

# EXPANDED ENERGY MANAGEMENT PROGRAM APPLICATION FORM

## 1. APPLICANT INFORMATION

Full Legal Name of Organization	
Address:	
City:	
Postal Code:	
Business Types?	<input type="checkbox"/> Commercial <input type="checkbox"/> Institutional
Is your organization currently Insolvent?	<input type="checkbox"/> Yes <input type="checkbox"/> No

## 2. CONTACT INFORMATION

Primary Contact Name:	
Title:	
Phone:	
Email:	
Secondary Contact Name:	
Title:	

Phone:	
Email:	

### 3. APPLICATION DETAILS

<b>Strategic Energy Management</b>	
Are you currently participating in a Strategic Energy Management (SEM) Cohort?	( ) Yes ( ) No
If so, are you applying to continue participating in an SEM Cohort?	( ) Yes ( ) No
If not, are you applying to join a SEM Cohort?	( ) Yes ( ) No
<b>Energy Manager</b>	
Are you applying for Energy Manager funding?	( ) Yes ( ) No
Have you identified your Energy Manager hire?	( ) Yes ( ) No
If not, are you interested in support with the hiring process? (such as, assessing resourcing needs and qualifications, developing a job description and hiring strategy, and identifying potential candidates)	( ) Yes ( ) No
<p>Do you intend to reduce the total annualized electricity and other energy consumption of the Facility(ies) listed in the next section by 5%, or more, within two years of the Energy Manager's start date?</p> <p>If not, use the box below to explain your internal energy savings target that is lower than 5%, and/or any barriers if you do not have an internal energy savings target. You may also use the box below to explain if you plan to exceed the above mentioned 5%.</p>	( ) Yes ( ) No

## 4. FACILITY INFORMATION

Total Annual Electricity Consumption* (all Ontario-based Facilities included in Application) (MWh/year)	
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Applicants can combine up to five (5) facilities to meet the minimum annual electricity consumption eligibility requirement. Once eligibility has been established, Applicants are not required to list additional facilities they intend to include in the scope of SEM or Energy Manager program participation – this can be confirmed at a later date. However, all facilities listed for eligibility purposes must be included in the scope of SEM and/or Energy Manager program participation.

Facility Name	Facility Street Address, City, Postal Code	Total Facility Annual Electricity (MWh)

\*Based on 12 months of representative data within the last 24 months (i.e. the latest 12 months is preferred, if available and representative of normal operations).

Please submit a minimum of 12 months of consecutive Energy Data for each Facility.

## 5. APPLICATION DECLARATION AND CONSENT

The Applicant declares that:

- (a) the information in this application ("**Application**") is accurate and complete in all material respects; and
- (b) prior to submitting an Application, the Applicant has not entered into an agreement with an individual, a contractor or consultant, or ordered or purchased any equipment for use in relation to the Expanded Energy Management Program ("**EEM Program**") without the prior written consent of the Independent Electricity System Operator (the "**IESO**").

The Applicant acknowledges and agrees that the IESO may reject its Application for any reason at its sole discretion. The IESO shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by the Applicant or any third party resulting from the IESO exercising this right.

If this Application is accepted, the IESO will issue the Applicant a written "**Notice of Approval**". The Applicant must submit a completed, signed Application and receive a Notice of Approval to participate in the EEM Program and be eligible to receive any incentive(s). Prior to receiving Notice of Approval from the IESO, no binding obligations are created, and the IESO is not bound in any way to the EEM Program Terms and Conditions and has no obligation to provide the Applicant with any incentives under the EEM Program.

The Program Delivery Agents are committed to protecting the personal information in its custody or control in accordance with applicable privacy laws. The Applicant may access the IESO's privacy policy at <http://www.ieso.ca/Privacy>.

## 6. APPLICANT PROVISIONS

### RELEASE AND INDEMNITY

The Applicant hereby agrees, for itself and its successors and assigns:

- (a) it releases and forever discharges the IESO, and their Program Delivery Agents and all of the respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns of the IESO, the Government of Canada and the Program Delivery Agents (collectively referred to as "**Releasees**") from any and all actions, causes of action, suits, complaints, disputes, debts, liabilities, obligations, damages, legal fees, costs, disbursements, expenses, claims and demands of every nature or kind whatsoever and howsoever arising, at law or in equity, or under any statute, including without limitation, claims for property damage, business interruption and

personal injury of the Applicant's employees, officers, directors or licensees, which it can, will or may have by reason of any matter, cause or thing arising as a result of, in relation to or in connection with the initiatives funded by the IESO for electricity conservation and demand management (including this Program) other than in the case of the gross negligence or willful misconduct of such Releasees; and

- (b) it will not make any claim or take any proceedings against any other person or entity with respect to any matter released and discharged in the aforementioned which may result in any claim arising against any of the Releasees for contribution or indemnity or other relief.
- (c) to indemnify and save harmless the IESO and their employees, officers and agents of any claims for injury or damages arising from this Application or the Expanded Energy Management Program.

## **COLLECTION AND DISCLOSURE OF INFORMATION**

The Applicant agrees that by submitting the Application, whether or not this Application is accepted:

- (d) it hereby consents to the collection, use, disclosure and other handling of any Applicant Information by the Program Delivery Agents for purposes relating to the operation, administration, compliance or assessment of the Program or other Save on Energy programs, including for dispute resolution, and in connection with any reporting activities, follow-up surveys, studies and audits relating to the Program, which shall include, without limitation: i) sharing of Applicant Information among the Program Delivery Agents; ii) use by the Program Delivery Agents of the Applicant Information provided by the Participant to conduct, analyze and report on the results of surveys, and to modify the Program based on such surveys; and iii) disclosure to Natural Resources Canada, the Ontario Energy Board, the Ontario Ministry of Energy and Electrification or the Ontario Commissioner of the Environment or their respective successors;
- (e) it hereby consents to the disclosure by the IESO of Applicant Information to local electricity utilities or local distribution companies and to the IESO receiving information related to the Participant that is collected by local electricity utilities or local distribution companies, required for the purpose of administering (which includes marketing and outreach activities) and assessing the Expanded Energy Management Program and/or other Save on Energy programs and to determine the Applicant's eligibility to receive a Participant Incentive by ensuring the Applicant meets the eligibility requirements set out in the Program Requirements and does not receive more than one financial incentive funded by the IESO for the same Measure; and
- (f) it hereby consents to the disclosure of Applicant Information in the possession or control of the IESO or its Program Delivery Agents, as required by applicable laws including the access provisions of the provincial *Freedom of Information and Protection of Privacy Act*

("FIPPA") and the federal *Access to Information Act* ("AIA"). The Applicant acknowledges that as a result, third parties may obtain access to the Applicant Information.

## COMPLIANCE AUDITS

The Applicant agrees:

- (g) that the IESO may contact the Applicant directly including by email and other electronic communication for purposes of follow-up surveys, studies and audits, future conservation programs, customer satisfaction surveys and other related purposes. The Applicant may withdraw its consent at any time by contacting the IESO at [customer.relations@ieso.ca](mailto:customer.relations@ieso.ca);
- (h) to participate in any surveys, studies, audits, reporting, evaluations or verifications conducted by the IESO, its Program Delivery Agents and Natural Resources Canada in connection with the Program including for the purpose of proper administration, compliance, monitoring and verification of this Application or evaluation of the Program and will provide to the Program Delivery Agents and Natural Resources Canada reasonable access to the Participant's records and facilities for such purposes. The Program Delivery Agents may undertake quality assurance and quality control activities in connection with the Application, including by collecting photographic evidence, conducting a physical or virtual inspection of the Facility, collecting evidence of Eligible Costs and any payments for the supply and/or installation of the replacement Measure(s), or requesting other information as may be reasonable required to verify Project details in respect of the existing equipment prior to its removal and/or the replacement Measure(s) following installation, at the IESO's sole discretion. The Participant will permit physical or virtual inspections to be conducted in the Facility by the Program Delivery Agents and Natural Resources Canada if the Participant is selected for a quality assurance and quality control review. The Participant consents to the Program Delivery Agents contacting the Participant directly, including by phone, email and other electronic communication, in connection with surveys, studies, audits, and reporting for the purposes of this review; and
- (i) it hereby consents to the disclosure by the IESO of information regarding the Applicant's past participation in other IESO funded conservation and demand management programs for the purpose of processing the Application.

## CANADA'S ANTI-SPAM LEGISLATION

By submitting this Application, Applicant agrees:

- (j) it is providing its "express consent" (as that term is described in Canada's *Anti-Spam Legislation* (CASL) and its associated regulations) for the IESO (or its Program Delivery Agents) or your local electricity utility or local distribution company, on the IESO's behalf) to contact you at the email address identified in your Application for the purpose of

receiving electronic communications regarding the IESO’s Save on Energy programs, events and ways to save on energy. You may withdraw your consent at any time or manage your subscription preferences [here](#). The IESO may be reached with any questions at: 120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1; [www.ieso.ca](http://www.ieso.ca); [www.saveonenergy.ca](http://www.saveonenergy.ca); or 905 403-6900.

7. AUTHORIZED SIGNATURE (APPLICANT)

<b>Authorized Signature:</b> I am duly authorized by the Applicant to execute this agreement and to ensure the Applicant takes all necessary action to maintain itself in good standing with and abide by all requirements of the Application Declaration and Consent, Applicant Provisions and the Participant Agreement.	
<b>Name:</b>	
<b>Title:</b>	
<b>Date:</b>	
<b>Signature:</b>	

# EXPANDED ENERGY MANAGEMENT PROGRAM – PARTICIPANT AGREEMENT

**References to “you” or “your” or “Participant” in these Terms and Conditions are references to the Applicant.**

These terms and conditions between the Independent Electricity System Operator (the “**IESO**”) and you (these “**Terms and Conditions**” or “**Participant Agreement**”) govern your participation in the Save on Energy Expanded Energy Management Program (the “**EEM Program**”). The EEM Program provides participants with assistance in implementing energy management practices at their Facilities and with adopting continuous energy improvement systems.

The EEM Program is offered, administered and centrally delivered by the IESO. By signing and submitting the Application, you confirm your consent to, and agree to comply with and be bound by these Terms and Conditions.

All capitalized terms not otherwise defined herein, will have the meanings given in **SCHEDULE “A”** of these Terms and Conditions.

These Terms and Conditions will only become binding on you and the IESO upon the issuance of a written Notice of Approval, which confirms the IESO’s acceptance of your application to participate in the EEM Program and its agreement to be bound to these Terms and Conditions. The date of the issuance of the written Notice of Approval is also the **Effective Date** of these Terms and Conditions.

For clarity, the Applicant indicated on the Application will become the Participant for the purposes of these Terms and Conditions upon acceptance into the EEM Program by the IESO (as indicated by the IESO’s issuance of a written Notice of Approval).

The IESO may subcontract any of its responsibilities under these Terms and Conditions to its Program Delivery Agent(s).

In consideration of you participation in the EEM Program, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, you agree to the following Terms and Conditions:

## 1. EEM PROGRAM ELIGIBILITY AND PARTICIPANT REPRESENTATIONS AND WARRANTIES

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

- (a) the Participant has all required rights and authority to participate in the EEM Program and carry out its applicable obligations set out in these Terms and Conditions;
- (b) the Participant and its Facilities meet all Program Eligibility Criteria in Schedule “B” for the Strategic Energy Management and/or Energy Manager Programs, as applicable;
- (c) the Participant is not Insolvent;
- (d) the Participant has agreed to be bound by the terms of the Application Declaration and Consent and Applicant Provisions in the Expanded Energy Management Program Application Form;
- (e) the Participant will not apply for Program funding, incentives and/or reimbursements for Measures that do not meet the Program Eligibility Criteria; and
- (f) the Participant is acting on its own behalf.

The representations made in this Section 1 will be continuing throughout the term of these Terms and Conditions, and any change in the accuracy of such representations and warranties must immediately be communicated by the Participant to the IESO. The IESO reserves the right to verify your compliance with the Program Eligibility Criteria.

## **2. SEM PROGRAM PARTICIPATION**

### **2.1 PARTICIPANT OBLIGATIONS**

As a condition of participating in the SEM Program and receiving Participant Incentives, the Participant agrees to perform the following activities:

- (a) Designate an internal Energy Champion to lead the Energy Team, no later than 30 days after the date of the Notice of Approval;
- (b) Identify an Executive Sponsor and demonstrate how this sponsor will support the Energy Team;
- (c) Participate in the Cohort Activities (for clarity, the Energy Champion must attend all Cohort Activities, unless the absence is excused by the IESO in advance in writing);
- (d) Ensure that members of the Energy Team actively meet and address energy issues at the Facilities;
- (e) Implement Measures identified in the Project Register;
- (f) Monitor Energy Metrics at the Facility against savings targets set out in the Project Register;

- (g) Complete and submit an Annual Report in accordance with the EEM Reporting Requirements within the deadlines prescribed by the IESO; and
- (h) Demonstrate completion of the SEM Milestones.

## **2.2 PARTICIPANT INCENTIVE ELIGIBILITY**

Subject to the Participant Incentive eligibility requirements set out in Section 2.2.1 to 2.2.3, the Participant will be eligible to receive the following Participant Incentives under the SEM Program:

- (a) Support and training opportunities through SEM Support Services (including Cohort Activities and Coaching Support);
- (b) Performance Incentives for achievement of Confirmed Electricity Savings; and
- (c) Enabling Incentives for the successful completion of SEM Milestones.

### **2.2.1 SEM SUPPORT SERVICES**

The Participant agrees to participate in Cohort Activities and receive Coaching Support as part of its participation in the SEM Program. The Participant will be grouped by the IESO in a Cohort of other SEM Program participants, for the purposes of undertaking the Cohort Activities.

### **2.2.2 PERFORMANCE INCENTIVE ELIGIBILITY**

To be eligible to receive a Performance Incentive pursuant to Section 2.3.1, the Participant must demonstrate the following:

- (a) Active participation in SEM Support Services, to the satisfaction of the IESO (for clarity, the Participant must participate in SEM Support Services at least every ninety (90) days while enrolled in the SEM Program); and
- (b) Completion of the obligations outlined in Sections 2.1.

### **2.2.3 ENABLING INCENTIVE ELIGIBILITY**

The Participant is eligible to receive Enabling Incentives pursuant to Section 2.3.2 upon confirmed participation in the SEM Support Services and completion of each SEM Milestone. For clarity, the Participant must participate in SEM Support Services at least every ninety (90) days while enrolled in the SEM Program)

## **2.3 PARTICIPANT INCENTIVE PAYMENTS**

### **2.3.1 PERFORMANCE INCENTIVES**

Upon confirmation by the IESO that the Participant has completed the requirements set out in Section 2.2.2 and Section 5 of these Terms and Conditions, the Participant will be eligible to receive Performance Incentives, calculated at \$0.02/kWh of Confirmed Electricity Savings for Non-Incented Projects implemented from the Project Register during the Funding Period, up to a maximum of \$100,000 (exclusive of Applicable Taxes) in each Funding Period:

Performance Incentive payments are calculated using Confirmed Electricity Savings based on the Electricity Baseline Model and are subject to Technical Review by the IESO. If the development of an Electricity Baseline Model to the satisfaction of the IESO is not feasible, the IESO will conduct an alternative M&V approach to determine the Confirmed Electricity Savings.

Increases in electricity consumption due to efficient electrification efforts can be netted out of the Electricity Baseline Model, such that Confirmed Electricity Savings are not negatively impacted.

In no event will the IESO be obliged to pay any additional amounts to the Participant under the SEM Program for Performance Incentives pursuant to these Terms and Conditions.

### **2.3.2 ENABLING INCENTIVES**

Upon confirmation by the IESO that the Participant continues to meet the Program Eligibility Criteria and has completed the requirements set out in Section 2.2.3 and Section 5 of these Terms and Conditions, the Participant will be eligible to receive Enabling Incentives for the completion of select SEM Milestones confirmed as completed, up to a maximum of \$5,000.00.

Participants will be informed of the process for acquiring eligible Enabling Incentive products, which includes an option for self-purchase and reimbursement, or purchase by the IESO's Program Delivery Agents.

## **3. ENERGY MANAGER PROGRAM PARTICIPATION**

### **3.1 PARTICIPANT'S OBLIGATIONS**

In addition to other applicable obligations contained in these Terms and Conditions, the Participant will fulfill the following obligations, unless otherwise approved by the IESO:

- (a) engage an Energy Manager, to complete, at a minimum, the Energy Manager Duties per Schedule "D";
- (b) employ the Energy Manager on a full-time basis for a minimum of 12 months;

- (c) ensure that the Energy Manager meets the Energy Manager Eligibility Criteria, per Schedule “B”, and has the ability to perform the Energy Manager Duties, or the Participant will commit to a plan to develop these abilities;
- (d) provide suitable operational support and work supplies to the Energy Manager to allow the Energy Manager to perform the Energy Manager Duties;
- (e) complete the EEM Reporting Requirements in the form of an Annual Report;
- (f) undertake Commercially Reasonable Efforts to complete the SEM Milestones, per Schedule C, and achieve Energy Savings, as evidenced by implemented Measures, documented in the Annual Report and confirmed by the Technical Reviewer.

The Participant represents and warrants that the Energy Manager is not employed or retained by the IESO, or its Program Delivery Agents.

### 3.2 ENERGY MANAGER TRAINING AND SUPPORT SERVICES

The Participant agrees the Energy Manager is required to participate in Energy Management Support Services and achieve the SEM Milestones per Schedule C.

The required Energy Management Support Services include:

- Completing an Energy Management Assessment;
- Working with the IESO’s Program Delivery Agent to develop an M&V approach; and
- Participating in Coaching Support, such as monthly 1-on-1 coaching calls with a dedicated energy coach.

Optional Energy Management Support Services include:

- Hiring, onboarding and providing custom training support for the Energy Manager;
- Completing an Energy Scan;
- Completing online courses; and
- Participating in group training, workshops, clinics, and Energy Manager meet-ups.

### 3.3 ENERGY MANAGER SAVINGS TARGETS & INCENTIVES

In each Funding Period, the Participant is eligible to receive the following incentive (the “**Energy Manager Incentive**”), subject to this Section 3 and the Participant satisfying all of its obligations herein:

1. Within thirty (30) calendar days after receiving the Notice of Approval from the IESO and within sixty (60) calendar days from the start of each subsequent Funding Period, the **"Start of Funding Period Payment"** calculated, up to a maximum of \$50,000, as follows:

**Start of Funding Period Payment = 25% of the estimated Energy Manager Cost of Hiring.**

2. Upon approval by the IESO of the Annual Report, the **"End of Funding Period Payment"** calculated, up to a maximum of \$100,000, as follows:

**End of Funding Period Payment =  
50% of all eligible Energy Manager Costs of Hiring – Start of Funding Period Payment**

3. The maximum Energy Manager Incentive amount payable in each Funding Period is \$100,000 (exclusive of Applicable Taxes), and in no event will the IESO be obligated to pay any additional amounts to the Participant.
  - (a) All payments hereunder will be made in Canadian dollars by cheque or by electronic funds transfer to the Participant's account or such other mode of payment at the sole discretion of the IESO.
  - (b) All payments hereunder are conditional on the Participant providing an invoice to the IESO together with sufficient documentation to support and substantiate the payment of the Energy Manager Incentive.

In addition to the Energy Manager Incentive, the IESO will pay any Applicable Taxes on the Energy Manager Incentive. The Participant will provide to the IESO sufficient supporting documentation, as requested by the IESO, to facilitate and support claiming input tax credits in respect of the Energy Manager Incentive. In addition, if the IESO has reasonable grounds to commence a discussion, negotiation or challenge, in any manner whatsoever, with a tax authority regarding the validity of any Applicable Taxes imposed on the Energy Manager Incentive, the Participant will provide such reasonable assistance as may be required by the IESO with such discussion, negotiation or challenge. For clarity, in no event shall the IESO be relieved of its obligations under these Terms and Conditions, including the IESO's obligation to pay Applicable Taxes as provided hereunder, pending the outcome of any discussion, negotiation or challenge with a tax authority.

The IESO will be permitted to claw back the Start of Funding Period Payment if the Participant fail to hire an Energy Manager within 180 days of receiving the Notice of Approval.

The IESO will be permitted to withhold the End of Funding Period, in part or in full, if the Participant fails to have an Energy Manager in place for a period of 90 days once employed.

## **4. PLACEHOLDER**

[This section is intentionally left blank].

## **5. REPORTING OBLIGATIONS**

- (a) Participants will prepare and deliver the following documents to the IESO for Technical Review:
  - (i) A Project Register for the Facility in accordance with the EEM Reporting Requirements;
  - (ii) an Annual Report in accordance with the EEM Reporting Requirements; and
  - (iii) any other information requested by the IESO in accordance with the EEM Reporting Requirements, including but not limited to, information or documentation for verifying Confirmed Electricity Savings.
- (b) The IESO will review the Project Register and the Annual Report to ensure timely filing and completeness and to assess Energy Savings and progress from the previous Reports. If the IESO does not approve a report, the IESO will provide comments and such document must be revised by the Participant in order to address the noted deficiencies and obtain the IESO's approval of such revised report.
- (c) The Participant is not eligible to receive a SEM Performance Incentive or Energy Manager End of Funding Period Payment, or any portion thereof, until each Report required to be submitted by the Participant for such payment is approved.
- (d) Energy Manager Participants will take part in or prepare and deliver the following additional documents to the IESO for Technical Review:
  - (i) an Early-term check-in, within the first six months of the Energy Manager's start date, to ensure the Energy Manager is on the right track and has a sound plan for achieving their Energy Savings Target and SEM Milestones; and
  - (ii) an Energy Management Plan, at a time to be confirmed by the IESO.

## **6. COMMUNICATION WITH TECHNICAL REVIEWER**

The Participant will cooperate and provide, on a timely basis, any requested information to the IESO as well as any clarifications required by the IESO from the Participant related to any Reports or information required for Technical Review and as otherwise required under these Terms and Conditions.

## **7. TERM, TERMINATION AND SURVIVAL**

- (a) These Terms and Conditions commence as of the Effective Date and expire on the end of the final Funding Period, (the "**Term**"), unless terminated earlier in accordance with these Terms and Conditions.
- (b) For SEM Program Participants, as well as Participants in both SEM and the Energy Manager Program, the first Funding Period commences as of the date on which the Participant is enrolled in an active SEM Program Cohort and expires on the date which is 12 months from the start date, unless terminated earlier in accordance with the terms of these Terms and Conditions.
- (c) For Participants in the Energy Manager Program only, the first Funding Period commences as of the Energy Manager's start date.
- (d) After the expiry of each Funding Period, the IESO, acting in its sole and absolute discretion, may extend funding to the Participant for an additional 12 month Funding Period, or shorter, upon written notice. For clarity, upon the termination or expiration (as the case may be) of a Funding Period, the IESO will not be required to pay any incentives for Confirmed Electricity Savings achieved or SEM Milestones achieved after the date of such termination or expiration (as the case may be), unless the IESO decided to extend funding for an additional Funding Period pursuant to this Section 7(d).
- (e) By delivery of written notice and with immediate effect, the IESO may terminate these Terms and Conditions and terminate any obligation to pay the Enabling Incentive or Performance Incentive where any of the following occurs:
  - (i) the Participant fails to participate in any SEM Support Services for a period of ninety (90) calendar days;
  - (ii) in the opinion of the IESO, there has been a misrepresentation made by the Participant in any materials submitted as part of this Program;
  - (iii) the Participant fails to observe or perform any obligation required to be observed or performed under these Terms and Conditions and such failure continues for a period of thirty (30) calendar days after the delivery of written notice by the IESO to the Participant to cure such failure; or
  - (iv) the Participant becomes or is declared Insolvent, becomes the subject of any proceeding related to its liquidation or insolvency which is not dismissed within ninety (90) calendar days, or makes an assignment for the benefit of creditors.
- (f) The IESO may also terminate these Terms and Conditions or any Funding Period for any reason upon sixty (60) calendar days' notice by the IESO.
- (g) Sections 1 (EEM Program Eligibility and Participant Representations and Warranties), 8 (Environmental Attributes), 9 (Evaluation, Monitoring and Verification; Audit), 10 (No

Warranty), 11 (Limitation of Liability and Indemnity), 12 (Confidentiality), 13 (FIPPA/AIA Compliance), 14 (Dispute Resolution), 19 (Governing Law and Attornment) and 25 (Intellectual Property), and such other provisions as are necessary for the interpretation thereof and any other provisions hereof, the nature and intent of which is to survive termination or expiration of these Terms and Conditions, will survive the expiration or termination of these Terms and Conditions.

## **8. ENVIRONMENTAL ATTRIBUTES**

All right, title and interest in and to all benefits or entitlements associated with Environmental Attributes arising in relation to the electricity savings funded by an amount paid under these Terms and Conditions are hereby unconditionally and absolutely transferred and assigned, or to the extent transfer or assignment is not permitted, held in trust for, by the Participant to, or in favour of, the IESO.

The Participant acknowledges that the IESO may direct the Participant to take such actions and do all such things necessary to certify, obtain, qualify and register with the relevant authorities or agencies such Environmental Attributes for the purpose of transferring, assigning, or holding in trust, such Environmental Attributes to and for the IESO and the Participant shall comply with such directions, and the Participant will be entitled to reimbursement of the cost of complying with such direction, provided that the IESO, acting reasonably, has approved such cost in writing prior to the cost being incurred by the Participant.

## **9. EVALUATION, MONITORING AND VERIFICATION; AUDIT**

- (a) The Participant agrees to abide by the IESO EM&V Protocols in order to evaluate of the effectiveness of meeting the objectives of the EEM Program. In furtherance of the IESO EM&V Protocols, the Participant will cooperate with the IESO and will make available such information in the form and with the frequency as may be reasonably prescribed, including with respect to historical electricity consumption.
- (b) The Participant will both keep complete and accurate books, accounts and records and all other data required for the purpose of proper administration, monitoring and verification of these Terms and Conditions. All such records and data will be maintained for seven years after the Term or the period of time specified under Applicable Law, whichever is greater.

Upon reasonable notice and at any time during normal business hours, the Participant will provide reasonable access to the IESO, the Program Delivery Agent and/or their respective designates to such books, accounts, records and data.

Upon reasonable request of the IESO, the Program Delivery Agent, the Participant will agree to make available its designates, the personnel of the Participant and subcontractors

involved in the operation of the Participant's business and the maintenance of such books, accounts, records and data referred to above for the purposes of this Section 9 and permit the IESO, the Program Delivery Agent to examine and audit and take copies and extracts from such documents.

- (c) The Participant will participate in any surveys, studies, audits, reporting, evaluations or verifications conducted by the IESO, and/or the Program Delivery Agent related to the Program.

## **10. NO WARRANTY**

Except as specifically set forth or referenced in these Terms and Conditions, the IESO provides no representations, warranties, or conditions, express, implied, statutory or otherwise, regarding any matter, including any implied warranties or conditions of quality or fitness for a particular purpose with respect to the EEM Program.

Without limiting the generality of the foregoing, the Participant acknowledges that its participation in the EEM Program is based on its own assessment of the EEM Program without reliance on anticipated or projected results (or incentives for same), and that such participation may not result in the achievement of any electricity, energy savings or GHG reductions (or incentives for same).

## **11. LIMITATION OF LIABILITY AND INDEMNITY**

- (a) Notwithstanding anything contained herein to the contrary, in no event will the Participant be entitled to recover from the IESO or any other Indemnified Parties (as defined in Section 11(b)) for any liabilities, damages, obligations, payments, losses, costs or expenses under or in relation to these Terms and Conditions:
  - (i) Any amount in excess of the actual compensatory direct damages, court costs and reasonable lawyers' and other advisors' fees suffered or incurred by the Participant and in any event limited to the Participant incentives paid by the IESO; or
  - (ii) Damages (whether direct or indirect, consequential or otherwise) for loss of profit, diminution of value or loss of use of any property.

The IESO and the Indemnified Parties (as defined in section 11(b)) will not be liable to 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 these Terms and Conditions, regardless of whether such liability arises under contract, tort or any other legal theory.

- (b) The Participant (the “**Indemnifying Party**”) will indemnify, defend and hold, the IESO (including = its directors, officers, employees and advisors), and it’s Program Delivery Agents (collectively, the “**Indemnified Parties**”) harmless from and against any and all Claims, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers’ fees and reasonable disbursements in connection therewith) (each, an “**Indemnifiable Loss**”), asserted against or suffered by the Indemnified Party relating to, in connection with, resulting from, or arising out of (i) any Claim by, or occurrence or event related to, any third party relating to these Terms and Conditions; 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 gross negligence or wilful misconduct of the Indemnified Party.

For clarity, in the event of contributory negligence or wilful misconduct of one of the Indemnified Parties, then such Indemnified Party will not be indemnified hereunder in the proportion that that Indemnified Party’s negligence or wilful misconduct contributed to any Indemnifiable Loss.

The IESO will hold the benefit the Participant’s obligations under this Section 11 in the IESO’s own right and, in trust, for the benefit of any other Indemnified Party.

## 12. CONFIDENTIALITY

- (a) Each party will, in its capacity as a Receiving Party:
- (i) not use or reproduce Confidential Information of the Disclosing Party for any purpose, other than as and to the extent expressly permitted under these Terms and Conditions or as may be reasonably necessary for the exercise of its rights or the performance of its obligations set out in these Terms and Conditions;
  - (ii) not disclose, provide access to, transfer or otherwise make available any Confidential Information of the Disclosing Party except as expressly permitted in these Terms and Conditions; and
- (b) take all measures reasonably required to maintain the confidentiality and security of all Confidential Information of the Disclosing Party that it handles. 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, provided that the Receiving Party first gives the Disclosing Party

notice of such compelled disclosure (except where prohibited by Applicable Laws from doing so) and uses 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 accountants, internal and external auditors and other professional advisors if and to the extent that such Persons need to know such Confidential Information in order to provide the applicable professional advisory services relating to the Receiving Party's business;
- B.** potential permitted assignees or successors of the Receiving Party if and to the extent that such Persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other transaction or transfer involving the business, assets or services provided by the Receiving Party; and
- C.** employees of each party and its other Representatives if and to the extent that such Persons need to know such Confidential Information to perform their respective obligations under these Terms and Conditions;

provided that any such Person is aware of the provisions of this Section 12 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 12.

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

- (i) the IESO will handle reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, disclosed, provided or made available to the IESO on an ongoing basis as part of its participation in the EEM Program or other eDSM program offered by the IESO and may do so without further notice to or further consent of the Participant;
- (ii) the IESO may disclose and provide reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, to the OEB, local distribution or utility companies, the Ontario Ministry of Energy, the Office of the Auditor General of Ontario and their respective successor entities for handling by such entities provided that the IESO has in place with any such Person a written agreement that includes

confidentiality obligations in respect of such Confidential Information that are comparable to those contained in this Section 12;

- (iii) the IESO (or its Program Delivery Agent) may disclose information of the Participant, including Confidential Information, to or receive such information from other third parties administering or implementing conservation and demand management (eDSM) programs funded by a Governmental Authority (whether administered via the IESO, a local electricity or gas distributor, the Provincial or Federal Government or any other party), and may do so without further notice to or further consent of the Participant, for the purpose of administering the Strategic Energy Management Program and determining Participant eligibility for an Enabling Incentive and/or Performance Incentive in the SEM Program;
  - (iv) these Terms and Conditions and all Confidential Information in the possession or control of the IESO or the Participant are subject to Applicable Laws that include the access provisions of FIPPA and AIA and that as a result, third parties may obtain access to each party's Confidential Information.
  - (v) 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;
  - (vi) the IESO may at any time make public the Participant's participation in the EEM Program and data relating to the Participant, including the achievement of electricity savings and demand savings, a description of the Projects identified by the Participant and the implementation of such Projects by the Participant, aggregated with other studies in a manner intended to report on the SEM Program; and
  - (vii) the Participant may identify Natural Resources Canada's role as a source of the funding provided by IESO.
- (d) Each party acknowledges that any violation of the provisions of Section 12 may cause irreparable damage or injury to the other party (including, in the case of the IESO, any of the other Indemnified Parties), the exact amount of which may be impossible to ascertain, and that, for such reason, in addition to any other remedies available to such party (including, in the case of the IESO, any of the other Indemnified Parties), such party (including, in the case of the IESO, any of the other Indemnified Parties) is entitled to proceed immediately to court in order to obtain, and the other party will consent to, interim, interlocutory, and final injunctive relief restraining the other party from breaching, and requiring the other party to comply with, its obligations under Section 12, without a requirement that a finding of irreparable harm or other criteria for the awarding of

injunctive relief be made. Nothing in this Section 12 will be construed to limit the right of a party (including, in the case of the IESO, any of the other Indemnified Parties) to obtain injunctive relief in any other circumstance in which it may be otherwise entitled to such relief.

### **13. FIPPA/AIA COMPLIANCE**

To the extent that the IESO must comply with their disclosure obligations under FIPPA or the AIA, respectively, the Participant agrees to:

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

### **14. DISPUTE RESOLUTION**

If any dispute arises under or in connection with these Terms and Conditions that the Parties cannot resolve, each of the Parties will promptly advise its senior management, in writing, of such dispute. Within ten (10) business days following delivery of such notice, a senior representative from each party will meet, either in person or by telephone, to attempt to resolve the dispute. Each senior Representative will be prepared to propose a solution to the dispute.

If, following such efforts, the dispute is not resolved, the dispute will be settled by arbitration before a single arbitrator pursuant to the Arbitration Act, 1991 (Ontario) and otherwise in accordance with the laws of the Province of Ontario. The arbitration will be conducted in English in the City of Toronto (unless otherwise agreed to by the Parties). Each party will bear its own costs for the arbitration except for the cost of the arbitrator, which will be shared.

### **15. SCHEDULES**

The following schedules are hereby incorporated in and form part of these Terms and Conditions:

Schedule "A" – Definitions

Schedule "B" – Program Eligibility Requirements

Schedule "C" – SEM Milestones

Schedule "D" – Energy Manager Duties

## **16. HEADINGS**

The insertion of headings is for convenience of reference only and will not affect the interpretation of these Terms and Conditions. The terms "hereof", "hereunder", and similar expressions refer to these Terms and Conditions and not to any particular Article, Section, Schedule or other part hereof. Unless otherwise indicated, any reference in these Terms and Conditions to an Article, Section or Schedule refers to the specified article or section of, or schedule to, these Terms and Conditions.

## **17. ENTIRE AGREEMENT**

Except as otherwise provided, these Terms and Conditions, together with the Application Declaration and Consent, Applicant Provisions and the Program Requirements, constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of these Terms and Conditions.

To the extent of any conflict between these Terms and Conditions and the Program Requirements and/or the Application Declaration and Consent and Applicant Provisions, the terms of these Terms and Conditions prevails.

## **18. AMENDMENTS**

These Terms and Conditions may not be varied, amended or supplemented except by an agreement in writing signed by both of the Parties.

## **19. GOVERNING LAW AND ATTORNMEN**

These Terms and Conditions will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. For the purpose of all legal proceedings, these Terms and Conditions will be deemed to have been made and performed in the Province of Ontario and the courts of the Province of Ontario will have exclusive jurisdiction to entertain any action arising under these Terms and Conditions. The IESO and the Participant each hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

## **20. SUCCESSORS AND ASSIGNS**

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

## **21. FURTHER ASSURANCES**

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

## **22. SEVERABILITY**

The invalidity, unenforceability or illegality of any provision in these Terms and Conditions will not, to the extent permitted by Applicable Law, affect the validity, enforceability or legality of any other provision of these Terms and Conditions, which will remain in full force and effect.

## **23. NO PARTNERSHIP, ETC.**

Nothing in these Terms and Conditions will be deemed to constitute a partnership or joint venture or create any fiduciary relationship between the IESO, and/or the Participant.

## **24. FORCE MAJEURE**

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

## **25. INTELLECTUAL PROPERTY**

All Intellectual Property that arises in the course of the Program shall vest in the IESO, unless otherwise agreed in writing between the IESO and the Participant.

Where such Intellectual Property remains with the Participant, the Participant will grant to the IESO a non-exclusive, irrevocable, world-wide, free and royalty-free license in perpetuity to use, modify, and, subject to FIPPA and the AIA, make publicly available reports and documents with such Intellectual Property for non-commercial governmental purposes.

## **SCHEDULE "A"**

### **DEFINITIONS**

The following terms used in the Application and Terms and Conditions will have the following meanings:

**"AIA"** means the federal *Access to Information Act*, as amended.

**"Annual Report"** means the report of energy management activities of a Participant, including documentation to verify Confirmed Electricity Savings. It is to be completed by the Participant in accordance with the EEM Reporting Requirements and delivered to the IESO within thirty (30) days after the end of each 12-month Funding Period (or shorter) in the form made available by the IESO from time to time.

**"Applicable Law"** 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.

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

**"Applicant"** means a Person (as indicated in the Application) that has submitted an Application to participate in the SEM Program.

**"Application Declaration and Consent"** means the provisions in Section 5.

**"Applicant Information"** means any information that an Applicant provides to the Program Delivery Agents and/or the IESO, which may include personal information and records showing past and current energy usage.

**"Applicant Provisions"** means the provisions in Section 6 relating to Release and Indemnity, Collection and Disclosure of Information, Compliance Audits and Canada's Anti-Spam Legislation submitted by the Participant as part of the Expanded Energy Management Program Application Form.

**"Application"** means a completed and signed application form submitted to the IESO by the Applicant to participate in the EEM Program, in the form specified on the Save on Energy website.

**"Baseline Energy Consumption"** means the actual annual electricity consumption for a Facility in the absence of Measures that is used to establish the Electricity Baseline Model.

**"eDSM"** means electricity conservation and demand management.

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

**“Coaching Support”** means the 1-on-1 support offered by the IESO to Participants and their Executive Sponsor, Energy Champion, and Energy Teams to assist the Participant in achieving the objectives of the SEM Program and to more effectively meet their energy goals.

**“Cohort”** means a set of Participants in the SEM Program who are grouped together by the IESO for the purposes of undertaking the Cohort Activities. The IESO will engage Participants (approximately 7-15 Participants per Cohort) simultaneously through the Cohort and encourage these Participants to work together on certain tasks to facilitate peer-to-peer learning and networking opportunities.

**“Cohort Activity(ies)”** means workshops, conference calls, site visits and other activities offered by the IESO through Cohorts to assist Participants in achieving the objectives of the SEM Program.

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

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

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

until the Receiving Party subsequently comes to have reason to believe that such information was subject to an obligation of confidence of any kind when originally received;

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

**“Confirmed Electricity Savings”** means the reduction in electricity consumption attributable to Non-Incented Projects implemented from the Project Register and in service while the Participant is enrolled in the SEM Program, as determined by the IESO, based on an Electricity Baseline Model, or, where the IESO determines an Electricity Baseline Model is not feasible, using an alternative M&V approach. These savings must be confirmed by Technical Review as in-service during the EEM Program.

**“Costs of Hiring”** means the actual cost incurred by the Participant, with no mark up of any kind, in the employment of the Energy Manager. For greater clarity, Costs of Hiring shall only include salary and benefits, direct costs associated with hiring the Energy Manager (such as advertising and recruiting), annual professional membership dues required to keep a professional status recognized by law, and fees for professional training.

**“Customer”** means an energy consumer and specifically, and electricity consumer that is directly connected to, or behind the meter of another electricity consumer connected to: (a) the IESO-Controlled Grid; or (b) a Distribution System.

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

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

**“Enabling Incentives”** means the Participant Incentive the Participant may be eligible to receive for participation in the SEM Support Services and the completion of the SEM Milestones.

**“Electricity Baseline Model”** means a Facility-specific model or set of models that predicts the electricity consumption of a Facility over a set period of time in the absence of Measures. Under the EEM Program, the Electricity Baseline Model will be created by the IESO with data and inputs from the Participant.

**“Energy Data”** means at a minimum, the utility billing data for electricity, provided by the Participant to the IESO through the EEM Reporting Requirements. This data may be supplemented with other more granular data or documentation to assist in verifying the success of Measures at the request of the IESO. The Participant is required to collect historical Energy Data and to continue to monitor current Energy Data as long as it is participating in the EEM Program. Improving Participant Energy

Data management processes is a fundamental component of the Program Cohort Activities and Coaching.

**"Measure"** means, subject to the Program Eligibility Criteria, an action taken which is intended to reduce energy consumption at a Facility.

**"Effective Date"** means the date of the issuance of the written Notice of Approval by the IESO to the Applicant (who now becomes the Participant).

**"Energy Champion"** means an employee of the Participant who is responsible for ensuring the Participant is actively engaged with the SEM Program and that the EEM Reporting Requirements are completed, accurate and submitted in a timely fashion.

**"Energy Management Assessment"** means a structured process including a facilitated session with the Participant that assesses the Participant's current state of energy management practices to identify areas for improvement.

**"Energy Management Plan"** means a document in the form made available, and subject to change from time to time, or otherwise approved by the IESO (the Participant may develop their own form if it contains, at a minimum, the same information as in the IESO form) , to be completed by a Participant's Energy Manager describing the activities and plans required to reduce energy consumption and/or demand in such Participant's Facility or Facilities, and detailing how the Participant is demonstrating leadership in the area of energy performance improvement by, among other things, developing conservation policies and establishing employee, community and peer-to-peer awareness programs.

**"Energy Manager"** or **"EM"** means an energy manager, funded by the IESO, whose primary responsibility is to promote the principles and practices of energy management, with a focus on improving the energy performance of the Facility or Facilities, based on the best practices embodied in Strategic Energy Management. This person performs the Energy Manager Duties at the Participant's Facility or Facilities in Ontario.

**"Energy Manager Duties"** means the minimum duties of the Energy Manager, substantially as set out in Schedule "D".

**"Energy Manager Eligibility Criteria"** means the eligibility requirements the Energy Manager must meet in order for the Participant to be eligible for an Energy Manager Incentive, as set out in Schedule "B".

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

**"Energy Map"** means a visual representation of which systems, equipment or zones in a building are consuming energy. Further details on the form and content of this map will be provided as part of the Cohort Activities.

**“Energy Metric”** means a series of measurements and data recorded over time by the Participant to track energy performance, with the objective of using the metrics to improve energy performance and/or take corrective actions, as needed, if the metrics go out of a normal range. Further details on the form and content of the metrics will be provided as part of the Cohort Activities.

**“Energy Policy”** means a written document that establishes the policies of the Participant with respect to decisions around energy use. Further details on the suggested form and content of the policy will be provided as part of the Cohort Activities.

**“Energy Savings”** means the megawatt hour (MWh) in energy consumption attributable to Measures implemented and in-service while the Participant is enrolled in the Program.

**“Energy Team”** means a cross-functional team of two or more of the Participant’s employees (plus external contractors or consultants of the Participant, if applicable) who meet regularly with a mandate and budget to find energy/ electricity savings at the Facility. One or more employee members of the Energy Team will participate in SEM Support Services, work to achieve the SEM Milestones and provide reports to IESO, as per the EEM Reporting Requirements. The Energy Team will be expected to engage other employees to fulfill its mandate as needed and will report to the Executive Sponsor.

**“Executive Sponsor”** means an employee of the Participant, identified to the IESO as the individual to whom the Energy Team directly reports. This person should be an employee in a senior leadership position, and will be accountable for the success of the Energy Team by providing adequate support and resources.

**“Environmental Attributes”** means all right, title and interest in and to all benefits or entitlements associated with decreased environmental impacts now or in the future, direct or indirect, arising as a result of, relating to or in connection with the electricity savings for which an incentive has been paid, and the right to quantify and register these, including any energy efficiency certificate, renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission, reduction allowance.

**“Expanded Energy Management (EEM) Program” or “Program”** means the expanded energy conservation program provided by the IESO.

**“EEM Reporting Requirements”** means the information the Participant must submit to the IESO, including baseline energy consumption, details about Energy Savings opportunities and completed Measures, and information to demonstrate its achievement of the EEM Program objectives. This includes: i) establishing continuous energy improvement processes within the Participant’s organization; and ii) implementing Measures and demonstrating savings at a Facility. The EEM Reporting Requirements will be made available to Participants by the IESO.

**"Facility" or "Facilities"**, means the buildings, premises or lands, or part thereof, owned or occupied by a Participant that satisfy the Program Eligibility Criteria and in respect of which such Participant is participating in the EEM Program.

**"FIPPA"** means Ontario's *Freedom of Information and Protection of Privacy Act*, as amended.

**"Funding Period"** means a 12-month period, or other duration, as determined by the IESO, in which a Participant is enrolled in an active SEM Program Cohort or in the Energy Manager program. The first Funding Period start date will be set by the IESO and communicated to the Participant following the issuance of the Notice of Approval.

**"Governmental Authority"** means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO in its capacity as the operator of the IESO-Controlled Grid, the OEB, the Electrical Safety Authority, the Office of the Auditor General of Ontario, and any Person acting under the authority of any of the foregoing, but excluding the IESO.

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

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

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

**"IESO-Controlled Grid"** has the meaning given to it in the IESO Market Rules.

**"IESO EM&V Protocols"** means the methods and processes that the IESO develops for the evaluation, measurement and verification of EDSM programs and initiatives, as such methods and processes may be amended from time to time.

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

**"Insolvent"**, in respect of a Person, means a Person:

- (a) who is for any reason unable to meet its obligations as they generally become due or otherwise acknowledges its insolvency;
- (b) who has ceased paying its current obligations in the ordinary course of business as they generally become due;
- (c) who has ceased to carry on business in the ordinary course;

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

**"Intellectual Property"** means any intellectual property recognized by law, including any intellectual property right protected through legislation including governing patents, copyright, trade-marks, and industrial designs.

**"MWh"** means a megawatt hour.

**"Measurement and Verification" or "M&V"** is a process of analyzing energy and other data to estimate the amount of avoided energy use that can be attributed to Measures. EEM Program M&V is based on the International Performance Measurement and Verification Protocol (IPMVP) Core Concepts, (March 22 edition), with IESO having final discretion on the detailed execution of M&V. Participants are obligated to collect, maintain and provide data to support M&V of their Facilities.

**"Non-Incented Projects"** are Measures that (a) are not financed by any incentives received from a Governmental Authority, whether administered by the IESO, a local electricity or gas distributor or any other party; and (b) have not had such Energy Savings counted under another energy efficiency program.

**"Notice of Approval"** means a notification issued by the IESO to the Applicant via email approving the Application.

**"OEB"** means the Ontario Energy Board or its successor.

**"Participant"** means, in respect of the EEM, SEM, or EM Program, an Applicant who meets the Program Eligibility Criteria, whose Application has been accepted by the IESO (as indicated by the issuance of a Notice of Approval), and has entered into these Terms and Conditions to be eligible to receive the Participant Incentives.

**“Participant Incentive”** means any incentives paid or payable to, or the discount received or receivable by, the Participant, and includes Performance Incentives, Enabling Incentives and SEM Support Services as well as the Energy Manager Incentive as approved by the IESO in accordance with these Terms and Conditions.

**“Performance Incentives”** means the Participant Incentive the Participant may be eligible to receive for Confirmed Electricity Savings from Non-Incented Projects implemented from the Project Register, up to a maximum of \$100,000 in any Funding Period.

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

**“Program Eligibility Criteria”** means the eligibility criteria that must be met by the Participant to participate in the EEM Program, as set out in Schedule B.

**“Program Delivery Agent”** means the service provider(s) under contract with the IESO to provide program delivery services for the Strategic Energy Management Program.

**“Program Requirements”** means the IESO Program Requirements for the EEM Program published online by the IESO, as may be amended from time to time.

**“Project Register”** means the list of projects implemented at the Facility, which is maintained by the Energy Manager, Energy Champion, and/or Energy Team and submitted to the IESO pursuant to the EEM Reporting Requirements during the Participant’s enrolment in the EEM Program.

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

**“Reports”** means, collectively, the set of reports to be submitted to the IESO including the Project Registry, the Annual Report, and those required for Technical Review.

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

**“SEM Milestone”** means the EEM Program tasks listed in Schedule C, to be completed by Participants in order to be eligible to receive Performance Incentives and Enabling Incentives. Further details about the Milestones will be made available to Participants by the IESO during participation in the EEM Program.

**“SEM Support Services”** or **“Energy Management Support Services”** means the Cohort Activities, Coaching Services and any other supports or resources offered by the IESO to Participants in the EEM Program.

**“Technical Review”** means a review of an Measure by the IESO for the purpose of delivering services such as, but not limited to, reviewing information submitted by Participants and determining Confirmed Electricity Savings.



## **SCHEDULE "B"**

### **PROGRAM ELIGIBILITY CRITERIA**

#### **Participant Eligibility**

To be eligible, the Participant must satisfy the following:

- a) be a commercial or institutional Customer and/or manage a Facility of a Customer;
- b) not be Insolvent.

#### **Facility Eligibility**

- a) Be connected to the IESO-Controlled Grid or Distribution System;
- b) Have a minimum of 12 months of consecutive Energy Data;  
For the SEM Program:
  - a. Have a total energy consumption of at least 3,000,000 kWh for a 12 month period within the 24 months prior to the Application submission (the Participant may combine up to five Facilities to reach this minimum annual energy consumption criteria); and
- c) For the Energy Manager program:
  - a. Have a total energy consumption of at least 6,500,000 kWh for a 12 month period within the 24 months prior to the Application submission (the Participant may combine up to five Facilities to reach this minimum annual energy consumption criteria).

#### **Energy Manager Eligibility Criteria**

To be eligible, the Energy Manager must satisfy the following:

- a) Successful completion of the Certified Energy Manager (CEM) examination by the end of their first year as an Energy Manager and has a pathway to becoming a designated CEM, i.e. if not qualified to become CEM certified upon passing the exam (due to insufficient experience), must register as a Certified Energy Manager in Training (EMIT).
- b) Experience with performing the Energy Manager Duties (Schedule "D"), or in the case of an Applicant with an existing Energy Manager applying for an additional dedicated energy management resource (e.g. an "energy analyst"), has experience with contributing to an energy team with the ability to perform the Energy Manager Duties.

## Measures Eligibility

To be eligible, the Measure that may be included in the SEM Performance Incentive calculation or towards the EM Energy Savings Target must satisfy:

- a) be listed in the Participant's Project Register and satisfy any other EEM Reporting Requirements that may be applicable;
- b) be undertaken with the intention of delivering Energy Savings; and
- c) not be funded by another IESO Save on Energy Program, or any other program funded by the Government of Ontario and or the ratepayers or taxpayers of Ontario.

For clarity, the following Measures are not eligible:

1. Behind-the-meter generation, including renewable energy generation
2. Measures that go into service before the Cohort kick-off workshop
3. Fuel-switching and efficient electrification projects (however, adjustments may be made to the Electricity Baseline Model such that Participant's Performance Incentives are not reduced as a result of efficient electrical load increases).

The Participant must collect and maintain sufficient data to verify Confirmed Electricity Savings that may be attributable to a Measure, and all Measures undertaken by a Participant while enrolled in the Program:

- a) may be subject to Technical Review to determine Performance Incentive eligibility; and
- b) may be subject to more detailed M&V by the Technical Reviewer.

In the absence of sufficient data to satisfy the IESO, certain Measures may be deemed ineligible.

## **SCHEDULE "C"**

### **SEM MILESTONES**

- (i) Establish an Energy Policy and goals;
- (ii) Establish an Energy Champion and Energy Team;
- (iii) Complete an Energy Management Assessment;
- (iv) Obtain Executive Sponsor commitment to your Strategic Energy Management Plan
- (v) Establish the Facility Baseline Energy Consumption and monitoring plan;
- (vi) Complete an Energy Map;
- (vii) Set Energy Metrics and savings targets;
- (viii) Establish a Project Register; and
- (ix) Complete and submit information required for the purposes of the EEM Reporting Requirements by the deadlines prescribed by the IESO.

## **SCHEDULE "D"**

### **ENERGY MANAGER DUTIES**

In connection with the identification, reporting, and implementation of energy performance improvement opportunities, the minimum duties of the Energy Manager are set out in this Appendix 1. These duties, along with any other obligations set out in the Participant's executed Participant Agreement should be used to develop the Energy Manager's job description:

- (a) Create and manage an Energy Team – This could be a new team, or a responsibility added to an existing team. It should include the Energy Manager, Executive Sponsor (or their delegate / direct report in a senior position) and other relevant staff, contractors or others who may be of assistance in finding energy savings. The Energy Team will assist the Energy Manager in achieving their objectives as outlined in the Energy Management Plan.
- (b) Energy Tracking & Monitoring – Provide a database and an energy tracking and monitoring system for each Facility / process that captures current monthly and hourly energy consumption and an electrical load inventory of major equipment. Develop Key Performance Indicators that are relevant to the organization and that can be used to improve energy performance. The Energy Manager will develop and deliver training to the Participant's staff on the energy tracking and monitoring system.
- (c) Primary Assessment – Review existing energy study reports and perform a high-level assessment, including a walkthrough audit of each major process area of each site, to identify energy performance improvement opportunities and to identify which systems will require more detailed evaluations.
- (d) Maintenance and Operating Schedules – Review and provide a description of the control systems, operating schedules, and maintenance practices at each Facility / process to identify operational energy savings. Develop maintenance practices and programs to enhance energy efficiency. Examples include: reprogramming controls to shutdown equipment and lighting when not required, developing a checklist to ensure that all shutdown procedures are properly implemented and followed.
- (e) Energy Saving Opportunities & Action Planning – Identify, assess, prioritize and recommend to senior management energy efficiency projects, including both capital improvement projects and operational and maintenance changes. This will include the preparation of business cases to justify capital expenditures and the completion of applications to Save on Energy, and to other programs to maximize funding

available for energy efficiency projects.

- (f) **Project Implementation & Energy Savings** – Coordinate the implementation of energy efficiency projects, including the planning, budgeting, and scheduling for the design, installation, commissioning, and verification of such projects. It is expected that a project manager (not the Energy Manager) be assigned for large capital projects.
- (g) **Measurement & Verification** – Develop and implement a strategy for the measurement & verification of energy efficiency projects, including collecting and maintaining baseline data and post-project data.
- (h) **Energy management behavior and business process improvements** – Work to create and foster a sustainable energy management culture and provide an avenue for employees to recognize and report issues and ideas regarding energy efficiency.
- (i) **Employee Awareness Program** – Implement an employee training and awareness program to promote energy conservation and communicate the energy efficiency programs undertaken.
- (j) **Reporting** – Maintain a project registry of energy savings opportunities, with key project data, such as estimated savings and costs, status tracking, ownership, and next steps, and complete other reporting requirements associated with the Energy Manager program.