



Participation Agreement

Between

(**Applicant**)

As Applicant

and

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

AGREEMENT

INFORMATION ONLY

- G. While completing the participant authorization tasks or once becoming a *market participant* and/or program participant, the Applicant may obtain access to *confidential information* when using or connecting to *IESO's* information systems.
- H. The Applicant and the IESO hereby acknowledge that, unless otherwise specified, all of the terms of this *Agreement* are intended to apply to the Applicant whenever it is accessing the *IESO's* information systems from and including the date this *Agreement* is signed by the Applicant, even if it is signed prior to the Applicant's completion of the participant authorization tasks.

NOW therefore, in consideration of the mutual covenants set forth herein and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the *Parties* agree as follows:

ARTICLE 1 INTERPRETATION

1.1 **Incorporation of *Market Rules Definitions*:** Subject to section 1.2, italicized expressions used in this Agreement have the meanings ascribed thereto in Chapter 11 of the *market rules*.

1.2 **Supplementary Definitions:** In this *Agreement*, the following italicized expressions shall have the meanings set out below unless the context otherwise requires:

“Accredited Investor” shall have the meaning attributed thereto in National Instrument 45-106 – Prospectus and Registration Exemptions, as made by the Canadian Securities Administrators, a list of the criteria is attached hereto as Schedule 2;

“Agreement” means this Agreement, including the Schedules to this Agreement, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement; and

“Party” means a party to this *Agreement* and “*Parties*” means every *Party*.

1.3 **Interpretation:** In this *Agreement*, unless the context otherwise requires:

1.3.1 words importing the singular include the plural and vice versa;

1.3.2 words importing a gender include any gender;

1.3.3 when italicized, other parts of speech and grammatical forms of a word or phrase defined in this *Agreement* have a corresponding meaning;

1.3.4 the expression “person” includes a natural person, any company, partnership, trust, joint venture, association, corporation or other private or public body corporate, and any government agency or body politic or collegiate;

1.3.5 a reference to a thing includes a part of that thing;

1.3.6 a reference to an article, section, provision or schedule is to an article, section, provision or schedule of this Agreement;

- 1.3.7 a reference to any statute, regulation, proclamation, order in council, ordinance, by-law, resolution, rule, order or directive includes all statutes, regulations, proclamations, orders in council, ordinances, by-laws or resolutions, rules, orders or directives varying, consolidating, re-enacting, extending or replacing it and a reference to a statute includes all regulations, proclamations, orders in council, rules and by-laws of a legislative nature issued under that statute;
- 1.3.8 a reference to a document or provision of a document, including this *Agreement* and the *market rules* or a provision of this *Agreement* or the *market rules*, includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document, as well as any exhibit, schedule, appendix or other annexure thereto;
- 1.3.9 a reference to a person includes that person's heirs, executors, administrators, successors and permitted assigns;
- 1.3.10 a reference to sections of this *Agreement* or of the *market rules* separated by the word "to" (*i.e.*, "sections 1.1 to 1.4") shall be a reference to the sections inclusively;
- 1.3.11 the expression "including" means including without limitation, the expression "includes" means includes without limitation and the expression "included" means included without limitation; and
- 1.3.12 a reference in this *Agreement* to the *market rules* includes a reference to any forms and *market manuals* established by the *IESO* and to any policies, guidelines or other documents adopted by the *IESO Board*, in each case as *published* pursuant to section 7.7 of Chapter 1 of the *market rules*.
- 1.4 Headings: The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement, nor shall they be construed as indicating that all of the provisions of this Agreement relating to any particular topic are to be found in any particular article, section, subsection, clause, provision, part or schedule.

ARTICLE 2
MARKET RULES

- 1.5 2.1 **Market Rules Govern:** In the event of any inconsistency between this *Agreement* and the *market rules*, the *market rules* shall prevail to the extent of the inconsistency.

ARTICLE 3
COMPLIANCE WITH MARKET RULES

- 3.1 **Applicant Compliance:** The Applicant hereby agrees to be bound by and to comply with all of the provisions of the *market rules* so far as they are applicable to the Applicant, including once it has been authorized by the *IESO* as a *market participant* or has successfully registered with the *IESO* as a program participant. Without limiting the generality of the foregoing, if the Applicant is or intends to become a program participant, the Applicant shall comply with and be bound by the provisions of Chapter 1, section 13 and Chapter 3, Section 5.
- 3.2 **IESO Compliance:** The *IESO* hereby agrees to be bound by and to comply with all of the provisions of the *market rules* so far as they are applicable to the *IESO*.
- 3.3 **Acknowledgment of Amendments:** The Applicant acknowledges and agrees that the *market rules* and the policies, guidelines and other documents referred to in section 1.3.12 may be amended by the *IESO* from time to time in accordance with the *market rules*.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

- 4.1 **Representations and Warranties of the IESO:** The *IESO* hereby represents and warrants as follows to the Applicant, and acknowledges and confirms that the Applicant is relying on such representations and warranties in applying to become authorized as a *market participant* and/or registered as a program participant:
- 4.1.1 the execution, delivery and performance of this *Agreement* by it has been duly authorized by all necessary corporate and/or governmental action; and
- 4.1.2 this *Agreement* constitutes a legal and binding obligation on the *IESO*, enforceable against the *IESO* in accordance with its terms.
- 4.2 **Representations and Warranties of the Applicant:** The Applicant hereby represents and warrants as follows to the *IESO* and acknowledges and confirms that the *IESO* is relying on such representations and warranties without independent inquiry (save and except for any testing or inspection that the *IESO* may have participated in) (i) to ascertain whether the Applicant satisfies the requirements for authorization as a *market participant* and/or registration with the *IESO* as a program participant; (ii) to ascertain whether the Applicant is ready and able to participate in the *IESO-administered markets* and/or programs, and, where applicable, to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid*; and (iii) to authorize the Applicant as a *market participant* and/or program participant under the *market rules*:

- 4.2.1 it is a duly and existing under the laws of ;
- 4.2.2 it has all the necessary corporate power to enter into and perform its obligations under this *Agreement*;
- 4.2.3 the execution, delivery and performance of this *Agreement* by it has been duly authorized by all necessary corporate and/or governmental action and in the Applicant's good faith belief and after making reasonable inquiry does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a violation or a breach of or a default under or give rise to a right of termination, greater rights or increased costs, amendment or cancellation or the acceleration of any obligation under (i) any charter or by-law instruments of the Applicant; (ii) any contracts or instruments to which the Applicant is a party or by which the Applicant is bound; or (iii) any laws applicable to it;
- 4.2.4 the individual(s) executing this *Agreement*, and any document in connection herewith, on behalf of the Applicant have been duly authorized to execute this *Agreement* and have the full power and authority to bind the Applicant;
- 4.2.5 this *Agreement* constitutes a legal and binding obligation on the Applicant, enforceable against the Applicant in accordance with its terms;
- 4.2.6 except for authorization as a *market participant* and/or registration as a program participant, and registration of any of its *facilities* or *boundary entities* by the IESO pursuant to the *market rules*, as applicable, it holds all permits, licenses and other authorizations that may be necessary to enable it to carry on the business and perform the functions and obligations of a *market participant* and/or program participant, as applicable, as described in the *market rules* and in this *Agreement*;
- 4.2.7 the information provided in support of its *application for authorization to participate* as a *market participant* and/or registration as a program participant, is true, accurate and complete in all respects;
- 4.2.8 subject to any *exemption* that the Applicant may have obtained, its *participant workstation*, if any, complies with or will comply prior to the first date the Applicant participates in the *IESO-administered markets* and/or programs, with all applicable technical requirements set forth in Appendix 2.2 of the *market rules*;
- 4.2.9 the Applicant has or will have prior to the first date the Applicant participates in the *IESO-administered markets* and/or programs, adequate qualified employees and other personnel and organizational and other arrangements that are sufficient to enable it to perform all of the functions and obligations applicable to *market participants* and/or program participants, the class of *market participant* and/or program participant of which the Applicant forms part and the *IESO-administered market* and/or program in which the Applicant wishes to participate;

- 4.2.10 subject to the granting of any exemptions for which the Applicant has applied, the *facilities* or *boundary entities* that the Applicant has registered with the *IESO* and the equipment related thereto comply, or will comply prior to the earlier of the first date the Applicant participates in the *IESO-administered markets* and/or programs and the date the Applicant's *facility* connects to the *IESO-controlled grid*, with all applicable technical requirements as set forth in the *market rules* applicable to all *market participants* and/or program participants, the class of *market participant* and/or program participant of which the Applicant forms part and the *IESO-administered markets* and/or programs in which the Applicant wishes to participate;
- 4.2.11 subject to the granting of any exemptions for which the Applicant has applied, the Applicant has provided, or will provide to the *IESO* prior to the earlier of the first date the Applicant participates in the *IESO-administered markets* and/or programs and the date the Applicant's *facility* connects to the *IESO-controlled grid*, all of the information required to be submitted in support of the registration of the *facilities* or *boundary entities* that the Applicant has registered with the *IESO* and the equipment related thereto and that such information is true, accurate and complete in all respects;
- 4.2.12 if the Applicant is or intends to be a *TR participant*, the Applicant has read, has full knowledge of and understands the provisions of the *market rules* and National Instrument 45-106 – *Prospectus and Registration Exemptions*, as made by the Canadian Securities Administrators (as the same may be amended, modified, supplemented and/or replaced from time to time, "NI 45-106") and the Applicant warrants that it is an *Accredited Investor* as such term is defined in NI 45-106 and understands that it must remain so in order to maintain authorization as a *financial market participant*; and
- 4.2.13 if the Applicant is or intends to be a *TR participant*, the Applicant hereby undertakes, covenants and agrees to advise the *IESO* in writing forthwith upon becoming aware of any event, circumstance or condition known to it that individually or together with all other such events, circumstances or conditions has, had or could have the effect of resulting in the Applicant no longer qualifying as an *Accredited Investor*.

ARTICLE 5 TERM AND TERMINATION

- 5.1 **Term:** This *Agreement* shall come into force on the date first noted above and shall remain in full force and effect until terminated in accordance with section 5.2 or section 5.3.
- 5.2 **Termination Upon Termination Order:** Subject to sections 5.4 and 5.5, this *Agreement* shall automatically terminate upon the issuance to the Applicant of a *termination order* by the *IESO* in accordance with section 6.4 of Chapter 3 of the *market rules*.
- 5.3 **Termination by Applicant:** Subject to section 5.6, this *Agreement* shall automatically terminate once the Applicant has ceased to be a *market participant* in accordance with the

- provisions of Section 9 of Chapter 2 of the *market rules* or ceased to be a program participant.
- 5.4 **Ongoing Liability:** Notwithstanding the provisions of section 5.2 or section 5.3 above, if the Applicant becomes a *terminated market participant* or is terminated as a program participant or otherwise ceases to be a *market participant* or program participant, as the case may be, the Applicant shall remain subject to and liable for all of its obligations and liabilities as a *market participant* and/or program participant which were incurred or arose under the *market rules* prior to the date on which the *termination order* was issued or the date on which the Applicant otherwise ceased to be a *market participant* and/or program participant, as the case may be, regardless of the date on which any claim relating thereto may be made.
- 5.5 **Confidentiality:** Notwithstanding the provisions of section 5.2 or section 5.3 above, if the Applicant becomes a *terminated market participant* or is terminated as a program participant or otherwise ceases to be a *market participant* and/or program participant, as the case may be, the Applicant shall remain subject to any confidentiality provisions contained in the *market rules* for all information obtained by or provided to the Applicant while the Applicant was a *market participant* and/or program participant.
- 5.6 **Survival:** Notwithstanding any provision to the contrary and for greater certainty, the terms of section 5.4 and section 5.5 of this *Agreement* shall survive any termination of this *Agreement* without limit as to time.

ARTICLE 6 LIABILITY AND INDEMNIFICATION

- 6.1 **Limitation of Liability:** The provisions of section 13 of Chapter 1 of the *market rules* apply to this *Agreement* and are hereby incorporated by reference herein, with all references in such section to a *market participant* and/or program participant being deemed to be references to the Applicant.

ARTICLE 7 MISCELLANEOUS

- 7.1 **Amendment:** No amendment of this *Agreement* shall be effective unless made in writing and signed by the *Parties*.
- 7.2 **Assignment:** This *Agreement* is personal to the *Parties*. Neither the rights nor the obligations of either *Party* under this *Agreement* may be assigned to any other person voluntarily, by operation of law, or otherwise, except with the other *Party's* prior written consent. No assignment made without the other *Party's* consent shall relieve a *Party* of its obligations under this *Agreement*. Notwithstanding the foregoing and for greater certainty, except as otherwise provided in the *market rules* or in any standard, policy, guideline, procedure or other document established by the *IESO* pursuant to the *market rules*, the

Applicant may use such information systems, communication systems, business processes, personnel, service providers or other agents as the Applicant, in its sole discretion, considers appropriate for the purpose of assisting in the performance of its obligations under the *market rules* and under such standard, policy, guideline, procedure or other document provided that, as between the *IESO* and the Applicant:

7.2.1 the Applicant shall be bound by and fully responsible for all acts or omissions of its personnel, service providers or other agents; and

7.2.2 the Applicant shall remain solely responsible and liable to the *IESO* for the due performance of such obligations.

7.3 **Successors and Assigns:** This *Agreement* shall enure to the benefit of, and be binding on, the *Parties* and their respective heirs, administrators, executors, successors and permitted assigns.

7.4 **Further Assurances:** Each *Party* shall promptly execute and deliver or cause to be executed and delivered all further documents and do such further acts and things as the other *Party* may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this *Agreement*.

7.5 **Exemption:** An exemption of any default, breach or non-compliance under this *Agreement* is not effective unless in writing and signed by the *Party* to be bound by the exemption. No exemption will be inferred or implied by any failure to act or by the delay in acting by a *Party* in respect of any default, breach or non-observance or by anything done or omitted to be done by the other *Party*. The exemption by a *Party* of any default, breach or non-compliance under this *Agreement* shall not operate as an exemption of that *Party's* rights under this *Agreement* in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

7.6 **Severability:** Each provision in this *Agreement* is distinct and severable. If any provision of this *Agreement*, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision, in whole or in part, shall not affect the legality, validity or enforceability of the remaining provisions of this *Agreement* in any other jurisdiction.

7.7 **Notices:** Any notice, demand, consent, request or other communication required or permitted to be given or made under this *Agreement* shall:

7.7.1 be given or made in the manner set forth in section 8.1 of Chapter 1 of the *market rules*;

7.7.2 be addressed to the other *Party* in accordance with the information set forth in Schedule 1 to this *Agreement*; and

7.7.3 be treated as having been duly given or made in accordance with the provisions of section 8.2 of Chapter 1 of the *market rules*.

Either *Party* may change its address and representative as set forth in Schedule 1 to this *Agreement* by written notice to the other *Party* given as aforesaid. Such change shall not constitute an amendment to this *Agreement* for the purposes of the application of section 7.1.

- 7.8 **Authority:** The Applicant hereby represents that the Applicant's representative(s) listed in Schedule 1 to this *Agreement* is hereby designated to act as the primary contact on behalf of the Applicant and to designate a rights administrator on behalf of the Applicant who may in turn add additional person(s) as user(s)/custodian(s) of the Applicant. The rights administrator is the person who requests system access to *IESO's* information systems on behalf of the Applicant. Without in any way limiting the rights and obligations under sections 7.2.1 and 7.2.2 of this *Agreement*, the Applicant shall be bound by and is solely responsible for all acts or omissions taken or made by its rights administrator and users in respect of the *IESO's* information systems. Anything said or done by the rights administrator and/or the Applicant's users shall be deemed to have been said or done by the Applicant under this *Agreement*.
- 7.9 **Governing Law:** This *Agreement* shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to principles of conflicts of laws that would impose a law of another jurisdiction.
- 7.10 **Attornment:** Subject to section 2 of Chapter 3 of the *market rules*, the *license* of each *Party*, section 36 of the *Electricity Act, 1998* (Ontario) and section 33 of the *Ontario Energy Board Act, 1998* (Ontario), each *Party* agrees (i) that any action or proceeding relating to this *Agreement* shall be brought in a court of competent jurisdiction in the Province of Ontario, and for that purpose now irrevocably and unconditionally attorns and submits to the exclusive jurisdiction of such Ontario court and all courts competent and with jurisdiction to hear appeals therefrom; (ii) that it irrevocably waives any right to, and will not, oppose any such Ontario action or proceeding on any jurisdictional basis, including *forum non conveniens*; and (iii) not to oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from an Ontario court as contemplated by this section 7.10.
- 7.11 **Counterparts:** This *Agreement* may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the *Parties* adopt any signatures received by a receiving facsimile machine as original signatures of the *Parties*; provided, however, that any *Party* providing its signature in such manner shall promptly forward to the other *Party* an original signed copy of this *Agreement* which was so faxed.

IN WITNESS WHEREOF the *Parties* have, by their duly appointed and authorized representatives, executed this *Agreement*.

Authorized Representative(s) - Person responsible for contractually binding your organization with the IESO:

By: _____ c/s
 Name: _____
 Position: _____
 Address: _____

 Email Address: _____
 Phone: _____

By: _____ c/s
 Name: _____
 Position: _____
 Address: _____

 Email Address: _____
 Phone: _____

Independent Electricity System Operator

By:	_____
Name:	<u>Stephen Nusbaum</u>
Position:	<u>Senior Manager, Performance, Applications and Integration</u>

SCHEDULE 1
NOMINATED REPRESENTATIVES FOR OFFICIAL NOTIFICATIONS
[Section 7.7]

IESO

Name of <i>IESO</i> Representative:	Stephen Nusbaum
Position:	<u>Senior Manager,</u> <u>Performance, Applications and Integration</u>
Address:	Station A, Box 4474
City/Province/Postal Code:	Toronto, Ontario M5W 4E5
Email Address:	market.registration@ieso.ca
Phone:	905.403.6601

Applicant

Identify at least one Primary contact that will be responsible for day-to-day activities for your organization with the IESO.

Name of Primary Contact:	
Position:	
Address:	
City/Province/Postal Code:	
Email Address:	
Phone:	

SCHEDULE 2

MEANING OF ACCREDITED INVESTOR

“accredited investor” means

- (a) a Canadian financial institution, or a Schedule III bank;
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);
- (c) a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary except the voting securities required by law to be owned by directors of that subsidiary;
- (d) a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than a person registered solely as a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador);
- (e) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d);
- (f) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada;
- (g) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;
- (h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;
- (i) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada;
- (j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1,000,000;
- (k) an individual whose net income before taxes exceeded \$200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse

exceeded \$300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year;

- (l) an individual who, either alone or with a spouse, has net assets of at least \$5,000,000;
- (m) a person, other than an individual or investment fund, that has net assets of at least \$5,000,000 as shown on its most recently prepared financial statements;
- (n) an investment fund that distributes or has distributed its securities only to:
 - i) a person that is or was an accredited investor at the time of the distribution,
 - (ii) a person that acquires or acquired securities in the circumstances referred to in sections 2.10 [*Minimum amount investment*], and 2.19 [*Additional investment in investment funds*], or
 - (iii) a person described in paragraph (i) or (ii) that acquires or acquired securities under section 2.18 [*Investment fund reinvestment*];
- (o) an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Québec, the securities regulatory authority, has issued a receipt;
- (p) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be;
- (q) a person acting on behalf of a fully managed account managed by that person, if that person:
 - (i) is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction, and
 - (ii) in Ontario, is purchasing a security that is not a security of an investment fund;
- (r) a registered charity under the *Income Tax Act* (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded;
- (s) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) or paragraph (i) in form and function;
- (t) a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are

persons that are accredited investors;

- (u) an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser; or
- (v) a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Québec, the regulator as:
 - (i) an accredited investor, or
 - (ii) an exempt purchaser in Alberta or British Columbia after this Instrument comes into force.

– End of Document –