
FIRST NATIONS COMMUNITY BUILDING RETROFIT PROGRAM

PARTICIPANT AGREEMENT

References to "you" or "your" in this Agreement are references to the Participant.

This participant agreement between you and the IESO (this "**Agreement**") governs your participation in the First Nations Community Building Retrofit Program (the "**FNCBR Program**"). The FNCBR Program is offered and funded by the Independent Electricity System Operator ("**IESO**"). By signing and submitting this Agreement, you confirm your consent to, and agree to comply with and be bound by the terms of this Agreement.

All capitalized terms not defined herein will have the meaning given in the FNCBR Program requirements in force at the time you sign this Agreement (the "**Program Requirements**").

If the IESO accepts this Agreement, you are eligible to participate in the FNCBR Program and receive funding up to \$100,000 to implement energy efficiency projects (the "**Community Budget Cap**"). If you decide to install additional Eligible Measures in excess of the Community Cost Cap, you will be responsible for the costs associated with such additional Eligible Measures.

In consideration of the installation of the Eligible Measures and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, you agree to the following terms and conditions:

- 1.** You represent and warrant that (a) you have all required rights and authority to participate in the FNCBR Program, allow for the installation of the Eligible Measures and to carry out all other obligations in this Agreement; (b) you have met all Eligibility Criteria as outlined in the Program Requirements; and (c) you have disclosed any Third Party Contributions to the IESO and the Service Provider.
- 2.** The IESO may subcontract any of its responsibilities under this Agreement to the Service Provider.
- 3.** The IESO reserves the right to determine the eligibility requirements for your participation in the FNCBR Program.
- 4.** You confirm that as part of your Application:

- a)** a signed Band Council Resolution has been provided to confirm the Eligible Community's participation in the FNCBR Program.
 - b)** a Community Coordinator has been identified to support the FNCBR Program delivery services and liaise with the Service Provider or any of their subcontractors.
- 5.** If your Application is approved and meets all Application Requirements as outlined in Section 4 of the Program Requirements, you agree to cooperate and work with the Service Provider to provide the IESO, the Service Provider or any of their respective subcontractors, with access to benchmarking data required, such as historical utility energy data, for all Eligible Facilities under the FNCBR Program within 20 business days following notice of Application approval, as well as access to any Eligible Facilities for the purpose of conducting Site-Visits.
- 6.** You agree to provide the IESO, the Service Provider or any of their subcontractors, access to any Eligible Facility to install all Eligible Measures as outlined in the Project Plan. All Eligible Measures must have a project completion date of no later than twelve (12) months after the Project Plan is approved. You agree to work with the Service Provider to move through the process of selecting projects and approving the project plan expeditiously.
- 7.** All Eligible Measures have a 1-year parts and labour warranty period from the date of installation of the Eligible Measure. You agree that any parts and labour warranty claims made by you within the 1-year period following the date of installation will be directed to the Service Provider. To the extent that any additional manufacturer warranties are available beyond the 1-year parts and labour warranty period, you agree that any such warranty claims made by you will be directed to the product manufacturer.
- 8.** Community Install Track.
 - a)** **THIRD PARTY COMMUNITY INSTALL CONTRACTOR:** The Participant shall contract with a third-party to carry out the activities for Community Install Track Projects identified and approved in the Project Plan. The Third-Party Community Install Contractor shall:
 - (1)** be a person (including a natural person, firm, trust, partnership, company or corporation, joint venture, governmental authority or other entity of any kind) retained by the Participant having on its staff individuals who has professional experience and qualifications as approved by the Participant and/or Service Provider.

- (2) conduct Detailed Engineering Studies and prepare an M&V Plan as outlined in Section 7 of the Program Requirements.
 - (3) install Eligible Measures according to industry best practices.
 - (4) take all necessary steps to have equipment that was removed or replaced as part of any Project disposed of or decommissioned in accordance with appropriate disposal or decommissioning processes, applicable laws and regulations, and in accordance with commercially reasonable environmental practices and shall be prepared to evidence, upon request by the IESO, such activities through appropriate disposal certificates or similar or other documentation as may be acceptable to the IESO, in its discretion.
 - (5) undertake all M&V activities and prepare the M&V Savings Report as outlined in the M&V Plan for all Community Install Track Projects.
- b)** The Participant agrees to working with the Service Provider and the Third Party Community Install Contractor to ensure all activities related to Community Install Track Projects are completed expediently.
- c)** **FORM AND AMOUNT OF PARTICIPANT INCENTIVE:** Where pre-approved for flow-through funding, the Participant may elect to receive flow-through funding from the Service Provider for 50% of the estimated Community Install Track Eligible Costs, once 50% or more of the Community Install Track project costs have been incurred and approved as outlined in the Project Plan. The Participant shall receive the payment balance for Community Install Track Eligible Costs upon project completion, following any applicable adjustments to reflect actual approved Community Install Track Eligible Costs. The Participant agrees to the following:
- (1) Flow-through funding received shall only be used to cover Community Install Track Eligible Costs.
 - (2) Payments made to the Third Party Community Install Contractor shall be made dutifully for any Community Install Track Eligible Costs as outlined in the Program Requirements.
 - (3) Costs for Detailed Engineering Studies shall not exceed \$10,000, and the total eligible costs for all Projects shall not exceed the Community Cost Cap of \$100,000.
 - (4) Upon project completion and to confirm the actual project costs, the Participant shall submit to the Service Provider verification of Community

Install Track Eligible Costs for each Community Install Track Project, in the form of accounting records and contractor invoices, and any other evidence required by the IESO.

- (5) In the event that the Community Install Track Project is cancelled or otherwise fails to meet the requirements of the approved Project Plan, the IESO reserves the right to enforce a repayment of any payments issued relating to the Project.

9. Environmental Attributes.

- c) 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 provided, 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 (collectively, the "**Electricity Savings Environmental Attributes**") will be allocated on a proportionate basis, with the IESO owning an amount equal to the total quantity of Electricity Savings Environmental Attributes multiplied by the Environmental Attribute Funding Percentage (the result being the "**IESO Environmental Attributes**") and the Participant owning the remaining quantity of Electricity Savings Environmental Attributes (the "**Participant Environmental Attributes**"), where Environmental Attribute Funding Percentage means, in respect of an Eligible Measure purchased and installed, the total incentive amount provided to the Participant and funded by the IESO in respect of the Eligible Measure(s), divided by the total amount of actual costs incurred by the Participant that meet the eligibility requirements for such costs set out under these terms and conditions, multiplied by 100, and expressed as a percentage.
- d) The Participant shall notify the IESO in writing prior to assigning, transferring, encumbering, submitting for compliance purposes, trading or otherwise using (collectively, "**realizing**") any of the Participant Environmental Attributes, with such notice to include: (i) the quantity of Participant Environmental Attributes to which the Participant believes it is entitled; (ii) the quantity of Electricity Savings Environmental Attributes and the Environmental Attributes Funding Percentage used to determine the quantity of Participant Environmental Attributes; and (iii) supporting calculations and data used to determine the total quantity of Electricity Savings Environmental Attributes and the Environmental Attribute Funding Percentage.

- e) The Participant agrees that all right, title and interest in and to all benefits or entitlements associated with the IESO Environmental Attributes are hereby transferred and assigned by the Participant to, or to the extent transfer or assignment is not permitted, held in trust for, the IESO and its successors and assigns.
 - f) The IESO will be entitled to unilaterally and without consent deal with such IESO Environmental Attributes in any manner it determines. The Participant acknowledge that the IESO will contact the Participant prior to realizing on any IESO Environmental Attributes.
 - g) The Participant agrees to, from time to time, upon written direction of the IESO, take all such actions and do all such things necessary to:
 - (i) effect the transfer and assignment to, or holding in trust for, the IESO all rights, title and interest in all IESO Environmental Attributes; and
 - (ii) certify, obtain, qualify and register with the relevant authorities or agencies IESO Environmental Attributes that are created and allocated or credited pursuant to applicable laws and regulations from time to time for the purpose of transferring such IESO Environmental Attributes to the IESO. The Participant will be entitled to reimbursement by the IESO of the cost of complying with such a direction provided that the IESO, acting reasonably, has approved such cost of compliance in writing prior to the cost being incurred and provided that such reimbursement will be limited to: (x) the total amount of such cost of compliance that have been approved in advanced by the IESO, multiplied by (y) the applicable Environmental Attributes Funding Percentage.
- 10.** The Participant acknowledges and agrees that: (i) you have independently assessed the risk of participating in the FNCBR Program; (ii) the IESO makes no representation or warranty, and assumes no liability with respect to quality, safety, performance, or other aspect of any design, system, equipment or appliance installed pursuant to this Agreement and expressly disclaims any such representation, warranty or liability; (iii) the energy cost savings and other benefits described in connection with the FNCBR Program are based on estimates, and actual results may differ; and (iv) the Eligible Measures are intended for use only as directed and improper use may result in injury or damage.
- 11.** The Participant will participate in any survey, studies, audits, evaluations or verifications conducted by the IESO, the Service Provider, or any of their respective agents or subcontractors (the "**Program Operators**") in connection with the FNCBRP

Program including for the purposes of the proper administration, monitoring and verification of this Agreement or evaluation of the FNCBR Program, and will provide to them reasonable access to the Facility and any relevant documentation and records for such purpose. The Participant further acknowledges and agrees to allow inspections to be conducted in the Facility by the Program Operators if your Facility is selected for a quality assurance and quality control review, and will provide reasonable access to the Facility and any relevant documentation and records for such purpose.

- 12.** The Participant hereby: (a) consents to the collection, use, disclosure and other handling of any information provided by the Participant to the Program Operators, including but not limited to, records showing historical energy use and consumption, Facility name, address and phone number and electricity account number (collectively, the "**Participant Information**") by the Program Operators for purposes relating to the operation, administration or assessment of the FNCBR Program, and in connection with any reporting activities relating to the FNCBR Program, which such use will include, without limitation: (i) sharing of Participant Information among the Program Operators; (ii) use by the Program Operators of the Participant Information provided by the Facility to conduct, analyze and report on the results of the FNCBR Program and to conduct surveys and modify the FNCBR Program based on such surveys; and (iii) disclosure to the Ontario Energy Board, the Ontario Ministry of Energy, or the Environmental Commissioner of Ontario and/or any of their respective successors; (b) acknowledge that the Participant Information may be accessible to third parties under the *Freedom of Information and Protection of Privacy Act* (Ontario); (c) consent to the Program Operators contacting you directly, including by email and other electronic communications, in connection with surveys, studies and audits. Pursuant to Canada's anti-spam legislation (hereinafter referred to as "**CASL**"), the IESO is hereby requesting your Express Consent (as that term is defined in CASL and its associated regulations) to contact you at the electronic address provided in this Agreement for the purposes of FNCBR Program administration and for collecting market research data related to the FNCBR Program. If you wish to receive email communications from the IESO in connection with future conservation programs, customer satisfaction surveys and other related purposes, you can register for the business newsletter by clicking here <https://saveonenergy.ca/For-Business-and-Industry#Business-Newsletter>. You may withdraw your consent at any time. You may also reach the IESO at 120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1; www.ieso.ca; www.saveonenergy.ca; or (905) 403-6900.
- 13.** The IESO is committed to protecting the personal information in its custody or control in accordance with applicable privacy laws. The Participant may access the IESO's privacy policy at <http://www.ieso.ca/Privacy>.

- 14.** The IESO will not be liable for any direct, indirect, special or consequential damages, costs or losses arising from the procurement, installation or use of the Eligible Measures, whether in accordance with the manufacturer’s instructions or otherwise, or from any actions, omissions, misrepresentations, negligence or willful misconduct by the Service Provider or its subcontractors (including for further certainty, with respect to any recommendations made by the Service Provider), or by any Third-Party Community Install Contractor.
- 15.** Any notice to be given by a party in connection with this Agreement will be in writing and delivered by regular mail, courier service, or electronic mail. Notices will be deemed to have been given: (a) in the case of delivery by postal service, five Business Days after such notice is sent; or (b) in the case of delivery by courier service, or by email (or other electronic mail service), one Business Day after such notice is sent; in each case when delivered to the applicable addresses noted below. Notices and other communications to the IESO must be addressed as follows:

Address: 120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Attention: Manager, Program Delivery

Email: Conservationcontracts@ieso.ca (with a copy to general.counsel@ieso.ca)

Notices to the Participant must be addressed to the Participant’s email provided below, or to such other address provided by the Participant to the IESO in writing by an authorized representative of the Participant.

- 16.** Except as otherwise provided, this Agreement constitutes the entire agreement between the Participant and the IESO in connection with its subject matter and supersedes all prior representations, communications and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.
- 17.** The IESO may change the terms and conditions of this Agreement at any time. This Agreement may only be amended upon written notice by the IESO to the Participant. No waiver of any provision of this Agreement will: (a) be binding unless executed in writing and properly authorized by the party to be bound thereby; or (b) constitute a waiver or continuing waiver of any other provision of this Agreement, except as otherwise expressly provided. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any term of this Agreement will be deemed to be a waiver of any subsequent breach of that term.
- 18.** This Agreement will ensure to the benefit of and be binding upon the Participant and each of its respective successors and assigns. The Participant may not assign this Agreement without obtaining the prior written consent of the IESO.

19. 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. The parties hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Province of Ontario in any suit, action or proceeding arising out of or in connection with this agreement. The invalidity, unenforceability or illegality of any provision in this Agreement will not, to the extent permitted by applicable laws, affect the validity, enforceability or legality of any other provision of this Agreement which will remain in full force and effect.
20. This Agreement may be executed and delivered electronically in one or more counterparts, and the IESO may rely upon all such signatures as though such signatures were original signatures.
21. This Agreement will become effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be the effective date of this Agreement (the "**Effective Date**").

The Participant and the IESO have executed this Agreement by their respective duly authorized representatives as of the Effective Date.

By: _____
Name:
Title:
Date:

I, the undersigned, certify that I understand and agree to the terms and conditions of this Agreement and that I have the authority to bind the Participant.

Participant Email:
(to be used for communications and as the notice contact in accordance with Section 15)

INDEPENDENT ELECTRICITY
SYSTEM OPERATOR

By: _____

Name:

Title:

I have authority to bind the IESO.