

1  
2 **IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
3 being Schedule B to the *Energy Competition Act, 1998 S.O.*  
4 1998, c. 15;

5 **AND IN THE MATTER OF** an Application by Horizon Utilities  
6 Corporation to the Ontario Energy Board for an Order or  
7 Orders approving of fixing just and reasonable rates and  
8 other service charges for the distribution of Electricity as of  
9 January 1, 2011.

10 **HORIZON UTILITIES CORPORATION (“HORIZON UTILITIES”)**  
11 **RESPONSES TO**  
12 **VULNERABLE ENERGY CONSUMERS COALITION**

13 **TECHNICAL CONFERENCE QUESTIONS**

14 **DELIVERED: February 23rd, 2011**

15  
16 **QUESTION TC #1**

17 **Reference:** VECC #2 and OEB Staff #12

18 **a)** Using the revised regression analysis in VECC #2 e) and the forecast values for the  
19 explanatory variables as in the original application, please provide forecasts of total  
20 system purchases for 2010 and 2011 (excluding Large Users) comparable to those  
21 presented in Table 3-9 of the Application.

22 **b)** With respect to OEB Staff #12 a), please confirm that the determination of the  
23 historical CDM cumulative results achieved from 2005 – 2009 programs assumes 100%  
24 persistence for all program results over this period.

25 **c)** With respect to OEB Staff #12 a), please confirm that the forecast cumulative CDM  
26 savings for 2010 and 2011 assume 100% persistence of all program results achieve  
27 during 2005 – 2009.

1 **d)** With respect to VECC #2 a) and b), please identify those 2005 and 2006 program  
2 savings that involved CFL' (i.e., MWh's from the programs in each year that are related  
3 to CFLs). For each year please provide the number of units installed, the assumed  
4 savings per unit and the resulting total savings reported for the year attributable to  
5 CFLs.

6 **e)** For the 2006 OPA programs, what were the OPA's assumptions regarding the  
7 persistence (i.e., the life span) for CFL's?

8 **f)** Based on the response to part (e), please adjust the cumulative 2010 and 2011  
9 forecast savings as required.

10 **Response:**

11 **a)** It is assumed that VECC is referring to the revised regression analysis in VECC #2  
12 c) since VECC #2 e) does not exist. The following table provides the forecast of total  
13 system purchases for 2010 and 2011 (excluding Large Users) comparable to those  
14 presented in Table 3-9 of the Application and assumes the forecast values for the  
15 explanatory variables as in the original application.

2010 Normalized Bridge	4,218.40
2011 Normalized Test	4,063.00
2011 Weather Normal - 10 year average	4,052.40
2011 Weather Normal - 20 year trend	4,065.60

16  
17 **b)** With respect to OEB Staff #12 a), Horizon Utilities confirms that the historical CDM  
18 cumulative results achieved from 2005 – 2009 programs used for the determination of  
19 the CDM Activity variable assumes 100% persistence for all program results over this  
20 period.

21 **c)** With respect to OEB Staff #12 a), Horizon Utilities confirms that the forecast of the  
22 CDM Activity variable for 2010 and 2011 assume 100% persistence of all program  
23 results achieve during 2005 – 2009.

1 **d)** The information shown in the three tables below supports the information provided in  
2 response to VECC #2 a) for 2005 and 2006. Third tranche program savings are based  
3 on the Board's Decision on Horizon Utilities LRAM/SSM Application EB-2009-0192.  
4 OPA program results are from information provided by the OPA on final results for 2006  
5 to 2009. For each year, data is provided on the number of units installed, the assumed  
6 savings per unit and the resulting total savings reported for the year attributable to each  
7 program.

1 **Table 1 2005 Third Tranche Program Savings**

Program	Efficient Technology	Participants	Filed OPA per unit kWh savings assumption	Filed OPA per unit kW savings assumption	Freerider ship	Net kWh
<b>Co-Branded Mass Markets</b>						<b>1,181,586</b>
<b>Cold Water Wash Program</b>	Cold Water Wash Detergent	484	n/a	n/a	n/a	291,906
<b>Call to Action Contest</b>						<b>63,487</b>
<b>Retailer Program</b>	CFLs	600	43	0.001	10%	23,220
	LED Night Lights	300	n/a	n/a	10%	5,760
	Efficient Showerhead	102	377	0.029	10%	34,507
						<b>826,193</b>
	CFL Screw-In 15W	10,062	43	0.0001	10%	389,401
	LED Christmas Lights (indoor or outdoor) Replacing 5w Christmas Lights C-7 (25 Lights)	1,579	13.7	0	5%	20,551
	LED Christmas Lights (indoor or outdoor) Replacing Incandescent Mini Lights	1,579	8.9	-	5%	13,350
	Programmable Thermostat - Space Heating, Existing Single Family Detached	196	2,063	-	10%	258,675
	Programmable Thermostat - Space Cooling, Existing Single Family Detached	510	138	0.151	10%	72,998
	Timer - Outdoor Light	233	41	0	0	61,232
	Timer - Indoor - Light	53	219	0.007	0	4,678
	Timer - Indoor - Air Conditioners	53	n/a	n/a	0	5,190
	Ceiling Fan	207	89	0.003	0	-
	EnerGuide for Existing Homes - Space Heating	1	117	0	0	117
	<b>Energy Audit and Support</b>					
	CFLs (23w)	3,120	167	0.002	10%	468,936
	LED Night Lights	1,560	16	-	10%	22,576
<b>Social Housing</b>						<b>4,500,353</b>
	CFL, 13W	28,104	109	0.001	1%	3,029,920
	CFL, 23W	8,236	179	0.002	1%	1,455,731
	Water Dam	625	-	n/a	1%	-
	Restrictors	450	33	n/a	1%	14,702
<b>Total</b>						<b>6,173,451</b>

1 **Table 2 2006 Third Tranche Program Results**

Program	Efficient Technology	Participants	Filed OPA per unit kWh savings assumption	Filed OPA per unit kW savings assumption	Freerider ship	Net kWh
<b>Co-Branded Mass Markets</b>						<b>12,110,059</b>
LED Light Exchange	LED Christmas Lights (indoor or outdoor)	1,000	13.7	-	5%	<b>13,015</b>
Community Events						<b>1,627,992</b>
Conservation Champs	13 Watt CFL	36,796	43	0.001	10%	1,424,005
	Low Flow Showerhead	601	377	0.029	10%	203,987
						<b>333,990</b>
Ebiling	13 Watt CFL	6,000	43	0.001	10%	232,200
	Low Flow Showerhead	300	377	0.029	10%	101,790
						<b>60,118</b>
Environment Hamilton	13 Watt CFL	1,080	43	0.001	10%	41,796
	Low Flow Showerhead	54	377	0.029	10%	18,322
						<b>540,095</b>
Fridge Bounty	13 Watt CFL	12,860	43	0.001	10%	497,682
	Low Flow Showerhead	125	377	0.029	10%	42,413
						<b>1,299,001</b>
	Fridge Bounty - Refrigerators	1,449	940	0.096	10%	1,226,245
	Fridge Bounty - Freezers	11	755	0.086	10%	7,477
Keep Cool	Fridge Bounty - 13 W CFL	1,518	43	0.001	10%	58,747
	Fridge Bounty - Timer	177	41	0	10%	6,531
						<b>1,173,276</b>
	Keep Cool - retired working units	1,428	n/a	n/a	10%	798,109
Smart Pak	Keep Cool - retired working units placed with Energy Star	1,058	n/a	n/a	10%	375,167
						<b>211,527</b>
	13 Watt CFL	3,800	43	0.001	10%	147,060
TAPS	Low Flow Showerhead	190	377	0.029	10%	64,467
						<b>559,799</b>
	13 Watt CFL	6,916	43	0.001	10%	267,649
	Low Flow Showerhead	788	377	0.029	10%	267,368
	Pipewrap	642	38	0.001	10%	21,956
OPA EKC Spring Campaign	Aerators	128	22	0.029	0%	2,825
						<b>2,778,235</b>
	CFL	57,235	43	0.001	10%	2,215,012
	Ceiling Fan	918	89	0.014	10%	73,532
	Timer	1,935	219	0	10%	381,389
	Programmable Thermostat	872	138	0.05	10%	108,302

Program	Efficient Technology	Participants	Filed OPA per unit kWh savings assumption	Filed OPA per unit kW savings assumption	Freerider ship	Net kWh
OPA/EKC Fall Campaign						<b>3,513,011</b>
	Baseboard Programmable Thermostat	172	75	0	10%	11,610
	CFLs	64,728	43	0	10%	2,504,955
	Motion Sensors	361	64	0	10%	20,794
	Programmable Thermostat - Space Heating	353	2063	0	10%	655,909
	Programmable Thermostat - Space Cooling	919	138	0.163	10%	114,127
	LED Seasonal Lights	15,069	13.7	0	10%	185,801
	Dimmer Switch	929	23.7	0	10%	19,816
<b>Load Control Initiative</b>						<b>126,138</b>
Residential A/C Control						
	Res. Peak Saver (Load Control Savings)	881	0	0.5	0%	-
	Res. Peak Saver (Programmable Thermostat Savings)	881	159.1	0.163	10%	126,138
<b>Residential Energy Audit</b>						<b>785,834</b>
Energy Audit	Audit	70	0	0	0%	-
Cool Shops	CFL and T8 Lighting	1	452,254.00	110.218	10%	407,029
Energy Audit Powerpak	13 Watt CFL	3,860	109.04	0.001	10%	378,805
<b>Social Housing</b>						<b>2,195,711</b>
City of Hamilton						<b>128,202</b>
	13 Watt CFL	950	109	0.001	1%	102,552
	Low Flow Showerhead	48	545	0.029	1%	25,650
Green Venture						<b>18,136</b>
	13 Watt CFL	168	109	0.001	1%	18,136
	Pipewrap	-	76	0.001	1%	-
	Aerators	-	33.6	0.029	1%	-
Victoria Park						<b>1,680,161</b>
	TL-11W	4,872	n/a	n/a	1%	945,363
	TL-15W	2,183	n/a	n/a	1%	734,798
Niagara Regional Housing						<b>369,213</b>
	Refrigerator Replacement - First 6 years	213	760	0.093	1%	160,261
	Refrigerator Replacement - Last 13 years	213	74	0.007	1%	15,604
	T-8 replacing T-12 - Single	150	n/a	n/a	1%	58,212
	T-8 replacing T-12 - Double	63	n/a	n/a	1%	17,963
	Motion Sensors	1	n/a	n/a	1%	1,604
	LED Exit Signs	60	237	n/a	1%	14,048
	Limiting Thermostats	422	243	n/a	1%	101,521
<b>LED Traffic Lights</b>						<b>114,812</b>

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Program	Efficient Technology	Participants	Filed OPA per unit kWh savings assumption	Filed OPA per unit kW savings assumption	Freerider ship	Net kWh
City of Hamilton	LED Lighting	1	n/a	n/a	30%	104,929
City of St. Catharines	LED Lighting	1	n/a	n/a	30%	9,883
<b>Total</b>						<b>15,332,554</b>

2

1 **Table 3 2006 OPA Results**

Initiative Name	Measure Name	Unit Savings Assumptions			Net-to-Gross Adjustments (%)						LDC Total (# Units)	LDC Total (# Units)
		Gross Summer Peak Demand Savings (kW)	Gross Annual Energy Savings (kWh)	Effective Life (EUL)	Free Rider (#1)	Spill Over (#2)	Exclusions \$ (#3)	Part Use (#4)	Other (#5)	Aggregate (#6)		
Every Kilowatt Counts	Energy Star® Compact Fluorescent Light Bulb	0.00	104	4	90%	100%	100%	100%	100%	90%	54,999	
Every Kilowatt Counts	Electric Timers	0.00	183	20	90%	100%	100%	100%	100%	90%	1,542	
Every Kilowatt Counts	Programmable Thermostats	0.05	216	15	90%	100%	100%	100%	100%	90%	671	
Every Kilowatt Counts	Energy Star® Ceiling Fans	0.01	141	20	90%	100%	100%	100%	100%	90%	510	
Every Kilowatt Counts	Energy Star® Compact Fluorescent Light Bulb	0.00	104	4	90%	100%	100%	100%	100%	90%	81,547	
Every Kilowatt Counts	Seasonal Light Emitting Diode Light String	0.00	31	30	90%	100%	100%	100%	100%	90%	19,628	
Every Kilowatt Counts	Programmable Thermostats	0.12	522	18	90%	100%	100%	100%	100%	90%	1,294	
Every Kilowatt Counts	Dimmers	0.00	139	10	90%	100%	100%	100%	100%	90%	1,023	
Every Kilowatt Counts	Indoor Motion Sensors	0.00	209	20	90%	100%	100%	100%	100%	90%	367	
Every Kilowatt Counts	Programmable Baseboard Thermostats	0.00	1466	18	90%	100%	100%	100%	100%	90%	77	
Total												14,710
Cool & Hot Savings Rebate	Energy Star® Central Air Conditioner	0.36	351	14	90%	100%	100%	100%	100%	90%	592	
Cool & Hot Savings Rebate	Programmable Thermostat	0.16	159	18	90%	100%	100%	100%	100%	90%	451	
Cool & Hot Savings Rebate	Central Air Conditioner Tune-ups	0.04	369	8	90%	100%	100%	100%	100%	90%	403	
Total												567
Secondary Refrigerator Retirement Pilot	Refrigerator Retirement	0.27	1200	6	90%	100%	100%	100%	100%	90%	206	
Secondary Refrigerator Retirement Pilot	Freezer Retirement	0.20	900	6	90%	100%	100%	100%	100%	90%	9	
Total												230
Grand Total												15,506

- 2
- 3 **e)** The OPA's 2006 assumptions regarding the equipment life of CFL's is 8 years. This
- 4 figure can be found in the 2009 OPA Measure and Assumptions List (V1.02 April 2009).
- 5 **f)** Based on the response to part (e), no adjustments to the cumulative 2010 and 2011
- 6 forecast savings are required.

**HORIZON UTILITIES CORPORATION (“HORIZON UTILITIES”)  
RESPONSES TO  
VULNERABLE ENERGY CONSUMERS COALITION**

**TECHNICAL CONFERENCE QUESTIONS**

**DELIVERED: February 23, 2011**

**QUESTION TC #2**

**Reference:** VECC #3 and VECC #13

**a)** The response to part (a) does not address the question as originally proposed. For each year (2003-2009), please provide a schedule that sets out:

1. The actual HDD and CDD values for the year
2. The “weather normal” HDD and CDD values
3. The difference between the actual and weather normal values for HDD and CDD
4. The product of these differences and the respective coefficients for HDD and CDD, as established in through the regression analysis. In doing so, please use the updated coefficients from VECC #2 c).
5. The actual purchases (excluding Large Users) for each year.
6. The “weather normal” purchases for each year calculated by adjusting the actual purchases (item (5)) by the estimated impact of weather (item (4)).

**b)** Please repeat part (a) based using the actual results for 2010, per VECC #13 a).

**Response:**

**a)** The requested information is provided in the following table. Please note the resulting Estimated Actual Weather Normal values are consistent with the Estimated Actual Weather Normal numbers shown in Horizon Utilities’ response to VECC Interrogatory 3.



	Actual Heating Degree Days (A)	Actual Cooling Degree Days (B)	Weather Normal Heating Degree Days (C)	Weather Normal Cooling Degree Days (D)	Difference in Heating Degree Days (F) = (A) - (C)	Difference in Cooling Degree Days (G) = (B) - (D)	Difference in Heating Degree Day apply to Coefficient of 94,813 (GWh) (H) = (F) * 94,813 /1,000,000	Difference in Cooling Degree Day apply to Coefficient of 910,315 (GWh) (I) = (G) * 910,315 /1,000,000	Actual Purchases (GWh) (J)	Estimated Actual Weather Normal (GWh) (K) = (J) - (H) (I)
2003	4009	257	3789	290	221	-33	20.9	(30.0)	4,490.3	4,499.4
2004	3802	207	3789	290	14	-83	1.3	(75.2)	4,462.3	4,536.1
2005	3863	439	3789	290	75	149	7.1	135.5	4,652.5	4,510.0
2006	3385	303	3789	290	-403	14	(38.2)	12.3	4,479.1	4,505.0
2007	3732	349	3789	290	-57	59	(5.4)	53.8	4,511.1	4,462.7
2008	3868	239	3789	290	79	-51	7.5	(46.3)	4,398.4	4,437.2
2009	3861	235	3789	290	72	-55	6.9	(50.2)	4,207.5	4,250.9
2010	3566	358	3789	290	-222	68	(21.1)	61.9	4,296.1	4,255.3

1

2 **b)** The requested information is provided in response to part a). Consistent with part a),  
3 the 2010 actual purchases exclude Large Use customers and do not reconcile with the  
4 information in Horizon Utilities' response to VECC Interrogatory 13 a), as the 2010 actual  
5 purchase data provided in Horizon Utilities' response to VECC Interrogatory 13 a) includes  
6 Large Use customers.

**HORIZON UTILITIES CORPORATION (“HORIZON UTILITIES”)  
RESPONSES TO  
VULNERABLE ENERGY CONSUMERS COALITION**

**TECHNICAL CONFERENCE QUESTIONS**

**DELIVERED: February 23rd, 2011**

**QUESTION TC #3**

**Reference:** VECC #7 and OEB #16

**a)** With respect to VECC #7 c), please clarify whether the values for the “total average load displaced” where determined by:

- Dividing total self-generation by the number of hours in the year, or
- Dividing the total self-generation for each unit by the number of hours it was operating (as originally requested).

**b)** If not done so, please recalculate the total average load displaced based on the approach set out in the second bullet of part (a).

**c)** With respect to OEB Staff #16 a), please describe more clearly precisely how the “amount of load displaced” (per lines 24-26) will be determined. In doing so, please use an example where:

- a) The generator’s capacity is 3,000 kW
- b) The customer’s peak demand for the month is 10,000 kW
- c) The generator output at the time of the customer’s peak demand is 1,000 kW
- d) The generator’s average output is 2,000 kW
- e) There was a period during the month when the generator’s output was zero, which was not at the time of the customer’s 10,000 kW peak demand.

1 **Response:**

2 Horizon Utilities spoke with Bill Harper (“VECC”) on February 17, 2011 to clarify the  
3 questions and the methodology of how Horizon Utilities intends to apply the standby  
4 charges.

5 **a)** After discussion with VECC, Horizon Utilities clarifies that in the table provided in  
6 its response VECC Interrogatory 7 c), the figures in the first row represent the amount  
7 that Horizon Utilities is currently charging for standby based on the generator name  
8 plate ratings. The second row in that table represents the kW amount that will be  
9 charged based on the proposed method.

10 **b)** As per discussion with VECC, the average load displaced is not required to  
11 determine the application of the standby charges. For clarity, the proposed standby  
12 charge is based on the kW difference in the customer’s gross monthly peak load (i.e.  
13 what their load would be if the generator was not operated) less the actual billed  
14 (consumed) peak load.

15 **c)** For purposes of the example provided, and for clarity, Horizon Utilities identifies  
16 the following two assumptions regarding the figures provided in the question:

- 17 • Assumption #1 - 10,000 kW (the figure provided in VECC Technical  
18 Conference Question 3c), subsection b)) is the customer’s monthly net  
19 peak demand load – the load that Horizon Utilities meters and bills the  
20 customer from Horizon Utilities’ supply point for the power they purchase,  
21 and
- 22 • Assumption #2 - the customer’s gross peak demand load for the month is  
23 11,500 kW. For purposes of this example, this could occur at any time in  
24 the month when the customer is generating 2,000 kW and is purchasing  
25 an additional 9,500 kW.

26 With the above assumptions, the amount of standby power charged is based on  
27 charging the customer for a total demand (standby and billed power) equal to and not

1 greater than their gross load. In this example the gross load is 11,500 kW and the net  
2 load (billed) is 10,000 kW. Therefore the standby charge would be 1,500 kW (11,500kW  
3 – 10,000kW)

4 Note: To reflect this change in the Tariff of Rates and Charges, Horizon Utilities  
5 proposes that the description for the standby charge change from:

6 “Standby Charge – for a month where standby is not provided. The charge is applied to  
7 the contracted amount (e.g. nameplate rating of generation facility).”

8 to:

9 “Standby Charge – for a month where standby is not provided. The charge is applied to  
10 the standby amount not provided.”

HORIZON UTILITIES CORPORATION (“HORIZON UTILITIES”)  
RESPONSES TO  
VULNERABLE ENERGY CONSUMERS COALITION  
TECHNICAL CONFERENCE QUESTIONS

DELIVERED: February 23rd, 2011

**QUESTION TC #4**

**Reference:** VECC #10 a) and Board Staff #45

**a)** With respect to VECC #10 a) - page 2 (lines 1-2), please indicate precisely where in the EB-2008-0183 Application Horizon proposed to continue to move the ratios towards one.

**b)** Please confirm whether any such proposals were made for reasons other than maintaining revenue neutrality while adjusting the revenue to cost ratios for certain classes to the lower/upper ends of the Board’s prescribed ranges. If yes, please indicate for which classes this independent proposal was made.

**Response:**

**a)** In Horizon Utilities’ 2009 Electricity Distribution Rate Application (EB-2008-0183), at Page 4 of the Application, Horizon Utilities stated:

*“In addition, Horizon Utilities has updated its revenue to cost ratio for the Streetlighting class from 43% to a revenue to cost ratio of 70% as directed by the OEB.”*

In so doing, Horizon Utilities moved the revenue to cost ratio for the Streetlighting class towards one.

**b)** Horizon Utilities confirms such proposals were made to maintain revenue neutrality while adjusting the revenue to cost ratios for certain classes to the lower/upper ends of the Board’s prescribed ranges. However, Horizon Utilities notes that such movement is consistent with Horizon Utilities’ objective, as set out in Exhibit 7, Tab 1, Schedule 1, Page 1 that *“It is a long-term objective of Horizon Utilities to allocate its distribution costs in such a manner that ultimately achieves revenue to cost ratios*

1 approaching 100% for each rate class.” Further, Horizon Utilities expressed this view in  
2 its previous Cost of Service Application (EB-2007-0697) also. In Exhibit H, Tab 1,  
3 Schedule 2, Page 9, Horizon Utilities stated “*The discussion and tables above support*  
4 *Horizon Utilities’ proposed reallocation of distribution costs across customer classes, in*  
5 *order to begin moving toward revenue to cost ratios of 100% and reduce cross-*  
6 *subsidization.*”

**HORIZON UTILITIES CORPORATION (“HORIZON UTILITIES”)  
RESPONSES TO  
VULNERABLE ENERGY CONSUMERS COALITION**

**TECHNICAL CONFERENCE QUESTIONS**

**DELIVERED: February 23rd, 2011**

**QUESTION TC #5**

**Reference:** VECC #14

**a)** Please confirm that the Board’s EDDVAR Report (page 21) only directed that distribution revenues be used to allocate certain specific HONI #1508 Accounts.

**b)** Please confirm that Horizon’s Account #1508 – Incremental Capital Charges subaccount is related to additional charges from HONI for Sub-Transmission service.

**c)** Please explain why it would not be appropriate to allocate this sub-account to customer classes using LV revenues by class.

**d)** Please provide a break-down of the costs recorded in Account #1508 – CDM Expense sub-account, by year and by type of expense.

**e)** Please explain why these costs are not recoverable from the OPA.

**Response:**

**a)** Horizon Utilities confirms that the Board’s EDDVAR Report, dated July 31, 2009, directs that the allocation factor to be used for “specific Hydro One Networks Inc. (“HONI”) accounts” included in account 1508 balances is Distribution Revenue

**b)** Horizon Utilities confirms that Incremental Capital Charges subaccount of account 1508 is related to additional charges from HONI for Sub-Transmission service.

1 c) The EDDVAR Report, dated July 31, 2009, stipulates that the allocation factor to  
2 be used for “specific Hydro One Networks Inc. (“HONI”) accounts” included in account  
3 1508 balances is Distribution Revenue.

4  
5 d) The table below illustrates a break-down of the CDM expenses recorded in  
6 Account #1508 by year and by type of expense.

**CDM Expenses in Account 1508**

	<b>2008 Actual</b>	<b>2009 Actual</b>
Labour	\$126,027.00	\$64,267.00
Travel	\$2,254.00	\$6,384.00
Training & Development	\$16,274.00	\$1,884.00
Office Supplies	\$3,115.00	\$801.00
Telephone/Communications	\$12,002.00	\$5,876.00
Legal/Consulting	\$31,454.00	\$155,522.00
Advertising/Marketing	\$0.00	\$16,642.00
<b>Total</b>	<b>\$191,126.00</b>	<b>\$251,376.00</b>

7  
8 e) The above-noted costs in Account #1508 relate to Horizon Utilities’ specific CDM  
9 programs. Such include the development and delivery of Horizon Utilities Demand  
10 Response offering, Horizon Utilities’ Generation Conservation grade five education  
11 program, “Ask the Expert” customer inquiries program and staff training and  
12 development.

13 Horizon Utilities has included the Amended and Restated CDM Program Agreement  
14 between the Ontario Power Authority and Horizon Utilities for 2008 – 2010 with this  
15 response. This Agreement defines the programs for which Horizon Utilities was able to  
16 receive funding through the OPA. Such programs included the: Appliance Retirement  
17 Program, Electricity Retrofit Incentive Program, Residential Demand Response,  
18 Business Incentive and the LDC Community Fund. All costs related to these programs  
19 were funded by the OPA.

20 The costs in Account #1508 are not related to OPA-specific program schedules and are  
21 therefore not recoverable through the OPA.



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**AMENDED AND RESTATED MASTER CDM PROGRAM AGREEMENT**

**BETWEEN**

**THE ONTARIO POWER AUTHORITY**

**- and -**

**EACH LDC THAT FOLLOWS THE ELECTRONIC CONTRACTING AND  
REGISTRATION PROCESS SET OUT ON THE WEBSITE**

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## AMENDED AND RESTATED MASTER CDM PROGRAM AGREEMENT

This Amended and Restated Master Agreement made as of the 31st day of January, 2008 (the “**Effective Date**”).

### BETWEEN:

**THE ONTARIO POWER AUTHORITY**, a corporation  
incorporated pursuant to the laws of the Province of Ontario,

(the “**OPA**”)

-and-

**EACH LDC THAT BECOMES LEGALLY BOUND  
HEREBY PURSUANT TO THE ELECTRONIC  
CONTRACTING AND REGISTRATION PROCESS SET  
OUT ON THE OPA WEBSITE**, in each case a corporation  
incorporated pursuant to the laws of the Province of Ontario,

(the “**Program Manager**”)

(each of the OPA and the Program Manager may be referred to as  
a “**Party**” and, collectively, the “**Parties**”)

### WHEREAS:

1. The OPA was established by the *Electricity Restructuring Act, 2004* (Ontario), for the purpose, among others, of engaging in activities that promote electricity conservation and the efficient use of electricity.
2. Local electricity distribution companies are the primary delivery vehicle for CDM programs under the Directive.
3. The OPA received a directive (the “**Directive**”), dated July 13, 2006, from the Minister of Energy to coordinate and fund the delivery of electricity conservation and demand management (“**CDM**”) programs by local distribution companies in Ontario in accordance with the guidelines set out in the Directive. The Directive provides the OPA with authority to fund up to a total of \$400 million over three (3) consecutive years.
4. On November 3, 2006, the Minister of Energy reaffirmed the importance of delivering three province-wide programs by no later than the summer of 2007 in a letter to the OPA (the “**Minister’s November Letter**”).
5. Through a consultative process, and in accordance with the Minister’s November Letter, the OPA has established an Initial Portfolio for calendar year 2007 which, in part, draws

upon existing experience of LDCs on conservation and demand management initiatives, for the purpose of establishing province-wide programs for delivery under the Directive.

6. The purpose of this Master Agreement is to establish a framework under which LDCs can deliver specific CDM Programs with funding provided by the OPA, in an effective and expeditious manner.
7. The OPA has, in accordance with the Directive, establish additional CDM Programs for 2008 to 2010, which additional CDM Programs are described in Additional Program Schedules to this Master Agreement.
8. The OPA may, in accordance with the Directive, fund CDM Programs proposed by the Program Manager, which CDM Programs will also be described in Additional Program Schedules.
9. This Master CDM Program Agreement establishes the respective rights and obligations of the OPA and the Program Manager in connection with the delivery of one or more of the CDM Programs.
10. It is intended that the Program Manager shall submit an Application for each CDM Program in which it intends to participate or, in the case of the CDM Programs for 2008 to 2010, to register to confirm acceptance of such CDM Program as an Additional Program Schedule under this Master Agreement. The Program Manager will be entitled to participate in each such CDM Program following registration or receipt of a Notice of Acceptance from the OPA in respect thereof, as applicable, on the terms and subject to the conditions set out in this Master Agreement and, in particular, in the Program Schedule applicable to such CDM Program.
11. The rights and obligations of the OPA and the Program Manager in respect of any particular CDM Program, in addition to those set out in the body of this Master Agreement, are specified in the relevant Program Schedule for such CDM Program.

**NOW THEREFORE FOR VALUABLE CONSIDERATION**, the receipt and sufficiency of which are acknowledged by the Parties hereto, the Parties hereto hereby agree as follows:

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Master Agreement (for clarity, including the Recitals and the Program Schedules hereto), unless defined herein or unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the following meanings:

**“Additional Program”** means any CDM Program other than those in the Initial Portfolio.

**“Additional Program Schedule”** means an additional Schedule Appended to this Master Agreement by the OPA (which for greater certainty includes Schedules A-2, B-2 and D-2), and

which describes the rights and obligations of the OPA and the Program Manager in respect thereof if the Program Manager Registers to confirm acceptance of the Additional Program Schedule.

“**Affiliate**” has the meaning ascribed thereto in the Ontario *Business Corporations Act*, R.S.O. 1990, as amended.

“**Annual Budget**” has the meaning given to it in Section 7.1.

“**Append**” means, in relation to any Additional Program Schedule, the delivery by the OPA to the Program Manager of a notice issuing an Additional Program Schedule together with a copy of such Additional Program Schedule to be attached to this Master Agreement and “**Appending**” and “**Appended**” shall have their corresponding meanings.

“**Application**” means, in relation to any CDM Program in the Initial Portfolio, the application to be submitted by the Program Manager to the OPA in accordance with the provisions of the Program Schedule relating to such CDM Program.

“**Approved**” means, in relation to any CDM Program in the Initial Portfolio in respect of which the Program Manager has submitted an Application, the delivery by the OPA to the Program Manager of a Notice of Acceptance in respect of such CDM Program following which the provisions of such Program Schedule shall become operative and legally binding upon the OPA and the Program Manager and “**Approval**” shall have a corresponding meaning.

“**Benefits**” has the meaning ascribed to it in subsection 5.4(e).

“**body**” means, in respect of this Master Agreement, this Master Agreement excluding the Schedules.

“**Bonus Payment**” has the meaning ascribed to it in subsection 4.4(a).

“**Brand Standards**” means in respect of each CDM Program, a document to be developed by the OPA and to be provided to the Program Manager prior to January 1, 2008 (as such may be amended from time to time) setting out certain requirements, standards and protocols applicable to the use of logos, names, phrases and marketing materials and elements that may be used by the Program Manager in connection with the marketing and delivery of such CDM Program.

“**Business Day**” means a day, other than a Saturday or 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.

“**CDM**” has the meaning set forth in the Recitals.

“**CDM Program**” means a CDM program included in the Initial Portfolio or a CDM program described in an Additional Program Schedule.

“**Changes**” has the meaning given to it in Section 7.4.

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

**“Confidential Information”** has the meaning given to it in Section 10.1.

**“Control”** means with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise.

**“Cooperation Period”** has the meaning given to it in Section 7.4.

**“Cure Period”** means a period of thirty (30) Business Days following delivery by a Party to the other Party of written notice of a failure, cessation or breach described in Section 8.1 (in the case of a failure, cessation or breach of the Program Manager) and Section 8.3 (in the case of a failure, cessation or breach of the OPA) or such longer period of time as the notifying Party may determine in its sole discretion.

**“Custom IP”** means the Intellectual Property in a Custom Program which is not OPA IP.

**“Custom Program”** has the meaning given to it in subsection 3.3(a).

**“Customer Information”** has the meaning given to it in Section 12.2.

**“Directive”** has the meaning set forth in the Recitals.

**“Disclosing Party”** has the meaning given to it in Section 10.1.

**“Dispute”** has the meaning given to it in Section 11.1.

**“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”** has the meaning first set forth above.

**“Emission Reduction Credits”** means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made under the *Environmental Protection Act* (Ontario), as amended from time to time, or such other

regulation as may be promulgated under the *Environmental Protection Act* (Ontario) or any currently applicable or future Laws and Regulations.

“**Enhanced Cooperation Procedures**” has the meaning given to it in Section 7.1.

“**Environmental Attributes**” means 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 this Master Agreement and any CDM Program, and the right to quantify and register such benefits and entitlements with competent authorities, including: (a) all right, title, interest and benefit in and to any renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance or other proprietary or contractual right, whether or not tradeable; (b) rights to any fungible or non-fungible attributes or entitlements relating to environmental impacts, however arising; (c) any and all rights, title and interest relating to the nature of an energy source as may be defined and awarded through applicable Laws and Regulations or voluntary programs, including all Emission Reduction Credits; and (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing. For greater certainty, in the event that any governmental or non-governmental agency, whether provincial, federal, national or international in scope or authority, creates or sanctions a registry, trading system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term “Environmental Attributes” as used in this Master Agreement shall include the rights or benefits created or sanctioned under any such program or programs to the extent available as a result of, or arising from, the Initial Portfolio.

“**Final Program Report**” means, in connection with any CDM Program, the report to be delivered by the Program Manager to the OPA, outlining the program results for such CDM Program, as specified in accordance with the provisions of the Program Schedule applicable to such CDM Program.

“**Financial Incentives**” means, in relation to a CDM Program, financial incentives paid or payable to a Qualifying Participant in such CDM Program, in accordance with the Program Schedule applicable thereto.

“**FIPPA**” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31.

“**Governmental Authority**” means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any of the foregoing, but excluding the OPA.

“**GST**” means the Goods and Services Tax as established by the *Excise Tax Act* (Canada).

“**IESO**” means the Independent Electricity System Operator of Ontario established under Part II of the *Electricity Act, 1998*, S.O. 1998, c.15, Sched. A, or its successor.

“**IESO-Administered Markets**” has the meaning given to it in the IESO Market Rules.

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

“**IESO Market Rules**” means the rules made under Section 32 of the *Electricity Act, 1998*, S.O. 1998, c.15, Sched. A, together with all market manuals, policies, and guidelines issued by the IESO.

“**IP License**” means any license pursuant to which the OPA has granted to the Program Manager any rights to Intellectual Property, other than the license contained in Article 5 pursuant to which the OPA grants certain Intellectual Property rights to the Program Manager.

“**Indemnifiable Loss**” has the meaning given to it in Section 13.4.

“**Indemnified Party**” has the meaning given to it in Section 13.4.

“**Indemnifying Party**” has the meaning given to it in Section 13.4.

“**Initial Portfolio**” means, collectively, the CDM Programs described in Program Schedules “A”, “B”, “C”, and “D”.

“**Insolvency Legislation**” means the *Bankruptcy and Insolvency Act* R.C.S. 1985, c.B-3, the *Winding Up and Restructuring Act* R.C.S. 1985, c.W-11 and the *Companies’ Creditors Arrangement Act* R.S.C. 1985, c.C-36 or any successor legislation, and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction or competence of such law).

“**Intellectual Property**” means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including all trade or brand names, business names, trade-marks, trade-mark registrations and applications, logos, slogans, service marks, service mark registrations and applications, copyrights, copyright registrations and applications, patents, patent registrations and applications and other patent rights (including any patents issued on such applications or rights), trade secrets, concepts, techniques, ideas, programs, plans, procedures, art, drawings, designs, patterns, specifications, formula, process, data, research, documents, experiments, reports, studies, papers, preliminary sketches, layouts, copy, commercial material, computer software, computer disks, source codes, laser prints, photography, films, video tapes, transcriptions, composition of material, compilation of information, and plans for advertising, whether registrable or not, however recorded.

“**kV**” means kilovolts.

“**kW**” means kilowatts.

“**kWh**” means kilowatt hours.

“**Laws and Regulations**” means:

- (a) applicable federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;



- (b) applicable orders, decisions, codes, manuals, interpretation bulletins, judgements, injunctions, decrees, awards, 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/or
- (d) any requirements under or prescribed by applicable common law.

“**LDC**” means the owner or operator of a Distribution System who is licensed by the OEB as an electricity distributor.

“**LDC Program**” means a program for CDM, that is not a CDM Program, that is implemented by an LDC and is funded by the OPA pursuant to the Directive.

“**Marketing Protocol**” has the meaning given to it in Section 5.5.

“**Master Agreement**” means, prior to the date hereof, the Master CDM Program Agreement and the Schedules attached thereto, and, from and after the date hereof, this Amended and Restated Master CDM Program Agreement and the Schedules Appended hereto from time to time, as same may be amended or supplemented from time to time.

“**MFIPPA**” has the meaning given to it in Section 10.2.

“**Milestone Date**” means, in respect of any CDM Program, the dates identified as such in the Program Schedule applicable to such CDM Program by which one or more Milestone Events for such CDM Program shall have been Satisfactorily Completed.

“**Milestone Events**” means, in respect of a CDM Program, the activities or events described as such in the applicable Program Schedule.

“**Minister’s November Letter**” has the meaning set forth in the Recitals.

“**Newly Created IP**” means any Intellectual Property created by the Program Manager (or any subcontractor retained by the Program Manager) that has been funded, directly or indirectly, by the OPA, provided that:

- (a) Intellectual Property that:
  - (i) would otherwise be Newly Created IP; and
  - (ii) is owned by a Person other than the Program Manager where that Person is at arm’s length from the Program Manager (as that term is defined in the *Income Tax Act* (Canada));
- (b) Intellectual Property that relates to modifications to computer software or hardware where such hardware or software was owned by the Program Manager

or its contractor on the date of the Application or the date the Program Manager Registers, as the case may be; and

- (c) Intellectual Property that is specifically identified in an Application or in writing through the Registration process as being excluded from Newly Created IP;

shall be excluded from the definition of Newly Created IP.

**“Next Year’s Budget”** has the meaning given to it in subsection 4.3(b).

**“Notice of Acceptance”** means, in relation to any CDM Program in the Initial Portfolio, the notice delivered by the OPA to the Program Manager confirming the OPA’s approval of the Program Manager’s Application with respect to its participation in such program.

**“OEB”** means the Ontario Energy Board.

**“OPA Event of Default”** has the meaning given to it in Section 8.3.

**“OPA IP”** means, in respect of a CDM Program any Intellectual Property created or owned by the OPA, existing at the time of the Approval or when the Program Manager Registers, as applicable, and used or proposed by the OPA to be used by the Program Manager in connection with the Approved CDM Program.

**“Other Program Managers”** has the meaning given to it in paragraph 13.1(a)(ii).

**“Participant”** means, in relation to a CDM Program that has been Approved or in respect of which the Program Manger has Registered, any customer of the Program Manager, or other Person, who meets the eligibility requirements for participation in such CDM Program as specified in the corresponding Program Schedule.

**“Party”** and **“Parties”** have the respective meanings first set forth above.

**“Payment Date”** has the meaning given to it in subsection 4.2(a).

**“Performance Target”** means, in respect of a CDM Program, the particular quarterly, annual or other periodic targets applicable to the Program Manager, as set out in the relevant Program Schedule, in respect of its participation in such CDM Program.

**“Periodic Report”** means, in relation to any CDM Program, the interim progress reports to be delivered by the Program Manager to the OPA at the interval specified and otherwise in accordance with the applicable Program Schedule.

**“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”** has the meaning given to it in PIPEDA, FIPPA, or MFIPPA, as applicable, or any similar information protected under applicable Laws and Regulations.

“**PIPEDA**” means the *Personal Information Protection and Electronic Documents Act* S.C. 2000, c.5.

“**Privacy Laws**” has the meaning ascribed thereto in paragraph 12.1(d).

“**Program Budget**” means, in respect of the Initial Portfolio, the budget which shall comprise a line-by-line budget of the Program Manager’s projected costs to implement each element of the Program Workplan for such CDM Program, to be prepared by the Program Manager and submitted to the OPA in accordance with the provisions of the applicable Program Schedule. For clarity, the Program Budget shall include all proposed Third-Party Costs.

“**Program Exclusivity**” means, in relation to any CDM Program, the exclusive right of the Program Manager to implement such CDM Program in the Program Manager’s service territory, during the continuance of the relevant Program Schedule.

“**Program Manager Contact Person**” means the Person identified as the contact person at the Program Manager for all purposes of this Master Agreement, as designated by the Program Manager in accordance with Section 14.2.

“**Program Manager Event of Default**” has the meaning given to it in Section 8.1.

“**Program Manager IP**” means all the Intellectual Property created or owned by the Program Manager, existing at the time of the Approval or upon Registering and used or proposed to be used by the Program Manager in connection with the CDM Program, provided that:

- (a) Intellectual Property that:
  - (i) would otherwise be Program Manager IP; and
  - (ii) is owned by a Person other than the Program Manager where that Person is at arm’s length from the Program Manager (as that term is defined in the *Income Tax Act* (Canada)); and
- (b) Intellectual Property that is specifically identified in an Application or in writing through the Registration process as being excluded from Program Manager IP;

shall be excluded from the definition of Program Manager IP.

“**Program Media Event**” means, in respect of Initial Portfolio, a media event to raise public awareness of the official launch of the CDM Program, as may be specified in the relevant Program Schedule to this Master Agreement for such CDM Program.

“**Program Schedule**” means a Schedule which describes a CDM Program and for clarity includes each of Schedules “A”, “B”, “C” or “D” and any Additional Program Schedule, including without limitation, “A-2”, “B-2” and “D-2”.

“**Program Workplan**” means, in respect of the Initial Portfolio, a workplan that comprises a detailed breakdown of the Program Manager’s proposed activities to implement such CDM

Program, prepared by the Program Manager and submitted to the OPA in accordance with the provisions of the applicable Program Schedule.

“**PST**” means the Provincial Sales Tax as established by the *Retail Sales Tax Act* (Ontario).

“**Qualifying Participant**” means, in relation to any given CDM Program, any Participant that qualifies for Financial Incentives in accordance with the provisions of the applicable Program.

“**Receiving Party**” has the meaning given to it in Section 10.1.

“**Register**” means, where applicable, the Program Manager electronically registering at the Website to confirm that an Additional Program Schedule attached to or Appended to this Master Agreement shall become operative and legally binding upon the OPA and the Program Manager in accordance with this Master Agreement, and “**Registration**” shall have a corresponding meaning.

“**Representatives**” means, in respect of a Person, such Person’s employees, officers, directors, shareholders, contractors, agents, representatives and advisors.

“**Request**” has the meaning given to it in subsection 7.3(a).

“**Review Period**” means, in respect of any Additional Program Schedule, the period commencing the date on which such Additional Program Schedule is appended to the Master Agreement, and terminating ten days later unless extended by the OPA.

“**Satisfactory Completion**” means (a) in the case of a Program Workplan, the preparation and delivery to the OPA of a written plan indicating the actions, methods and processes to be taken to implement the applicable CDM Program and any other specified goals, in form and substance satisfactory to the OPA acting reasonably, (b) in the case of a Program Media Event, the occurrence of the Program Media Event, in form and substance satisfactory to the OPA acting reasonably and in compliance with the Marketing Protocol, (c) in the case of the Periodic Reports and the Final Program Report, the preparation and delivery to the OPA of each such report, in form and substance satisfactory to the OPA, acting reasonably, and (d) in the case of any other task, activity, document, or other act or thing, the completion thereof to the satisfaction of the OPA, acting reasonably, and “**Satisfactorily Complete**” and “**Satisfactorily Completed**” will each have a corresponding meaning.

“**Taxes**” includes any taxes, duties, fees, premiums, assessments, levies, payments and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines and liabilities required by the *Income Tax Act* (Canada), GST, PST and payments in lieu of taxes under Section 93 of the *Electricity Act, 1998* (Ontario), or other additional amounts imposed by any Governmental Authority in respect thereof.

“**Third-Party Costs**” means expenses incurred by the Program Manager in delivering a CDM Program arising out of or relating to third-party contractors, consultants or service providers.

“**Website**” means [www.powerauthority.on.ca](http://www.powerauthority.on.ca)

## **1.2 Currency**

Unless otherwise indicated, all dollar amounts referred to in this Master Agreement are expressed in Canadian funds.

## **1.3 Sections and Headings**

The division of this Master Agreement into Articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Master Agreement. Unless otherwise indicated, any reference in this Master Agreement to an Article, section, subsection or Schedule refers to the specified Article, section or subsection of or Schedule to this Master Agreement.

## **1.4 Number and Gender**

In this Master Agreement, words importing the singular number only shall include the plural and *vice versa*, words importing gender shall include all genders. The word “including” means including without limitation, and the words “include” and “includes” have a corresponding meaning.

## **1.5 Accounting Principles**

Any reference in this Master Agreement to generally accepted accounting principles refers to generally accepted accounting principles that have been established in Canada, including those approved from time to time by the Canadian Institute of Chartered Accountants or any successor body thereto.

## **1.6 Entire Agreement**

At any particular time, this Master Agreement together with all Schedules then attached hereto, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.

## **1.7 Applicable Law**

This Master Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

## **1.8 Binding Agreement**

This Master Agreement shall enure to the benefit of and shall be binding on and enforceable by the Parties and, where the context so permits, their respective successors and permitted assigns.

Except as otherwise set out in this Master Agreement, this Master Agreement shall not confer upon any other person except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Master Agreement.

### **1.9 Assignment**

The Program Manager may not assign this Master Agreement, in whole or in part, without the prior written consent of the OPA, which the OPA may decline in its sole discretion.

### **1.10 Severability**

If any provision of this Master Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

### **1.11 Amendments and Waivers**

No amendment or waiver of any provision of this Master Agreement shall be binding on either Party unless it is consented to in writing by such Party. No waiver of any provision of this Master Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided. Nothing shall be construed to be or have the effect of a waiver, except an instrument in writing signed by the Party which expressly waives a provision under this Master Agreement. To the extent that a Notice of Acceptance approves a Program Workplan that waives a provision under this Master Agreement the OPA shall ensure that such Notice of Acceptance contains an express waiver by the OPA of such provision.

### **1.12 Preparation of Agreement**

Notwithstanding the fact that this Master Agreement was drafted by the OPA and its legal and other professional advisors, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of this Master Agreement shall not be construed or interpreted against the OPA or in favour of the Program Manager when interpreting such term or provision, by virtue of such fact.

### **1.13 Schedules**

- (a) The following Schedules are hereby attached to, incorporated into and are to be read with this Master Agreement and shall form part of this Master Agreement:

Schedule "A" - Appliance Retirement

Schedule "B" - Business Incentive

Schedule "C" - Summer Savings

Schedule "D" - Residential and Small Commercial Demand Response

## Schedule “E” – Form of License

and such additional Schedules in respect of which the OPA from time to time may notify the Program Manager.

The Parties hereby acknowledge and agree that this Amended and Restated Master Agreement is being completed to facilitate Appending Schedules “A-2”, “B-2” and “D-2” hereto.

- (b) The OPA may, in its sole discretion from time to time, create and Append hereto Additional Program Schedules in respect of additional CDM Programs other than those comprising the Initial Portfolio and those referred to in (a) above. Such additional CDM Programs may include CDM Programs designed by the OPA or Custom Programs.
- (c) The provisions of the body of this Master Agreement, any Program Schedule and the Notice of Acceptance with respect to such Schedule and any other Schedule are to be read and interpreted together in relation to the CDM Program to which the Program Schedule corresponds. In the event of any inconsistency between the provisions of the body of this Master Agreement, the Program Schedule and the Notice of Acceptance in respect thereof, other than in the case of subsection 4.4(e) hereof, the matters referred to in the foregoing provisions shall be given meaning and effect in the following order of precedence (in descending order):
  - (i) The Notice of Acceptance (which, for greater certainty shall not exist where the Program Manager has Registered);
  - (ii) The Program Schedule;
  - (iii) A Schedule that is not a Program Schedule; and
  - (iv) The body of this Master Agreement.
- (d) Notwithstanding any other provision of this Master Agreement except Article 9, the Program Manager shall have the option, in its sole discretion whether or not to submit an Application or Register in respect of any CDM Program. For clarity, until an Application pursuant to a Program Schedule is Approved by the OPA or, where applicable, the Program Manger Registers to confirm acceptance of a Program Schedule, neither the OPA nor the Program Manager shall have any obligation or liability in respect of such Program Schedule or the CDM Program to which such Program Schedule corresponds.

### **1.14 Agreements and Statutes**

Unless otherwise provided, any reference, in this Master Agreement to a statute, registration or rule promulgated under any statute or any provision of the statute, regulation or rule shall be a reference to the statute, regulation, rule or provision as amended, restated, re-enacted or replaced from time to time.

## **ARTICLE 2 PROGRAM ELEMENTS**

### **2.1 Engagement**

- (a) **The OPA hereby engages the Program Manager and the Program Manager hereby agrees to** undertake and assume full responsibility to fulfill those duties identified as being the responsibility of the Program Manager in this Master Agreement and in each Program Schedule in respect of which the Program Manager has Registered or received a Notice of Acceptance, as appropriate.
- (b) The OPA hereby agrees to undertake and assume full responsibility to fulfill those duties identified as being the responsibility of the OPA in this Master Agreement and in each Program Schedule in respect of which:
  - (i) it has delivered a Notice of Acceptance to the Program Manager; or
  - (ii) the Program Manager has Registered;as appropriate.

### **2.2 CDM Program Elements**

The program description, roles and responsibilities, budget requirements, reporting and terms of payment for each CDM Program shall be as set forth in the Program Schedule relating thereto.

### **2.3 Milestone Dates and Milestone Events**

The Program Manager will Satisfactorily Complete each Milestone Event in respect of a CDM Program in a Program Schedule in respect of which it has received a Notice of Acceptance or in respect of which the Program Manager has Registered, as described in such Program Schedule, by its corresponding Milestone Date.

### **2.4 Evaluation, Measurement and Verification**

Each CDM Program shall be subject to appropriate measurement, verification, valuation and evaluation methodologies designed by the OPA for such CDM Program as specified in the Program Schedule applicable to such CDM Program Schedule. In this regard and subject to Article 12:

- (a) the Program Manager shall cooperate with the OPA and facilitate all OPA directed evaluation activities. This shall include but not be limited to:
  - (i) providing access to all records associated with a CDM Program;
  - (ii) providing access to personnel of the Program Manager involved with the delivery or administration of the CDM Program;



- (iii) facilitating access to third parties contracted to provide services in relation to the CDM Program; and
  - (iv) providing access to data in relation to Qualifying Participants, including contact information.
- (b) the Program Manager shall preserve all records relating to any CDM Program for a period of three years from the date which is the later of the date on which the Final Program Report for such CDM Program is delivered to the OPA and the date on which the Program Manager achieves the last Milestone Event for such CDM Program; and
- (c) the OPA may, at its cost, retain an independent auditor/evaluator to examine expenditures for a sample of Participants. The Program Manager shall use Commercially Reasonable Efforts to facilitate such evaluation process.

## **2.5 Delivery**

The delivery or implementation of a CDM Program shall not be combined with the delivery or implementation of any non-OPA program offered by a third party and in particular but without limitation, no Financial Incentive or other service or benefit offered to Participants pursuant to a CDM Program shall be combined with other incentives provided by a third party in any manner that may result in an increase to the financial or other reward received by Participants in connection with their participation in a CDM Program. In addition, a Program Manager shall not enter into arrangements with any third party respecting the delivery of a CDM Program that provides in the OPA's opinion, acting reasonably, an unfair advantage to a retail commercial business relative to its competitors or increase the financial incentive provided to Eligible Customers in connection with a CDM Program.

## **ARTICLE 3 OPA APPROVAL AND CONTENT OF SCHEDULES**

### **3.1 OPA Approval**

Upon receipt of an Application from the Program Manager in connection with any CDM Program in the Initial Portfolio, the OPA shall review such Application in accordance with the provisions of the Program Schedule relating to such CDM Program. Where the OPA approves such Application, to its satisfaction, it shall deliver to the Program Manager a Notice of Acceptance in respect thereof. In respect of Additional Program Schedules for which Registration is applicable, the Program Manager shall Register to confirm its acceptance of the Additional Program Schedule and this Master Agreement.

### **3.2 Program Schedules**

- (a) The OPA shall, in its sole discretion, have the right to amend, modify, supplement or otherwise change any Additional Program Schedule at any time during the Review Period.

- (b) Notwithstanding subsection 3.2(a) and for further clarity, a Program Schedule may not be amended, modified, supplemented or otherwise changed, except by mutual consent of the Parties, following the end of the Review Period.

### **3.3 Custom Programs**

- (a) The Program Manager may, from time to time, propose to the OPA one or more programs designed by the Program Manager or any other Person to be CDM Programs and to be described in and be subject to the terms and conditions of an Additional Program Schedule. In its sole discretion, the OPA may issue an Additional Program Schedule in respect of such custom CDM Program in accordance with subsection 1.13(b) (following the issuance of such Additional Program Schedule in respect of such custom CDM Program, such custom CDM Program shall be referred to as a “**Custom Program**”).
- (b) The OPA intends to use Commercially Reasonable Efforts to approve or reject Custom Programs proposed pursuant to section 3.3(a) within 30 days following receipt of a complete application setting out program details sufficient for the needs of the OPA in preparing an Additional Program Schedule for such Custom Program. Applications which are incomplete or which do not otherwise provide the information needed to prepare an Additional Program Schedule would likely require an additional period of 15 Business Days.

### **3.4 Program Exclusivity**

- (a) In respect of the Initial Portfolio, effective the Effective Date and until the deadline for submission of an Application in respect of a CDM Program that is included in the Initial Portfolio as such deadline is set out in such Program Schedule, the Program Manager shall have Program Exclusivity for such CDM Program.
- (b) In respect of any Additional Program Schedule, effective the date on which such Additional Program Schedule is Appended and until the deadline for either submission of an Application or for the Program Manager to Register, as the case may be, in respect of a CDM Program that is included in such Additional Program Schedule as such deadline is set out in such Additional Program Schedule, the Program Manager shall have Program Exclusivity for such CDM Program.
- (c) For any CDM Program in the Initial Portfolio in respect of which the Program Manager has Program Exclusivity as set out in subsection 3.4(a) or (b), provided that the Program Manager submits an Application for such CDM Program or any revisions to the Application within the prescribed timelines, such Program Exclusivity shall be extended and shall continue until the date that is the earlier of the (i) date that the Program Manager receives a Notice of Acceptance from the OPA and (ii) the date that the Program Manager receives a notice from the OPA that its Application has not been Approved or that its Application has not been Satisfactorily Completed.

- (d) In the event that the Program Manager receives a Notice of Acceptance from the OPA for any CDM Program or Registers for any CDM Program, the Program Exclusivity for such CDM Program shall be further extended and shall continue until the date that is the deadline for the delivery of the Final Program Report for such CDM Program as provided in the applicable Program Schedule unless the applicable Program Schedule is terminated earlier in accordance with the provisions of this Master Agreement, provided that where a Program Schedule does not have a requirement to submit a Final Program Report, the Program Exclusivity for such CDM Program shall terminate on the date of the last operational (as opposed to reporting) obligation of the Program Manager directly related to CDM activities.

## **ARTICLE 4 PAYMENT TERMS**

### **4.1 Budget and Payment Structure**

- (a) For any CDM Program in the Initial Portfolio, the Program Manager shall submit to the OPA a Program Budget. Subject to the provisions of the relevant Program Schedule, payments by the OPA to the Program Manager shall be based on the Program Budget. Any Third-Party Costs of a CDM Program shall appear in the Program Budget without any margin or mark-up of any kind, nor may any administrative or management fee be associated therewith in the Program Budget. Further provisions relating to payments to the Program Manager by the OPA in respect of a CDM Program shall be prescribed in the corresponding Program Schedule.
- (b) The Program Schedule for each CDM Program in the Initial Portfolio shall establish Milestone Dates for completion of Milestone Events. All payments payable to the Program Manager shall be subject to (i) receipt by the OPA of an invoice in respect thereof from the Program Manager, and (ii) Satisfactory Completion of all Milestone Events whose corresponding Milestone Date is prior to the Payment Date in respect of such invoice.
- (c) Additional Program Schedules may establish the filing, Performance Targets and reporting obligations of the Program Manager in respect thereof.

### **4.2 Schedule of Payments**

Where in respect of the Initial Portfolio, a Program Manager is entitled to receive any payments from the OPA, the following shall apply in respect of each Program Schedule:

- (a) All invoices shall provide a description of the relevant actions, items, deliverables or materials in respect of which the invoice is rendered, together with such other information as may be specified in the relevant Program Schedule attached hereto such that the invoices provided are acceptable to the OPA, acting reasonably. Invoices received by the OPA on or before the 10<sup>th</sup> Business Day of a month shall, subject to approval by the OPA, be paid on or before the last Business Day

of the month following the month in which the invoice is received (the “**Payment Date**”).

- (b) OPA shall have the right to withhold payment of amounts provided for in subsection 4.2(a) where the Program Manager has not Satisfactorily Completed any Milestone Event, in respect of the Program Schedule for which the invoice has been tendered, by its corresponding Milestone Date, provided that following the Satisfactory Completion of such Milestone Event, the OPA shall remit such payment to the Program Manager on the next Payment Date.

### **4.3 Other Funding Structures**

- (a) Additional Program Schedules may establish different funding mechanisms including quarterly or other periodic payments based upon fixed and variable factors identified in each such Additional Program Schedule.
- (b) For each Additional Program Schedule A-2, B-2 and D-2, the OPA funding mechanism has established the 2008 CDM Program Budget for each Program Manager. Commencing in 2008 and continuing for the balance of the Term, the OPA will provide each Program Manager with a proposed budget (using the then applicable funding mechanism) for the following CDM Program year, within 30 days following receipt by the OPA of the Program Manager’s third quarter report on the current CDM Program Year for each such Program Schedule (the “**Next Year’s Budget**”). A Program Manager may, in a manner established by the OPA and appearing on the Website, for a period of 30 days following receipt by it of the Next Year’s Budget elect to withdraw from participation in the relevant CDM Program effective on January 1<sup>st</sup> of the following year. If there are multiple years remaining in the relevant CDM Program at the time such withdrawal is effective, the Program Manager may in subsequent years after the following year re-Register to participate in the relevant CDM Program, provided the OPA has not engaged a third party to deliver such CDM Program in the relevant Program Manager’s service territory. A withdrawal by a Program Manager of participation in a CDM Program in the manner herein described shall constitute a termination of the relevant Program Schedule by the Program Manager and Section 8.5 hereof shall apply thereto.

### **4.4 Financial Incentives**

- (a) The Program Manager shall invoice the OPA, on or prior to the 10<sup>th</sup> Business Day of each month, for all Financial Incentives and, where applicable, any Bonus Payments (as defined in the applicable Program Schedule) accrued and payable as at the last day of the prior month, in accordance with the requirements applicable to such Financial Incentives or Bonus Payments (where applicable) as set out in the Program Schedule.
- (b) Each Program Schedule shall prescribe the criteria, form and content of the reports, data and other information to be provided by the Program Manager to the

OPA to receive funds in respect of Financial Incentives. The Program Manager acknowledges to the OPA that the OPA will rely on the accuracy and completeness of such reports, data and other information in providing to the Program Manager funds for such Financial Incentives.

- (c) Where an invoice described in subsection 4.4(a) is not submitted in accordance with the criteria or form specified for such invoices in the applicable Program Schedule, the OPA shall, acting reasonably, have the right to reject all or part of such invoice and withhold all or part of the payment in respect thereof by providing notice to the Program Manager of such rejection within ten Business Days together with reasons for such rejection. Upon receipt of the foregoing notice, the Program Manager shall provide the additional information requested or take such other steps necessary to substantiate the invoice or correct any deficiency or error therein such that it is in compliance with the requirements of the applicable Program Schedule.
- (d) Except where payment is withheld pursuant to subsection 4.4(c) above, the OPA shall make payment of any invoice received pursuant to subsection 4.4(a) by the Payment Date.
- (e) Notwithstanding any other provision in this Master Agreement to the contrary, in respect of a CDM Program set out in a Program Schedule, the OPA shall not be liable for payment of any Financial Incentives or Bonus Payment, if any, in excess of the maximum Financial Incentives or Bonus Payment specified in such Program Schedule.

#### **4.5 Information on Invoices**

Where applicable, each invoice described in Section 4.2 and 4.4 shall contain a statement, in the form provided below, from the Program Manager representing and confirming that all applicable Milestone Events with respect to the CDM Program in relation to which such invoice has been submitted have been successfully achieved.

Form of statement to appear on each invoice:

“[The Program Manager] hereby confirms that:

1. This invoice is in relation to the [name of CDM Program]; and
2. All applicable Milestone Events relating to the [CDM Program] as of the date of this invoice have been successfully achieved.”

#### **4.6 Exclusive Funding**

For any CDM Program for which the Program Manager has received a Notice of Acceptance or in respect of which the Program Manager has Registered, the Program Manager acknowledges and agrees that it is not receiving and shall not receive, directly or indirectly, funding or other benefits or consideration from any Person or source other than the OPA pursuant to this Master

Agreement, or as expressly provided for in the corresponding Program Schedule. Nothing in this section prevents the Program Manager from applying to and receiving from electricity industry Persons benefits in relation to CDM Programs, excluding any electricity ratepayer funded benefits or programs, but including benefits from any incentives in respect of Taxes or any lost revenue mechanism that may be implemented by the OEB from time to time. Nothing in this section prevents the Program Manager from applying to other Persons for funds or incentive to be passed on to Participants or the electricity distribution customers of the Program Manager.

## **ARTICLE 5 OWNERSHIP OF PROPERTY**

### **5.1 Intellectual Property**

- (a) The Program Manager agrees and acknowledges that, as between the Program Manager and the OPA, all OPA IP and Newly Created IP is, shall be and shall remain the sole property of the OPA. The Program Manager shall not do anything or omit to do anything that impairs, jeopardizes or infringes the OPA IP or adversely affects the OPA's ownership of the OPA IP. The Program Manager shall ensure that its use of the OPA IP shall comply with any IP License and all Laws and Regulations.
- (b) Except for the Intellectual Property specifically set out in subsection 5.1(c), the OPA hereby grants to the Program Manager and the Program Manager accepts from the OPA a royalty-free, non-exclusive, non-transferable license to display, advertise and otherwise use the OPA IP in its service territory in connection with any CDM Program or any LDC Program. The Program Manager shall not grant or purport to grant any right or license hereunder to any third party. This license shall remain in effect for the term of this Master Agreement.
- (c) The OPA shall grant to the Program Manager and the Program Manager accepts from the OPA a royalty-free, non-exclusive, non-transferable license to display, advertise and otherwise use the trade marks which are OPA IP in connection with any CDM Program and/or any LDC Program on the terms of the Form of License attached hereto as Schedule "E".
- (d) Except for the Intellectual Property specifically set out in subsection 5.1(e), the Program Manager hereby grants to the OPA and the OPA accepts from the Program Manager a royalty-free, non-exclusive, non-transferable license to display, advertise and otherwise use the Program Manager IP in connection with any CDM Program or any LDC Program. The OPA may grant or purport to grant any right or license hereunder to any third party provided that such grant is in connection with any CDM Program or LDC Program. This license shall remain in effect for the term of this Master Agreement.
- (e) The Program Manager shall grant to the OPA and the OPA accepts from the Program Manager a royalty-free, non-exclusive, non-transferable license to display, advertise and otherwise use the trade marks which are Program Manager

IP in connection with any CDM Program and/or any LDC Program on the terms of the License attached hereto as Schedule “E”.

- (f) The Program Manager represents and warrants to the OPA as at the Effective Date and, in respect of any CDM Program, as at the time such CDM Program is Approved, and acknowledges that the OPA is relying on such representation and warranty in entering into this Master Agreement, that use of the Program Manager IP by the OPA or other Person or LDC in the manner contemplated in this Article 5 does not and shall not infringe the rights of any Person with respect to the Program Manager IP.
- (g) The OPA represents and warrants to the Program Manager as at the Effective Date and, in respect of any CDM Program, as at the time such CDM Program is Approved, and acknowledges that the Program Manager is relying on such representation and warranty in entering into this Master Agreement, that use of OPA IP by the Program Manager or other Person or LDC in the manner contemplated in this Article 5 does not and shall not infringe the rights of any Person with respect to OPA IP.
- (h) Provisions relating to Intellectual Property in any Program Schedule shall, in the case of any inconsistency or where different, greater or lesser rights or obligations are expressly specified therein in relation to Intellectual Property, prevail over any provisions relating to Intellectual Property in the body of this Master Agreement. Any terms with respect to Intellectual Property which are expressly agreed upon in writing by the Program Manager and the OPA through the Registration process regarding a Program Schedule are deemed to be such provisions relating to Intellectual Property in that Program Schedule.

## **5.2 Newly Created Intellectual Property**

- (a) The OPA shall be the sole owner of any Newly Created IP.
- (b) The Program Manager irrevocably assigns to and in favour of the OPA and the OPA accepts every right, title and interest in and to all Newly Created IP, immediately upon the creation thereof.
- (c) The Program Manager shall ensure that any subcontractor that is not at arm’s length (as that term is defined in the *Income Tax Act* (Canada)) and any Affiliate assigns to and in favour of the OPA every right, title and interest in and to all Newly Created IP, immediately following the creation thereof, for all time.

## **5.3 Custom Programs**

With respect to a Custom Program advanced by a Program Manager and contained in an Additional Program Schedule:

- (a) the Program Manager shall be the sole owner of any Custom IP which exists at the time of application to the OPA;

- (b) subject to acceptance for use in the Custom Program by the OPA, the Program Manager will use the Custom IP in the Custom Program;
- (c) if requested by the OPA, the Program Manager will grant to the OPA a non-exclusive license for the Province of Ontario to use and to sublicense others to use the Custom IP in connection with CDM Programs, at no cost and without restriction, on the terms of the form of License attached hereto as Schedule E; and
- (d) the OPA may require that the Newly Created IP be used in connection with the Custom IP, on the terms of the License attached hereto as Schedule “E”.

#### **5.4 Environmental Attributes and Other Rights**

- (a) The Program Manager hereby transfers and assigns to the OPA, unconditionally and absolutely, all of its right, title and interest in and to the Environmental Attributes. Upon request by the OPA, the Program Manager agrees to use Commercially Reasonable Efforts, and shall be reimbursed by the OPA for all reasonable expenses incurred by the Program Manager in respect thereof, to obtain, register, certify or deliver the Environmental Attributes or any evidence of the OPA’s right, title and interest thereto to the OPA, to the IESO-Administered Markets or other markets, or to any Person as the OPA may direct, on behalf, or for the benefit, of the OPA. Without limiting the generality of the foregoing, the Program Manager shall from time to time during and after the term hereof, on behalf and in the name of or in trust for the OPA, upon request by the OPA, use Commercially Reasonable Efforts to obtain, quantify, verify, certify and register with the relevant Governmental Authorities or other agencies all Environmental Attributes. The OPA shall retain all rights, title, and interest in and to all such Environmental Attributes. The OPA shall be entitled, unilaterally and without the consent of the Program Manager, to deal with Environmental Attributes in any manner it determines, regardless of whether any consideration is being received by the OPA.
- (b) The Program Manager covenants not to sell, supply or deliver any Environmental Attributes to the IESO-Administered Markets, other markets or any other Person, or to retire any Environmental Attributes, unless the OPA has requested and approved such sale, supply, delivery or retirement.
- (c) The Program Manager shall not participate in any voluntary programs with respect to any Environmental Attributes associated with a CDM Program and assigned to the OPA pursuant to subsection 5.4(a) hereof, without the prior written consent of the OPA, which consent may be unreasonably withheld or delayed in the OPA’s sole discretion.
- (d) All Environmental Attributes shall be delivered by the Program Manager free and clear of all liens, claims and encumbrances other than those in favour of the OPA.
- (e) OPA acknowledges and agrees that the Program Manager alone shall be entitled to any monies, benefits or credits or other recognition from the OEB (the



“Benefits”) which may be granted in respect of and/or as a result of the net benefits created by the CDM Program in respect of which a Program Schedule is attached to this Master Agreement, as such Benefits are directly or indirectly related to any CDM Plan filed with the OEB by the Program Manager prior to January 1, 2007.

- (f) The Program Manager acknowledges and agrees that all kWh savings, or part thereof, achieved under this Master Agreement shall be exclusively treated as savings allocated to the Directive. The Program Manager further agrees that it shall not, other than in respect of Benefits referred to in subsection 5.4 (e), at any time assert that the kWh savings achieved by the CDM Programs for which a Program Schedule is attached to this Master Agreement, are allocable to or are to be counted in respect of, any other conservation or demand management targets other than those applicable to the OPA under the Directive.

## **5.5 Marketing Protocol and Brand Standards**

For any Program Media Event, any advertising in print, on radio, television, internet, phone or other media, or any other marketing activities, contemplated or required in a Program Schedule, the Program Manager may use marketing templates for materials (such as posters, digital media, banners and transcripts for call centre) provided or made available by the OPA to the Program Manager in the form and with the content provided, which materials shall be subject to the intellectual property licensing rights associated therewith as set out in this Article 5. To the extent that the Program Manager proposes not to use such templates or supplement such templates, or develops its own materials the Program Manager shall at all times comply with the Brand Standards.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES**

### **6.1 Representations and Warranties of the Program Manager**

The Program Manager represents and warrants to the OPA as at the Effective Date, and in respect of any CDM Program as at the time the Program Manager Registers or submits an Application in respect of such CDM Program, and acknowledges that the OPA is relying on such representations and warranties in entering into this Master Agreement and, providing a Notice of Acceptance to the Program Manager, where applicable, in respect of any CDM Program and otherwise agrees as follows:

- (a) The Program Manager is a corporation incorporated under the laws of the Province of Ontario, is registered or otherwise qualified to carry on business in the province of Ontario, and has the requisite power to enter into this Master Agreement and to perform its obligations hereunder.
- (b) The Program Manager is the owner or operator of a Distribution System connected to the IESO-Controlled Grid and, is licensed by the OEB as an electricity distributor.

- (c) This Master Agreement has been duly authorized, executed, and delivered by the Program Manager and is a valid and binding obligation of the Program Manager enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (d) All statements, specifications, data, confirmations, and information contained in any Application are complete and accurate in all material respects and there is no material information omitted from any such Application which makes the information in such Application misleading or inaccurate.
- (e) The Program Manager is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- (f) In order to comply with its obligations under this Master Agreement, the Program Manager is, and shall at all times during the term hereof be, in compliance with all applicable IESO Market Rules and all applicable Laws and Regulations, and has received, and shall obtain and maintain in good standing, each licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority, as applicable, to the extent necessary or appropriate to carry out its obligations under this Master Agreement.
- (g) The Program Manager has not received and shall not receive, directly or indirectly, funding or other benefits or consideration in relation to any Approved CDM Program from any Person or source other than the OPA pursuant to this Master Agreement, except as may be expressly provided for in the corresponding Program Schedule, Section 4.6 or subsection 5.4(e).

## **6.2 Representations of the OPA**

As of the Effective Date and as of the date of every Notice of Acceptance or Registration, the OPA represents and warrants to the Program Manager as follows and acknowledges that the Program Manager is relying on such representations warranties in entering into this Master Agreement and in submitting an Application or Registering, as the case may be:

- (a) The OPA is a corporation without share capital established under the laws of the Province of Ontario, has the requisite power to enter into this Master Agreement and to perform its obligations hereunder.
- (b) This Master Agreement has been duly authorized, executed, and delivered by the OPA and is a valid and binding obligation of the OPA enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.

- (c) In order to comply with its obligations under this Master Agreement, the OPA is, and shall at all times during the term hereof be, in compliance with all applicable IESO Market Rules and all applicable Laws and Regulations, and has received, and shall obtain and maintain in good standing, each licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority, as applicable, to the extent necessary or appropriate to carry out its obligations under this Master Agreement.

## **ARTICLE 7 ENHANCED COOPERATION PROCEDURES**

### **7.1 Purpose**

The Additional Program Schedules A-2, B-2 and D-2 to be Appended hereto include a funding mechanism including both fixed and variable amounts based upon Eligible Customers, Participants and such other criteria as may be provided for therein. This funding formula will establish the amounts to be paid to the Program Manager (the “**Annual Budget**”) in anticipation of achieving certain Performance Targets. The Parties hereto acknowledge that to the extent that, due to local market conditions or otherwise, there is a failure to achieve the Performance Targets as set out in each such Schedule, the Parties will cooperate in the manner hereinafter set out (the “**Enhanced Cooperation Procedures**”). Enhanced Cooperation Procedures will apply to all Additional Program Schedules unless otherwise indicated in such Additional Program Schedule.

### **7.2 Expenditure Relative to Targets**

Each Additional Program Schedule may establish on a quarterly basis where the Annual Budget is paid quarterly by the OPA, or otherwise in accordance with the schedule of such payments, a percentage of the Annual Budget that is expected to be spent in each such quarter (on a per quarter basis and cumulatively) and a percentage of the Performance Target that is expected to be achieved in each such quarter (also on a quarterly basis and cumulatively). The Parties acknowledge that for any particular Additional Program Schedule, the relationship between the amount of the Annual Budget spent at a particular point in time and the percentage of Performance Target achieved at that time is unlikely to be linear and, where applicable, this will be reflected in the actual Performance Targets.

### **7.3 Initial Enhanced Cooperation**

If the Program Manager’s quarterly report for any quarter indicates either that the amount of the Annual Budget expended during that quarter is materially in excess of the expected amount for that quarter or that the percentage of the Performance Target achieved is materially lower than expected for that quarter on a cumulative basis or relative to the amount spent, then:

- (a) the OPA may request that the Program Manager (the “**Request**”) report monthly rather than quarterly or on such other frequency as the OPA may request; and
- (b) within 15 days of receipt of the Request the Program Manager shall (i) submit a revised marketing plan for the CDM Program proposing actions required to return

to expected expenditures of the Annual Budget and or to achieve expected percentages of the Performance Target (the “**Targets**”) or (ii) provide additional information or proposals expected to achieve such Targets, which in either case shall be subject to the approval of the OPA, acting reasonably. It shall not be unreasonable for the OPA to withhold its consent if such revised marketing plan cannot be implemented without an increase in quarterly or other periodic payments to which the Program Manager would otherwise be entitled.

#### **7.4 Further Enhanced Cooperation**

Following OPA approval of the revised marketing plan or other Program Manager proposals pursuant to Section 7.3 above, the Program Manager shall implement such plan or proposals, which shall contain a stated period of time (the “**Cooperation Period**”) within which to measure the success of such plan or proposals in achieving the Targets. If at any time during the Cooperation Period or thereafter the OPA reasonably concludes that such plan or proposals is/are unlikely to or has not achieved the Targets, the OPA may request that the Program Manager amend its marketing plan, or operational or other procedures (the “**Changes**”) so as to achieve the Performance Targets. Upon receipt of such request the Program Manager shall use Commercially Reasonable Efforts to implement the Changes. If the Program Manager subsequently indicates in a monthly report that implementation of the Changes has resulted in there no longer being a material excess in the amount of Annual Budget spent or a material shortfall in the percentage of Performance Target achieved, then the Program Manager shall revert to quarterly reporting. If the Program Manager does not use Commercially Reasonable Efforts to implement such Changes or implementation of such Changes does not result in achieving the Targets within a reasonable time in the opinion of the OPA, having regard to its then expectations as to the likelihood of achieving the Performance Targets, the OPA may provide written notice to the Program Manager (the “**Notice**”) terminating the Additional Program Schedule and all funding thereunder from the date of the Notice or on a date otherwise specified in such Notice. Delivery of such Notice and the consequences thereof shall not be subject to arbitration pursuant to Article 11 hereof but shall otherwise be deemed to be a termination pursuant to subsection 8.2(b) hereof.

### **ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES**

#### **8.1 Events of Default by the Program Manager**

Each of the following will constitute an event of default by the Program Manager (each, a “**Program Manager Event of Default**”):

- (a) The Program Manager is in breach of its representations and warranties set out in Section 6.1 unless, in the case only of the first breach of a representation and warranty, such breach is remedied within the Cure Period.
- (b) There is a change of Control of the Program Manager or all or substantially all or a material amount of the assets of the Program Manager are sold, transferred or

otherwise conveyed (in each case, other than through a merger, acquisition or any corporate transaction between two or more LDCs).

- (c) The Program Manager fails to comply with its obligations set out in Section 5.4, and such failure is not remedied within the Cure Period.
- (d) The Program Manager is in material breach of any of its obligations under this Master Agreement and such breach is not remedied within the Cure Period, or the OPA has delivered a Final Notice to the Program Manager pursuant to Section 7.4 hereof because the Program Manager has failed to use Commercially Reasonable Efforts to implement the Changes referred to in such section.
- (e) The Program Manager is in breach of its obligations under any IP License and such breach is not remedied within ten (10) days.
- (f) The Program Manager is in breach of its OEB licence in a manner that materially affects the Program Manager's ability to perform its obligations under this Master Agreement and such breach is not remedied within the Cure Period.
- (g) By agreement, decree, judgment or order of a Governmental Authority, the Program Manager agrees to be treated as or is adjudicated bankrupt or insolvent or any substantial part of the Program Manager's property is sequestered or subject to the appointment of any third party and such agreement, decree, judgement, order or appointment continues in effect unrevoked, undischarged and unstayed for a period of thirty (30) days after the entry or implementation thereof.
- (h) The Program Manager dissolves, winds up or liquidates, or makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.
- (i) The Program Manager fails to materially comply with the Program Workplan for any Program Schedule which has been Approved and such failure is not remedied within the Cure Period.
- (j) The Program Manager makes a material misstatement or omission in any Application, quarterly or other report, invoice or any other information submitted by the Program Manager to the OPA and such failure is not remedied within the Cure Period.

## **8.2 Remedies of the OPA**

If any Program Manager Event of Default occurs and is continuing, upon written notice to the Program Manager, the OPA may, in addition to and not in substitution for any other remedies available at law or equity:

- (a) terminate this Master Agreement.
- (b) terminate the Program Manager's ability to participate in any or all CDM Programs by declaring that the relevant Program Schedule is terminated.
- (c) suspend payment of any amounts owing hereunder to the Program Manager in relation to the applicable Program Schedule until such Program Manager Event of Default has been remedied to the satisfaction of the OPA, in its sole discretion, acting reasonably; and
- (d) set off any amounts owing to the Program Manager hereunder against any amounts then or thereafter owing to the OPA by the Program Manager.

The OPA shall only be responsible for the payment of amounts accruing under this Master Agreement up to and including the date of any such termination, including payment of invoices in respect of such accrued amounts where the invoices are dated after the date of such termination.

### **8.3 Events of Default by the OPA**

Each of the following will constitute an Event of Default by the OPA (each, an “**OPA Event of Default**”):

- (a) The OPA fails to make any payment required under this Master Agreement when due or is otherwise in breach of any of its obligations hereunder and such breach is not remedied within the Cure Period after notice thereof from the Program Manager, provided that, in the event of breach of a payment obligation under Article 4 by the OPA, an OPA Event of Default shall be deemed to occur if such breach is not remedied within ten (10) Business Days following notice thereof to the OPA by the Program Manager.
- (b) The OPA is in breach of its OEB licence in a manner that materially affects the OPA's ability to perform its obligations under this Master Agreement and such breach is not remedied within the Cure Period.
- (c) The OPA fails to materially comply with the provisions of the Program Schedule or the Notice of Acceptance in respect of any CDM Program which has been Approved and such failure is not remedied within the Cure Period.

### **8.4 Termination by the Program Manager**

- (a) If any OPA Event of Default occurs and is continuing, then, upon written notice to the OPA, the Program Manager may, at its option, terminate the applicable Program Schedule or terminate this Master Agreement effective as of the date such written notice is given. Notwithstanding the foregoing, the OPA shall be responsible for payment of amounts accruing under this Master Agreement up to and including the date of such termination, including payment of invoices in

respect of such accrued amounts where the invoices are dated after the date of such termination.

## **8.5 Additional Obligations Upon Termination**

- (a) In the event that the OPA exercises its right pursuant to subsection 8.2(b) hereof, the OPA may also specify whether the completion of the CDM Program will be managed by some Person other than the Program Manager designated by the OPA. If such other Person is designated, the Program Manager will, subject to applicable Laws and Regulations, use its Commercially Reasonable Efforts to cooperate with the OPA and such Person to ensure the transition of the CDM Program to such Person occurs in a commercially reasonable manner that is transparent to Program Participants to the extent possible, subject to Article 12.
- (b) If this Master Agreement is terminated in respect of all or any CDM Programs:
  - (i) no further applications for Financial Incentives for such CDM Program(s) will be accepted by the Program Manager on or after the date of such termination other than any entitlement that has accrued as of the date of such termination;
  - (ii) OPA may, where appropriate, require the Program Manager to notify Participants and potential Participants of the CDM Program's termination not later than the thirty (30) days following the day on which such termination occurs; and
  - (iii) except for payments which are due but unpaid on the date of such termination, no additional payments will be made pursuant to Section 4.1.

## **ARTICLE 9 TERM AND TERMINATION**

### **9.1 Term**

This Master Agreement shall commence on the Effective Date and terminate on the later of December 31, 2010, and the date on which the last outstanding CDM Program terminates, unless terminated prior thereto pursuant to the terms hereof.

### **9.2 Termination**

- (a) If the Program Manager has not submitted an Application or Registered in respect of at least one CDM Program prior to January 1, 2009 this Master Agreement shall terminate as at that date without any liability or obligation of either Party to the other.
- (b) At any time, provided that the Program Manager has not received a Notice of Acceptance in respect of any CDM Program or has not Registered in respect of any CDM Program, the Program Manager may, on ten (10) days' notice to the

OPA, terminate this Master Agreement without any liability or obligation of either Party to the other.

## **ARTICLE 10 CONFIDENTIALITY**

### **10.1 Obligation**

Each recipient of Confidential Information (as defined below) hereunder (the “**Receiving Party**”) shall maintain in strict confidence any and all proprietary and confidential information about the business or operations or customers of the other Party or any of its Affiliates, which it receives in any form from the other Party (the “**Disclosing Party**”) by virtue of this Master Agreement (“**Confidential Information**”) and will not disclose to any third party or make use of such Confidential Information (except for the purposes of this Master Agreement) for itself or any third party without the prior written consent of the Disclosing Party, except as permitted or provided for in this Master Agreement and except where required by Laws and Regulations. Notwithstanding the foregoing, “Confidential Information” shall not include information which:

- (a) is in the public domain at the time of its disclosure to the Receiving Party or which thereafter enters the public domain otherwise than by any breach of this Master Agreement;
- (b) is already known to or in the possession of the Receiving Party at the time of its disclosure by the Disclosing Party as evidenced by the Receiving Party’s records; or
- (c) is lawfully acquired at any time by the Receiving Party without restrictions from a third party without breach of confidentiality by such third party.

### **10.2 Permitted Disclosure**

Notwithstanding Section 9.1 and subject to applicable Laws and Regulations,

- (a) the Parties hereby acknowledge and agree that the Receiving Party is permitted to disclose the Disclosing Party’s Confidential Information relating to the CDM Programs to other electricity distributors in the Province of Ontario;
- (b) the Parties hereby acknowledge and agree that the Receiving Party is permitted to disclose the Disclosing Party’s Confidential Information relating to CDM Programs, to the extent required for arbitration pursuant to Article 11 hereof and to the OEB and any other Governmental Authority to which the Program Manager or the OPA may be required to report regarding the Program Manager CDM Plan, if any, filed with the OEB prior to January 1, 2007, the CDM Program, any payments made hereunder and the achievement of CDM Program results;
- (c) the Parties hereby acknowledge and agree that Program Manager is subject to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) (“**MFIPPA**”) or, where the Program Manager is or is a subsidiary of Hydro One



Inc., to FIPPA, and that the Program Manager may be required to disclose Confidential Information in accordance with the provisions of MFIPPA or FIPPA, as the case may be;

- (d) the Parties hereby acknowledge and agree that OPA is subject to FIPPA and that OPA may be required to disclose Confidential Information in accordance with the provisions of FIPPA;
- (e) in the event that a Receiving Party is required by applicable Laws and Regulations to disclose any Confidential Information to Government Authority, including, without limitation, any disclosure required pursuant to a request under MFIPPA or FIPPA, such Party may so disclose; provided that it shall, to the extent permitted by law, first inform the Disclosing Party of the request or requirement for disclosure to allow an opportunity for the Disclosing Party to apply for an order to prohibit or restrict such disclosure;
- (f) the Parties acknowledge and agree that the collection, use and disclosure of any information relating to the customers of Program Manager is governed by requirements of the *Ontario Energy Board Act, 1998*, PIPEDA, FIPPA, and MFIPPA, as applicable, and regulations, licenses, codes and procedures established by the OEB; and
- (g) the Parties hereby acknowledge and agree that the Receiving Party is permitted to disclose the Disclosing Party's Confidential Information to the Receiving Party's Representatives who have a need to know and who have agreed in writing to comply with and be bound by the provisions of this Article 10.

### **10.3 Liability for Breach**

Except for disclosures made pursuant to Section 10.2 hereof or as otherwise required by law, or to the OEB or any Governmental Authority as may be required, each Party shall be responsible for any breach of this Article 10 by the Party, its Representatives and any Person to whom it discloses any Confidential Information. The Parties agree that a Disclosing Party would be irreparably injured by a breach of this Article 10 by a Receiving Party or by any Person to whom it discloses any Confidential Information and that monetary damages would not be a sufficient remedy. Therefore, in such event, the Disclosing Party shall be entitled to equitable relief, including injunctive relief without proof of actual damages, as well as specific performance. Such remedies shall not be deemed to be exclusive remedies for a breach of this Article 10 but shall be in addition to all other remedies available at law or equity.

### **10.4 Return of Confidential Information**

Upon completion or termination of this Master Agreement, or upon ten (10) days written notice from the Disclosing Party requesting return of any or all Confidential Information, the Receiving Party shall forthwith return to the Disclosing Party, without retaining any copies thereof, all such information.

## **10.5 Survival**

The obligations of confidentiality herein shall survive the expiration or termination of this Master Agreement for a period of two (2) years.

## **ARTICLE 11 DISPUTE RESOLUTION**

### **11.1 General**

Any controversy, dispute, difference, question or claim (collectively, a “**Dispute**”) arising between the Parties in connection with the interpretation, performance, construction or implementation of this Master Agreement that cannot be resolved by a director or manager from each Party within ten (10) Business Days after the Dispute has arisen shall be settled in accordance with this Article 11.

### **11.2 Senior Officers**

The aggrieved Party shall send the other Party written notice identifying the Dispute, the amount involved, if any, and the remedy sought, and invoking the procedures of this section. Senior officers with authority to bind the organization from each Party, as selected by each Party in its discretion, shall confer in an effort to resolve the Dispute. If the Dispute cannot be resolved in accordance with this Section 11.2 within thirty (30) days of the date the Dispute arose, the Dispute shall be resolved by arbitration in accordance with Sections 11.3 and 11.4 below.

### **11.3 Arbitrators**

The Parties shall submit any arbitration under this section to a single arbitrator agreed upon by both Parties. If the Parties cannot agree upon a single arbitrator within ten (10) days after the Dispute is referred to arbitration, each Party shall within ten (10) more days choose one individual who shall sit on a three-member arbitration panel. The two arbitrators appointed shall name the third arbitrator within ten (10) days or, if they fail to do so within that time period, either Party may make application to a court of competent jurisdiction for appointment of the third arbitrator. Any arbitrator selected to act under this Master Agreement shall be qualified by education, training and experience to pass on the particular question in Dispute and shall have no connection to either of the Parties other than acting in previous arbitrations.

### **11.4 Procedures of Arbitration**

The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). The arbitration shall be conducted in the City of Toronto, Ontario unless the Parties agree otherwise in writing. The decisions of the arbitrator or arbitration panel shall be made in writing and shall be final and binding on the Parties as to the questions submitted and the Parties shall have no right of appeal from such decisions. All costs and expenses relating to a Dispute which is finally determined or settled by arbitration, including reasonable legal fees, will be borne by the Party determined to be liable or to have erred in respect of such Dispute; provided, however, that if complete wrong-doing or liability is not assessed against only one Party or if no liability is assessed, the Parties will share the total costs in proportion to their respective amounts

of liability so determined or the Parties will equally share the total costs where no liability or wrong-doing is assessed, as the case may be. The Parties agree to keep all details of the arbitration proceeding and the arbitral award strictly confidential. Notwithstanding the provisions to arbitrate any Dispute hereunder, either Party may seek from a court any equitable relief (including, without limitation, injunctive relief) that may be necessary to protect such Party's rights. This Article 11 shall survive the termination or expiry of this Master Agreement.

### **11.5 Exclusion**

This Article 11 shall not apply to an arbitration arising pursuant to Section 13.1 except as expressly provided in Section 13.1.

## **ARTICLE 12 PRIVACY RULES**

### **12.1 Compliance with Privacy Legislation**

- (a) The Program Manager will comply with PIPEDA, MFIPPA or FIPPA, as applicable.
- (b) The OPA shall comply with PIPEDA and FIPPA, as applicable.
- (c) Each Party shall comply with all applicable Privacy Laws and its own published, external privacy policy with respect to any Personal Information it collects, uses or discloses in connection with this Master Agreement, and shall indemnify and hold harmless the other Party and its Affiliates and their respective Representatives from and against any and all claims, demands, suits, losses, damages, causes of action, fines or judgments (including related expenses and legal fees) that they may incur related to or arising from any non-compliance with any such applicable privacy laws, regulations or applicable policies.
- (d) Neither Party shall knowingly cause the other Party to breach its obligations under PIPEDA, MFIPPA, FIPPA or other Laws and Regulations pertaining to the privacy of personal information (collectively, "**Privacy Laws**") as applicable.

### **12.2 Program Manager Customer Information**

The OPA acknowledges and agrees that, if as a result of this Master Agreement, the OPA collects from the Program Manager, and uses, stores or discloses, any Personal Information about residential customers of the Program Manager (the "**Customer Information**"), then, pursuant to Section 10.1, it shall maintain the confidentiality of such Customer Information and in any event shall not knowingly cause the Program Manager to be in violation of any applicable Privacy Laws.

### **12.3 Pseudonymized Information**

Subject to Section 12.8, where the OPA requires the Program Manager to provide the OPA with Customer Information, the Program Manager shall, in compliance with applicable Privacy Laws,

provide the OPA with such Customer Information in a format that may include pseudonymizing such Customer Information or providing it in aggregate, where applicable. For the purposes of this provision, “pseudonymizing” shall mean remove all personal identifiers that would reveal the identity of a Participant.

#### **12.4 Continuation of Privacy Laws**

Each Party shall immediately advise the other if it believes that any practice or procedure in which it or the other Party is engaging contravenes applicable Privacy Laws, or if either receives or learns of any complaint or allegation to that effect. If either Party determines that a practice or procedure would result in violation of applicable Privacy Laws or other applicable laws, regulations or policies in relation to privacy, the Parties may by mutual agreement amend this Master Agreement to vary or eliminate such practice or procedure.

#### **12.5 No Disclosure of Customer Information**

Except as expressly permitted herein or by applicable Laws and Regulations, the OPA shall not, without the prior written consent of the Program Manager, (i) disclose any of the Customer Information to any affiliated or unaffiliated third party, or (ii) transmit or provide access to the Customer Information to any of the OPA’s personnel who are not directly involved in the matters pertaining to this Master Agreement, or to any facility, outside Ontario.

#### **12.6 Complaints**

Subject to applicable Laws and Regulations, if the OPA receives any inquiry or complaint relating to Customer Information that has been collected, used or disclosed by it under this Master Agreement, the OPA shall immediately notify the Program Manager thereof in such form and manner, and with such particulars, as the Program Manager may reasonably request but shall not, in so doing, breach any applicable Privacy Laws.

#### **12.7 Return of Customer Information**

In the event of the expiry or termination of this Agreement, the OPA shall forthwith return to the Program Manager, as directed by the Program Manager, all the Customer Information held by the OPA pursuant to this Master Agreement, or, at the Program Manager’s option, destroy such Customer Information as directed by the Program Manager and certify, under the signature of a senior officer of the OPA, to the Program Manager that such Customer Information has been destroyed.

## 12.8 Consent

Where the Program Manager is required to provide the OPA with any Customer Information pursuant to any CDM Program, the Program Manager shall make Commercially Reasonable Efforts to obtain appropriate consents from all relevant parties, as applicable, to comply with such obligation.

## 12.9 Survival

The obligations in this Article 12 shall survive the expiration or termination of this Master Agreement.

# ARTICLE 13 MISCELLANEOUS

## 13.1 Change in Laws and Regulation

- (a) To the extent that there is a change in the Laws and Regulations which frustrates the contractual relationship established between the Parties by this Master Agreement following the date hereof, then:
  - (i) each Party shall notify the other Party as soon as reasonably possible upon becoming aware of the consequences of such change;
  - (ii) the Parties and, at the OPA's discretion, those other LDCs who have also entered into a master agreement substantially the same as this Master Agreement (collectively, "**Other Program Managers**") that are required by the OPA to participate, shall engage in good faith negotiations to amend this Master Agreement and the respective agreements of those Other Program Managers on the basis that such amendments together with the change in the Laws and Regulations will not frustrate the contractual relationship between the Parties and, at the OPA's discretion, those Other Program Managers, prior to the introduction of such change in the Laws and Regulations; and
  - (iii) if the Parties fail to reach agreement on the amendments described in paragraph 13.1(a)(ii), the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Article 11. However, if the Program Manager fails to participate in such arbitration, the Program Manager acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Program Manager shall be bound by the award of the arbitration panel and the subsequent amendments to this Master Agreement made by the OPA to implement such award of the arbitration panel set out in paragraph 13.1(b)(iii).
- (b) The terms of this Master Agreement shall be amended either:

- (i) by the agreement of the Parties, where no award of an arbitration panel has been made pursuant to paragraph 13.1(a)(iii);
- (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to paragraph 13.1(a)(iii); or
- (iii) by an amendment prepared by the OPA made pursuant to and to implement an award of the arbitration panel made pursuant to paragraph 13.1(a)(iii), where the Program Manager failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date that the change in the Laws and Regulations became effective.

### **13.2 Further Assurances**

Each of the Parties shall, 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 Master Agreement.

### **13.3 Relationship of the Parties**

The Program Manager agrees that its relationship with the OPA is an independent business relationship and in no way does this Master Agreement contemplate or create a relationship of employment, partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

### **13.4 Indemnification**

Each Party (in this context, an “**Indemnifying Party**”) shall indemnify, defend and hold the other Party and its directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (in this context, collectively, the “**Indemnified Party**”) harmless from and against any and all claims, demands, suits, 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 act or omission of the Indemnifying Party relating to this Master Agreement, except to the extent that any injury or damage is attributable to the gross negligence or wilful misconduct of the Indemnified Party or the wilful failure of the Indemnified Party to comply with Laws and Regulations and (ii) any breach by the Indemnifying Party of any representations, warranties, and covenants contained in this Master Agreement, except to the extent that any injury or damage is attributable to the gross negligence or wilful misconduct of the Indemnified Party. For greater certainty, in the event of contributory negligence or other fault of the Indemnified

Party, then such Indemnified Party shall not be indemnified hereunder in the proportion that the Indemnified Party's negligence or other fault contributed to any Indemnifiable Loss.

### **13.5 Defence of Claims**

- (a) Promptly after receipt by the Indemnified Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 13.4 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defence thereof with counsel designated by the Indemnifying Party and satisfactory to the affected Indemnified Party, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel satisfactory to the Indemnifying Party acting reasonably (at no additional cost to the Indemnified Party) to participate in the defence of such action on behalf of the Indemnified Party. The Indemnifying Party shall promptly confirm that it is assuming the defence of the Indemnified Party by providing written notice to the Indemnified Party. Such notice shall be provided no later than five (5) days prior to the deadline for responding to any claim relating to any Indemnifiable Loss.
  
- (b) Should any of the Indemnified Parties be entitled to indemnification under Section 13.4 as a result of a claim by a third party, and the Indemnifying Party fails to assume the defence of such claim (which failure shall be assumed if the Indemnifying Party fails to provide the notice prescribed by subsection 13.5(a)), the Indemnified Party shall, at the expense of the Indemnifying Party, contest (or, with the prior written consent of the Indemnifying Party, settle) such claim, provided that no such contest need be made and settlement or full payment of any such claim may be made without consent of the Indemnifying Party (with the Indemnifying Party remaining obligated to indemnify the Indemnified Party under Section 13.4), if, in the written opinion of an independent third party counsel chosen by the Parties, such claim is meritorious. If the Indemnifying Party is obligated to indemnify any Indemnified Party under Section 13.4, the amount owing to the Indemnified Party will be the amount of such Indemnified Party's actual out-of-pocket loss net of any insurance proceeds received or other recovery.

### **13.6 Exclusion of Consequential Damages**

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Master Agreement or under any cause of action relating to the subject matter of this Master Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits, loss of use of any property or claims of customers or contractors of the Parties for any such damages.

### **13.7 Subcontractors**

Every subcontract entered into by the Program Manager shall require that the subcontractor comply with the terms and conditions of this Master Agreement which are applicable to the subcontract. All subcontracts shall be procured through competitive procurement processes in accordance with the internal policies of the Program Manager. In its application to participate in or during the Registration process for a CDM Program, the Program Manager shall identify in writing those contracts that it proposes to subcontract and the competitive process for doing so as required by its applicable internal procedures.

### **13.8 Audit Rights**

During the term of this Master Agreement and for the period of time thereafter specified in Laws and Regulations, where applicable, the Program Manager shall:

- (a) keep proper books, accounts, and records of its revenue received and expenses incurred and paid in connection with each CDM Program and shall keep its invoices, receipts, and other vouchers relating thereto;
- (b) keep proper and accurate records relating to the environmental impact (if any) of the CDM Program;
- (c) on reasonable notice, during normal business hours and not more often than once in a calendar year in respect of a CDM Program, make available to the OPA or its designate such books, accounts, records, invoices, receipts, and vouchers referred to above and permit the OPA to (at its own expense) examine and audit and take copies and extracts from such documents; and
- (d) subject to Laws and Regulations, allow the OPA or its designate, at the OPA's discretion and expense and on reasonable notice, and not more often than once in a calendar year in respect of a CDM Program, to conduct a technical audit to verify that the CDM Program was implemented in accordance with this Master Agreement.

If any discrepancy is identified by the audit referred to in subsection 13.8(c) above, between the amounts paid by the OPA and the amounts actually payable pursuant to this Master Agreement, the appropriate adjustments shall be promptly made between the Parties. If there has been an overpayment or underpayment by the OPA, the amount of the overpayment or underpayment shall constitute a debt due to the OPA or to the Program Manager, as the case may be, and may be so recovered. In the case of an overpayment, if such overpayment is greater than three percent of the aggregate budgeted amounts in respect of the relevant audit period (such budgeted amounts subject to adjustment where consented to by the OPA or as otherwise provided herein), the cost of such audit shall be paid by the Program Manager and such amount shall also constitute a debt due to the OPA and may be so recovered. Any debt due to the OPA herein referred to may, in addition to any other remedies available at law or in equity, also be recovered by the OPA by set-off.



### **13.9 Invoices**

All invoices for payment sent by the Program Manager to the OPA shall be certified in writing by the Program Manager Contact Person to have been prepared and delivered in accordance with the terms of this Master Agreement and shall be delivered to:

Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, Ontario M5H 1T1  
Attention:  
Accounts Payable

### **13.10 Counterparts**

This Master Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Master Agreement. It shall not be necessary in making proof of the contents of this Master Agreement to produce or account for more than one such counterpart. Either Party may deliver an executed copy of this Master Agreement by facsimile but such Party shall promptly deliver to the other Party an originally executed copy of this Master Agreement.

### **13.11 Program Manager's Responsibility for Taxes**

The Program Manager is liable for and shall pay, or cause to be paid, or reimburse the OPA if the OPA has paid, all Taxes (“**Applicable Taxes**”) applicable to amounts paid or payable under this Master Agreement, provided that amounts in respect of GST paid or to be paid by the Program Manager that are not otherwise recoverable by the Program Manager and are not in respect of Financial Incentives may be included in the Program Budget. In the event that the OPA is required to remit any Applicable Taxes, the amount thereof may be deducted from any sums becoming due to the Program Manager hereunder.

### **13.12 OPA's Responsibility for GST and PST**

If GST or PST is payable in connection with the payments of any amounts hereunder other than Financial Incentives in respect of which no GST is payable, such GST or PST shall be paid by the OPA or the Program Manager, as applicable.

### **13.13 Time of Essence**

Time is of the essence in the performance of the Parties' respective obligations under this Master Agreement.

### **13.14 Severability**

The invalidity, unenforceability or illegality of any provision in this Master Agreement shall not, to the extent permitted by law, affect the validity, enforceability or legality of any other provision of this Master Agreement, which shall remain in full force and effect.

**ARTICLE 14  
NOTICES**

**14.1 Notices**

Any notice or other communication required, permitted or desired to be given under this Master Agreement must be in writing and shall be given by facsimile or other means of electronic communication or by hand-delivery as provided. Any notice, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at that address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section, but shall only be effective on actual delivery. Notices and other communications must be addressed as follows:

- (a) If to the OPA:

Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, Ontario M5H 1T1  
Attention: Vice President, Program Operations and Sector Development  
Fax: 416-967-1947

With a copy to the Attention of:

General Counsel  
Fax: 416-969-6383

- (b) If to the Program Manager:

Name of Program Manager: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/Town: \_\_\_\_\_, Ontario  
Postal Code: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax: \_\_\_\_\_

**14.2 Program Manager Contact Person**

The Program Manager appoints the following individual as its Program Manager Contact Person:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The Program Manager may from time to time appoint a replacement Program Manager Contact Person following receipt by the OPA of written notice thereof.

**IN WITNESS WHEREOF**, the Parties have entered into this Amended and Restated Master Agreement as of the date first written above by virtue of the Program Manager having followed the electronic contracting and Registration process set out on the Website.

Ontario Power Authority  
January 31, 2008

3407195.10

**HORIZON UTILITIES CORPORATION (“HORIZON UTILITIES”)  
RESPONSES TO  
VULNERABLE ENERGY CONSUMERS COALITION  
TECHNICAL CONFERENCE QUESTIONS**

**DELIVERED: February 23rd, 2011**

**QUESTION TC #6**

**Reference:** CCC #47

**a)** Please report separately Horizon’s smart meter capital costs per customer for the Residential versus the GS<50 classes.

**Response:**

**a)** Smart meter capital costs are outside the Cost of Service Application and are currently accounted for in Horizon Utilities’ Smart Meter Funding Adder Application (EB-2010-0292). The total capital expenditures per meter are provided in Table 5 in the Smart Meter Funding Adder Application. The capital cost for residential meters is \$104.93 per meter; this includes \$101.48 per meter, \$0.78 for MDM/R integration and \$2.67 for web and smart meter back office costs. The average capital cost for the GS < 50 kW customers is \$311.99 (comprised of a mixture of 8,595 single phase meters with a cost of \$104.93 per meter and 9383 three phase meters with a cost of \$501.67 per meter).

HORIZON UTILITIES CORPORATION (“HORIZON UTILITIES”)  
RESPONSES TO  
VULNERABLE ENERGY CONSUMERS COALITION

TECHNICAL CONFERENCE QUESTIONS

DELIVERED: February 23rd, 2011

**QUESTION TC #7**

**Reference:** Energy Probe #12 and VECC#2 and Board Staff #12

**Preamble:** An alternative way of treating CDM is to estimate total purchases before CDM using the regression analysis and then make a specific adjustment for CDM.

**a)** Please re-do the regression analysis and subsequent 2010-2011 forecast as follows:

- Increase the purchases in each month by the cumulative CDM for the month as used by Horizon for VECC #2 c), adjusted for losses using the average loss factor for the period per VECC #5.
- Re-do the regression analysis using the same explanatory variables as in the initial analysis, with the exception of CDM. Provide the resulting coefficients and model statistics
- Forecast the purchases for 2010 and 2011 (prior to CDM) using the same forecasts for the explanatory variables as in the initial Application.
- Provide CDM adjusted forecasted purchases for 2010 and 2011 based on the forecast cumulative CDM savings for 2010 and 2011 adjusted for losses.

1 **Response:**

2 The regression analysis has been redone based on the above assumptions. The purchases in  
 3 each month have been adjusted upwards by the cumulative CDM for the month as used by  
 4 Horizon Utilities for VECC #2 c) and, adjusted for losses using the average loss factor for the  
 5 period per VECC #5. The regression analysis uses the same explanatory variables as in the  
 6 initial analysis, with the exception of the CDM Activity variable. The resulting coefficients and  
 7 model statistics are outlined below.

<b>R Square</b>	87.0%
<b>Adjusted R Square</b>	86.1%
<b>F Test</b>	104.0
<b>Coefficient</b>	
Intercept	(475,331,011)
Heating Degree Days	84,826
Cooling Degree Days	818,780
Number of Days in Month	9,560,212
Spring Fall Flag	(13,383,587)
Ontario Real GDP Monthly %	4,058,018
<b>T-stats by Coefficient</b>	
Intercept	(6.5)
Heating Degree Days	7.8
Cooling Degree Days	9.9
Number of Days in Month	4.8
Spring Fall Flag	(3.0)
Ontario Real GDP Monthly %	12.8

8

9 The 2010 and 2011 forecasted purchases with the above assumptions are provided in the  
 10 following table.

11

12

13

GWh	Forecasted Purchases Excluding Large Use	CDM Adjustment	Forecasted Purchases Excluding Large Use after CDM Adjustments	Resulting Billed Forecast Including Large Use
2010 Normalized Bridge	4,934.9	(95.8)	4,839.1	5,343.6
2011 Normalized Test	5,133.2	(174.1)	4,959.0	5,458.8

1

2 For the purposes of comparison, Horizon Utilities has included the Resulting Billed Forecast  
 3 including Large Use. The billed forecast is the Forecasted Purchases Excluding Large Use after  
 4 CDM Adjustments reduced for losses and added to the proposed Large Use kWh in the  
 5 application. In Horizon Utilities' 2008 Cost of Service Application, the Billed Forecast amount  
 6 was 5,600.3 (GWh). The equivalent actual values for 2008, 2009 and 2010 are 5,121.1 (GWh),  
 7 4,597.3 (GWh) and 4,874.1 (GWh); respectively. Since its last Board approved Cost of Service  
 8 Application, Horizon Utilities has never realized the level of GWh that underlie the Board  
 9 approved 2008 rates. Such resulted in significant loss of revenues. In response to this loss,  
 10 Horizon Utilities submitted a Z-factor Application (EB-2009-0332) to recover the lost revenue.  
 11 Such recovery was denied by the Board but lead to this early rebasing Cost of Service  
 12 Application. As a result, Horizon Utilities has serious concerns with a 2011 billed forecast of  
 13 5,458.8 (GWh) as such is highly unlikely to be achieved in 2011 and would continue to cause  
 14 revenue risk.

15 In addition, Horizon Utilities is concerned with the methodology outlined in this request. The  
 16 alternative approach of treating CDM is to estimate total purchases before CDM using the  
 17 regression analysis and then make a specific adjustment for CDM. However, the approach of  
 18 estimating total purchases before CDM by increasing the purchases in each month by the  
 19 cumulative CDM for that month appears to be counter intuitive and is causing the resulting  
 20 forecast to be unreasonably high.

21 Finally, the R-square associated with the above forecast is 87.0% compared to 91.9% for the  
 22 load forecast proposed in the Application. Horizon Utilities submits that the latter load forecast  
 23 is more statistically accurate than the former.



1  
2 **HORIZON UTILITIES CORPORATION (“HORIZON UTILITIES”)**  
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5 **TECHNICAL CONFERENCE QUESTIONS**

6 **DELIVERED: February 23rd, 2011**  
7

8 **QUESTION TC #8**

9 **Reference:** Energy Probe #8 b) and VECC #8 a)

10 **a)** Please reconcile the “Distribution Revenue including Transformer” reported in VECC  
11 # 8 a) (\$85,330,364) with the Distribution Revenue value reported in Energy Probe #8  
12 b) (\$85,329,428).

13 **Response:**

14 **a)** The difference of \$936 represents 0.001% of the total revenue and is due to  
15 rounding.

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QUESTION TC #9

Reference: VECC #19 a)

a) Does the appended “A” indicate allocated costs as opposed to budgeted costs?

b) Note 2 states that “Business Development costs for 2009 and 2010 were not allocated to Horizon Utilities as a result of the Board’s decision in the 2008 EDR Cost of Service Application (EB-2007-0697 Decision, p. 15).” Please explain how the business development costs that are proposed for recovery in rates in 2011 are related to the provision of distribution services and please demonstrate how Horizon has determined that the customer benefits from this spending exceed the costs.

c) Please provide the allocators used in the table provided with this response.

Response:

a) The appended “A”, for years 2007 to 2009, refers to “Actual” allocated costs. For years 2010 and 2011, the budgeted allocated cost is presented (“B” represents Bridge Year, which is a forecast; and “T” represents Test Year).

b) While the Business Development resource was not allocated to Horizon Utilities in 2009 and 2010 as a result of the Board’s decision in the 2008 EDR Cost of Service Application (EB-2007-0697 Decision, Page 15), the role was generally designed to add to the strategic planning and corporate development capacity of Horizon Utilities. Since the 2008 EDR COS Application Decision, the organizational priorities of Horizon Utilities have changed with the recognition that meaningful merger and acquisition (“M&A”) activity is unlikely without an external catalyst such as a change in Board policy with

1 respect to such or a more direct inducement by the provincial government. As a result,  
2 the Business Development Group has focused on the more general strategic planning  
3 and corporate development objectives of Horizon Utilities.

4 The current responsibilities of the Business Development Group that support the  
5 regulated electricity distribution business include:

- 6 • Supporting company strategic planning exercises, such as the coordination of  
7 inputs from business units for the executive management team and the Board of  
8 Directors of Horizon Utilities, and execution of certain strategic review initiatives,  
9 such as LDC obligations under the *Green Energy and Green Economy Act*,  
10 *2009*.
- 11 • Managing an active database of LDC comparisons, one of which provides  
12 valuable support to Horizon Utilities' Finance and Regulatory groups. (Please  
13 refer to Horizon Utilities' response to School Energy Coalition Interrogatory 9 for  
14 additional details).
- 15 • Supporting company regulatory strategy and advocacy, such as leading a  
16 coalition of 22 LDCs in the development and advocacy of nine recommendations  
17 for change to the OEB's 3rd Generation Incentive Regulation Mechanism  
18 framework. (Please refer to Horizon Utilities' response to School Energy Coalition  
19 Interrogatory 9 for additional details).
- 20 • Leading company involvement in an OPA-initiated energy mapping pilot known  
21 as Integrated Energy Mapping for Ontario Communities ("IEMOC").
- 22 • Representing Horizon Utilities in the Canadian Electricity Association's ("CEA")  
23 environmental commitment and responsibility ("ECR") program and developing  
24 and executing the company's sustainable development initiatives, the latter of  
25 which resulted in Horizon Utilities being named "Company of the Year" by the  
26 Ontario Energy Association ("OEA") in September 2009.
- 27 • Leading elements of corporate strategy on the unique challenges related to LDC

1 service territories in older industrial cities, such as Hamilton and St. Catharines,  
2 and particularly the implications for how Horizon Utilities' future "smart grid"  
3 initiatives link with the provincially mandated municipal "smart growth" plans.

- 4 • Serving as the main point of contact for working with and supporting the needs of  
5 the municipalities in its service territories, and particularly the needs of economic  
6 development departments as they seek to locate new businesses (and Horizon  
7 Utilities' customers).
- 8 • Responsibility for developing or contributing to the CEO's speeches and others  
9 from Horizon Utilities' with strategic implications, and acting as a company  
10 representative at the Ontario energy sector's and municipal sector's numerous  
11 events, including those of the Electricity Distributors Association, Ontario Energy  
12 Network, Ontario Energy Association, Association of Municipalities of Ontario,  
13 and others.
- 14 • Supporting numerous community relationships, particularly those with company-  
15 wide or customer-wide implications, such as the Chambers of Commerce in  
16 Hamilton and St. Catharines and others groups.

17 While it was created in an environment where significant M&A activity was anticipated,  
18 the Business Development Group at the outset had and continues to have responsibility  
19 for augmenting the strategic planning and corporate development capacity for the  
20 regulated electricity distribution operations. In this regard, Business Development has  
21 always assumed a more expansive role than just M&A, roles which ultimately benefit  
22 the Horizon Utilities ratepayers and the communities within which such reside.

23 It is Horizon Utilities' understanding that the responsibilities listed above parallel many  
24 accepted responsibilities in other LDCs and represent a legitimate expense for the  
25 regulated utility business in Horizon Utilities' 2011 EDR COS revenue requirement.

26 **c)** Please see the following table:  
27

Year	Horizon Utilities Corp.	Horizon Holdings Inc.
2007	100% of Business Development Costs	N/A
2008	100% of Business Development Costs	N/A
2009	N/A	100% of Sustainability and Business Development Costs
2010	100% of Sustainability Costs *	100% of Business Development Costs
2011	100% of Sustainability Costs * 80% of Salaries and benefit expenses for Business Development Department	20% of Salaries and benefit expenses for Business Development department; and 100% of all other Business Development Costs

1 \* Third party costs incurred to develop the Sustainability Report were recorded in Horizon Holdings Inc.  
 2 in 2009.

3 Please refer to Exhibit 4, Tab 2, Schedule 11, Pages 2-4 for an explanation of the  
 4 Business Development costs allocation of 80% to the regulated utility.

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**QUESTION TC #10**

**Reference:** VECC #19 c)

**a)** For each of the 2010 Corporate Metrics please provide the actual performance broken down by component, and indicate the amount of incentive pay or performance based payments paid to executives, management, unionized labour, and non-union labour in 2010.

**b)** Please provide the 2011 Corporate Metrics along with an estimate of the maximum incentive or performance payments in 2011 broken down among the categories executives, management, unionized labour, and non-union labour.

**Response:**

**a)** Please see Horizon Utilities’ response to VECC Interrogatory 19c) for the 2010 Corporate Metrics. Performance in each component as at December 31, 2010 is as follows:

Component	Result
Financial – Return on Equity	150% of target
Financial – Controllable Cost per Customer	150% of target
Customer – Ease of Doing Business	100% of target
Customer – Reliability and Service	100% of target
Operational Excellence – Continuous Improvement	50% of target
Operational Excellence – Customer Service Excellence	125% of target
Learning and Growth – Leading Indicator Safety Program	65% of target
Learning and Growth – Labour/Employee Relations	100% of target
Total	107% of target

1 The 2010 payout amounts for the Corporate Metrics are summarized in the table below.  
 2 These amounts represent gross dollars paid to employees that were eligible to receive  
 3 the corporate incentive in 2010. Eligibility terms and conditions are set out in the  
 4 Horizon Annual Incentive Plan document provided in response to Board staff  
 5 Interrogatory 28. The executive figure contained in the table does not include payouts  
 6 for the President and CEO, the Senior Vice-President and CFO, and Vice Presidents of  
 7 Horizon Utilities. These payouts are not calculated and approved until late March 2011.

<b>Employee Category</b>	<b>Total Incentive Paid For 2010 (Gross)</b>
Executive	\$92,000
Management	\$203,000
Non Union	\$88,500
Union	\$0. There is no incentive for unionized employees.

8

9 **b) The 2011 Corporate Metrics are as follows:**

<p>10 <b>FINANCIAL</b>          11 <u>Return on Equity (ROE) *</u></p> <p>12 Objective ROE metric corresponds with the approved EDO 2011 budget. A composite metric for measuring how well we manage the financial business overall including balance sheet, income, cash and our ability to deliver dividends.</p> <p>13 ROE Employed <b>Target:</b> 7.13% <b>Threshold:</b> 6.13%</p> <p style="text-align: center;"><b>30%</b></p> <p>14 <u>Controllable Cost per Customer</u>          Achievement of controllable cost per customer as provided in the 2011 budget, isolating for extraordinary one-time expenditures.</p> <p>15 \$ CC per C <b>Target:</b> \$213.04 <b>Threshold:</b> \$218.04</p> <p style="text-align: center;"><b>10%</b></p> <p>16 The target and threshold values for ROE and CC/C are based on the budget as approved In Dec 2010, and shall be revised to reflect any budget revisions consequent on the OEB's decisions with respect to Horizon's application to the OEB for 2011 rates.</p>
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## CUSTOMER (VALUE PROPOSITION)

### Ease of Doing Business

#### **Annual Customer Satisfaction Survey**

**Target:** 2% above the Ontario average (Horizon end of interview score)

**Threshold:** Meet Ontario average (Horizon end of interview score)

#### **Contractor/Developer Satisfaction Survey**

**Target:** Exceed 2009 benchmark by 2% (Horizon end of interview score)

**Threshold:** Meet 2009 benchmark 88% overall satisfaction (Horizon end of interview score)

### Reliability & Service

A composite index based on a combination of reliability and service performance indicators to provide one index to assess reliability and customer service performance. The composite index is based on three contributing measurement indicator groups – short term system performance based on SAIDI and SAIFI, longer term system performance based on reliability trends benchmarked to a larger utility group, and current PBR Service Quality Indicators. Target is based on a 2% improvement on the 3-year average. Threshold is based on a 10% decrease in the 3-year average.

**Target:** 0.70

**Threshold:** 0.80

1  
2

## OPERATIONAL EXCELLENCE

### Continuous Improvement

Continue with improving the new customer connection process to be timelier, less costly and a better customer experience. Estimating metrics will be expanded to measure all estimates (capital projects and customer recoverable work) to continually improve the process of providing accurate estimates.

- **Target:** 90% of all construction projects (recoverable and capital) reconciled, closed and settled within 60 business days. **Threshold:** 80% of all construction projects (recoverable and capital) reconciled, closed and settled within 60 business days.
- **Target:** 90% of all recoverable customer connection projects estimated within 10% of actual costs. **Threshold:** 80% of all recoverable customer connection projects estimated within 10% of actual costs.
- **Target:** 80% of all capital construction projects estimated within 10% of actual costs. **Threshold:** 70% of all capital construction projects estimated within 10% of actual costs.

### Information Systems Processes and Technology Management

IT Systems and processes are foundational to the delivery of organizational change and operational excellence. Horizon Utilities has adopted the best practices and assessment framework against best practices based on Controls Objectives for Information and related Technology ("COBIT") and the Information Technology Infrastructure Library ("ITIL"). Horizon has set a 3 year internal target to achieve an index score of 3.5 in 2012. Horizon Utilities is forecasting a 2010 index score of 2.1.

The 2011 metrics are as follows:





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**QUESTION TC #11**

**Reference:** VECC #19 d)

**a)** What do the appended letters mean, i.e., does the appended A indicate actual spending and B indicate budget?

**b)** Is the table labeled 2007B correct?

**c)** Please provide the actual 2010 amounts spent.

**Response**

**a)** Yes. The appended “A” indicates “Actual” and the “B” indicates “Budget”.

**b)** Yes, the table is correct. There was not a specific budget in 2007 for the Business Development department.

**c)** Please find below the actual amounts spent for 2010. Please note these figures are subject to the review and final approval of 2010 financial results by Horizon Utilities’ Board of Directors.

2010A

	Salaries & benefits	Operating Expense	Distributable	Total
Horizon Utilities Corporation Sustainability	-	-	-	-
Business Development	-	-	-	-
Horizon Holding Inc.	385	375	39	799
<b>Total Business Development</b>	<b>385</b>	<b>375</b>	<b>39</b>	<b>799</b>

1  
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8 **QUESTION TC #12**

9 **Reference:** VECC #19 e)

10 **a)** Are the Information Systems Technology used to provide “support to all  
11 departments within the organization” included in rate base?

12 **b)** Does “all departments within the organization” include non-regulated  
13 departments?

14 **Response:**

15 **a)** Yes, the Information Systems Technology department assets are included in rate  
16 base. Please also refer to Horizon Utilities’ response to VECC Technical Conference  
17 Question 15.

18 **b)** The phrase quoted from Horizon Utilities’ response to VECC Interrogatory 19 e)  
19 references OM&A expenses incurred by support departments that are distributed to  
20 other internal cost centres, including the Information Systems Technology Department.  
21 Horizon Utilities confirms that the Information Systems Technology department OM&A  
22 expenditures are distributed to all departments, including non-regulated departments.

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**QUESTION TC #13**

**Reference:** VECC #20 d)

- a) Please update the 2010 forecast numbers to actual numbers.
- b) Is there any contingency amount typically included in these budgets?
- c) Please explain why budgeted total amounts exceed actual total amounts (or forecast amounts for 2010) for each year.

**Response**

a) The table below provides 2010 actual numbers. Please note these figures are subject to the review and final approval of 2010 financial results by Horizon Utilities’ Board of Directors.

**Budget Summary 2010**

	Actual	Budget
Salaries and benefits	289,903	371,909
Operating expenses	346,624	557,229
Distribution cost	117,011	118,728
Total cost	753,538	1,047,866

b) Contingency amounts are not typically built into the budgets. Budgets are derived based on the business plan and the initiatives and activities planned for the year.

1 c) The following is a summary of budget variances for each year:

2 **2008**

3 Actual Corporate Communications operating expenses for 2008 were \$18,856 or  
4 approximately 2% lower than budget for the year. Horizon Utilities respectfully submits  
5 that this is not a significant variance from budget.

6

7 **2009**

8 Total actual expenses for 2009 were \$42,848 or 5% lower than budget for the year.  
9 Operating expenses were \$105,837 lower than budget specifically reflecting the deferral  
10 of \$100,000 in communication costs in 2009, as documented in Board staff  
11 Interrogatory 5 in Horizon Utilities Z-Factor Application (EB-2009-0332), and as  
12 reproduced in response to VECC Interrogatory 3b) on the Preliminary Issue.

13 **2010**

14 Forecast operating expenses for 2010 are expected to be \$898,750 or \$149,116 lower  
15 than budget for the year primarily reflecting lower salaries and benefits and operating  
16 costs. The lower salaries and benefits expense reflects temporary staffing vacancies  
17 during the year. In particular, the Director of Corporate Communications position was  
18 vacant for approximately five months and a contract communication specialist position  
19 was vacant for 10 of 12 months. Due to these vacancies, other operating expenses  
20 were also lower as certain planned activities for the department could not be carried out  
21 in the absence of these positions. In addition, the 2010 budget included costs related to  
22 the website redevelopment project which was deferred to 2011, and included as part of  
23 this Application.

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**QUESTION TC #14**

**Reference:** VECC #22 e)

**Preamble:** VECC would like to understand whether the fleet size has changed in the regulated utility and, if so, which of the utility’s departments required a change in their fleets and why.

**a)** Using the 2008 year end as a starting point, please identify any increases overall in the number of vehicles in each of Horizon Utilities’ departments and, in each case, provide an explanation as to (i) the type of vehicle added and (ii) the reason why the department required an increase in fleet size.

**b)** Using the 2008 year end as a starting point, please identify any decreases overall in the number of vehicles in each of Horizon Utilities’ departments and, in each case, provide an explanation as to (i) the type of vehicle removed and (ii) the reason why the department no longer required the vehicle.

**c)** Please provide a brief summary of the vehicles included in rate base in the EB-2007-0697 Decision and the vehicles proposed to be included in rate base for the 2011 Test Year.

**Responses:**

**a) and b)** The table below provides responses to questions (a) & (b). The table summarizes increases and/or decreases to Horizon Utilities’ fleet between 2009 and 2011 using the 2008 year end fleet inventory based on description, requirements and departments:

Departments	2008	2009	2010	2011	Type of vehicle added or removed	Reason for Increase or decrease
Overhead	64	+3	+15	+7	Single Bucket (+5)(-5)	Purchase of new vehicles to replace end of life vehicles.
		-3	-8	-5	Digger Derrick (+1)(-1)	Purchase of new vehicle to replace end of life vehicle.
					Knuckle Crane (+1)(-1)	Purchase of new vehicle to replace end of life vehicle.
					Dump Truck (+2)(-2)	Purchase of new vehicles to replace end of life vehicles.
					Flat Deck (+3)(-3)	Purchase of new vehicles to replace end of life vehicles.
					Pickup Trucks (+4)(-4)	Purchase of new vehicles to replace end of life vehicles.
					Pickup Trucks (+5)	Two Additional Outside Inspectors Current manager without vehicle Additional Lead Hand Vehicle availability to support demand
					Mini Vans (+2)	Additional Supervisor Vehicle availability to support demand
					Enclosed Trailer (+1)	Environmental Risk Management
					Backyard Derrick (+1)	Reduce safety risks & restoration time
Underground	29	+1	+3	+3	Splicer Truck (+1)(-1)	Purchase of new vehicle to replace end of life vehicle.
		-1	-2	-2	Step Vans (+2)(-2)	Purchase of new vehicles to replace end of life vehicles. Vehicle availability to



					Step Van (+1)	support demand
					Pickup Trucks (+1)(-1)	Purchase of new vehicle to replace end of life vehicle.
					Pickup Trucks (+1)	Vehicle availability to support demand
					Deck Trailer (+1)(-1)	Purchase of new vehicle to replace end of life vehicle.
Substation	5	0	0	0	None	
Capital	7	+1	+2 -1	0	Ford SUV (+1)(-1)	Purchase of new vehicle to replace end of life vehicle.
					Ford SUV (+2)	Vehicle availability to support demand
Metering	22	+2 -2	0	+2 -2	Cargo Vans (+4)(-4)	Purchase of new vehicles to replace end of life vehicles.
Facilities	3	0	0	0	None	
Stores	4	0	0	0	None	
Fleet	8	0	0	0	None	
Total	142					

1

2 **c)** The table below provides a brief summary of the vehicles included in rate base  
3 consistent with the 2008 EDR Cost of Service Application Decision and the vehicles  
4 proposed in rate base for 2011 Test Year:

2008 EDR Decision		2011 EDR Application	
Service Support Trucks	80	Service Support Trucks	89
Line Trucks	48	Line Trucks	49
Digger Derrick Trucks	5	Digger Derrick Trucks	5
Passenger Trucks	9	Passenger Trucks	12
Total Fleet Inventory	142	Total Fleet Inventory	155

5

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**QUESTION TC #15**

**Reference:** VECC #27 a)

**a)** For each shared service provided, please indicate whether the associated assets are fully (or partially) in rate base and provide the opening net book value for 2011 of any and all such assets

**b)** If applicable, please indicate why it is appropriate for ratepayers to pay the full return component on shared services assets while providing services from these assets to non-utility entities.

**Response:**

**a)** To the extent any assets are used exclusively by a non-rate regulated entity in conjunction with shared services provided by Horizon Utilities, such assets are owned by the non-regulated entity and are not included in the rate base.

As documented in response to Energy Probe Interrogatory #14, the primary departments that provide shared services include Information Technology, Human Resources, Supply Chain and Finance. With respect to these departments, and as noted in response to VECC #27, the principle assets used in providing shared services are related to information technology costs such as computer hardware and software. Such assets are not allocated specifically to each department.

Based on the 2010 Fixed Asset Continuity Schedule filed in response to Energy Probe Technical Conference Question #1, the opening net book value as at January 1, 2011 for all computer hardware and software included in rate base is approximately \$6.8MM.

1 Included in the opening net book value is approximately \$3.1MM of net book value with  
2 respect to Horizon Utilities' investment in the Enterprise Resource Planning ("ERP")  
3 solution, which was implemented in 2008. Excluding the ERP investment, the opening  
4 net book value of the remaining computer hardware and software assets is  
5 approximately \$3.7MM.

6 As part of its 2008 EDR Application (EB-2007-0697), and as summarized in the Board's  
7 Decision, Horizon Utilities submitted that:

8 *"...affiliates would not receive any incremental value from the ERP*  
9 *which support complex business processes and high volumes*  
10 *transactions for Horizon's regulated distribution operations".*

11 The Board, in its decision, agreed that:

12 *"no adjustment to the development costs will be made for an*  
13 *allocation to Horizon's affiliates. The project was driven by the*  
14 *requirements of the distribution company, not by the corporation as*  
15 *a whole. The Board notes that the licensing and support costs will*  
16 *be allocated to the affiliates according to the established*  
17 *methodology."*

18 As a result, Horizon Utilities would exclude the net book value of its investment in ERP  
19 from the opening book value of computer hardware and software as it relates to the  
20 provision of shared services.

21 Horizon Utilities respectfully submits that the remainder of the computer hardware and  
22 software assets are not 100% used to provide shared services. Horizon Utilities has  
23 not undertaken a detailed cost allocation study to determine the other specific  
24 information technology assets used in providing shared services to non-regulated  
25 businesses.

26 Even if Horizon Utilities were to assume that 100% of the remaining hardware and  
27 software assets were used to provide shared services, Horizon Utilities respectfully  
28 submits that the amount allocated to each affiliate would not be material.

1 As an illustration, assuming that 100% of the remaining balance of NBV for  
 2 computer hardware and software assets were used in providing services to affiliates,  
 3 and assuming that an appropriate cost driver is the same driver used to allocate the  
 4 information technology OM&A costs, the allocation to the shared services would be  
 5 as follows:

	Horizon Utilities Regulated Ops		
January 1, 2011			
Estimated Opening NBV, Computer Hardware/Software	\$ 3,700,000		
		Hamilton Utilities Corporation/ Hamilton Hydro Services Inc.	Hamilton Hydro Services Inc. Water Heater Billing
Allocation % based on Information Technology Driver		1.559%	0.2000%
Allocation of NBV based on % above		\$ 57,683	\$ 7,400
2011 Rate of Return		7.27%	7.27%
Maximum ROE on NBV of Assets Used to Provide Shared Services		\$ 4,194	\$ 538

6  
 7 Please refer to Horizon Utilities' response to Energy Probe Technical Conference  
 8 Question 6 with respect to information technology costs allocated to the non-  
 9 regulated billing services.

10 Horizon Utilities respectfully submits that the allocated return on such assets would  
 11 not be material and that the incremental cost of conducting a detailed cost allocation  
 12 study would outweigh any resulting benefit to the ratepayer.

13 **b)** Horizon Utilities would not assert that it is appropriate for the ratepayers to pay  
 14 the full return component on shared services assets while these assets provide services  
 15 to non-utility entities. However, with due consideration for materiality, and as  
 16 demonstrated in the illustration in a) above, Horizon Utilities suggests that the costs to  
 17 the utility of performing a detailed cost allocation study to identify the assets and the  
 18 appropriate allocation to the non-utility entities, as well as the related administration  
 19 costs, would be well in excess of the return component on the amount of assets  
 20 ultimately allocated to the non-utility entities.