

MULTI-SITE CUSTOMER ENERGY MANAGER PROGRAM

MSC ENERGY MANAGER AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, _____ (**the “Effective Date”**),

BETWEEN:

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

(the **“IESO”**)

- and -

[**LEGAL NAME OF THE PARTICIPANT**], a [**LEGAL FORM OF THE PARTICIPANT**] governed by the laws of [**JURISDICTION OF THE PARTICIPANT**],

(the **“Participant”**)

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

WHEREAS the Participant has submitted a MSC Energy Manager Application (the **“Application”**) to the IESO to access funding for the employment of an Energy Manager;

AND WHEREAS the Participant reasonably expects that it can deliver at a minimum the Annual Savings Target;

AND WHEREAS the IESO has approved the Application;

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

1. **Defined Terms.**

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

2. **Annual Savings Target, Funding Amount and Payment.**

- (a) In each Employment Year, the Energy Manager shall implement and put into service Projects resulting in a minimum of 2,000 MWh (“**Annual Savings Target**”), which savings will persist at least until December 31, 2020.
- (b) The Annual Savings Target:
 - (i) will be calculated based only on Energy Savings from Projects initiated and/or implemented by the Energy Manager as reported in the Energy Manager’s Quarterly Reports.
 - (ii) must contain Energy Savings from at least one Project under a saveONenergy Program;
 - (iii) must contain a minimum of 10% Energy Savings from Projects that do not receive an incentive from a saveONenergy program or from the IESO, the Province of Ontario, or the Government of Canada.
- (c) If the Energy Manager fails to achieve the Annual Savings Target in the first Employment Year (“**Shortfall Amount**”), then the Shortfall Amount will be added to the Annual Savings Target in the second Employment Year. In the second Employment Year, the Energy Manager must achieve the Annual Savings Target plus any Shortfall Amount. If this Agreement is extended, the Energy Manager must achieve the Annual Savings Target in each subsequent Employment Year.
- (d) The IESO agrees to pay the following (“**Funding Amount**”) to the Participant subject to this Section 2, Section 4(d), and to the Participant satisfying all of its obligations herein contained:
 - (i) \$40,000 upon notice to the IESO of the Energy Manager’s employment start date, and upon the start of each subsequent Employment Year; and
 - (ii) upon approval by the IESO of the fourth Quarterly Report in accordance with Section 4(c), the product of \$40/MWh and the Energy Savings up to a maximum of \$150,000, less \$40,000, for each Employment Year.
- (e) If the amount of the calculation under Section 2(d)(ii) results in a negative value, this amount shall be deemed to be \$0.
- (f) The maximum Funding Amount for each Employment Year is \$150,000, and in no event shall the IESO be obligated to pay any additional amounts to the Participant.
- (g) 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.

- (h) All payments hereunder are conditional on the Participant providing an invoice to the IESO together with sufficient documentation to support and substantiate the Funding Amount.
- (i) In addition to the Funding Amount, the IESO will pay any Applicable Taxes on the Funding Amount, excluding for certainty, any income taxes or Worker Safety Insurance Board amounts. The Participant will provide to the IESO sufficient supporting documentation, as requested by the IESO, to facilitate and support the IESO in claiming input tax credits in respect of the Funding Amount. 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 Funding Amount, the Participant will provide such reasonable assistance as may be required by the IESO with such discussion, negotiation or challenge. For greater certainty, in no event shall the IESO be relieved of its obligations under this Agreement, including the IESO's obligation to pay Applicable Taxes as provided hereunder, pending the outcome of any discussion, negotiation or challenge with a tax authority.

3. Participant's Obligations.

In addition to the other obligations contained in this Agreement, the Participant will fulfill the following obligations:

- (a) The Participant will enter into an employment agreement with the Energy Manager, which will contain, at a minimum, the Energy Manager duties attached hereto in Schedule "B", and respect the terms and conditions of such employment agreement. Participant will be solely responsible for all obligations arising out of the employment of the Energy Manager, including withholding of income taxes and compliance with all applicable employment laws.
- (b) The Participant will employ the Energy Manager on a full time basis and will ensure that the Energy Manager is professionally designated as a certified engineering technician or technologist, Certified Energy Manager, or a licensed professional engineer in the province of Ontario, with a strong background in commercial, institutional or industrial energy use, as applicable, and energy management. The Participant shall ensure that the Energy Manager is designated as a Certified Energy Manager within one (1) year of the Energy Manager's employment start date.
- (c) If the Energy Manager is a current employee of the Participant, the Participant will provide to the IESO a written commitment from a senior officer that such employee's previous job will be filled by another employee.
- (d) No later than the tenth (10) Business Day prior to the 90th day after the commencement of the Energy Manager's employment, the Participant will deliver a written notice to the IESO confirming that the Participant will continue to

employ the Energy Manager for the balance of the term of the Energy Manager's employment agreement.

- (e) The Participant will provide suitable operational support and work supplies to the Energy Manager to allow the Energy Manager to perform their duties under the employment agreement.
- (f) The Participant will cause the Energy Manager to achieve the Annual Savings Target in each Employment Year as evidenced by implemented Projects and as verified by the IESO; and
- (g) The Participant will ensure that at least 10% of the Energy Savings arise directly from Projects that do not receive any incentives from the IESO, the Province of Ontario, the Government of Canada, or a gas utility.

4. Reporting Obligations.

The Participant will ensure that the Energy Manager prepares and delivers to the IESO, for its approval, the following documents:

- (a) Energy Management Plan for the Facilities occupied by the Participant, no later than six (6) months after the Energy Manager's employment start date, unless an Energy Management Plan already exists. The Participant shall deliver an updated Energy Management Plan in each Employment Year beginning as of the Energy Manager's employment start date.
- (b) Quarterly Reports according to a template to be established by the IESO will be delivered within 30 days after the end of each quarter for each Employment Year beginning as of the Energy Manager's employment start date and any anniversary thereof. The last Quarterly Report must indicate whether or not the required minimum Annual Savings Target has been achieved. For any funding period that is less than one Employment Year, the Participant shall deliver a report within 30 days after the end of the term which will include any information to be included in the last Quarterly Report to the extent that such information is available.
- (c) The IESO will review the Reports to ensure timely filing and completeness and to assess Energy Savings and progress from the previous Reports and will provide its approval or comments on the Reports to the Participant within a reasonable time. If the IESO does not approve the Reports, such documents will be revised by the Participant in order to address the noted deficiencies and obtain the IESO's approval of such revised Reports.
- (d) The IESO will not make payment under Section 2(d)(ii) of this Agreement until it approves each Report required to be submitted by the Participant.
- (e) At the IESO's request, the Participant shall provide information demonstrating its ability to meet any prior or future Annual Savings Target.

5. Communication with Technical Reviewer.

The IESO may carry out any of the review activities in Section 4 through a Technical Reviewer. The Participant will cooperate and provide on a timely basis the requested information to the IESO or the Technical Reviewer should the IESO or the Technical Reviewer require clarification from the Participant related to any reports or information required under this Agreement. The Participant shall, at the same time as it provides information to the Technical Reviewer, provide a copy of such information to the IESO.

6. Term, Termination and Survival.

- (a) The term of this Agreement commences as of the Effective Date and terminates after two Employment Years unless terminated earlier in accordance with the terms of this Agreement. After the second Employment Year, this Agreement may be extended at the sole discretion of the IESO. Any extension is subject to the Participant being in compliance with its obligations herein, and provided this Program remains available. The Participant acknowledges that the term may not extend past December 31, 2020.
- (b) This Agreement will terminate on the expiry of the term as provided in Section 6(a) or earlier as a result of:
 - (i) the Participant's failure to observe or perform any obligation required to be observed or performed under this Agreement and such failure continues for a period of thirty (30) calendar days after delivery of written notice by the IESO to cure such failure; or
 - (ii) the position of Energy Manager is unfulfilled for a period of 50 days or more, unless extended by the IESO; or
 - (iii) upon 60 days notice by the IESO; 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; or
 - (v) at the sole discretion of IESO, where the Energy Manager did not achieve the Annual Savings Target plus, if applicable, the Shortfall Amount, in the second Employment Year or where the Energy Manager did not achieve the Annual Savings Target in any subsequent Employment Year.
- (c) Upon termination under Section 6(b)(i), (ii), (iv) or (v), the Participant will promptly repay any Funding Amount paid under Section 2(d)(i) for that Employment Year prorated for the time until termination.
- (d) Sections 2(i), 6(c), 9(b), 11, 12, 13, 14, 15, and 17(d), and such other provisions as are necessary for the interpretation thereof and any other provisions hereof, the

nature and intent of which is to survive termination or expiration of this Agreement, will survive the expiration or termination of this Agreement.

7. Environmental Attributes.

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

8. Representations and Warranties.

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

- (a) The Participant would not have undertaken the employment of this Energy Manager without the Funding Amount;
- (b) the Participant satisfies the eligibility criteria set out in Schedule “C” as of the date hereof; and
- (c) the Participant has the authority to execute this Agreement and to fulfill its obligations as contemplated herein.

9. Evaluation, Measurement and Verification (EM&V); Audit.

- (a) The performance and administration of this Agreement will be subject to the IESO EM&V Protocols. In furtherance of the IESO EM&V Protocols, the Participant will cooperate with the IESO and its respective designates and will make available such information in the form and with the frequency as may be reasonably prescribed, including with respect to historical electricity consumption.
- (b) The Participant will keep complete and accurate books, accounts and records and all other data required by it for the purpose of proper administration, monitoring and verification of this Agreement and all such records and data will be maintained during the term of this Agreement and for the period of time thereafter which is the greater of seven years and the period of time specified under Applicable Law. On reasonable notice, at any time during normal business hours, the Participant will provide reasonable access to the IESO and/or its respective designates to such books, accounts, records and data and: (A) at the reasonable request of the IESO, make available to the IESO and/or its respective designates, the personnel of the

Participant and its subcontractors involved in the operation of the Participant's business and the maintenance of such books, accounts, records and data referred to above for the purposes of this Section 9; and (B) permit the IESO and/or its respective designates to examine and audit and take copies and extracts from such documents.

10. No Warranty.

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

11. Limitation of Liability and Indemnity.

- (a) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY: (A) IN NO EVENT WILL THE PARTICIPANT BE ENTITLED TO RECOVER FROM THE IESO OR ANY OTHER INDEMNIFIED PARTY (AS DEFINED IN SECTION 11(b) BELOW) FOR ANY LIABILITIES, DAMAGES, OBLIGATIONS, PAYMENTS, LOSSES, COSTS OR EXPENSES UNDER OR IN RELATION TO THIS AGREEMENT: (I) ANY AMOUNT IN EXCESS OF THE ACTUAL COMPENSATORY DIRECT DAMAGES, COURT COSTS AND REASONABLE LAWYERS' AND OTHER ADVISORS' FEES SUFFERED OR INCURRED BY THE PARTICIPANT AND IN ANY EVENT LIMITED TO THE FUNDING AMOUNT PAID BY THE IESO HEREUNDER; OR (II) DAMAGES (WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL OR OTHERWISE) FOR (X) LOSS OF PROFIT, OR (Y) DIMINUTION OF VALUE OR LOSS OF USE OF ANY PROPERTY; AND (B) THE IESO AND THE INDEMNIFIED PARTIES (AS DEFINED IN SECTION 11(b) BELOW) WILL NOT BE LIABLE TO THE PARTICIPANT, ITS SUCCESSORS OR ASSIGNS OR ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS OR REPRESENTATIVES, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE UNDER OR IN RELATION TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY.
- (b) The Participant (the "Indemnifying Party") will indemnify, defend and hold the IESO, the Government of Ontario, the members of the Government of Ontario's Executive Council and their respective affiliates, and each of the foregoing Person's respective directors, officers, employees, shareholders, advisors, third party service providers and agents (including contractors and their employees) (collectively, the "Indemnified Party") harmless from and against any and all

Claims, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "Indemnifiable Loss"), asserted against or suffered by the Indemnified Party relating to, in connection with, resulting from, or arising out of (i) any Claim by, or occurrence or event related to, any third party relating to this Agreement; and/or (ii) the negligence or wilful misconduct of the Participant, except in either case to the extent that any injury or damage related to such Claim, occurrence or event is attributable to the negligence or wilful misconduct of the Indemnified Party. For greater certainty, in the event of contributory negligence or wilful misconduct of the Indemnified Party, then such Indemnified Party will not be indemnified hereunder in the proportion that the Indemnified Party's negligence or wilful misconduct contributed to any Indemnifiable Loss. The IESO will hold the benefit of 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 and Privacy.

- (a) Neither Party will use or disclose the Confidential Information of the other Party except as permitted or required by this Agreement. Subject to the foregoing, each Party will keep the other party's Confidential Information confidential and secure using measures appropriate to the nature and sensitivity of such information.
- (b) Each Party may disclose Confidential Information of the other Party to the extent required by a Governmental Authority or as required by Applicable Law, subject to giving prior reasonable notice to the other Party of such compelled disclosure (except where prohibited by Applicable Law from doing so) so that the other Party may take such steps as it desires to challenge or contest such disclosure or seek a protective order.
- (c) Each Party may disclose Confidential Information on a need-to-know basis to:
 - (i) its accountants, internal and external auditors and other professional advisors;
 - (ii) potential permitted assignees or successors of such Party in connection with a potential sale, merger, amalgamation or other transaction or transfer involving the business, assets or services provided by such party; and
 - (iii) directors, officers and employees of such Party and its service providers,

provided that any such person is notified of the confidentiality of the Confidential Information and of the provisions of this Section 12 and is subject to written

confidentiality obligations no less stringent than those contained in this Section 12.

- (d) The IESO may disclose Confidential Information of the Participant to the OEB, the Government of Ontario and the Environmental Commissioner's Office or their respective successors provided that the IESO notifies such person of the confidentiality of the Confidential Information.
- (e) The Participant consents to the disclosure of:
 - (i) aggregated data relating to its participation in this Program;
 - (ii) its participation in this Energy Manager Program; and
 - (iii) the status and nature of Projects undertaken under this Program provided that the IESO shall provide ten (10) Business Days notice to the Participant in advance of such disclosure.
- (f) Without limiting the foregoing, the Participant acknowledges and agrees that this Agreement 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 that as a result, third parties may obtain access to each Party's Confidential Information. Moreover, the Participant acknowledges that the IESO and its Representatives are subject to FIPPA which applies to and governs all recorded information in any form or medium that is provided by the IESO or its Representatives to the Participant, or provided by the Participant to the IESO or its Representatives for the purposes of this Agreement, or created by the Participant in the performance of this Agreement, and that is in the custody or control of the IESO (collectively, the "**Records**"), and may require the disclosure of the Records to third parties.
- (g) Each Party will:
 - (i) comply with Privacy Laws in connection with the collection, use and disclosure of Personal Information and will perform its obligations so as to enable the other party to comply with Applicable Law;
 - (ii) promptly notify the other Party if such Party receives notice from any Governmental Authority alleging that either Party has failed to comply with Privacy Laws and, or if such Party otherwise becomes aware that either Party may have failed or may fail to comply with Privacy Laws in connection with the performance of this Agreement;
 - (iii) cooperate and comply with any requests or instructions issued by any privacy regulatory authority or any other Governmental Authority applicable to such Party; and

- (iv) provide reasonable assistance to the other Party in responding to and addressing any complaint relating to the collection, use or disclosure of Personal Information.

13. Injunctive Relief.

Each Party acknowledges that, notwithstanding Section 6(b), Section 6(d) or Section 15, any violation of the provisions of Section 12 may cause irreparable damage or injury to the other Party, 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, such Party is entitled to proceed to court in order to obtain injunctive relief restraining the other party from breaching, and requiring the other Party to comply with, its obligations under Section 12. Nothing in this Section 13 will be construed to limit the right of a party to obtain injunctive relief in any other circumstance in which it may be otherwise entitled to such relief.

14. FIPPA Compliance.

To the extent that the IESO must comply with disclosure obligations under FIPPA, the Participant agrees (without limiting its obligation set out in Section 12):

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

15. Dispute Resolution.

If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties will promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, a senior representative from each Party will meet, either in person or by telephone, to attempt to resolve the dispute. Each senior representative will be prepared to propose a solution to the dispute. If, following such efforts, the dispute is not resolved, the dispute will be settled by arbitration pursuant to Schedule "D" of this Agreement.

16. Schedules.

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

Schedule "A" - Definitions

Schedule "B" – Energy Manager Duties

Schedule “C” - Eligibility Criteria

Schedule “D” - Arbitration Provisions

17. **General Provisions.**

- (a) **Headings.** The insertion of headings is for convenience of reference only and will not affect the interpretation of this Agreement. The terms “hereof”, “hereunder”, and similar expressions refer to this Agreement and not to any particular Article, Section, Schedule or other part hereof. Unless otherwise indicated, any reference in this Agreement to an Article, Section or Schedule refers to the specified article or section of, or schedule to, this Agreement.
- (b) **Entire Agreement.** Except as otherwise provided, this Agreement, together with the Release and Waiver, constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.
- (c) **Amendments.** This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by both of the Parties.
- (d) **Governing Law and Attornment.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. For the purpose of all legal proceedings, this Agreement will be deemed to have been made and performed in the Province of Ontario and the courts of the Province of Ontario will have exclusive jurisdiction to entertain any action arising under this Agreement. The IESO and the Participant each hereby attorns to the exclusive jurisdiction of the courts of the Province of Ontario.
- (e) **Successors and Assigns.** This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and assigns. This Agreement may not be assigned by the Participant except with the prior written consent of the IESO, which consent may be unreasonably withheld or delayed.
- (f) **Further Assurances.** Each of the Parties will, from time to time, on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed and delivered all such further things as may be reasonably required in order to fully perform and to more effectively implement the terms of this Agreement.
- (g) **Severability.** The invalidity, unenforceability or illegality of any provision in this Agreement will not, to the extent permitted by Applicable Law, affect the validity, enforceability or legality of any other provision of this Agreement, which will remain in full force and effect.

- (h) **No Partnership, etc.** Nothing in this Agreement will be deemed to constitute a partnership or joint venture or create any fiduciary relationship between the IESO and the Participant.
- (i) **Notices.** Any notice to be given under this Agreement unless expressly provided otherwise herein must be in writing and will be given by e-mail or by hand-delivery as provided. Any notice, if sent by e-mail, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received on the Business Day is delivered to the applicable address noted below. Either Party may, by notice of change of address to the other Party, change its address to which notices are to be sent. Notices and other communications must be addressed as follows:
- If to the IESO:
- 120 Adelaide Street West, Suite 1600
Toronto, ON M5H 1T1
- Attention: Manager, Program and Partner Services
E-mail: ConservationContracts@ieso.ca
- If to the Participant:
- Attention: ●
E-mail: ●
- (j) **Separation of Functions.** The Participant acknowledges and agrees that any actions or any notice delivered pursuant to this Agreement, shall not be deemed to be notice for any other purpose, including any obligation to take action or to provide notice to the IESO pursuant to the IESO Market Rules.
- (k) **Counterparts.** This Agreement may be executed in any number of counterparts and all such counterparts will, for all purposes, constitute one agreement binding on both Parties provided that each Party has signed at least one counterpart.
- (l) **Electronic Signatures.** This Agreement may be executed and delivered by electronic transmission and the Parties may rely upon all such signatures as though such signatures were original signatures.

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

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR**

[LEGAL NAME OF PARTICIPANT]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I have authority to bind the corporation

[I/We] have authority to bind the Participant

SCHEDULE "A" DEFINITIONS

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

“**Agreement**” means this MSC Energy Manager Agreement, including all recitals and Schedules, as it or they may be amended, restated or supplemented from time to time.

“**Annual Savings Target**” has the meaning given to it in Section 2(a).

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

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

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

“**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.

“**Confidential Information**” of a Party means all information relating to such Party or any of its affiliates, licensors, customers (including information regarding a customer that is a

consumer, wholesaler or generator) or employees in connection with or as a result of entering into this Agreement, including information concerning the disclosing Party’s past, present or future customers, suppliers, technology, 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 other Party or that subsequently becomes publicly available other than through an act or omission of the other Party; (B) already known to the other Party at the time of disclosure and is not known to the other party to be the subject of an obligation of confidence; (C) independently developed by the other Party; or (D) received by the other Party in good faith without an obligation of confidence of any kind by a third party; provided, however, that, all personal information collected by a Party or for which a party is responsible under Applicable Law in connection with this Agreement is the Confidential Information of that Party, whether or not it falls into one of the exceptions set out in clause (A) through (D) of this definition.

“**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.

“**Effective Date**” is defined in the preamble to this Agreement.

“**Employment Year**” means the twelve-month period beginning on the Energy Manager’s start date.

“**Energy Manager**” means an energy manager engaged by a Participant and embedded at such Participant’s Facility or Facilities whose primary responsibility is to propose and lead methodologies and processes to reduce energy consumption in a Facility or a System.

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

“**Energy Savings**” means MWh savings arising directly from a Project initiated and/or implemented by the Energy Manager. In the event of a dispute, the IESO’s evaluation of Energy Savings will be final and binding.

“**Environmental Attributes**” means all benefits and entitlements associated with a Measure or a Facility having decreased environmental impacts resulting from the employment of an Energy Manager, including: (a) all rights to any fungible or non-fungible attributes, whether arising from a Facility itself, from the interaction of a Facility with a Distribution System or the IESO-Controlled Grid or because of Applicable Law or voluntary programs established by any Governmental Authority; (b) all rights relating to the nature of the energy source as may be defined and awarded through Applicable Law or voluntary programs; and specific Environmental Attributes include ownership rights to any applicable credits, entitlements or other instruments resulting from the interaction of a Facility or a Measure with a Distribution System or the IESO-Controlled Grid or as specified by Applicable Law or voluntary programs; (c) all rights to quantify and register the foregoing with competent authorities; and (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing.

“**Facility**” means the building(s), premises or lands, or part thereof, occupied by the Participant, and over which the Participant has all required authorization and consents to carry out its obligations under this Agreement and meeting the requirements in Schedule “C”.

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

“**Funding Amount**” has the meaning given to it in section 2(f).

“**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, without limitation, the IESO in its capacity as the operator of the IESO-Controlled Grid, the OEB, the Electrical Safety Authority, the Environmental Commissioner’s Office, and any Person acting under the authority of any of the foregoing, but excluding the IESO.

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

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

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

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

“**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.

“**Indemnifiable Loss**” has the meaning given to it in Section 11.

“**Indemnified Party**” has the meaning given to it in Section 11.

“**Indemnifying Party**” has the meaning given to it in Section 11.

“**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: (i) to adjudicate it a bankrupt or insolvent; (ii) 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 (iii) 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.

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

“**MSC Energy Manager Application**” means an application in the form posted on the Website from time to time and submitted by the Participant to access funding for the employment of an Energy Manager under this Agreement.

“**MWh**” means a megawatt hour.

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

“**Participant**” has the meaning given to it in the preamble of this Agreement.

“**Party**” and “**Parties**” have the meanings given to them in the preamble of this Agreement.

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

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

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

“**Project**” means one or more Measures, initiated and/or implemented in respect of a single System or Facility, that was implemented by the Energy Manager in carrying out his or her duties listed in Schedule “B”.

“**Program**” means this Multi-Site Customer Energy Manager Program.

“**Quarterly Report**” means the report of energy management activities of a Participant completed by an Energy Manager on a quarterly basis in the form made available on the Website.

“**Records**” has the meaning given to it in Section 12(f).

“**Reports**” means, collectively, an Energy Management Plan and Quarterly Reports.

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

“**Shortfall Amount**” means the Energy Savings not achieved by the Energy Manager.

“**System**” will be defined broadly and means an integrated or interdependent combination of installed equipment and processes that: (a) may be used for (i) manufacturing or other industrial or

commercial processes, or (ii) circulating or distributing inside, outside or between Facilities commodities, goods or utilities (including heating, cooling, air or other gases, water or other liquids); and (b) consumes electricity.

“**Technical Reviewer**” means a third party retained by the IESO.

“**Website**” means the website located at the address: <https://saveonenergy.ca> or such other website as the IESO may notify the Participant of from time to time.

SCHEDULE "B"

ENERGY MANAGER DUTIES

In connection with the identification, reporting, and implementation of energy saving opportunities, the minimum duties of the Energy Manager are set out below. These duties, along with any other obligation set out elsewhere in this Agreement, shall be used to develop the Energy Manager's job description.

- A. Facility Benchmarking – Provide a list of historical demand and energy consumption for each Facility along with additional attributes like but not limited to: location, square footage, typical equipment, hours of operation. This list can be used to identify high performers as well as less energy efficient sites for comparison and identification of energy saving projects.
- B. Primary Assessment – Review existing energy study reports and perform a high-level assessment, which may include a walk through audit of a representative number of facilities to identify energy saving opportunities and to identify which systems will require more detailed evaluations.
- C. Maintenance and Operating Schedules - Review and provide a description of the control systems, operating schedules, and maintenance practices representative of the Participant's typical facilities to identify operational savings. Develop maintenance practices and programs to enhance energy efficiency. Examples include but are not limited to: reprogramming controls to shutdown equipment and lighting when not required, developing a checklist to ensure that all shutdown procedures are properly implemented and followed.
- D. Energy Saving Opportunities & Action Plan - Identify, assess, prioritize and recommend to senior management energy-saving opportunity 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 other IESO initiatives and to other agencies to maximize funding available for energy-saving projects. The Energy Manager will also prepare a cost-benefit analysis for each project that it proposes to senior management.
- E. Project Implementation & Electrical Energy Savings – Coordinate the implementation of energy-saving projects, including the planning, budgeting, and scheduling for the design, installation, commissioning, and verification of energy efficiency projects; participate in at least one saveONenergy projects. It is expected that a project manager (not the Energy Manager) would be assigned for large capital projects.
- F. Measurement & Verification Strategy – Work with the Participant to develop a strategy for the Measurement & Verification of energy-saving projects at a corporate level (i.e. not project level).
- G. Energy Management Behaviour and Business Process Improvements – Work to create and foster a sustainable energy management culture at the Participant's facilities and provide an avenue for employees to recognize and report issues and ideas regarding energy conservation and efficiency.
- H. Employee Awareness Program - Implement an employee training and awareness program to promote energy conservation and communicate the energy efficiency initiatives undertaken.
- I. Assistance to IESO Projects – Coordinate and assist with site inspections by the IESO from time to time of the various measures implemented at the sole discretion of the IESO. Collect relevant information regarding additional electrical energy use (equipment purchases, schedule changes, occupancy changes or construction). The Energy Manager is expected to familiarize himself/herself with and access initiatives under saveONenergy programs and other available relevant resources.
- J. Reporting: Complete Quarterly Reports.

- 2 -
SCHEDULE "C"
ELIGIBILITY CRITERIA

1. Participant Eligibility Criteria

To be eligible to participate in this Multi-Site Customer Energy Manager Program the Participant must:

- (a) be an electricity consumer that occupies the Facilities, and has all required authority and permission to carry out its obligations under this Agreement;
- (b) not be Insolvent; and
- (c) not have already received funding for an energy manager from the IESO.

2. Facility Eligibility Criteria

To be eligible to participate in this Multi-Site Customer Energy Manager Program, the Facilities

- (a) must have a combined peak demand of 15 MW, or an annual electricity consumption use of 75 GWh; and
- (b) must each be connected to a Distribution System and not to the IESO-Controlled Grid, and
- (c) must be located in five or more local distribution company service areas.

Facilities may be substituted during the Term of this Agreement provided that the Eligibility Criteria are met.

3. Facility Sharing

- (a) The Energy Manager may be used at all Facilities that are eligible under Section 2 of this Schedule "C".
- (b) Energy savings arising as a direct result of the Energy Manager's activities from all Facilities will be applied towards the Annual Savings Target. For certainty, savings from a facility connected to the IESO-Controlled Grid are not eligible to be included in the Annual Savings Target.

SCHEDULE "D"
ARBITRATION PROVISIONS

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