

RETROFIT PROGRAM PARTICIPANT AGREEMENT

The Participant (being the “**Applicant**” in the Application) has applied for Participant Incentives, in respect of Eligible Costs, Peak Demand Savings, Energy Savings, or Generation Capacity, as applicable, pursuant to the Application submitted to the IESO under the Save on Energy retrofit program (the “**Retrofit Program**”) in accordance with the Program Requirements. All capitalized terms not otherwise defined herein will have the meanings given to them in Schedule 1 to this participant agreement (the “**Agreement**”).

In consideration of the Participant Incentives being provided and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Participant agrees to the following terms and conditions:

1. PARTICIPANT INCENTIVE: Subject to the terms and conditions of this Agreement and the Application, the IESO will only pay to the Participant a Participant Incentive for the implementation of the Measures in each Project described in the Application and approved by the IESO in a Pre-Approval. In addition to the other provisions hereof, payment of the Participant Incentive is subject to, and conditional upon, the following terms and conditions:
 - a) the Participant will implement each of the Projects described in the Application and receive a Participant Incentive Invoice Approval by the “**Participant Incentive Invoice Approval Deadline**”, which defined as: (i) no later than March 31, 2027 for a Project comprised of the EMIS Measure, or (ii) no later than 24 months after the date of the Pre-Approval for Projects without an EMIS Measure, unless otherwise approved in writing by the IESO in its sole discretion. For certainty, any extension to the Participant Incentive Invoice Approval Deadline or the Project’s project completion date that is not expressly consented to in writing by the IESO shall be null and void and of no force or effect;
 - b) the Participant will provide the IESO with the Post-Project Submission by the “**Post-Project Submission Deadline**”, which is defined as the later of: (i) 12 months following receipt of a Pre-Approval, (b) the estimated project completion date specified in the Application, or (c) any other deadline for Post-Project Submission that may be communicated in writing to the Participant by or on behalf of the IESO. The IESO may declare the Pre-Approval and the underlying Application null and void if a Post-Project Submission is not received by the Post-Project Submission Deadline;

- c) the IESO will have the right to reject Applications where it has determined, in its sole discretion, that the Project's Eligible Costs are beyond reasonable standard industry costs.
- d) the IESO will have the right, in its sole discretion, to decide whether or not to accept the evidence provided in connection with the Post-Project Submission;
- e) the Participant will submit an invoice to the IESO for an Advance Incentive (if applicable) after the receipt of a Pre-Approval from the IESO; and
- f) the Participant will submit an invoice to the IESO for the Participant Incentive after the approval of the Post-Project Submission by the IESO.

For greater certainty, the IESO will not pay any Participant Incentives in respect of any Measures that were not included in the Application.

2. AMOUNT AND FORM OF PARTICIPANT INCENTIVE: The Participant acknowledges that the total amount of the Estimated Participant Incentives set forth in the Application is based upon estimated Peak Demand Savings, estimated Energy Savings, estimated Generation Capacity, and estimated total annual energy consumption of an Industrial Facility, in each case, as may be applicable, and Estimated Eligible Costs set forth in the Application and, subject to this Section 2 and Section 3, will be the maximum amount payable hereunder.

- a) Upon the completion of each Project, the IESO will review the Post-Project Submission and recalculate the amount of the Participant Incentive based upon the best available information at that time, provided that the recalculated Participant Incentive may not exceed the Estimated Participant Incentive amount in the Application by more than 10%.
- b) Notwithstanding Section 2.a), the Participant may submit a request to amend a Pre-Approved Application via the Retrofit Portal to amend the scope of a Project prior to the completion of that Project, which results in a recalculated Participant Incentive that exceeds the Estimated Participant Incentive in the Application by more than 10%.
- c) The IESO will review the Post-Project Submission upon receipt from the Participant, and may conduct post-Project site visits and inspections, as required for verification purposes. If, following the review, the Post-Project Submission is approved by the IESO, the total amount of the Participant Incentives, as determined by the IESO in its sole discretion will be paid by the IESO as a lump sum payment.
- d) Following the approval of the Post-Project Submission by the IESO and the submission of an invoice by the Participant to the IESO for the approved Participant Incentive, any Participant Incentive payable under the Retrofit Program will be paid by the IESO to the Participant as a lump sum within 90 days of the Participant receiving the Participant Incentive Invoice Approval.

- e) In respect of a Participant Incentive for the EMIS Measure, the Participant acknowledges and agrees that the IESO will have the right to suspend payment of such Participant Incentive if at any time on or before March 31, 2027, a Project comprised of an EMIS Measure becomes a "project" carried out on federal land or outside of Canada according to the *Impact Assessment Act* (Canada) until such time as either: (i) a determination indicating that the carrying out of the Project is not likely to cause significant adverse environmental effects by the federal Minister of Natural Resources (which includes any of his or her duly authorized officers or representatives) or another authority referred to in the *Impact Assessment Act* (Canada), or (ii) if the carrying out of the Project is likely to cause significant adverse environmental effects, a decision of the federal Governor in Council, where such decision is requested by the Minister of Natural Resources, in his or her sole discretion, indicates that those effects are justified in the circumstances.
- f) In the event that NRCan reduces or terminates its funding to the IESO in connection with the EMIS Measure, the parties will enter into a written amendment to this Agreement to reflect, in connection with the EMIS Measure, a corresponding reduction in the Participant's obligations and the IESO's payment obligations in proportion to the reduction of the NRCan funding.

3. ADVANCE INCENTIVES

- a) If the Participant is a Social Housing Provider that has requested an SHP Advance Incentive, such SHP Advance Incentive will be paid upon the acceptance by the IESO of the Application in a Pre-Approval. The total Participant Incentive payable upon completion of a Project, including any Social Housing Adder, will be reduced by the amount of the SHP Advance Incentive paid by the IESO.
- b) Where an Advance Incentive is paid to the Participant and the amount of the Advance Incentive is greater than the total Participant Incentive payable to the Participant in accordance with Section 2 of this Agreement, the Participant will repay the resulting difference to the IESO. The Participant further acknowledges and agrees that the IESO may set-off any such amount from any Participant Incentive that may become payable.
- c) If the Participant is a Social Housing Provider and has not provided the Post-Project Submission for the Project for which that Advance Incentive was paid by the Post-Project Submission Deadline, the Participant will no longer be eligible to receive the Social Housing Adder. The Participant acknowledges and agrees that upon request from the IESO, at the IESO's sole discretion, the Participant will repay to the IESO any Advance Incentive previously paid to the Participant. The Participant further acknowledges and agrees that the IESO may set-off any such amount from any Participant Incentive that may become payable.

4. **METHOD OF PAYMENT:** The IESO will pay any Participant Incentive or Advance Incentive either by electronic funds transfer or cheque.
5. **OPERATION OF PROJECT:** The Participant will maintain, or will cause to be maintained, all of the equipment and improvements implemented through each Project, including the Measures, in good working order and will operate and maintain, or will cause to be operated and maintained, such equipment and improvements without any modification for a continuous period of 48 months starting on the first day of the month immediately following the month in which the IESO pays the Participant Incentive (the "**Period**").
6. **EVENTS OF DEFAULT:** Each of the following is an "**Event of Default**" hereunder:
- a) If equipment or improvements implemented through a Project requires any modification during the Period and the Participant does not obtain the IESO's written consent prior to carrying out any such modification, which consent may be withheld at the IESO's sole discretion;
 - b) if the equipment or improvements implemented through a Project, including the Measures, ceases operation before the end of the Period;
 - c) if the Participant does not perform or comply with any term or condition of this Agreement or if any representation, warranty or certification made by the Participant is untrue, incomplete or inaccurate;
 - d) except as permitted in Section 11.b), if any equipment that is replaced as part of any Project is not properly disposed of or decommissioned in accordance with the terms and conditions of this Agreement or such equipment is used again; or
 - e) in the case of a Social Housing Provider that has requested and received an Advance Incentive, if the Projects in the Application are not all completed.
7. **REPAYMENT AND MULTIPLE EVENTS OF DEFAULT:** If an Event of Default occurs then, upon demand by the IESO, the Participant will repay to the IESO a portion of the Participant Incentive, calculated as follows:

$$\text{Participant Incentive paid (in relation to each defaulting Project)} \times \text{months remaining in Period} \div 48$$

For the purposes of this calculation: (a) an Event of Default occurring at any time during a month will be deemed as an Event of Default for the full month; and (b) for an Event of Default in Section 6.e), the "months remaining in Period" will be deemed to be 48.

If the Participant is in default under this Agreement or any other participant agreement entered into by the Participant under the Retrofit Program, the IESO may, upon written notice to the Participant, not be obligated to provide Participant Incentives for all Projects completed by the

Participant under this Agreement or any other participant agreement executed by the Participant under the Retrofit Program.

8. **PROJECT DETAILED INFORMATION:** The IESO shall have the right to publicize the features or equipment described in the Application to potential participants who are considering the Retrofit Program, and may refer any such interested party to the Participant, unless the Participant clearly indicates which sections of the Application are to remain confidential or otherwise provides a written request to the IESO that this information remain confidential.
9. **REPRESENTATIONS AND WARRANTIES:** The Participant represents, warrants and covenants that:
 - a) unless otherwise disclosed to the IESO, no Project has received, is receiving or will receive any financial incentives generally funded by a Governmental Authority, whether administered by the IESO, a local electricity or gas distributor or any other party (unless funding is principally directed to Social Housing Providers and if such funding, when combined with the Participant Incentive, does not exceed the Project cost) or rebates from manufacturers, wholesalers or other supply chain participants;
 - b) it has not previously entered into a binding commitment to acquire the Measures or services required to install the Measures, provided that the IESO may waive this requirement where:
 - i) for Prescriptive Measures relating to the unplanned replacement of recently failed existing equipment with a Prescriptive Measure listed on the Unitary AC Eligible Measures Worksheet or the VSD Compressed Air Eligible Measures Worksheet, where such Prescriptive Measures:
 - A. have an Estimated Participant Incentive of less than \$10,000; and
 - B. relate to an Application submitted within 45 days following the completion of such Project; or
 - ii) the Participant can demonstrate to the IESO's satisfaction, at the IESO's sole discretion, that the Participant intended to apply to the Retrofit Program prior to entering into a binding commitment.
 - c) it has all required rights and authority to install the equipment and improvements, including, for greater certainty, the Measures, and to carry out all other obligations in this Agreement;
 - d) all information in the Application, including any attached documentation, is true, accurate and complete;
 - e) it is a Non-Residential Customer or Recognized Farm Operation;
 - f) if applying for a Social Housing Adder, it is a Social Housing Provider;

- g) it would not otherwise have undertaken the Project(s) without the financial support and participation of the IESO;
- h) it has the authority and capacity to enter into this Agreement;
- i) it is an independent contractor, and that there is no joint venture, partnership or agency created or implied by this Agreement;
- j) where the Participant becomes eligible to receive or does receive funding as described in Section 9.a): (i) the Participant will promptly notify the IESO, (ii) the funding received will be deducted from the Estimated Eligible Costs or the Eligible Costs; and (iii) the Estimated Participant Incentive and/or Participant Incentive will be recalculated; and
- k) it has not entered into and will not enter into a net metering agreement and/or any other compensation agreement for any excess electricity that is generated and injected into the Distribution System and/or IESO-Controlled Grid by any Measure.

10. EVALUATION, MEASUREMENT AND VERIFICATION AUDIT: The Participant will participate in any surveys, studies, audits, reporting, evaluations, reviews or verifications conducted by the IESO or its service providers (collectively, the "**Program Operators**") in connection with the Retrofit Program, including for the purpose of proper administration, monitoring and verification of this Agreement or evaluation of the Retrofit Program, and will provide to the Program Operators reasonable access to the Participant's records, information and other documentation, and to the Participant's Facility for such purposes. The Program Operators may undertake quality assurance and quality control activities in connection with the Project, 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 Measure(s), or requesting any other information as may be reasonably required to verify Project details in respect of the existing equipment prior to its removal and/or the replacement Measure(s) or other 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 Operators if the Participant is selected by IESO or its service providers for a quality assurance and quality control review. The Participant further agrees that with respect to an Application for an EMIS Measure, it will also provide the Minister of Natural Resources or any of his or her representatives with reasonable access to the Facility where the Project is to be located for up to four (4) years after March 31, 2027, for the purpose of assessing the Project's progress or any element thereof, subject to providing notice to the Participant and complying with the Participant's safety requirements for such access.

11. EQUIPMENT DISPOSAL AND DECOMMISSIONING

- a) The Participant will 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 sole discretion.

- b) Notwithstanding Section 11.a), the Participant may utilize its removed or replaced air compressor for emergency back-up situations and/or scheduled maintenance purposes only. The Participant shall record the number of hours the removed or replaced air compressor is utilized, which shall not exceed 4% of the annual average run time of the air compressor. The Participant shall provide the log of recorded emergency and/or scheduled maintenance use to the IESO upon request.
- c) With respect to an Application for a Project that includes the EMIS Measure, the Participant will seek the IESO's written consent prior to disposing of any equipment or other goods acquired or used in connection with the implementation of the EMIS Measure, where the Participant either disposes of or ceases to use such equipment or other goods in connection with the EMIS Measure at any time prior to the completion of the Project and for three years after the completion of the Project.

12. ENVIRONMENTAL ATTRIBUTES

- a) 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, or 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 paid to the Participant and funded by the IESO in respect of the Measure, 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.
- b) 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.

- c) 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.
- d) The IESO will be entitled unilaterally and without consent to deal with such IESO Environmental Attributes in any manner it determines. The Participant acknowledges that the IESO will contact the Participant prior to realizing on any IESO Environmental Attributes.
- e) The Participant agrees that it will, 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.

13. NO WARRANTY: Except as specifically set forth or referenced in this Agreement, there are no representations, warranties, or conditions of the Participant or the IESO, express, implied, statutory or otherwise, regarding any matter, including any implied warranties or conditions of quality, workmanship, safety, legal compliance or fitness for a particular purpose, which are expressly disclaimed. Without limiting the generality of the foregoing, the Participant acknowledges that its participation in the Retrofit Program is based upon its own assessment of the Retrofit Program and not on any reliance on anticipated or projected results, and that such participation may not result in the achievement of any Energy Savings, Peak Demand Savings, Generation Capacity, or greenhouse gas (GHG) reductions.

- 14. ASSIGNMENT:** This Agreement will enure to the benefit of and be binding upon the Participant and their respective successors and assigns. This Agreement will not be assigned to another person other than an affiliate except with the prior written consent of the IESO, which consent may not be unreasonably withheld or delayed.
- 15. SUBCONTRACTING BY THE IESO:** The IESO may subcontract any of its responsibilities under this Agreement or the Program Requirements to one or more service providers.
- 16. MISCELLANEOUS:** 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, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement. This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by the Participant and the IESO. The Participant will, from time to time, on written request of the IESO, 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. 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 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.
- 17. TERM AND TERMINATION:** Except as otherwise specified herein, this Agreement will terminate upon the expiration of the Period, upon notice from the IESO following any Event of Default herein, or as otherwise determined by the IESO in its sole discretion. Sections 9, 10, 11, 12, 13, 17, 20 and 21, 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 termination of this Agreement.
- 18. THIRD PARTY BENEFICIARIES:** Except as provided in Sections 8, 10, 14, 20 and 21, this Agreement is solely for the benefit of:
- a) the IESO, and its successors and assigns, with respect to the obligations of the Participant under this Agreement, and
 - b) the Participant, and its successors and permitted assigns, with respect to the obligations of the IESO under this Agreement;
- and this Agreement will not be deemed to confer upon or give to any other person any claim or other right or remedy.
- 19. COVENANT NOT TO INCREASE RENT:** Where the Facility is a Multi-Family Building, the Participant must: (a) evidence ownership or operation of a facility that permits tenants to occupy rental units subject to the *Residential Tenancies Act, 2006* (the "**RTA**"); and (b) not use the Participant

Incentives as a basis for applying to the Board (as defined in the RTA), for an increase in the annual rent amounts paid by such tenants above the annual rent-increase guideline permitted under the RTA.

20. COLLECTION, USE, DISCLOSURE AND HANDLING OF PARTICIPANT INFORMATION: The Participant understands and agrees that by submitting the Application, whether or not this Application is accepted, the Participant:

- a) consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators, including but not limited to, records showing current and historical energy use and consumption, Facility name, address, phone number, contact information, and electricity account number (the "**Participant Information**"), by the Program Operators for purposes relating to the operation, administration, compliance or assessment of the Retrofit Program, including for dispute resolution, and in connection with any reporting activities, follow-up surveys, studies and audits relating to the Retrofit Program, which shall include, without limitation:
 - i) sharing of Participant Information among the Program Operators;
 - ii) use by the Program Operators of the Participant Information to conduct, analyze and report on the results of surveys and modify the Retrofit Program based on such surveys; and
 - iii) disclosure of Participant Information to the Ontario Energy Board, the Ontario Ministry of Energy & Electrification or the Auditor General of Ontario, and their respective successors.
- b) with respect to an Application for an EMIS Measure, consents to disclosure by the Program Operators to the federal Minister of Natural Resources (which includes any of his or her duly authorized officers or representatives), the Participant Information, Participant Agreement, and copies of any related documentation for such EMIS Measure, including, but not limited to, reviews, evaluations, verifications or audit reports by the IESO;
- c) consent to the Program Operators contacting the Participant directly, including by email and other electronic communications, in connection with follow-up surveys, studies and audits;
- d) consents to the disclosure by the IESO of Participant Information to the Participant's local electricity or gas utility or distribution company and to the IESO receiving information related to the Participant that is collected by any of them, required for the purpose of administering (which includes marketing and outreach activities) and assessing the Retrofit Program, Local Programs and/or other Save on Energy programs, and to determine the Participant's eligibility to receive a Participant Incentive by ensuring the Participant 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;

- e) consents to the use, disclosure and other handling by the IESO of Project details in an Application and the following Participant Information collected in connection with the Participant's participation in the Retrofit Program, for the purpose of verifying your compliance with the eligibility requirements of other IESO-administered electricity conservation and demand management programs, including any successor program to the Retrofit Program, that you have applied, or may apply, to participate in: Facility name, address, phone number and contact information of the Participant;
- f) acknowledges the IESO is a not-for-profit corporation without share capital established under the *Electricity Act, 1998*, and is authorized under the *Ontario Energy Board Act, 1998* and Sections 6(1)(i) and 6(1)(p) of the *Electricity Act, 1998*, to collect, use and disclose information about a Participant as necessary to advance its statutory objects; and
- g) acknowledges that the IESO is subject to Ontario's *Freedom of Information and Protection of Privacy Act* ("**FIPPA**") and NRCan is subject to the federal *Access to Information Act*. The Participant further acknowledges that as a result, third parties may pursue and obtain access to Participant Information, and any other information about the Participant in connection with its Application and this Agreement. For information about IESO's general personal information practices, please refer to its privacy policy at <https://www.ieso.ca/en/privacy> or contact IESO at: 120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1; 416-969-6277; or privacy@ieso.ca.

21. LIMITATION OF LIABILITY AND INDEMNIFICATION BY PARTICIPANT:

- 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 below) for any liabilities, damages, obligations, payments, losses, costs or expenses under or in relation to the Application or this Agreement (i) for 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, indirect, consequential or otherwise) for loss of profit, diminution of value or loss of use of any property.
- b) The IESO and the Indemnified Parties (as defined below) will not be liable to the Participant, its successors or assigns or its directors, officers, employees, contractors, agents or representatives, for any special, indirect, incidental, punitive, exemplary or consequential damages which may arise under or in relation to the Application or this Agreement, regardless of whether such liability arises under contract, tort or any other legal theory.

- c) The Participant (the “**Indemnifying Party**”) will indemnify, defend and save harmless the Program Operators, NRCan and their respective directors, officers, employees and advisors (collectively, the “**Indemnified Parties**”), from and against any and all claims, losses, damages (including indirect or consequential damages), liabilities, penalties, obligations, payments, cost 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 disbursements in connection therewith), asserted against or suffered by the Indemnified Party relating to, in connection with, resulting from, or arising out of this Agreement, including by reason of the actual or alleged implementation of any Project and its operation, or any other matter contemplated in the Application or this Agreement. The IESO will hold the benefit of the Participant’s obligations under this Section 21 in the IESO’s own right and, in trust, for the benefit of any other Indemnified Party.

22. COMPLIANCE WITH LAWS: The Participant and the IESO will comply, in all material respects, with all laws and regulations required to be complied with in the performance of their respective obligations hereunder.

23. ACCEPTANCE OF AGREEMENT: This Agreement may be executed and delivered electronically and the IESO may rely upon all such signatures as though such signatures were original signatures. The use of an electronic signature process to accept and sign this Agreement, including the Participant’s indication of acceptance of this Agreement by a click-through or click-wrap process using the Retrofit Portal, shall constitute effective execution and delivery of this Agreement, and shall form a binding contract between you and the IESO.

24. ADDENDA: Notwithstanding any term in this Agreement, where an application is submitted through the Retrofit Portal for a financial incentive payable under a Local Program, the terms of the applicable Local Program Addendum, which supplements this Agreement, will apply.

25. CASL CONSENT: By signing this Agreement, you agree that you are providing your “express consent” (as that term is described in Canada’s Anti-Spam Legislation (CASL) and its associated regulations) for the Program Operators or your local electricity utility or distribution company, on the IESO’s behalf, to contact the Participant at the email address identified in the 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](#). If you have any questions, 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.

I, the Participant, certify that I understand and agree to the terms and conditions as set forth above in this Agreement.

PARTICIPANT / LEGAL COMPANY NAME

AUTHORIZED SIGNATURE

DATE

SCHEDULE 1 DEFINITIONS

Capitalized terms not otherwise defined in the Agreement will have the following meaning:

“Advance Incentive” means a portion of the total Participant Incentive to which a Participant is entitled in accordance with the Program Requirements and payable prior to completion of the Project.

“Application” means a complete application for an incentive in respect of a proposed Project under the Retrofit Program, in the form specified by the IESO on the Save on Energy website, submitted by a Participant via the Retrofit Portal to the IESO for approval.

“Applicant Representative” means a representative of a Participant that enters applicant and Project information into the Retrofit Portal on behalf of the Participant.

“Combination Incentive” means a Participant Incentive payable for the installation of a combination of Custom Measures and Prescriptive Measures, calculated as the lesser of:

- a) the sum of the Prescriptive Incentives calculated as specified in the definition of Prescriptive Incentive and the Custom Incentives calculated as specified in the definition of Custom Incentive; and
- b) 50% of the Eligible Costs for the Project, up to a maximum of 55% of the Estimated Eligible Costs in the Application approved by the IESO.

“Combination Project” means a Project comprised of a combination of Custom Measures and Prescriptive Measures that satisfies the Program Eligibility Criteria in Section 3 of the Program Requirements.

“Custom Incentive” means a Participant Incentive payable for the installation of a Custom Measure, calculated as the lesser of:

- a) the greater of \$1,800/kW of Peak Demand Savings or \$0.20/kWh of Energy Savings; and
- b) 50% of the Eligible Costs for a Project with Custom Measures, up to a maximum of 55% of the Estimated Eligible Costs in the Application approved by the IESO.

“Custom Measure” means a Measure not comprising a Prescriptive Measure that involves one or more of the following:

- a) replacement of existing equipment with equipment that is more efficient;
- b) purchase and installation of new equipment that is more efficient than what would have been installed if the Participant had not participated in the program, where none previously existed;
- c) replacement of oversized existing equipment with appropriate sized equipment that is more efficient;

- d) implementation of new operating procedures, including the purchase and installation of equipment (such as an energy management system, building automation system, sensors, control equipment, metering equipment, or related communication systems) necessary either to obtain or to increase the effectiveness of an energy management system or building automation system;
- e) improvement of thermal performance of a building envelope through Measures such as increased insulation, installation of high performance windows and frames, low emissive window glazing or low emissive roof barriers; or
- f) not comprise of the replacement of general lighting or street lighting (i.e., public lighting infrastructure installed along roads, streets and public thoroughfares to enhance visibility and ensure public safety).

"Custom Worksheet" means the worksheet describing Custom Measures in the form made available by the IESO, as updated from time to time, and submitted as part of an Application for a Custom Measure.

"Distributed Energy Resource Measure" or "DER Measure" means a Prescriptive Measure that is a behind-the-meter electricity generation system made available to eligible Facilities, where measure-specific requirements are outlined within the corresponding Prescriptive Worksheet.

"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.

"Electricity Savings Environmental Attributes" has the meaning provided in Section 12.a).

"Eligible Costs" means the costs that are eligible to be included in the calculation of the Participant Incentive payable to a Participant, as described in Schedule 2 to this Agreement.

"Energy Efficient Case" means equipment, operation, process or services as altered by the Measures in a Facility where a Project has been or will be implemented that are intended to generate Energy Savings and/or Peak Demand Savings compared to the Existing Case.

"Energy Management Information System Measure" or "EMIS Measure" means a Prescriptive Measure that is an energy management system that establishes a framework for organizations to systematically manage energy, set priorities and adopt energy efficient practices that are proven to continuously improve energy performance, which is made available under the Retrofit Program to eligible Industrial Facilities through funding provided to the IESO under NRCan's Green Industrial Facilities and Manufacturing Program, where measure and facility-specific requirements are outlined within the corresponding Prescriptive Worksheet.

"Energy Savings" means the estimated, determined or actual kilowatt hour (kWh) reduction between the Existing Case and the Energy Efficient Case, attributable to: (a) the installation of a

Custom Measure during the first year after completion of the Project; or (b) the savings attributable to a Prescriptive Measure corresponding to the values listed in the applicable Prescriptive Worksheet. For greater clarity, a Combination Project may have Energy Savings attributable to both (a) and (b) where context requires.

"Estimated Eligible Costs" means an estimation of the anticipated Eligible Costs, as specified in the Application approved by the IESO in a Pre-Approval.

"Estimated Participant Incentive" means an estimation of the anticipated Participant Incentive, as specified in the Application approved by the IESO in a Pre-Approval.

"Event of Default" has the meaning given in Section 6.

"Existing Case" means the equipment, operation, process or service that existed or would have existed prior to the implementation of the Retrofit Project at a Facility.

"Facility" means a building structure where Measures are installed that is (a) a single facility, connected to, or behind the meter of, another electricity consumer connected to the IESO-Controlled Grid or a Distribution System, provided that a Facility may be located within or upon a building, but may also be a structure other than a building, such as a freestanding billboard, and (b) in the case of the EMIS Measure, an Industrial Facility.

"Generation Capacity" means, in the case of a DER Measure, the maximum amount of electricity that can be generated by a DER Measure, expressed in kW. For greater certainty this refers to the nameplate capacity of the DER Measure.

"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 Ontario Energy Board, 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.

"HST" means the harmonized sales tax payable pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15.

"IESO" means the Independent Electricity System Operator.

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

"IESO Environmental Attributes" has the meaning provided in Section 12.a).

"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.

“Industrial Facility” means an eligible industrial Facility that is engaged in energy consuming processes that involve the physical or chemical transformation of materials or substances into new products.

“Local Program” means a local cost-effective conservation demand management program that is not duplicative of IESO conservation and demand programs.

“Local Program Addendum” means an addendum provided to the Participant that supplements and/or modifies this Agreement to include terms specific to the applicable Local Program.

“Measure” means any eligible electricity savings measure or activity that may be undertaken in accordance with the Program Requirements or as otherwise approved by the IESO.

“Multi-Family Building” means a Facility that has multiple residential tenanted units that is classified as: (a) general service less than 50 kW account, (b) general service greater than 50 kW account, or (c) the large user account, as applicable.

“NRCan” means the federal government’s Department of Natural Resources Canada.

“Non-Residential Customer” means electricity customers in Ontario that: (a) are not classified as residential in the most recent *Yearbook of Electricity Distributors* published by the Ontario Energy Board, and (b) are connected to the IESO-Controlled Grid.

“Participant” means the person who has signed this Agreement to be eligible to receive a Participant Incentive and whose Application has been accepted by the IESO.

“Participant Environmental Attributes” has the meaning provided in Section 12.a).

“Participant Incentive” means, in respect of the Retrofit Program, the financial incentives paid or payable to a Participant calculated by the IESO in accordance with the Program Requirements and this Agreement. For greater certainty, the Participant Incentive includes a Prescriptive Incentive, Custom Incentive, Combination Incentive and a Social Housing Adder.

“Participant Incentive Invoice Approval” means a notice sent by the IESO to the Participant via the Retrofit Portal advising that the Participant’s invoice for the Participant Incentive has been accepted following Project completion and IESO’s approval of the Post-Project Submission.

“Participant Incentive Invoice Approval Deadline” has the meaning provided in Section 1.a).

“Participant Information” has the meaning provided in Section 20.a).

“Peak Demand Savings” means the average summer load reduction in electricity demand in kilowatts (KW), between the Existing Case and the Energy Efficient Case occurring between 3 p.m. to 9 p.m. on weekdays, June 1 through September 30. For Measures that are weather dependent, Peak Demand Savings shall be considered as occurring at peak design load conditions.

“Period” has the meaning provided in Section 5.

“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.

“Post-Project Submission” means the submission made by the Participant via the Retrofit Portal after the completion of a Project, which shall include, without limitation, evidence of completion and implementation of the Project, verification of the Project’s Eligible Costs, in the form of accounting records and contractor invoices, and any other evidence required by the IESO (including visual inspections by the IESO or its service providers).

“Post-Project Submission Deadline” has the meaning provided in Section 1.b).

“Pre-Approval” means a notice from the IESO to the Participant via the Retrofit Portal that their Application has been reviewed and their Project deemed eligible for a Participant Incentive, and that the Participant may proceed with the Project in accordance with the Program Requirements and the notice.

“Prescriptive Incentive” means a Participant Incentive payable for the installation of a Prescriptive Measure, calculated as the lesser of:

- a) The Prescriptive Incentive calculated in accordance with the Prescriptive Worksheet(s); and
- b) 50% of the Eligible Costs for a Project with Prescriptive Measures, up to a maximum of 55% of the Estimated Eligible Costs in the Application approved by the IESO.

“Prescriptive Measure” means a Measure listed in a Prescriptive Worksheet.

“Prescriptive Worksheet” means one or more worksheets describing Prescriptive Measures, in the form made available by the IESO, as updated from time to time.

“Program Operators” has the meaning given in Section 10.

“Program Requirements” means the program requirements governing the Retrofit Program that are in effect at the time this Agreement is entered into by the Participant and IESO.

“Project” means one or more Measures that are expected to be undertaken in accordance with the eligibility requirements described in Schedule 3 to this Agreement.

“Project M&V Plan” means a plan to conduct measurements verification of the Energy Savings and Peak Demand Savings in respect of a Project with Custom Measures, in accordance with the Project M&V Procedure.

“Project M&V Procedure” means the document that outlines Existing Case and Energy Efficient Case measurement and verification requirements for Projects with Custom Measures, in the form made available by the IESO on the Save on Energy website, and updated by the IESO from time to time.

“Recognized Farm Operation” means a farm property that possesses a farm business registration number, being the six to seven-digit number administered by Agricorp, an agency of the Government of Ontario.

“Retrofit Portal” means the IESO’s online portal for the Retrofit Program used for Application submissions, Pre-Approvals, Post-Project Submissions and approvals, and invoice submissions and approvals.

“Retrofit Program” has the meaning given in the recitals of this Agreement.

“SHP Advance Incentive” means an Advance Incentive, provided at the IESO’s sole discretion, payable to a Social Housing Provider upon request, in the amount calculated by the IESO up to a maximum of 50% of: (a) the total estimated Prescriptive Incentive, Custom Incentive, or Combination Incentive, as applicable, and (b) the Social Housing Adder, if any.

“Social Housing Adder” means a Participant Incentive payable to a Social Housing Provider, subject to available IESO funds, for a Project in addition to a Prescriptive Incentive, Custom Incentive, or Combination Incentive, as applicable, and calculated as the positive difference, if any, of:

- a) the Participant Incentive that would otherwise be payable for such Project had the Participant not been a Social Housing Provider, multiplied by two (2), up to a maximum of 50% of the Eligible Costs for such Project or a maximum of 55% of the Estimated Eligible Costs in the Application approved by the IESO in a Pre-Approval; and
- b) the Participant Incentive that would otherwise be payable for such Project had the Participant not been a Social Housing Provider.

“Social Housing Provider” means a non-profit provider of assisted or social housing under a federal, provincial or municipally funded program, and includes, without limitation, non-profit corporations under the *Housing Services Act, 2011*, as amended or any successor legislation; public housing corporations owned by municipalities directly or through local housing corporations; non-profit housing co-operatives as defined in the *Co-operative Corporations Act*; non-profit housing corporations that manage or own residential buildings developed under the “Affordable Housing Program”; and non-profit organizations or municipal or provincial governments that manage or own residential supportive housing, shelters and hostels.

“Unitary AC Eligible Measures Worksheet” means the Prescriptive Worksheet for the eligible Prescriptive Measures that are unitary air conditioning (AC) Measures, in the form made available by the IESO, as updated from time to time, and embedded in the Retrofit Portal.

“VSD Compressed Air Eligible Measures Worksheet” means the Prescriptive Worksheet for the eligible Prescriptive Measures that are variable frequency drive air compressor or variable displacement air compressor Measures, in the form made available by the IESO, as updated from time to time, and embedded in the Retrofit Portal.

SCHEDULE 2 ELIGIBLE COSTS

Eligible Costs must:

- 1) for Prescriptive Measures other than DER Measures and EMIS Measures, be reasonable standard industry costs, be directly related to procurement and implementation, and be limited to:
 - a) cost of the equipment purchased;
 - b) cost of labour for equipment installed by a third party; and
 - c) costs to dispose of or decommission the replaced equipment.
- 2) for Custom Measures and DER Measures, be reasonable standard industry costs, be directly related to procurement and implementation, and be limited to:
 - a) costs of the equipment purchased;
 - b) costs of labour for equipment installed by a third party;
 - c) costs of energy audits not funded by the IESO;
 - d) costs of design, engineering and/or architecture;
 - e) third party project management costs;
 - f) shipping, delivery, duties and other costs applicable to equipment delivery to the Facility;
 - g) costs to prepare and implement the Project M&V Plan;
 - h) costs to dispose or decommission the replaced equipment; and
 - i) costs of inspections, as may be required by laws and regulations.
- 3) for EMIS Measures, be reasonable standard industry costs, be directly related to procurement and implementation, and be limited to:
 - a) cost of the equipment purchased;
 - b) cost of labour for equipment installed by a third party; and
 - c) costs to prepare the Project M&V Plan.
- 4) not comprise any of the following:
 - a) costs of the Participant's labour, service, administration or overhead that are not incurred by a third party;

- b) financing costs including, but not limited to, costs associated with financing, leasing, and lease-to-own procurement arrangements and such other financing costs associated with leasing or borrowing capital;
- c) insurance costs;
- d) costs associated with post-installation work related to equipment maintenance or repair;
- e) costs of spare parts, spare equipment or other inventories;
- f) costs of purchase or lease of tools for equipment installation;
- g) HST; and
- h) any costs already covered by or will be covered by funding or grants funded by a Governmental Authority, whether administered by the IESO, a local electricity or gas distributor or any other party (unless funding is principally directed to Social Housing Providers and if such funding, when combined with the Participant Incentive, does not exceed the Project cost), or rebates from manufacturers, wholesalers, or other supply chain participants.

SCHEDULE 3 PROJECT ELIGIBILITY REQUIREMENTS

A Project must:

- 1) be located in a Facility;
- 2) be completed, and receive Participant Incentive Invoice Approval by the applicable Participant Incentive Invoice Approval Deadline;
- 3) comply with all Measure-specific requirements specified in the applicable Prescriptive Worksheet or Custom Worksheet;
- 4) be comprised of one or more Measures that:
 - a) produce Peak Demand Savings and/or Energy Savings through an increase in energy efficiency as compared to the existing equipment being replaced;
 - b) in the case where the Measure(s) being installed is not replacing any previously existing equipment, produce Peak Demand Savings and/or Energy Savings through an increase in energy efficiency as compared to the equipment that would otherwise be installed in the absence of an available incentive under the Retrofit Program; or
 - c) is a DER Measure; or
 - d) is an EMIS Measure.
- 5) where it contains Prescriptive Measures, for such Prescriptive Measures only:
 - a) result in a minimum Participant Incentive of \$500; and
 - b) for the unplanned replacement of recently failed existing equipment with a Prescriptive Measure listed on the Unitary AC Eligible Measures Worksheet or the VSD Compressed Air Eligible Measures Worksheet, have the following:
 - i) an Estimated Participant Incentive less than \$10,000; and
 - ii) an Application submitted within 45 days following the completion of such Project;
- 6) where it contains Custom Measures, for such Custom Measures only:
 - a) result in a minimum Participant Incentive of \$1,500;
 - b) be based on a reasonable estimate of Peak Demand Savings and Energy Savings for Custom Measures;
 - c) be projected to deliver such Peak Demand Savings and/or Energy Savings for a minimum period of 48 months from the Project completion date; and

- d) result in a minimum Peak Demand Savings of 1 kW and/or annual Energy Savings of at least 2,000 kWh;

7) where it contains DER Measures, for such DER Measures only:

- a) be projected to be in-service for a minimum period of at least 48 months from the Project completion date;
- b) be sized for the purpose of load displacement generation only, where the generated load should not exceed the Facility load (for clarity, net-metering is not eligible);
- c) Participants must provide evidence of the approval to connect by the appropriate local electric distribution company, or the IESO in the case of transmission-connected customers, as applicable;
- d) Participants must submit and upload to the Retrofit Portal a Prescriptive Worksheet for DER Measures; and
- e) the Application must only contain DER Measures;

8) where it contains the EMIS Measure, for such EMIS Measure only:

- a) be projected to be in-service for a minimum period of at least 48 months from the Project completion date;
- b) Participants must submit and upload to the Retrofit Portal a Prescriptive Worksheet for the EMIS Measure; and
- c) the Application must only contain the EMIS Measure;

9) not comprise the following:

- a) an Application for Prescriptive Measures that proposes the replacement of existing equipment that was previously incented;
- b) an Application for one or more DER Measures in which the Participant is a party to a net metering agreement and/or any other compensation agreement for any excess electricity that is generated and injected into the Distribution System and/or IESO-Controlled Grid associated with the DER Measure(s);
- c) an Application for Custom Measures that proposes Measures that are not generally commercially available, are pilot or demonstration projects, or are otherwise unproven; or
- d) a project that participated in a previous IESO or former Ontario Power Authority-funded program for the same Measures, unless evidence supports the installation of Measures in a different area of the Facility.