER AND CONSENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby, for itself and its successors and assigns:

- A. releases and forever discharges the Independent Electricity System Operator (“**IESO**”), the Government of Canada, and their respective representatives, affiliates, third party service providers and agents (collectively, the “**Program Operators**”) and all of the respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns of the Program Operators (collectively, the “**Representatives**”) (the Program Operators and the Representatives hereinafter collectively referred to as “**Releasees**”) from any and all actions, causes of action, suits, complaints, disputes, debts, liabilities, obligations, damages, legal fees, costs, disbursements, expenses, claims and demands of every nature or kind whatsoever and howsoever arising, at law or in equity, or under any statute, including without limitation, claims for property damage, business interruption and personal injury of the undersigned’s employees, officers, directors or licensees, which it can, will or may have by reason of any matter, cause or thing arising as a result of, in relation to or in connection with the initiatives funded by the IESO for electricity conservation and demand management or natural gas demand side management, and directed at one of the commercial, institutional or industrial electricity and/or natural gas consumer groups (referred to as “**CDM Programs**” or “**DSM Programs**”, respectively).
- B. agrees that the undersigned will not make any claim or take any proceedings against any other person or entity with respect to any matter released and discharged in Section A above which may result in any claim arising against any of the Releasees for contribution or indemnity or other relief;
- C. without limiting the foregoing, the undersigned acknowledges, agrees and consents that by submitting an application (“**Application**”) to participate in a CDM or DSM Program (including the NRCAN-IESO Collaborative Energy Manager Program) or any initiative thereof, whether or not its Application is ultimately accepted:
- (a) it hereby consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators, including all reports, data, personal information, records showing historical energy use and consumption, and other information of the undersigned or its subcontractors or representatives (collectively, the “**Applicant Information**”) by the Program Operators for purposes relating to the operation, administration or assessment of the CDM or DSM Program, any initiative thereof or the Application, and in connection with any reporting activities relating to the CDM or DSM Program, which shall include, without limitation: (i) sharing of Applicant Information among the Program Operators; (ii) use by the Program Operators of the Applicant Information provided by the Participant to process any of the undersigned’s Applications and to conduct, analyze and report on the results of surveys and modify the CDM or DSM Program based on such surveys; and (iii) disclosure to Natural Resources Canada, the Ontario Energy Board, the Independent Electricity System Operator, local distribution or utility companies, the Ontario Ministry of Energy, Northern Development and Mines or the office of the Auditor General of Ontario or their respective successors. The Participant agrees that the IESO may contact the Participant directly including by email and other electronic communication for purposes of follow-up surveys, studies and audits, future conservation programs, customer satisfaction surveys and other related purposes. The Participant may withdraw its consent at any time by contacting the IESO at customer.relations@ieso.ca;
 - (b) it hereby consents to the disclosure by the IESO of information regarding the Participant’s past participation in other IESO funded conservation and demand management programs for the purpose of processing the Participant’s Application;
 - (c) it hereby consents to the disclosure by local distribution or utility companies to the IESO, and by the IESO to local distribution or utility companies, of information regarding the Participant’s past participation in other IESO or government-funded CDM or DSM Programs for the purpose of processing the Participant’s Application and administering CDM or DSM Programs;
 - (d) the Program Operators are committed to protecting the personal information in its custody or control in accordance with applicable privacy laws. The Participant may access the IESO’s privacy policy at <http://www.ieso.ca/Privacy>; and
 - (e) this Release, Waiver and Consent and all Applicant Information, in the possession or control of the IESO are subject to applicable laws that include the access provisions of the Freedom of Information and Protection of Privacy Act (Ontario) (“**FIPPA**”) and the Access to Information Act (Canada), as the case may be, and that as a result, third parties may obtain access to the Applicant Information;
- D. the foregoing Release, Waiver and Consent will continue in full force and effect for the benefit of the Releasees and will apply to each Application submitted by the undersigned to the IESO and to the extent of any conflict between this Release, Waiver and Consent and the terms of any agreement or other document entered into by the undersigned and one or more of the Program Operators pursuant to or in

connection with the CDM or DSM Program or any part thereof, or any initiative under any CDM or DSM Program, the terms of this Release, and Waiver and Consent will prevail; and

E. this Release, Waiver and Consent will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed this Release, Waiver and Consent by its duly authorized representative(s) as of the date below written.

Dated: _____

[LEGAL NAME OF PARTICIPANT]

Name:

Title:

Name:

Title:

[I/We] have the authority to bind the corporation

SCHEDULE "D" PROGRAM ELIGIBILITY CRITERIA

(a) Participant Eligibility

The Participant must meet the following eligibility criteria:

- be a Small or Medium-sized Enterprise;
- be a commercial, institutional, or industrial Customer and/or manage a Facility of a Customer;
- not be insolvent;
- not be receiving or have applied for or otherwise intend to receive, any financial incentives funded by a Governmental Authority (whether administered via the IESO, a local electricity or gas distributor or any other party) for the employment of the Energy Manager during the term of the Participant's Participant Agreement, unless otherwise approved by the IESO;
- demonstrate to the IESO's satisfaction the potential to reach the associated Minimum Annual Savings Target; and
- execute a Participation Agreement with the IESO.

(b) Facility Eligibility

The Facility/facilities must be connected to the IESO-Controlled Grid or a Distribution System.

(c) Project and Measures Eligibility

Progress towards the Minimum Annual Savings Target will be assessed based on Confirmed Annual Energy Savings arising from Projects implemented by the Energy Manager which are in-service during the Participant Agreement term and where savings are expected to persist for a minimum of one (1) year from the Project's in-service date, as reported in the Energy Manager's Second Quarter Report and Annual Report submitted to the Technical Reviewer. At least 10% of these Confirmed Annual Energy Savings must be attributable to Projects that, unless otherwise approved by the IESO: (a) are not financed by any incentives received from the IESO, the Province of Ontario or the Government of Canada; and (b) have not had such Energy Savings counted under another energy efficiency program.

(d) Energy Manager Eligibility

The Participant must employ an Energy Manager that meets the Energy Manager Eligibility Criteria and has the demonstrated technical ability to perform the Energy Manager Duties.

Schedule "E" –Energy Manager Duties

In connection with the identification, reporting, and implementation of energy efficiency opportunities, the minimum duties of the Energy Manager are set out in this Schedule "E". These duties, along with any other obligations set out in the Participant's executed Participant Agreement should be used to develop the Energy Manager's job description:

1. Energy Tracking & Monitoring – Provide a database and an energy tracking and monitoring system for each Facility/process that captures current monthly energy consumption and an energy load inventory of major equipment. The Energy Manager will develop and deliver training to the Participant's staff on the energy tracking and monitoring system.
2. Primary Assessment – Review existing energy study reports and perform a high-level assessment, including a walkthrough audit of each major process area of each site, to identify energy efficiency opportunities and to identify which systems will require more detailed evaluations.
3. Maintenance and Operating Schedules – Review and provide a description of the control systems, operating schedules, and maintenance practices at each Facility/process to identify operational Energy Savings. Develop maintenance practices and programs to enhance energy efficiency. Examples would include: reprogramming controls to shutdown equipment and lighting when not required, developing a checklist to ensure that all shutdown procedures are properly implemented and followed.
4. Energy Saving Opportunities & Action Plan – Identify, assess, prioritize and recommend to senior management energy efficiency Projects, including both capital improvement projects and operational and maintenance changes. This will include the preparation of business cases to justify capital expenditures and the completion of applications to IESO conservation and demand management initiatives, such as Save on Energy, and to other programs to maximize funding available for energy efficiency projects.
5. Project Implementation & Energy Savings – Coordinate the implementation of energy efficiency Projects, including the planning, budgeting, and scheduling for the design, installation, commissioning, and verification of such Projects. It is expected that a project manager (not the Energy Manager) would be assigned for large capital projects.
6. Measurement & Verification Strategy – Work with the Participant to develop a strategy for the measurement & verification of energy efficiency projects at a corporate level (i.e. not involved at Project level).
7. Energy management behavior and business process improvements – work to create and foster a sustainable energy management culture at the Participant's Facility and provide an avenue for employees to recognize and report issues and ideas regarding energy efficiency.
8. Employee Awareness Program – Implement an employee training and awareness program to promote energy conservation and communicate the energy efficiency programs undertaken.
9. Assistance to IESO Projects – Coordinate and assist with site inspections by the IESO (or their designate) from time to time of the various measures implemented, at the sole discretion of the IESO. Collect relevant information regarding additional energy use (equipment purchases, schedule changes, occupancy changes or construction).
10. Reporting – Complete an Energy Management Plan, Second Quarter Reports and Annual Reports.

Schedule "F" – Energy Manager Eligibility Criteria

The Participant will ensure that the Energy Manager meets the following eligibility criteria:

- (a) has the demonstrated technical ability to perform the Energy Manager Duties; and
- (b) is professionally designated or qualified with/as:
 - (i) a Certified Energy Manager; or
 - (ii) an Energy Manager In Training; or
- (c) provided such individual successfully completes the CEM examination by the end of their first year of employment under a Participant Agreement:
 - (i) a 4 year degree in engineering or architecture, or professional engineer or registered architect;
 - (ii) a Certified Engineering Technician;
 - (iii) a Certified Engineering Technologist; or
 - (iv) an individual approved at the IESO's sole discretion.