



INDUSTRIAL ACCELERATOR™ PROGRAM

**Master Program Agreement
(August 9, 2017)**

between

[name of Participant]

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

DATED as of the ♦ day of ♦, ♦

TABLE OF CONTENTS

	Page
ARTICLE I INTERPRETATION	1
1.1 Definitions and References	1
1.2 Schedules	1
1.3 Entire Agreement and Conflicts.....	1
1.4 Non-Exclusivity of Contract.....	2
ARTICLE II INCENTIVE SCHEDULES.....	2
2.1 Incentive Schedules	2
2.2 No Obligation	2
2.3 Performance of Incentive Schedules.....	2
ARTICLE III TERM.....	3
3.1 Term.....	3
3.2 In-Service Date	3
ARTICLE IV PARTICIPANT RESPONSIBILITIES.....	3
4.1 General.....	3
4.2 Technical Reviewer	3
4.3 Evaluation, Monitoring and Verification.....	4
ARTICLE V PAYMENT	4
5.1 Incentive Payments	4
5.2 Invoices	5
5.3 Settlement	5
5.4 Responsibility for Taxes	5
ARTICLE VI REPRESENTATIONS AND WARRANTIES.....	6
6.1 Mutual Representations of the Parties	6
6.2 Representations of the Participant	6
6.3 Representations regarding Incentive Schedules.....	7
6.4 Survival of Representations and Warranties.....	7
ARTICLE VII REMEDY FOR DEFAULT	7
7.1 Participant Breach.....	7
7.2 Remedies of the IESO.....	8
7.3 Surviving Obligations	9
7.4 Cross Security and Set-off	9
7.5 Liquidated Damages	9

7.6	Remedies Not Cumulative	9
ARTICLE VIII LIMITATION OF LIABILITY, INDEMNIFICATION AND RELEASE.....		9
8.1	No Warranty	9
8.2	Limitation of Liability	10
8.3	Indemnification by the Participant.....	10
8.4	Defence of Claims	10
8.5	Release	11
ARTICLE IX CONFIDENTIALITY AND FIPPA		11
9.1	Confidential Information	11
9.2	Return of Information	13
9.3	Injunctive and Other Relief.....	13
ARTICLE X FORCE MAJEURE.....		14
10.1	Effect of Invoking Force Majeure.....	14
ARTICLE XI DISPUTE RESOLUTION		14
11.1	Notice of Dispute	14
11.2	Negotiation.....	14
11.3	Arbitration.....	14
11.4	Confidentiality	15
11.5	Preclusion of Actions.....	16
ARTICLE XII GENERAL PROVISIONS		16
12.1	Audit Rights	16
12.2	Assignments and Changes of Control.....	16
12.3	Environmental Attributes.....	17
12.4	Company Representatives.....	18
12.5	Project Communications.....	18
12.6	Interpretation.....	18
12.7	Governing Law and Attornment	18
12.8	Amendments	19
12.9	Waivers	19
12.10	Further Assurances	19
12.11	Binding agreement.....	19
12.12	Third party beneficiaries	19
12.13	Relationship of the Parties	19
12.14	Notice.....	19
12.15	Counterparts and Execution.....	20

SCHEDULE "A" DEFINED TERMS22
SCHEDULE "B" FORM OF INVOICE35

MASTER PROGRAM AGREEMENT

THIS AGREEMENT is between ♦, a ♦ [Set forth the name and legal form of the Participant] incorporated under the laws of ♦ (the “Participant”) and the Independent Electricity System Operator (the “IESO”).

BACKGROUND:

A. The IESO has implemented the Industrial Accelerator Program to encourage industrial, commercial and institutional customers that are directly or indirectly connected to the IESO-Controlled Grid to implement electricity efficiency initiatives that require capital expenditures;

B. The Parties wish to execute this Master Agreement in order to formalize the contractual arrangements with respect to the Participant’s participation in the Industrial Accelerator Program on the terms and conditions set out in this Master Agreement;

C. This Master Agreement will incorporate and govern one or more Incentive Schedules that will set out the particulars of the Incentives that the Participant will access.

NOW THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I **INTERPRETATION**

1.1 Definitions and References

Defined terms are set out in Schedule "A". Unless otherwise stated, references to a “Section” or “Article”, are to sections and articles of the body of this Master Agreement.

1.2 Schedules

- (a) All Incentive Schedules that have been executed by the Parties in accordance with this Master Agreement and the schedules listed below are part of this Master Agreement and are binding on the Parties:

Schedule "A" - Defined Terms

Schedule "B" - Form of Invoice

- (b) All Incentive Schedules that have been executed by the Parties in accordance with this Master Agreement are subject to, and form part of, this Master Agreement (the Master Agreement and such executed Incentive Schedule are collectively the “**Agreement**”).

1.3 Entire Agreement and Conflicts

- (a) This Agreement, including the Master Agreement, all schedules thereto and executed Incentive Schedules, is the entire agreement between the Parties regarding its subject matter and supersedes all prior agreements. Without limiting the foregoing, this Master

Agreement and the applicable Incentive Schedules supersede and replace any Applications submitted by the Participant except to the extent that such Applications are expressly incorporated into an incentive Schedule. Any guidance released or provided by the IESO with respect to the Industrial Accelerator Program does not form part of this Agreement and is not binding on the Parties.

- (b) In the event of any conflict between any provision of this Master Agreement and any provision of an Incentive Schedule, the provisions of this Master Agreement will prevail unless the Incentive Schedule expressly provides otherwise.

1.4 Non-Exclusivity of Contract

The Agreement is not an exclusive contract under the Industrial Accelerator Program and the IESO may contract with others on the same or similar terms and by other means and on different terms.

ARTICLE II INCENTIVE SCHEDULES

2.1 Incentive Schedules

Pursuant to this Master Agreement, the Parties may enter into one or more Incentive Schedules, subject to the following:

- (a) each Incentive Schedule will be in the form pre-approved by the IESO, subject to the addition of Project- or Participant-specific information;
- (b) each Incentive Schedule will be deemed to incorporate by reference the most recent version of the Eligibility Requirements in effect as of the date of the Incentive Schedule, provided that the incorporated version of the Eligibility Requirements will continue to apply in respect of that Incentive Schedule in the event that the IESO subsequently amends the Eligibility Requirements;
- (c) each Incentive Schedule will be binding only once it has been duly executed and delivered by both Parties; and
- (d) each executed Incentive Schedule forms part of, and is subject to the terms and conditions of, this Master Agreement.

2.2 No Obligation

This Master Agreement creates no obligation for the IESO to provide any Incentives, to accept any Applications, or to enter into any Incentives Schedules.

2.3 Performance of Incentive Schedules

The IESO agrees to provide Incentives on the terms and conditions of any executed Incentive Schedules, and the Participant agrees to perform all of its obligations under such Incentive Schedules.

ARTICLE III
TERM

3.1 Term

The term will commence on the date of this Master Agreement and terminate on the later of: (i) the date on which all Incentive Schedules have expired, or (ii) December 31, 2020; unless the Agreement is terminated earlier in accordance with its terms or if the Parties otherwise agree in writing (the “**Term**”).

3.2 In-Service Date

All Projects must be in-service on or before the earlier of: (i) the Implementation Deadline; and (ii) the Program Expiry Date.

ARTICLE IV
PARTICIPANT RESPONSIBILITIES

4.1 General

The Participant agrees to:

- (a) demonstrate leadership in the area of energy conservation by, among other things, developing conservation policies and establishing employee, community and peer-to-peer awareness programs;
- (b) acknowledge the assistance provided by the IESO in respect of any Funded Activities in all Project Communication;
- (c) inform the IESO in writing of all Third Party Contributions received after the date of this Master Agreement;
- (d) carry out the Funded Activities in accordance with Applicable Law and Good Engineering Practices; and
- (e) obtain and maintain all Government Approvals necessary for the installation, verification and operation of any Project, or otherwise necessary for the Funded Activities; and
- (f) carry out any other specific responsibilities that are set out in Incentive Schedules.

4.2 Technical Reviewer

- (a) The Participant will cooperate and provide on a timely basis the requested information to the IESO or the Technical Reviewer should the IESO or the Technical Reviewer require clarification from the Participant related to any reports or information required to be delivered by the Participant under the Agreement. The Participant will, at the same time as it provides information to the Technical Reviewer, provide a copy of such information to the IESO.
- (b) The Participant acknowledges that the Technical Reviewer is an advisor to the IESO and that the use of the Technical Reviewer does not limit the discretion of the IESO under the Agreement, and that the IESO may direct the Technical Reviewer.

4.3 Evaluation, Monitoring and Verification

- (a) Where an Incentive Schedule contemplates an M&V Plan and M&V Report:
 - (i) the Participant will fulfill all of its obligations as required pursuant to the M&V Plan, including, without limitation, providing all relevant data and any other information required pursuant to the M&V Plan;
 - (ii) upon receipt of all relevant data and any other information required pursuant to the M&V Plan, the IESO will instruct the Technical Reviewer to complete the work necessary to deliver a M&V Report for each M&V Reporting Period within a reasonable period of time; and
 - (iii) the Electricity Savings as determined by the Technical Reviewer and set out in any M&V Report will be used by the IESO, among other things, to assess whether the Project has achieved the required Electricity Savings for the M&V Reporting Period.
- (b) The Participant will participate in any surveys, studies, evaluations or verifications conducted by the IESO or its service providers in connection with the Agreement and the Industrial Accelerator Program, including, without limitation, for the purpose of proper administration, monitoring and verification of the Agreement or evaluation of the Industrial Accelerator Program.
- (c) The Participant and the IESO will both keep complete and accurate books, accounts and records and all other data required by each of them for the purpose of proper administration, monitoring and verification of the Agreement and all such records and data will be maintained for a period which is the greater of 7 years and the period of time specified under Applicable Laws. 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 (i) such books, accounts, records and other data and (A) at the reasonable request of the IESO make available to the IESO, and/or its designates, the personnel of the Participant and its subcontractors involved in the performance of Funded Activities and the maintenance of such books, accounts, records and data referred to above for the purpose of this Section 4.3(c); and (B) permit the IESO, and/or its designates to examine and audit and take copies and extracts from such documents; and (ii) its premises for purposes of performing an inspection or technical audit for purposes of evaluation and verification or to confirm that the Participant and each of its subcontractors has performed their obligations in respect of the Funded Activities, in accordance with the Agreement.

ARTICLE V PAYMENT

5.1 Incentive Payments

The IESO will calculate and pay Incentive payments as set out in the applicable Incentive Schedules, all in accordance with this Master Agreement and the applicable Incentive Schedules, and provided that the Participant has fulfilled all of the obligations required to be performed by it under the Agreement. Where the Participant has not fulfilled all of its obligations, the IESO may withhold payment of an amount of the

Incentive proportionate to the unfulfilled obligation without prejudice to any other rights or remedies the IESO may have under the Agreement or at law.

5.2 Invoices

The Participant will issue invoices to the IESO for all Incentive payments, subject to the following:

- (a) Participant invoices will be issued on Participant letterhead, will be substantially in the form attached as Schedule "B" and include any additional information specified in the applicable Incentive Schedule.
- (b) Each invoice will be deemed to include a representation and warranty of the Participant to the IESO: (i) that the work required to be completed or costs required to be incurred and paid to qualify to receive such payment has been completed in all material respects or incurred and paid in accordance with the evidence provided to the IESO; and (ii) that the representations and warranties given in Section 6.2 true and correct in all respects.

5.3 Settlement

- (a) The IESO will transfer payments due under the Agreement via electronic funds transfer into a bank account registered by the Participant in Online IESO.
- (b) The Participant will, within 15 Business Days after the date of this Master Agreement, register as a Program Participant through Online IESO. In order to register as a Program Participant, the Participant will execute and deliver to the IESO an IESO Market Participation Agreement, subject to the following:
 - (i) the Parties acknowledge and agree that the Participant's registration as a Program Participant and the execution and delivery of the IESO Market Participation Agreement are to enable the Participant to gain access to Online IESO for payment and payment administration purposes only with respect to this Agreement; and
 - (ii) the terms and conditions of the IESO Participation Agreement and the IESO Market Rules shall be entirely inoperative and inapplicable to the IESO and the Participant in relation to this Agreement, provided that if the Participant engages in any activities in the IESO-Administered Markets outside of the scope of this Agreement or the Industrial Accelerator Program, or accesses any parts of Online IESO outside of the access required for registration as a Program Participant or for payment or payment administration, the IESO Market Participation Agreement shall apply.

5.4 Responsibility for Taxes

In addition to any Incentive amounts payable to the Participant, the IESO will pay any applicable HST or other applicable sales or use taxes. The Participant will provide to the IESO sufficient documentation, as requested by the IESO, to support the IESO in claiming input tax credits in respect of such amounts paid. If the IESO has reasonable grounds to challenge whether such taxes should be paid by the IESO, the Participant will provide reasonable assistance to the IESO with such challenge.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES

6.1 Mutual Representations of the Parties

Each of the Participant and the IESO represents and warrants to the other as follows, and acknowledges that the other is relying on such representations and warranties in entering into this Master Agreement and each Incentive Schedule:

- (a) it has the requisite power, authority and capacity to enter into this Master Agreement and each Incentive Schedule and to perform its obligations under them;
- (b) this Master Agreement and each Incentive Schedule has been duly authorized, executed, and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms; and
- (c) the execution and delivery of this Master Agreement and each Incentive Schedule by it and the performance of the Party's obligations under them will not result in the breach or violation of any of the provisions of its material obligations or any judgment, decree, order or award to which it is subject or any Governmental Approval held by it.

6.2 Representations of the Participant

In addition to the representations set out in Section 6.1, 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 Master Agreement and each Incentive Schedule:

- (a) all of the information set out in this Master Agreement and any applicable Incentive Schedule pertaining to the Participant and the Funded Activities is true and correct, or, to the extent it relates to a Project or Portfolio yet to be constructed, accurately represents the Participant's plans for the construction of the Project or Portfolio;
- (b) the Participant is an Eligible Person for the purposes of each Incentive Schedule;
- (c) any Project that is the subject of an Incentive Schedule is an Eligible Project for the purposes of that Incentive Schedule;
- (d) for each Facility in respect of which the Participant will undertake Funded Activities, the Participant has title to, a leasehold interest in, or other contractual rights in respect of, such Facility sufficient to enable the Participant to undertake the Funded Activities;
- (e) no Event of Insolvency has occurred with respect to the Participant or, to the knowledge of the Participant, is threatened against the Participant;
- (f) there are no (i) Claims; or (ii) judgments, rulings or orders by or before any Governmental Authority or arbitrator;
- (g) all Governmental Approvals that are required at the time of this representation for the performance of the Participant's obligations have been obtained;

- (h) the Participant did not, without the prior written consent of the IESO, purchase, lease or otherwise obtain any goods, or enter into any agreement for the provision of services, relating to Funded Activities prior to submitting the relevant Application;
- (i) no Project or Portfolio or any other Funded Activities involve the installation or operation of any equipment or system that does not comply with all Applicable Laws;
- (j) the Participant would not have undertaken the Funded Activities pursuant to each Incentive Schedule without the Incentive; and
- (k) the Participant is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

6.3 Representations regarding Incentive Schedules

By executing any Incentive Schedule, the Participant will be deemed to make all of the representations in Section 6.1 and 6.2 again as of the date of the Incentive Schedule.

6.4 Survival of Representations and Warranties

The representations and warranties provided in this Article VI will be continuing throughout the Term of this Agreement, any change in the accuracy of such representations and warranties will immediately be communicated by the relevant Party to the other Party in writing.

ARTICLE VII **REMEDY FOR DEFAULT**

7.1 Participant Breach

During the Term of the Agreement, each of the following will be an event of default by the Participant (“**Participant Event of Default**”):

- (a) the Participant fails to post and maintain security as required under an Incentive Schedule, if such failure is not remedied within five Business Days after written notice of such failure from the IESO;
- (b) the Participant breaches any material obligation in the Agreement not otherwise listed in this Section 7.1 and such failure is not remedied within 15 Business Days after written notice of such failure from the IESO;
- (c) any representation or warranty made by the Participant in the Agreement is not true or correct in any material respect when made, or during the Term, and is not made true or correct in all material respects within 15 Business Days after receipt by the Participant of written notice of such fact from the IESO;
- (d) the Participant fails to obtain or ceases to hold any necessary Governmental Approval where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect and is not remedied within 15 Business Days after receipt by the Participant of written notice of such failure or cessation from the IESO;

- (e) any steps are taken by the Participant, a third party or a court of competent jurisdiction in respect of the dissolution, termination of the existence, liquidation or winding up of the Participant, unless such steps are immediately rendered inapplicable, or unless there has been a permitted assignment of the Agreement by the Participant to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Participant's obligations under the Agreement;
- (f) other than in accordance with Section 12.2, the Participant assigns this Agreement, amalgamates with another Person, or undergoes a change of Control;
- (g) an Event of Insolvency occurs with respect to the Participant;
- (h) the Participant makes a material amendment to a Project or Portfolio or otherwise to the scope of its Funded Activities that has not first been consented to in writing by the IESO, acting reasonably;
- (i) with respect to a Project or Portfolio for which the Participant has executed an Incentive Schedule for Large Projects, Small Projects, Retrofits or HPNC:
 - (i) the In-Service Date has not occurred by the earlier of: (A) the applicable Implementation Deadline; and (B) the Program Expiry Date; or
 - (ii) the Project or Portfolio fails to achieve at least 90% of the Anticipated Electricity Savings in any M&V Reporting Period; and
- (j) any other event that is described in an Incentive Schedule as a Participant Event of Default occurs;

provided that, with respect to Sections 7.1(b), (c) or (d), the applicable cure period may be extended by the IESO for a further 10 Business Days if the IESO is satisfied in its sole discretion that the Participant is diligently remedying the breach and that such breach is capable of being corrected during such extended cure period.

7.2 Remedies of the IESO

If any Participant Event of Default occurs and is continuing, the IESO may:

- (a) upon written notice to the Participant, terminate this Master Agreement (and all Incentive Schedules) or only the Incentive Schedule to which the Participant Event of Default relates. Notwithstanding anything else in the Agreement, on the occurrence of a Participant Event of Default referred to in Sections 7.1(e) or 7.1(g), all of the IESO's obligations hereunder will terminate immediately before such Participant Event of Default;
- (b) draw on Performance Security or withhold deferred payments that are given as security, or where the requirement under an Incentive Schedule to provide Performance Security has been waived, revoke such waiver and require the Participant to pay liquidated damages in an amount equal to or lesser than the Performance Security that would have had to have been posted, provided that the IESO's right to draw down Performance Security or receive liquidated damages under this Section 7.2(b) will be limited to the

amount of the Incentive that it has already paid if the Participant Event of Default arises before the In-Service Date and the deadline for such In-Service Date remains pending;

- (c) refuse to pay all or any portion of any Incentives or any other payments to the Participant under the Agreement;
- (d) require the Participant to repay all or part of the amount paid by the IESO under the applicable Incentive Schedule as liquidated damages; and
- (e) exercise any other remedy set out in an Incentive Schedule for a Participant Event of Default.

7.3 Surviving Obligations

Subject to Section 7.2, termination shall not relieve the Participant or the IESO of their respective responsibilities relating to the Funded Activities and delivery of the Electricity Savings and Environmental Attributes up to and including the date of termination.

7.4 Cross Security and Set-off

- (a) Notwithstanding anything else in the Agreement, the IESO may draw on any Performance Security provided in respect of any Project for any default by the Participant, even where the IESO did not require the Participant to provide Performance Security in respect of the Project to which the default relates.
- (b) The IESO may set off against any payments owing to a Participant against any amounts owing to the IESO by that Participant.

7.5 Liquidated Damages

The Parties agree that any liquidated damages payable under the Agreement, including any amounts that are drawn from Performance Security by the IESO in accordance with the Agreement, are genuine pre-estimates of damages and are not penalties.

7.6 Remedies Not Cumulative

For greater certainty, the express rights and remedies of the IESO set out in Article VII are in addition to and will not limit any other rights and remedies available to the IESO at law or in equity.

ARTICLE VIII **LIMITATION OF LIABILITY, INDEMNIFICATION AND RELEASE**

8.1 No Warranty

Except as specifically set forth or referenced in the 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 Industrial Accelerator Program is based on its own assessment of the Industrial Accelerator Program and not on any reliance on anticipated or projected results, and that such participation may not result in the achievement of any Electricity Savings, each of which is expressly disclaimed.

8.2 Limitation of Liability

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 8.3 below) for any liabilities, damages, obligations, payments, losses, costs or expenses under or in relation to the Agreement (including any Incentive Schedule): (i) any amount in excess of the actual compensatory direct damages, court or arbitration costs and reasonable fees suffered or incurred by the Participant and in any event limited to the Incentives paid by the IESO under the Agreement; 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 Indemnified Parties (as defined in section 8.3 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 the Agreement, regardless of whether such liability arises under contract, tort or any other legal theory, regardless of whether the IESO was advised, knew or should have known of the possibility of such damages.

8.3 Indemnification by the Participant

The Participant will indemnify, defend and hold the IESO, the Government of Ontario, the members of the Government of Ontario's Executive Council and their respective Affiliates, and each of the foregoing Person's respective directors, officers, employees, shareholders, advisors, 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 (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 relating to any Funded Activities or the Agreement; and/or; (ii) the negligence or wilful misconduct of the Participant, except in either case to the extent that any injury or damage related to such Claim, occurrence or event is attributable to the negligence or wilful misconduct of the Indemnified Party. For greater certainty, in the event of contributory negligence or breach of the Indemnified Party, then such Indemnified Party will not be indemnified hereunder in the proportion that the Indemnified Party's negligence or breach contributed to any Indemnifiable Loss.

8.4 Defence of Claims

- (a) Promptly after receipt by the Indemnified Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which an indemnity provided for in Section 8.3 may apply, the Indemnified Party will notify the Participant in writing of such fact. The Participant will assume the defence thereof with counsel designated by the Participant and satisfactory to the affected Indemnified Party, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnified Party and the Participant and the Indemnified Party has reasonably concluded that there may be legal defences available to it which are

different from or additional to, or inconsistent with, those available to the Participant, the Indemnified Party will have the right to select separate counsel satisfactory to the Participant acting reasonably (at no additional cost to the Indemnified Party) to participate in the defence of such action on behalf of the Indemnified Party. The Participant will promptly confirm that it is assuming the defence of the Indemnified Party by providing written notice to the Indemnified Party. Such notice will be provided no later than ten (10) days prior to the deadline for responding to any claim relating to any Indemnifiable Loss.

- (b) Should any Indemnified Party be entitled to indemnification under Section 8.3 as a result of a Claim by a third party, and the Participant fails to assume the defence of such claim (which failure will be assumed if the Participant fails to provide the notice prescribed by subsection 8.4(a)), the Indemnified Party will, at the expense of the Participant, contest (or, with the prior written consent of the Participant, acting reasonably, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Participant (with the Participant remaining obligated to indemnify the Indemnified Party under Section 8.3), as the case may be, if, in the written opinion of an independent third party counsel chosen by the Parties, such Claim is meritorious. If the Participant is obligated to indemnify any Indemnified Party under Section 8.3, the amount owing to the Indemnified Party will be the amount of such Indemnified Party's actual out-of-pocket loss net of any insurance proceeds received or other recovery.

8.5 Release

The Participant hereby, for itself and its successors and assigns, releases and forever discharges each of the IESO and all of its respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns, and third party service providers and their respective subcontractors (hereinafter collectively referred to as the "**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 kind, at law or in equity, or under any statute, including without limitation, claims for property damage, business interruption and personal injury of the Participant's employees, officer, directors or licencees, which it can, shall or may have by reason of any matter, cause or thing arising as a result of, in relation to or in connection with the attendance by one or more of the employees, officers, directors, representatives, agents or third party service providers and their subcontractors ("**Attending Persons**") on one or more occasions of the IESO at any and all facilities owned or occupied by the undersigned in connection with, arising out of or relating to the IESO's Industrial Accelerator Program, including this Master Agreement and any Incentive Schedule, other than in the case of the gross negligence or willful misconduct of such Attending Persons during such attendances. The foregoing release shall continue in full force and effect for the benefit of the IESO and to the extent of any conflict between this release and the terms of any other document entered into by the undersigned and the IESO pursuant to or in connection with Industrial Accelerator Program or the Agreement, the terms of this release shall prevail.

ARTICLE IX **CONFIDENTIALITY AND FIPPA**

9.1 Confidential Information

- (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 the Agreement or as may be reasonably necessary for the exercise of its rights or the performance of its obligations set out in the Agreement;
 - (ii) not disclose, provide access to, transfer or otherwise make available any Confidential Information of the Disclosing Party except as expressly permitted in the Agreement; and
 - (iii) take all measures reasonably required to maintain the confidentiality and security of all Confidential Information of the Disclosing Party that it accesses, receives, collects, uses, stores, processes, records, discloses, transfers, retains, disposes of, destroys, manages or otherwise handles (collectively “**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 Applicable Laws (including FIPPA, which the IESO is subject to), provided that the Receiving Party must first give the Disclosing Party notice of such compelled disclosure (except where prohibited by Applicable Laws 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 Applicable Laws and subject to any protective order that applies to such disclosure; and
 - (ii) to: (A) its 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) actual or prospective lenders or investors and their advisors to the extent necessary for securing financing for the Facility or a Project; (C) 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 (D) 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 the Agreement; in each case provided that any such Person is aware of the provisions of this Section 9.1 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 9.1.
- (c) Without limiting the foregoing, each Party acknowledges and agrees that:
- (i) the Participant consents to the: (A) public disclosure of its name, its contact particulars, and its participation in the Industrial Accelerator Program; (C) on a confidential basis, the disclosure of any information received by the IESO in respect of the Agreement for such internal purposes as the IESO may reasonably

determine from time to time internally and to the IESO's Representatives; (D) the public disclosure of aggregated data relating to the Industrial Accelerator Program, including a description of any Project and type of Facility, historical energy use and consumption, aggregated with other Projects in a manner intended to report on the Industrial Accelerator Program; and (D) public disclosure of any Project features and equipment unless the Participant, acting reasonably, has advised the IESO in writing that such information is confidential;

- (ii) the IESO will Handle reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives on an ongoing basis as part the Industrial Accelerator Program or other initiatives offered by the IESO and may do so without further notice to or further consent of the Participant; and
 - (iii) 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, the Government of Ontario and the Ontario Environmental Commissioner for Handling by such entities provided that the IESO notifies such person of the confidentiality of the Confidential Information.
- (d) 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.

9.2 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party will be deleted from the electronic systems of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (a) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, or (b) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, will be held by the Receiving Party and kept subject to the terms of the Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party will be entitled to make, at its own expense, and retain one copy of, any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Applicable Laws and will keep such retained copy subject to the terms of this Article IX.

9.3 Injunctive and Other Relief

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third party to whom the Disclosing Party owes a duty of confidence and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article IX.

ARTICLE X
FORCE MAJEURE

10.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure, a Party is unable, wholly or partially, to perform or comply with its material obligations hereunder, then that Party will be excused and relieved on a day for day basis from performing or complying with such obligations for the period of time in which such Force Majeure will continue and for any liability for such non-performance or non-compliance during that period.
- (b) A Party invoking Force Majeure will give the other Party written notice within ten (10) Business Days of the commencement and of the termination of Force Majeure, respectively.
- (c) If, by reason of one or more events of Force Majeure, the Participant is unable to achieve the In-Service Date in respect of a Project by the earlier of (i) the 3rd anniversary of the date of the applicable Incentive Schedule and (ii) the Program Expiry Date, then the IESO may terminate the applicable Incentive Schedule upon notice to the Participant or the Participant may terminate the Incentive Schedule upon notice to the IESO. Upon termination of an Incentive Schedule pursuant to this Section 10.1(c), the Participant will forthwith repay to the IESO any amounts paid to the Participant in accordance with the Incentive Schedule which, as of the date of termination, exceeded the amount of Eligible Costs actually incurred and paid by the Participant in accordance with the Incentive Schedule, following which, any Performance Security given in respect of this Incentive Schedule will be returned to the Participant.
- (d) Nothing in this Section 10.1 will relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.

ARTICLE XI
DISPUTE RESOLUTION

11.1 Notice of Dispute

If either Party considers that any dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute.

11.2 Negotiation

Within 20 Business Days following delivery of a notice under Section 11.1, the Company Representative from each Party will meet to attempt in good faith to resolve the dispute. If they cannot resolve the dispute within 20 Business Days (which may be extended by agreement of the Parties), either Party may refer the dispute to arbitration pursuant to Section 11.3.

11.3 Arbitration

Any disputes with respect to the Agreement, whether arising during or after the Term (including any dispute as to whether an issue is arbitrable), that are not resolved in accordance with Section 11.2 will be

resolved by arbitration before a single arbitrator pursuant to the *Arbitration Act, 1991* (Ontario) (the “**Arbitration Act**”), subject to this Article XI, and otherwise in accordance with the laws of the Province of Ontario. The following will apply:

- (a) 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.
- (b) If the Parties fail to jointly appoint an arbitrator within 20 days after the date of such notice, an arbitrator will be designated by a judge of the Ontario Superior Court of Justice upon application by either Party. Any arbitrator selected to act under this Master Agreement will be qualified by education, training and experience to pass on the particular question in dispute and will have no connection to either party other than acting in previous arbitrations.
- (c) The arbitration will be conducted in English in the City of Toronto at such location and time as the arbitrator may fix and, failing agreement thereto by the Parties, in accordance with such procedures as the arbitrator will determine.
- (d) The arbitrator will provide each party with an opportunity to be heard and will conduct the arbitration hearing in accordance with the Arbitration Act. 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, award costs, and award interest.
- (e) The arbitrator will deliver a written decision 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.
- (f) 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, or solely on a question of law as provided for in the Arbitration Act. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

11.4 Confidentiality

All proceedings and the making and terms of the arbitral award under Section 11.3 will be private and, subject to registration in any court, be kept confidential unless the Parties otherwise agree; provided, however, that such obligation to maintain confidentiality will not prohibit either Party from complying with mandatory disclosure requirements under Applicable Laws. All information disclosed, including all statements made and documents produced, in the course of any proceedings under Section 11.3 will be held in confidence and neither party may rely on, or introduce as evidence in any subsequent proceeding, any admission, view, suggestion, notice, response, discussion or position of the other party or any acceptance of a settlement proposal or recommendation for settlement made during the course of the arbitration, except (a) as required by Applicable Law; or (b) to the extent that disclosure is reasonably necessary for the establishment or protection of a Party’s legal rights against a third party or to enforce the arbitral award or appeal award or to otherwise protect a Party’s rights under the arbitration.

11.5 Preclusion of Actions

The Parties agree that all disputes in respect of this Agreement will be settled in accordance with this Article XI. Submission to arbitration under this section is intended by the Parties to preclude any action or application to a court of competent jurisdiction in matters which may be arbitrated hereunder, save and except for the enforcement of any arbitral award and for any claim for injunctive relief permitted under Section 9.3.

ARTICLE XII GENERAL PROVISIONS

12.1 Audit Rights

- (a) For the purposes of confirming compliance with the Agreement, the IESO and its authorized representatives may audit the Participant's books, accounts, records and other information related to the Agreement on reasonable notice during normal business hours and in a manner which does not unreasonably interfere with the Participant's business activities.
- (b) The Participant will make its information pertaining to the Agreement, any Funded Activities and its personnel available to the IESO and its authorized representatives within five Business Days of an audit request and will use its commercially reasonable efforts to make its service providers' personnel available in connection with any such audit.
- (c) Prior to finalizing the results of any such audit, the IESO will review the findings of the audit with the Participant and provide it with a reasonable opportunity to respond to the results and audit findings.
- (d) Without limiting any other remedies of a Party under the Agreement, if an audit conducted and finalized pursuant to this Section 12.1 discloses that there has been an overpayment or underpayment by the IESO or a misappropriation or misuse of Incentive funds by the Participant, the amount of the overpayment, underpayment, misappropriation or misuse will be payable or repayable to the IESO promptly following such disclosure.
- (e) Audits will be conducted at the expense of the IESO, provided that if an audit indicates a material misappropriation or misuse of funds paid by the IESO to the Participant, the Participant will pay the entire reasonable cost of the audit (and such cost will not be an Eligible Cost under any Incentive Schedule).

12.2 Assignments and Changes of Control

- (a) A Participant will not assign this Agreement to another Person, other than to an Affiliate to whom the Participant's interest in the Facility is also transferred and who has assumed all of the Participant's obligations hereunder and agrees in writing to be bound by this Agreement, except with the prior written consent of the IESO.
- (b) A Participant will not amalgamate with another Person, other than an Affiliate where the amalgamated entity retains the Participant's interest in the Facility and all of the Participant's obligations hereunder, except with the prior written consent of the IESO.

- (c) A Participant will not undergo a change of Control, except with the prior written consent of the IESO.

12.3 Environmental Attributes

- (a) All Environmental Attributes arising in respect of Electricity Savings for which an Incentive has been paid (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 Funding Percentage (the result being the “**IESO Environmental Attributes**”) pursuant to Section 12.3(c) and the Participant owning the remaining quantity of Electricity Savings Environmental Attributes (the “**Participant Environmental Attributes**”). All other Environmental Attributes arising in relation to a Participant’s Facility will be owned by the Participant and the IESO will have no entitlement thereto.
- (b) The Participant will 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 a statement of the applicable quantity of Electricity Savings Environmental Attributes, the Funding Percentage and the resultant quantity of Participant Environmental Attributes to which the Participant believes it is entitled. If the IESO intends to realize on any of the IESO Environmental Attributes before the Participant has provided notice that the Participant will realize on the Participant Environmental Attributes, then the IESO will notify the Participant prior to the IESO realizing on any of the IESO Environmental Attributes. The Participant will provide such information and cooperation as may be reasonably requested by the IESO for the purposes of confirming the allocation of Electricity Savings Environmental Attributes pursuant to a notice delivered by either Party under this Section.
- (c) The Participant hereby grants, transfers, conveys, assigns and sets over to, or to the extent such transfer or assignment is not permitted, holds in trust for, the IESO free and clear of all liens, claims and encumbrances other than those in favour of the IESO, all of the Participant’s right, title, benefit and interest in and to the IESO Environmental Attributes, and the IESO will own all right, title, benefit and interest in and to all IESO Environmental Attributes.
- (d) The Participant will from time to time, upon written direction of the IESO, take all such actions and do all such things necessary to effect, as set out in Section 12.3(c), the transfer and assignment to, or holding in trust for, the IESO, all right, title, benefit and interest in and to all IESO Environmental Attributes.
- (e) The Participant will from time to time, upon written direction of the IESO, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies the IESO Environmental Attributes that are created and allocated or credited pursuant to Applicable Law from time to time for the purposes of transferring the IESO Environmental Attributes to the IESO in accordance with this Section 12.3. The Participant will be entitled to reimbursement of the cost of complying with a direction under this Section 12.3(e), provided that the IESO, acting reasonably, approved such cost in writing prior to the cost being incurred by the Participant.

12.4 Company Representatives

- (a) The IESO will identify its Company Representative by notice in writing to the Participant and may change its Company Representative on written notice to the Participant. The Participant will identify its Company Representatives in each Incentive Schedule (and may have different Company Representatives for different Incentive Schedules) and may change its Company Representative on written notice to the IESO.
- (b) Each Party confirms that its respective Company Representatives are duly authorized to act on behalf of the Party. Written instructions, requests and decisions of a Company Representative will be binding on the appointing Party as to all matters pertaining to this Agreement and the Incentive Schedule in respect of which they were appointed, provided that such instructions, requests and decisions expressly reference this Agreement and the applicable Incentive Schedules.
- (c) Other than with respect to written notices of a change of Company Representative, notices, waivers, consents, amendment or any other instrument are binding on the IESO only if executed by the Company Representative.

12.5 Project Communications

The Participant will obtain the IESO's prior written approval to all Project Communications in advance of publication or release thereof.

12.6 Interpretation

(a) **Consent.** Whenever a provision requires an approval or consent and the approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required will be conclusively deemed to have withheld its approval or consent. (b) **Currency.** Unless otherwise specified, all references to money amounts are to the lawful currency of Canada. (c) **Headings.** The headings and table of contents are for convenience of reference only and will not affect the interpretation of the Agreement. (d) **Including.** Unless otherwise specified, where "including" is used in the Agreement, it means "including (or includes) without limitation". (e) **No Strict Construction.** Any ambiguity regarding the Agreement will not be construed against the IESO or in favour of the Participant by virtue of the Agreement having been drafted by the IESO. (f) **Severability.** The unenforceability of any provision of the Agreement does not affect the enforceability of any other provision. (g) **Statutory References.** A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule. (h) **Time Periods.** Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

12.7 Governing Law and Attornment

The Agreement is governed by the laws of Ontario and, subject to Article XI, the parties attorn to the jurisdiction of the courts of Ontario sitting in Toronto.

12.8 Amendments

This Master Agreement and any executed Incentive Schedules, may not be varied, amended or supplemented except by an agreement in writing signed by both Parties.

12.9 Waivers

No waiver of any obligation under, or remedy for breach of, the Agreement is effective unless it is in writing.

12.10 Further Assurances

Each Party will, at the written request of the other party, do all further things as reasonably required to more effectively implement the Agreement.

12.11 Binding agreement

The Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns, including any entity that replaces the IESO.

12.12 Third party beneficiaries

The Agreement does not confer upon any third parties, any rights, interests, obligations or remedies.

12.13 Relationship of the Parties

The Parties are independent contractors and the Agreement does not create any partnership, joint venture, employer/employee, principal/agent or any other relationship between the Parties.

12.14 Notice

All notices pertaining to the Agreement not explicitly permitted to be in a form other than writing will be in writing and will be addressed to the other Party as follows:

- (a) If to the Participant:



- (b) If to the IESO:

Independent Electricity System Operator
120 Adelaide Street West Suite 1600
Toronto, Ontario M5H 1T1
Attention: Manager, Program Delivery and Partner Services
Facsimile: 416-967-1947
Email: conservationcontracts@ieso.ca

With a copy to:

Industrial Accelerator Program Management
Email: IA@ieso.ca

Either Party may, by written notice to the other, change its respective Company Representative or the address to which notices are to be sent.

- (c) Notice delivered or transmitted as provided above will be deemed to have been given and received on the day it is received or transmitted, provided that it is received or transmitted on a Business Day prior to 5:00 p.m. local time in the place of receipt. Otherwise such notice will be deemed to have been given and received on the next Business Day.
- (d) Any notices of a Participant Event of Default and termination of the Agreement will only be given by hand or courier delivery.

12.15 Counterparts and Execution

This Master Agreement and any Incentive Schedules may be signed and delivered by original or by email transmission and executed in any number of counterparts, and each executed counterpart will be considered to be an original. All executed counterparts of the Master Agreement or of an Incentive Schedule taken together will constitute one agreement.

[Signature page to follow]

IN WITNESS WHEREOF the Parties have executed this Master Agreement as of the date first above written.

[NAME OF PARTICIPANT]

Per: _____
Name:
Title:

I have authority to bind the Corporation.

**INDEPENDENT ELECTRICITY SYSTEM
OPERATOR**

Per: _____
Name:
Title:

I have authority to bind the Corporation.

SCHEDULE "A"

DEFINED TERMS

“**Advanced Evaluation and Incentive Report**” means, for the purposes of a Retrofit Incentive Schedule or an HPNC Incentive Schedule, an evaluation and Incentive report in the form made available on the Website that is prepared by the Participant prior to the commencement of a Project and submitted to the IESO in accordance with the applicable Incentive Schedule;

“**Affiliate**” means any Person that, in relation to another specified Person: (i) Controls that other Person; (ii) is Controlled by that other Person; or (iii) is Controlled by the same Person that Controls that other Person;

“**Agreement**” means this Master Agreement, including all recitals and schedules together with executed Incentive Schedules (and attachments thereto) as it is or they may be amended, restated or supplemented from time to time;

“**Annual Savings Target**” has the meaning given to it in an Energy Manager Incentive Schedule;

“**Annualized Electricity Savings**” means Electricity Savings divided by the number of years in the relevant Electricity Savings Period;

“**Anticipated Electricity Savings**” means in each M&V Reporting Period (as defined in the M&V Plan), the Electricity Savings anticipated by the Technical Reviewer to be achieved during such period or such other amounts as were approved by the IESO in writing, as set out in the Initiative Schedule;

“**Applicable Building Code**” means the “building code” as defined in the *Building Code Act, 1992* (Ontario), as may be amended (or any other applicable building code imposed by a municipality to the extent that it supplements any part of the foregoing building code);

“**Applicable Laws**” means any applicable law including any statute, legislation, treaty, regulation and any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Governmental Authority and any applicable Governmental Approvals;

“**Application**” means the application submitted by the Participant to, and accepted by, the IESO in respect of one or more Incentives;

“**Approved Maximum Amount**” means the maximum amount of an Engineering Study Incentive as set out in the applicable Incentive Schedule.

“**Approved Modelling Software**” means any of the following software, the output of which is the Modelling Results Report which is used to determine Electricity Savings associated with a Project: EE4-OBC or EE4 version 1.7 or higher; DOE 2 version 2.1 or higher; eQUEST version 3.64 or higher; EnergyPro version 5.1.6.2 or higher; CAN-QUEST; or any additional modelling software that may be considered by the IESO, provided such software is ASHRAE 140-compliant, as represented by the software’s program developer, or as otherwise approved by the IESO;

“**Assessment Period**” has the meaning given to it in an Energy Manager Incentive Schedule;

“**Attending Persons**” has the meaning given to it in Section 8.5;

“**Base Case**” means, for the purposes of an HPNC Incentive Schedule, the case based on the assumption that the new construction or major renovation that is the subject of the Pre-Project Submission Form would be completed without the HPNC Initiative and at least meeting the minimum requirements of the Applicable Building Code;

“**Base Case Baseline**” means the Projected economic, operational and technical configuration of a Facility without implementation of the Project, for the Electricity Savings Period, taking into account appropriate adjustments during such period;

“**Business Day**” means any day that is not a Saturday, a Sunday, or a legal holiday in the Province of Ontario;

“**CCHP Project**”, as used in respect of an Incentive Schedule, Project has the meaning given to it in that Incentive Schedule;

“**Certified Energy Manager**” means a Person who has been certified as a Certified Energy Manager by the Association of Energy Engineers;

“**Change Notice**” has the meaning given to it in Section 3.4(a) of a Large Project Incentive Schedule;

“**Claim**” means any actual, potential or to the knowledge of the applicable party threatened 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;

“**Claw Back Amount**” has the meaning given to it in Section 3.4(c) of a Large Project Incentive Schedule;

“**Claw Back Notice**” has the meaning given to it in Section 3.4(b) of a Large Project Incentive Schedule;

“**Company Representative**” means, in respect of the Participant or the IESO as applicable, the individual(s) appointed in accordance with Section 12.4;

“**Confidential Information**” means all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with the Agreement including all new information derived at any time from any such confidential information, but excluding (i) publicly-available information unless made public by the Receiving Party or its Representatives in a manner not permitted by the Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative if such other source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party without reference to Confidential Information of the Disclosing Party;

“**Control**” means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise, and “**Controlled**” has a corresponding meaning;

“**Credit Rating**” means, (i) with respect to the Participant or an Affiliate (A) its long-term senior unsecured debt rating (not supported by third party credit enhancement) or (B) the lower of its issuer or corporate credit rating, as applicable, in either case being the lower rating provided by S&P, Moody’s or DBRS or any other established and reputable debt rating agency agreed to by the Parties from time to time, each acting reasonably;

“**Custom Incentive**” means an Incentive paid for a Custom Project calculated in accordance with an HPNC Incentive Schedule;

“**Custom Measure**” means, (a) for the purposes of an HPNC Incentive Schedule, a measure that satisfies the eligibility criteria set out in Section 6 of Exhibit "A" of the HPNC Incentive Schedule; and (b) for the purposes of a Retrofit Incentive Schedule, measures not included as any Prescriptive Measures and that involve one or more of the following (i) replacement of inefficient existing equipment with high efficiency equipment; (ii) the purchase and installation of new high efficiency equipment where none previously existed; (iii) replacement of oversized existing equipment with appropriate sized efficient equipment; (iv) implementation of new operating procedures; or (v) improvement of thermal performance of a building envelope through measures such as increased insulation, installation of high performance windows and frames, low emissive window glazing or low emissive roof barriers, provided in each case that what constitutes high efficiency or high performance will be determined by the IESO in its sole discretion;

“**Custom Project**” means, (a) for the purposes of an HPNC Incentive Schedule, a Project that satisfies the eligibility criteria set out for Custom Projects in Exhibit "A" of the HPNC Incentive Schedule; and (b) for the purposes of a Retrofit Incentive Schedule, a Project that includes only Custom Measures;

“**Custom Worksheet**” means the worksheet in the form made available on the Website in respect of Custom Projects for an HPNC Incentive Schedule or Retrofit Incentive Schedule, as applicable;

“**DBRS**” means Dominion Bond Rating Service limited or its successors;

“**Demand Savings**” means the maximum reduction in electricity demand between the base case and the energy efficient case occurring in the same hour between 11 am to 5 pm on business days, June 1 through September 30. For Projects that are weather dependent as determined by the IESO, Demand Savings shall be considered as occurring at peak design load conditions;

“**Design Decision-Maker**” means a person who satisfies the eligibility criteria in Section 8 of Exhibit "A" of an HPNC Incentive Schedule;

“**Design Decision-Maker Agreement**” means the IESO form of Design Decision-Maker Agreement made available on the Website, pursuant to which each Design Decision-Maker agrees to be bound;

“**Design Decision-Maker Incentive**” means the Incentive paid by the IESO directly to the Design Decision-Maker in connection with the Custom Project(s) undertaken under an HPNC Incentive Schedule;

“**Detailed Engineering Study**” means a study conducted with respect to the Facility in accordance with a Engineering Study Incentive Schedule, meeting the minimum requirements as outlined in the Incentive Schedule;

“**Disclosing Party**” means, with respect to Confidential Information, the Party providing or disclosing such Confidential Information and may be the IESO or the Participant, as applicable;

“**Distribution System**” means a distribution system in respect of which the distributor is subject to the Ontario Energy Board's *Distribution System Code*;

“**Draft Report**” means a draft report regarding the results of an Engineering Study, to be delivered in accordance with the applicable Engineering Study Incentive Schedule;

“**Electricity Savings**” means the aggregate electricity consumption reduction from the IESO-Controlled Grid, expressed in MWh, arising directly from a Project during the Electricity Savings Period, measured in accordance with the M&V Plan, initially as projected by the Technical Reviewer and specified in the applicable Incentive Schedule, and ultimately determined by the IESO based on the the M&V Report by the Technical Reviewer following the In-Service Date in the relevant Electricity Savings Period;

“**Electricity Savings Period**” means the period specified in an Incentive Schedule during which Electricity Savings must be demonstrated;

“**Electricity Savings Environmental Attributes**” has the meaning given to it in Section 12.3(a);

“**Eligibility Requirements**” means the IESO’s *Industrial Accelerator Program Eligibility Requirements* as may be amended from time to time, provided that when a specific version of the Eligibility Requirements is incorporated by reference into an Incentive Schedule, unless the Parties otherwise agree in writing, that version of the Eligibility Requirements will continue to apply to that Incentive Schedule notwithstanding any subsequent amendments to the IESO’s *Industrial Accelerator Program Eligibility Requirements*;

“**Eligible Costs**”, as used in respect of an Incentive Schedule, has the meaning given to it in that Incentive Schedule;

“**Eligible Person**”, as used in respect of an Incentive Schedule, has the meaning given to it in that Incentive Schedule;

“**Eligible Measures**” , as used in respect of an Incentive Schedule, has the meaning given to it in that Incentive Schedule;

“**Eligible Project**”, as used in respect of an Incentive Schedule, has the meaning given to it in that Incentive Schedule;

“**EM&V Protocols**” means the methods and processes that the IESO develops for the evaluation, measurement and verification of conservation and demand management programs and initiatives, as such methods and processes may be amended from time to time;

“**Energy Efficient Case**” means, for the purposes of a HPNC Incentive Schedule, the case based on using the Eligible Measures specified in the Pre-Project Submission Form;

“**Energy Management Plan**” means a document generated by an Energy Manager in connection with the Participant’s conservation policy and planning, describing the activities and plans required to reduce energy consumption in the Participant’s transmission-connected Facilities located in Ontario 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 a person employed or engaged by a Participant whose primary responsibility is to propose and lead methodologies and processes to reduce energy consumption in the Participant’s facilities;

“**Energy Manager Incentive**” means the amount of the Incentive paid for an Energy Manager calculated in accordance with an Energy Manager Incentive Schedule;

“**Energy Manager Incentive Schedule**” means an Incentive Schedule entered into under this Master Agreement for funding of a full-time Energy Manager;

“**Engineered Incentive**” means an Incentive paid for an Engineered Project calculated in accordance with an HPNC Incentive Schedule;

“**Engineered Measure**” means measures listed on the Engineered Worksheets for an HPNC Incentive Schedule;

“**Engineered Project**” means, for the purposes of an HPNC Incentive Schedule, a Project that satisfies the eligibility criteria set out for Engineered Projects in Exhibit "A" of the HPNC Incentive Schedule;

“**Engineered Worksheet**” means the worksheet made available on the Website in respect of Engineered Projects for an HPNC Incentive Schedule;

“**Engineering Study**” means a Preliminary Engineering Study or a Detailed Engineering Study, as context requires;

“**Engineering Study Incentive**” means the amount of the Incentive calculated in accordance with an Engineering Study Incentive Schedule;

“**Engineering Study Incentive Schedule**” means an Incentive Schedule entered into under this Master Agreement for funding of a Preliminary Engineering Study or a Detailed Engineering Study;

“**Environmental Attributes**” means environmental attributes associated with a Facility having decreased environmental impacts resulting from the implementation of a Project, and includes:

- (i) rights to any fungible or non-fungible attributes, whether arising from the Facility itself, from the interaction of the Facility with the IESO-Controlled Grid or because of applicable legislation or voluntary programs established by governmental authorities, governmental agencies or applicable regulatory bodies;
- (ii) any and all rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs and specific Environmental Attributes include ownership rights to any applicable credits, entitlements or other instruments resulting from interaction of the Facility with the IESO-Controlled Grid or as specified by applicable legislation or voluntary programs, and the right to quantify and register these with competent authorities; and
- (iii) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing;

“**Excluded Generation Projects**”, as used in respect of an Incentive Schedule, has the meaning given to it in that Incentive Schedule;

“**Excluded Projects**”, as used in respect of an Incentive Schedule, has the meaning given to it in that Incentive Schedule;

“**Event of Insolvency**” means, in respect of a party, any one or more of the following: (a) if a party files a petition in bankruptcy or for reorganization or for an arrangement pursuant to any Insolvency Legislation; (b) if a party is adjudged bankrupt by an Ontario court, or becomes insolvent, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts generally as they become due, is dissolved or suspends payment generally of its obligations; (c) if a petition is filed proposing the adjudication of a party as bankrupt or its reorganization pursuant to any applicable bankruptcy laws and regulations or any similar laws and regulations, and: (i) the party consents to that filing; (ii) the petition is not discharged or denied within 30 days after that filing; or (iii) the petition is not diligently defended against; and (d) if a receiver, trustee, liquidator, or other similar official is appointed to take charge of a party or of all or substantially all of the business or assets of a party, and: (i) that party consents to the appointment; or (ii) the appointment is not discharged or withdrawn or action is not taken by that party to secure the discharge of that official within 30 days after the appointment;

“**Facility**” means the building(s) and premises owned or occupied by the Participant and in which a Project is or will in the future be located;

“**Final Project Status Report**” means the last Project Status Report to be filed with the IESO by the Participant, which includes a certification by the Technical Reviewer that the Project was completed in accordance with the Incentive Schedule in all material respects including confirmation of the actual Eligible Costs;

“**Final Evaluation and Incentive Report**” means, for the purposes of a Retrofit Incentive Schedule or an HPNC Incentive Schedule, an evaluation and Incentive report in the form made available on the Website that is prepared by the Participant, in the case of a Retrofit Incentive Schedule, and by the Technical Reviewer, in the case of an HPNC Incentive Schedule, after the completion of a Project and submitted to the IESO in accordance with the applicable Incentive Schedule;

“**Final Report**” means a final report regarding the results of an Engineering Study, to be delivered in accordance with the applicable Engineering Study Incentive Schedule;

“**FIPPA**” means the Freedom of Information and *Protection of Privacy Act* (Ontario), as the same may be amended or replaced from time to time;

“**Force Majeure**” means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, that is beyond the affected Party’s reasonable control, and will include: (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts; (b) fires or explosions; (c) local, regional or national states of emergency; (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute); (e) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics; and (f) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used commercially reasonable efforts to oppose said order, judgment, legislation, ruling or direction. Notwithstanding the foregoing, Force Majeure does not include any of the following circumstances where the Party seeking to invoke Force Majeure:

- (i) has caused the applicable event of Force Majeure by its fault or negligence;
- (ii) has failed to use commercially reasonable efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which will be wholly within the discretion of the Party involved);
- (iii) because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach of or failure to comply with Applicable Law by such Party;
- (iv) is unable to perform its obligations by a lack of funds or other financial cause; or
- (v) fails to comply with the notice provisions in Section 10.1(b);

“**Funded Activities**” means any of the activities which the Participant undertakes (directly or through subcontractors) in respect of an Incentive Schedule or for which the Participant otherwise receives funding under this Agreement, including without limitation any Project or Portfolio;

“**Funding Percentage**” means, in respect of a Project or other Funded Activities, the total Incentives paid by the IESO pursuant to this Agreement in respect of the Project or other Funded Activities divided by the total amount of actual Eligible Costs incurred by the Participant in respect of the Project or other Funded Activities, multiplied by 100, and expressed as a percentage;

“**Generation**” means a process used to produce energy in the form of electricity that is for the Participant’s own use and the impact of which is measured in accordance with the M&V Plan and:

- (i) that has all permits and approvals required by Applicable Laws including, without limitation, all permits and approvals that may be required for the operation of the generator from the Ontario Ministry of the Environment pursuant to the *Environmental Assessment Act* (Ontario) and the *Environmental Protection Act* (Ontario); and
- (ii) that meets all of the relevant requirements for a generator under the IESO Market Rules including, without limitation, the requirements described in any amendments to the IESO Market Rules from time to time;

“**Generation Facility**” means a facility whose primary purpose, as determined by the IESO, is generating electricity or providing ancillary services;

“**Good Engineering Practices**” means any of the practices, methods and activities adopted by a significant portion of North American industries as good practices applicable to the design, building, and operation of Projects of type, size and capacity similar to the Projects to which Funded Activities relate or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent engineer in light of all the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Applicable Law; Good Engineering Practices are not limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods or acts generally accepted in North American industries;

“**Governmental Authority**” means any legislative, executive, judicial or administrative body or Person having jurisdiction in the relevant circumstances;

“**Governmental Approval**” means any declaration, filing or registration with, notice to or license, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority pertaining to the Agreement, a Project or Portfolio, or any Funded Activities;

“**Handles**” has the meaning given to it in Section 9.1(a)(iii);

“**HPNC Incentive**” means any one of the Incentives available under a HPNC Incentive Schedule, including the Modelling Incentive, Design Decision-Maker Incentive, Prescriptive Incentive, Engineered Incentive or Custom Incentive, each as calculated in accordance with the HPNC Incentive Schedule;

“**HPNC Incentive Schedule**” means an Incentive Schedule entered into under the Master Agreement for funding of high performance new construction;

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

“**IESO**” means the Independent Electricity System Operator in the Province of Ontario;

“**IESO-Administered Markets**” means the markets established by the IESO Market Rules;

“**IESO-Controlled Grid**” has the meaning given to it by the IESO Market Rules;

“**IESO Environmental Attributes**” has the meaning given to it in Section 12.3(a);

“**IESO Market Participation Agreement**” means the form of agreement prescribed by the IESO from time to time to be entered into by Program Participants;

“**IESO Market Rules**” means the rules made under Section 32 of the *Electricity Act, 1998*, together with all market manuals, policies and guidelines issued by the IESO, all as amended or replaced from time to time;

“**Implementation Deadline**” means, in respect of a Project, the day that is two years after the date first shown on the applicable Incentive Schedule;

“**Incentive**” means one or more of the monetary incentives that may be provided by the IESO pursuant to Incentive Schedules under this Agreement;

“**Incentive Schedule**” means a schedule to this Agreement that has been entered into by the Parties in accordance with Section 2.1;

“**Incentive Security**” means, in the context of the Large Project Incentive Schedule, the Net Project Incentive payments withheld by the IESO as Incentive security upon the election by the Participant to receive payments under Section 4.3 of the Large Project Incentive Schedule;

“**Indemnifiable Loss**” has the meaning given to it in Section 8.3;

“**Indemnified Party**” has the meaning given to it in Section 8.3;

“**Ineligible Costs**”, as used in respect of an Incentive Schedule, has the meaning given to it in that Incentive Schedule;

“**Ineligible Project**”, as used in respect of an Incentive Schedule, has the meaning given to it in that Incentive Schedule; “**Information Requests**” means any information request, response to such

information request and any other correspondence between the IESO, or the Technical Reviewer, and the Participant, or its representatives, relating to an Engineering Study and attached to the applicable Engineering Study Incentive Schedule;

“**In-Service Date**” means, in respect of a Project or Portfolio, the first day that the Project or Portfolio is fully installed in accordance with this Agreement and the applicable Incentive Schedule and delivers Electricity Savings, as certified or otherwise verified by the Technical Reviewer to the IESO;

“**Insolvency Legislation**” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada), the *Companies’ Creditor Arrangement Act* (Canada), or any analogous legislation, and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction or the application or competence of such law);

“**IPMVP**” means the Efficiency Valuation Organizations IMPVP Committee’s *International Performance Measurement and Verification Protocol*, as updated from time to time;

“**Large Project**” means a Project which is expected to deliver at least 350 MWh of Annualized Electricity Savings and which may be eligible for a Project Incentive of up to \$10,000,000;

“**Large Project Incentive Schedule**” means an Incentive Schedule entered into under this Master Agreement for funding if a Large Project;

“**Master Agreement**” means the terms of this master Incentive agreement, as may be amended, restated or supplemented from time to time;

“**M&V Plan**” means a measurement and verification plan developed by the Technical Reviewer which outlines the criteria by which Electricity Savings will be measured, the information and data to be collected, the methodologies to be used and the activities to be undertaken by the Participant, to be provided to the Technical Reviewer for the purpose of developing the M&V Report and attached as an exhibit to the applicable Incentive Schedule;

“**M&V Report**” means a measurement and verification document approved by the Technical Reviewer quantifying the Electricity Savings delivered by a Project during the M&V Reporting Period specified by the M&V Plan;

“**M&V Reporting Period**” has the meaning given to it in an M&V Plan;

“**Material Adverse Effect**” means any change (or changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations under this Agreement;

“**Minimum Expected Life**” means the number of years a Project or Portfolio is required to provide the Electricity Savings, being 10 years after the In-Service Date;

“**Modelling Assumptions Report**” means, for the purposes of an HPNC Incentive Schedule, a report to be submitted by a Participant to the IESO summarizing the assumptions used with the Approved Modelling Software, in accordance with the required form;

“**Modelling Incentive**” means, for the purposes of an HPNC Incentive Schedule, the Incentive paid to a Participant for the preparation of the Modelling Assumptions Report in connection with a Custom Project;

“**Modelling Results Report**” means, for the purposes of an HPNC Incentive Schedule, a computer simulation file submitted by the Participant that is the model of the eligible Project and which provides information, among other things, about a Custom Project, including the specification and quantities of Eligible Measures, resulting from the use of Approved Modelling Software;

“**Moody’s**” means Moody’s Investors Service, Inc. or its successor;

“**Multi-Family Building**” means a facility which houses multiple residential tenants;

“**Multi-Family Building Adder**” means, for the purposes of a Retrofit Incentive, an incremental amount added to the Participant Incentive payable to a Multi-Family Housing Provider in respect of a Project as set forth in the applicable Incentive Schedule;

“**Multi-Family Housing Provider**” means (i) a Person that is eligible to participate in the Retrofit Initiative and (ii) with respect to a facility that is a Multi-Family Building zoned as residential or mixed use;

“**MW**” means a megawatt;

“**MWh**” means a megawatt hour;

“**Nameplate Capacity**” means the rated, continuous load-carrying capability net of parasitic or station service loads, expressed in MW, of a generating facility to generate and deliver electricity at a given time;

“**Net Project Incentive**” means the Project Incentive for a Small Capital Project or a Large Project less any Engineering Study Incentive paid or to be paid to the Participant in respect of such Project;

“**OEB**” means the Ontario Energy Board or any successor thereto;

“**Online IESO**” means the online portal operated by or on behalf of the IESO, accessible at such URL as the IESO may prescribe from time to time;

“**Participant**” has the meaning set out in the first paragraph of this Agreement;

“**Participant Environmental Attributes**” has the meaning given to it in Section 12.3(a).

“**Participant Event of Default**” has the meaning given to it in Section 7.1;

“**Party**” means either of the Participant and the IESO, and the Participant and the IESO are collectively referred to as the “**Parties**”;

“**Percentage**” has the meaning given to it in Section 3.4(b) of a Large Project Incentive Schedule;

“**Performance Security**” means security provided by the Participant as “Performance Security” in accordance with a Large Project Incentive Schedule;

“**Performance Security Amount**” means an amount equal to the estimated Net Project Incentive multiplied by a percentage equal to 100% as may be reduced in accordance with the applicable Incentive Schedule;

“**Person**” means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, governmental authority or other entity of any kind;

“**Portfolio**” means two or more Projects which are grouped together for the purpose of obtaining Project Incentives for the Projects so grouped, as identified in an Incentive Schedule;

“**Post-Project Submission Form**” means the Post-Project Submission Form to be submitted pursuant to a Retrofit Incentive Schedule or HPNC Incentive Schedule, as applicable, substantially in the form attached to the applicable Incentive Schedule;

“**Pre-Project Submission Form**” means the Pre-Project Submission Form attached to a Retrofit Incentive Schedule or HPNC Incentive Schedule, as applicable;

“**Preliminary Engineering Study**” means a study conducted with respect to the Facility in accordance with an Engineering Study Incentive Schedule, meeting the minimum requirements as outlined in the Incentive Schedule;

“**Prescriptive Incentive**” means an Incentive paid for a Prescriptive Project under an HPNC Incentive Schedule;

“**Prescriptive Measure**” means measures listed on the Prescriptive Worksheets for an HPNC Incentive Schedule or a Retrofit Incentive Schedule;

“**Prescriptive Project**” means (a) for the purposes of an HPNC Incentive Schedule, a Project that satisfies the eligibility criteria set out for Prescriptive Projects in Exhibit "A" of the HPNC Incentive Schedule; and (b) for the purposes of a Retrofit Incentive Schedule, a Project that includes only Prescriptive Measures;

“**Prescriptive Worksheet**” means the worksheet made available on the Website in respect of Prescriptive Projects for an HPNC Incentive Schedule or Retrofit Incentive Schedule, as applicable;

“**Prime Rate**” means the annual rate of interest equal to the rate at which the Royal Bank of Canada establishes at its principal office in Toronto as the reference rate of interest to determine interest rates it will charge on such day for commercial loans in Canadian dollars made to its customers in Canada and which it refers to as its “prime rate of interest”;

“**Program Expiry Date**” means December 31, 2022;

“**Program Participant**” mean a Person who has registered to participate in an IESO program using Online IESO and who has entered into an IESO Market Participation Agreement;

“**Project**” means the installation, retrofit, replacement or modification applied to a single process or equipment in order to deliver Electricity Savings, as described in an Incentive Schedule;

“**Project Benefits**” means the sum of all benefits Projected to be generated from the implementation of the Project during the Electricity Savings Period including, without limitation, Electricity Savings and benefits not related to Electricity Savings, including, again without limitation, from reducing other energy consumption, use of alternative fuels, positive and negative difference in operating and maintenance costs and other avoided fuels, expressed as a dollar amount;

“**Project Budget**” means the total budget for the planning, engineering, design, construction and commissioning of the Project or Portfolio, as set out in the applicable Incentive Schedule;

“**Project Communication**” means publications, publicity materials and other forms of release or communication from the Participant pertaining to a Project or other Funded Activities;

“**Project Incentive**” means the amount of the Incentive paid for a Small Capital Project or Large Project calculated in accordance with a Small Capital Project Incentive Schedule or Large Project Incentive Schedule;

“**Project Payback**” means the expected number of years it will take to recover the Eligible Costs for a Project, and is calculated by (i) subtracting from the Eligible Costs: the Preliminary Engineering Study Incentive, the Detailed Engineering Study Incentive and the Net Project Incentive received by the Participant, if any, and (ii) dividing the remainder thereof by the expected Project Benefits, subject to adjustment in accordance with the applicable Incentive Schedule

“**Project Schedule**” means the schedule for the planning, engineering, design, construction and commissioning of the Project (including those Projects in a Portfolio) as attached to an Incentive Schedule where required;

“**Project Status Report**” means, in respect of a Project or Portfolio, a completed status report in the form posted on the IESO website from time to time and containing, without limitation, the actual Eligible Costs incurred to and paid to the date thereof, the status of the Project implementation relative to the budget and schedule provided by the Participant during a Project review with a description of any changes in scope or other issues that may impact the Project In-Service Date or Electricity Savings;

“**Quarterly Report**” means a report to be delivered in accordance with the Energy Manager Incentive Schedule, such reports to be in the form prescribed by the IESO on the Website or in such other form as may be acceptable to the IESO in its sole discretion;

“**Rating Agency**” means any one of DBRS, Moody’s or S&P;

“**realizing**”, as used with regard to environmental attributes, has the meaning given to it in Section 12.3(b);

“**Receiving Party**” means, with respect to Confidential Information, the Party receiving Confidential Information and may be the IESO or the Participant, as applicable;

“**Releasees**” has the meaning given to it in Section 8.5;

“**Representative**” means, in respect of one of the Parties, any one of that Party’s directors, officers, employees, counsel, consultants or other advisors;

“**Required Rating**” means the Participant or Affiliate has a Credit Rating of at least A- from S&P, A low from DBRS or A3 from Moody’s;

“**Retrofit Incentive**” means the amount of the Incentive calculated in accordance with a Retrofit Incentive Schedule;

“**Retrofit Incentive Schedule**” means an Incentive Schedule entered into under this Master Agreement for funding of Prescriptive Projects and Custom Projects involving the retrofitting of existing Facilities;

“**S&P**” means the Standard and Poor’s Rating Group (a division of McGraw-Hill Inc.) or its successor;

“**Small Capital Project**” means a Project which is expected to deliver at least 100 MWh of Annualized Electricity Savings and which may be eligible for a Project Incentive of up to \$1,000,000;

“**Small Capital Project Incentive Schedule**” means an Incentive Schedule entered into under this Master Agreement for funding of a Small Capital Project;

“**Technical Reviewer**” means a Person retained by the IESO having on its staff individuals who have the professional experience and qualifications approved by the IESO;

“**Tenant Education Proposal**” means a proposal, in form and substance satisfactory to the IESO, submitted by a Multi-Family Housing Provider with a Pre-Project Submission Form;

“**Third Party Contributions**” means any financial or other contribution (including the value of contributions in kind) received from or made by any party other than the Participant or the IESO in connection with a Project or Portfolio or other Funded Activities;

“**Total System Efficiency**”, as used in respect of an Incentive Schedule, has the meaning given to it in that Incentive Schedule;

“**Transmission System**” means that part of the IESO-Controlled Grid that conveys electricity at voltages of 50 kilovolts or higher and including any structures, equipment or other things used for that purpose, which for greater certainty, will be included in the IESO-Controlled Grid;

“**Useful Thermal Output**”, as used in respect of an Incentive Schedule, has the meaning given to it in that Incentive Schedule;

“**Website**” means the IESO’s website at www.ieso.ca/IAP (or such other URL as the IESO may specify to the Participant from time to time); and

“**WER**” or “**Waste Energy Recovery**”, as used in respect of an Incentive Schedule, has the meaning given to it in that Incentive Schedule.

