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VIA RESS, COURIER AND EMAIL

May 4, 2011

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

**Re: Ontario Energy Board (EB-2011-0011)
Toronto Hydro-Electric System Limited ("THESL")
Application for 2011-2014 Board-Approved CDM Programs**

The Ontario Power Authority ("OPA") is writing to file responses to undertakings taken by Julia McNally during her cross-examination on May 3, 2011. All five of the undertakings are being filed today as listed in the chart below.

Exhibit J3.3	UNDERTAKING NO. J3.3: To file a full version of Master Agreement.
Exhibit J3.4	UNDERTAKING NO. J3.4: To provide copies of written communication between Toronto Hydro and the OPA, as referenced.
Exhibit J3.5	UNDERTAKING NO. J3.5: To provide estimated figure OPA might be providing for programs.
Exhibit J3.6	UNDERTAKING NO. J3.6: To advise whether conditions were put on \$50 million allocated to Toronto Hydro with respect to implementation of CDM programs; to advise whether percentage allocations were the same as those in Exhibit No. K3.6.
Exhibit J3.7	UNDERTAKING NO. J3.7: To provide explanation of difference between \$1,356,000,000 figure in Exhibit J3.6 and \$1.4 billion in OPA budget.

May 4, 2011

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The OPA has used the Board's regulatory electronic submission system to file these documents and encloses the confirmation sheet, and two paper copies.

Yours truly,

(original signed)

Karen Frecker
Manager, Regulatory Proceedings

cc: George Vegh, McCarthy Tétrault (by email)
Glen A. Winn, Manager Regulatory Applications & Compliance (by email:
regulatoryaffairs@torontohydro.com)
EB-2011-0011 Interested Parties (by email)

UNDERTAKING NO. J3.3

REFERENCE

Hearing Day May 3, 2011 Tr. p. 46

UNDERTAKING NO. J3.3: TO FILE A FULL VERSION OF MASTER AGREEMENT.

RESPONSE

The Master Agreement referred to at page 46 of the transcript is filed as Attachment 1 to this exhibit.

MASTER CDM PROGRAM AGREEMENT

BETWEEN

ONTARIO POWER AUTHORITY

- and -

**LDC
(as defined herein)**

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Schedule C-3	Direct Install Lighting and Water Heating Initiative

MASTER CDM PROGRAM AGREEMENT

This Master CDM Program Agreement is made as of the 1st day of January, 2011 (the “**Effective Date**”).

BETWEEN:

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

(the “**OPA**”)

- and -

THE LOCAL DISTRIBUTION COMPANY THAT BECOMES LEGALLY BOUND HEREBY PURSUANT TO THE ELECTRONIC CONTRACTING AND REGISTRATION PROCESS SET OUT ON THE OPA WEBSITE, a corporation incorporated pursuant to the laws of the Province of Ontario,

(the “**LDC**”)

(each of the OPA and the LDC 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. The LDC is the Local Distribution Company for its service area.
3. The OPA received a directive dated April 23, 2010 from the Minister of Energy and Infrastructure (the “**Directive**”) to, among other things, design, deliver and fund province-wide CDM programs to be made available for participation by Local Distribution Companies in accordance with the criteria set out in the Directive.
4. In collaboration with the Local Distribution Companies, the OPA has designed the OPA-Contracted Province-Wide CDM Programs to assist the Local Distribution Companies in meeting their OEB-approved CDM targets. The OPA, in offering the OPA-Contracted Province-Wide CDM Programs, is required to meet its province-wide targets.

5. The LDC is required to meet its OEB-approved CDM targets and has Registered to participate in the Registered CDM Programs and the Registered Initiatives. During the Term, the LDC may choose to participate in other CDM Programs and Initiatives (including Additional Initiatives).
6. The OPA-Contracted Province-Wide CDM Programs consist of four programs that each target a different customer sector: Industrial, Commercial and Institutional, Residential and Low Income. Each CDM Program consists of several Initiatives.
7. Funding for the CDM Programs is recovered from electricity consumers in the Province of Ontario and, as such, is required to be delivered on a cost-effective basis.
8. The OPA and the LDC share a common goal and each acknowledges that cooperation with the intention of achieving such goal will be mutually beneficial. The LDC wishes to implement and deliver to its customers in its service area each of the Registered CDM Programs and each of the Registered Initiatives, and the OPA wishes to make available and fund each of the Registered CDM Programs and each of the Registered Initiatives, on a collaborative and cost-effective basis.
9. The LDC has strong relationships with its customers and, pursuant to the Directive and as and where specified in the Initiative Schedules, will play a primary role in delivering the Registered Initiatives to electricity consumers. The electricity consumers in the LDC's service area are electricity distribution customers of the LDC.
10. The rights and obligations of the OPA and the LDC in respect of each Initiative, in addition to those set out in the body of this Master Agreement, are specified in the Initiative Schedules attached to this Master Agreement, as this Master Agreement may be amended from time to time in accordance with the terms and conditions herein.

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

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In addition to the terms defined elsewhere in this Master Agreement, capitalized terms used in this Master Agreement will have the meanings ascribed to them in Schedule A-1.

1.2 Currency

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

1.3 Headings

The insertion of headings and a table of contents is for convenience of reference only and will not affect the interpretation of this Master Agreement. The terms "hereof", "hereunder", and similar expressions refer to this Master Agreement and not to any particular Article, Section or other part of this Master Agreement. Unless otherwise indicated, any reference in this Master Agreement to an Article, Section, Schedule or Exhibit refers to the specified article or section of or schedule or exhibit to this Master Agreement.

1.4 Number and Gender

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

1.5 Entire Agreement

This Master Agreement constitutes 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.

1.6 Governing Law and Attornment

This Master Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. For the purpose of all legal proceedings, this Agreement will be deemed to have been made and performed in the Province of Ontario and the courts of the Province of Ontario will have exclusive jurisdiction to entertain any action arising under this Master Agreement. OPA and LDC each hereby attorns to the jurisdiction of the courts of the Province of Ontario.

1.7 Amendments

Except as otherwise expressly permitted or specified herein, this Master Agreement will not be amended or supplemented except by a written agreement that: (a) is entered into by an authorized signatory of each of the Parties which, in the case of the OPA, must be an individual at the vice president level or above; and (b) expressly states that it is intended to amend or supplement, as the case may be, this Master Agreement. For greater certainty, all Additional Initiative Schedules will, once effective in accordance with the provisions of this Master Agreement, form part of this Master Agreement and the Master Agreement will be deemed to be amended accordingly.

1.8 Waivers

No waiver of any obligation or any remedy for breach of any provision of this Master Agreement will be effective or binding unless made in writing and agreed to by an authorized signatory of the Party purporting to give the same and, unless otherwise provided, will be limited to the specific obligation or breach waived. The failure of either Party at any time to require performance by the other Party of any provision of the Master Agreement will not affect in any way the full right to require such performance at any subsequent time; nor will a waiver by either Party of a breach of any provision of this Master Agreement be taken or held to be a waiver of the provision itself.

1.9 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 will not be construed or interpreted against the OPA or in favour of the LDC when interpreting such term or provision, by virtue of such fact.

1.10 Paramountcy

The provisions of the body of this Master Agreement, any Initiative Schedule and any other Schedule are to be read and interpreted together in relation to the Registered Initiative to which such Initiative Schedule and other Schedule applies. Except as expressly provided otherwise in this Master Agreement, any inconsistency between the provisions of the body of this Master Agreement, the Initiative Schedules and any other Schedule, will be resolved by giving meaning and effect to such provisions in the following order of precedence (in descending order):

- (i) the body of this Master Agreement and each Schedule that is not an Initiative Schedule; and
- (ii) the Initiative Schedule applicable to a Registered Initiative.

1.11 Laws and Regulations

Unless otherwise provided, any reference in this Master Agreement to any Laws and Regulations will be a reference to the Laws and Regulations as amended, restated, re-enacted or replaced from time to time.

1.12 Schedules

The following Schedules are attached to, and are to be read with and form part of this Master Agreement:

Schedule A-1	- Definitions
Schedule A-2	- CDM Programs and Initiatives
Schedule A-3	- Contract Administration
Schedule A-4	- Change Terms
Schedule A-5	- Funding Amounts
Schedule A-6	- Reporting Requirements
Schedule A-7	- Ministry Marks
Schedule B-1	- Residential CDM Program Initiatives 2011-2014
Schedule B-2	- Residential New Construction and Major Renovation Initiative 2011-2014
Schedule C-1	- Energy Audit Initiative
Schedule C-2	- Efficiency: Equipment Replacement Incentive Initiative
Schedule C-3	- Direct Install Lighting and Water Heating Initiative

ARTICLE 2 CDM PROGRAM ELEMENTS

2.1 Undertaking of Initiatives

Subject to the terms and conditions of this Master Agreement, during the Term, each Party will undertake and perform its respective obligations set forth in each Initiative Schedule pertaining to the Registered Initiatives. To the extent not provided in the body of this Master Agreement, the terms and conditions of each Registered Initiative will be as set forth in the Initiative Schedule relating thereto.

2.2 Duty of Care, Relationship of Parties

- (a) Each of the Parties acknowledges the accuracy of the recitals to this Master Agreement to the extent that such recitals apply to it and the intentions of the Parties.
- (b) Each Party agrees that its relationship with the other Party is an independent business relationship and in no way does this Master Agreement contemplate or create a relationship of employer and employee, partners, joint venturers, fiduciaries, principal and agent or any other relationship between the Parties. Without limiting the generality of the foregoing, each Party acknowledges that it is not a service provider to the other and that, subject to the terms and conditions of this Agreement, it will at all times be entitled to discharge its duties hereunder in a manner it determines in its sole discretion to be necessary or desirable in order to implement and deliver the Registered Initiatives.

2.3 Marketing

- (a) The OPA will:
 - (i) develop a marketing and communication plan and marketing materials for Registered Initiatives in collaboration with the EDA Representative but as determined by the OPA;
 - (ii) communicate such marketing and communication plan to the LDC;
 - (iii) market the Registered Initiatives throughout Ontario using the Marketing Standards and providing appropriately balanced “air cover support” between urban and rural areas;
 - (iv) in connection with any changes to the Marketing Standards that could affect the LDC’s obligations hereunder, following reasonable efforts to collaborate with the EDA Representative on such changes and the timing of such changes, provide a reasonable period of advance notice to the LDC, in each case having regard to the nature of such changes;
 - (v) create, develop and host a website (the “**Microsite**”) that:
 - (A) includes content describing the Initiatives; and
 - (B) enables the LDC, in its discretion, to engage in customization of specifically identified portions of certain pages of the Microsite to include LDC Marks and some custom content for display to the LDC’s customers; and

- (vi) include as part of its publicly available website a mechanism to link an electricity consumer to the LDC Microsite Pages or LDC Custom Microsite, as applicable.
- (b) The LDC:
- (i) will market each Registered Initiative to the relevant target sector, accurately describing each such Registered Initiative and accurately outlining the terms and conditions applicable to such Registered Initiatives in a manner that permits Persons to readily identify the Initiatives applicable to them;
 - (ii) will, in a manner it sees fit and having regard to the Initiative Schedule, develop and manage relationships with Eligible Persons for the purposes of identifying and undertaking CDM opportunities and promoting participation in the Registered Initiatives or other CDM projects to other Eligible Persons;
 - (iii) may, in its discretion, engage in customization of specifically identified portions of certain pages of the Microsite set aside for the LDC (the “**LDC Microsite Pages**”) to include an LDC Mark and some custom content for display to the LDC’s customers. If the LDC elects to engage in such customization, it will do so through the Program Management System. The LDC acknowledges that, should it not engage in such customization, then the LDC Microsite Pages will include the non-customized content provided by the OPA as part of the Microsite from time to time;
 - (iv) will ensure, if the LDC is engaged in customization of the LDC Microsite Pages and any other content generated by the LDC relating to the CDM Programs, that such content generated by the LDC is current, complete and accurate, and will immediately correct any such content that does not meet these requirements upon being advised of or otherwise becoming aware of any such issue;
 - (v) will include, as part of its publicly available website and in the manner specified in the Marketing Standards, a link to the Microsite or LDC Microsite Pages as applicable; and
 - (vi) will, in performing its obligations under this Master Agreement, including this Section 2.3 comply with the Marketing Standards. Without limiting the generality of the preceding sentence, the LDC will not use any marketing materials that do not comply with the Marketing Standards (including any use of a marketing template that has not been approved by the OPA) without first submitting to the OPA for, and obtaining from the OPA, approval to use such marketing materials. The OPA agrees to respond to any request for approval by the LDC within five (5) Business Days.

- (c) As an alternative to using the Microsite or LDC Microsite Pages for displaying content describing the Initiatives on a website, the LDC may seek the OPA's approval, which approval will not be unreasonably withheld, to implement a customized website to describe the Initiatives, and to display LDC Marks and some custom content to the electricity consumers in the LDC's service area (the "**LDC Custom Microsite**"). If the LDC implements such a customized website, the LDC agrees that it will be responsible for: (i) hosting the LDC Custom Microsite; (ii) creating the content for the LDC Custom Microsite to describe all CDM Programs and Initiatives; and (iii) ensuring that the LDC Custom Microsite complies with the Marketing Standards. The LDC further agrees that the LDC Custom Microsite will utilize and be integrated with the Program Management System for the purposes of Applications and other processes in the same way that the Microsite or LDC Microsite Pages utilize and are integrated with the Program Management System. If the OPA approves such request, the OPA will use Commercially Reasonable Efforts to assist the LDC to link the LDC Custom Microsite with the Program Management System and to ensure that the Program Management System is built to function in such manner so as to allow the LDC Custom Microsite to be linked to it, provided that the LDC will be responsible for the LDC's costs associated with the implementation of the LDC Custom Microsite, including, for greater certainty, all costs associated with the integration of the LDC Custom Microsite with the Program Management System and any third party licensing costs that apply to the LDC Custom Microsite and not the Microsite or LDC Microsite Pages.

2.4 Communication with Electricity Consumers

The Party that is primarily responsible for interaction with the public in the LDC's service area in respect of the Registered Initiatives will be identified in the applicable Initiative Schedule. If a Party receives any inquiries or complaints regarding any issue relating to or arising out of a Registered Initiative that is the responsibility of the other Party, including with respect to any of such other Party's third party service providers, such inquiries and complaints will be directed by the Party receiving such inquiry or complaint to the contact person of such other Party listed in Schedule A-3.

2.5 Technology Requirements

- (a) The OPA will use Commercially Reasonable Efforts to, by January 3rd, 2011 or as soon as possible thereafter, implement and operate the Program Management System and provide the LDC with access to the Program Management System in accordance with Sections 2.5(a) and 2.5(b). The OPA will use Commercially Reasonable Efforts to ensure that the Program Management System will be designed to facilitate necessary functions relating to the operation and administration of the CDM Programs, including the submission of Applications, transmittal of reports and other information, reporting, and data storage and retrieval. Without limiting the generality of the foregoing:

- (i) the OPA will use Commercially Reasonable Efforts to have available the functions necessary for consumer interface by January 3, 2011 in respect of the Registered Programs available as at such date;
 - (ii) the Program Management System will provide the LDC with access to unverified results achieved by the LDC for each Registered Initiative; and
 - (iii) the Program Management System will enable the LDC to access and export then-current data stored in the Program Management System that relates to Participants who are located in the LDC's service area.
- (b) Following the implementation of the Program Management System, the OPA will use Commercially Reasonable Efforts to:
 - (i) operate, support and maintain the Program Management System for the duration of the Term, including maintaining appropriate security and integrity safeguards within the Program Management System for the purposes of maintaining the confidentiality of data in accordance with the provisions of Article 12;
 - (ii) target that the Program Management System will be available for 98% of the Term; and
 - (iii) target remediation of incidents that affect the Program Management System within a period of twenty-four (24) hours or such other reasonable period of time taking into account the severity of the incident.
- (c) The OPA will:
 - (i) be responsible for any data entered into the Program Management System by the OPA, any OPA Other Service Provider, or any other third party acting on behalf of the OPA (which, for certainty, will not include any Local Distribution Company or any LDC Other Service Provider);
 - (ii) not insert or permit any third party for whom it is responsible at law (which, for certainty, does not include the LDC or any LDC Other Service Provider) to insert any Disabling Code into the Program Management System nor modify information on the Program Management System related to any Participant without such Participant's consent;
 - (iii) provide to the LDC forty-eight (48) hours advance notice of any scheduled (as opposed to emergency) maintenance to be performed on the Program Management System that will result in the Program Management System being unavailable along with an estimate of the duration of such unavailability; and

- (iv) provide to the LDC prompt notice of an event or circumstance occurring that results, or is likely to result, in the Program Management System being unavailable.
- (d) Following the implementation of the Program Management System, the LDC will use the functions available through the Program Management System for purposes relating to the delivery, operation, administration, processing of and reporting on Registered Initiatives. Without limiting the generality of the preceding sentence, the LDC will:
 - (i) follow and implement the Program Management System interface guidelines or other instructions, as may be amended or modified from time to time, received from the OPA and reasonably required or reasonably desirable to ensure the proper administration by the LDC of the Registered Initiative and the LDC's performance of its obligations under the Master Agreement using the Program Management System;
 - (ii) use the Program Management System to submit Applications, Participant Agreements, assessments, reports, and all other documentation or information required to be completed or provided by the LDC to the OPA in connection with each Registered Initiative; and
 - (iii) otherwise use the functionality that is available as part of the Program Management System from time to time during the Term for purposes relating to the delivery, operation, administration, processing of and reporting on Registered Initiatives by the LDC.
- (e) With respect to the use of the Program Management System, including, for greater certainty, any applicable LDC Microsite Pages or LDC Custom Microsite:
 - (i) the LDC will:
 - (A) control access to and use of the Program Management System by LDC users, including LDC employees, contractors, agents and LDC Other Service Providers, including the management of user logon IDs and passwords and compliance with third party licence restrictions (where the OPA has advised the LDC of such third party licence restrictions), such as user limitations in respect of Microsoft or other third party licenses procured by the OPA for use by or on behalf of the LDC;
 - (B) ensure that all links and all other interfaces to each of its LDC Microsite Pages are compatible with the Program Management System;

- (C) not insert or permit any third party for whom it is responsible at law (which, for certainty, does not include the OPA or any OPA Other Service Provider) to insert any Disabling Code into the Program Management System nor modify information on the Program Management System related to any Participant without such Participant's consent;
- (D) use Commercially Reasonable Efforts to cooperate with the OPA and OPA Other Service Providers at the OPA's request with respect to the testing, operation, support and maintenance of the Program Management System, including, if applicable, participation in contingency planning tests or failovers and testing of fixes, updates, enhancements to and new releases for the Program Management System;
- (E) in respect of any problem or suspected problem with the Program Management System:
 - (1) if such problem is discovered by the LDC, promptly notify the OPA of such problem; and
 - (2) use Commercially Reasonable Efforts where applicable and given the nature of the problem to cooperate with and assist the OPA to achieve resolution of such problems;
- (ii) the LDC will be responsible for any data entered into the Program Management System by the LDC, any LDC Other Service Provider, or any other third party acting on behalf of the LDC (which, for certainty, will not include any other Local Distribution Company or OPA Other Service Provider); and
- (iii) the LDC agrees that the OPA may, in its discretion, for emergency maintenance or reasons relating to suspected security breaches, fraud or unauthorized access or misuse, suspend access to any portion of the Program Management System, including, for greater certainty, any portion of the LDC Microsite Pages, without prior written notice to the LDC.
- (f) If the Program Management System is out of service for more than a 48-hour period but less than ten (10) Business Days, the OPA will devise a reasonable work-around and the LDC will use Commercially Reasonable Efforts to comply with such work-around instructions provided by the OPA from time to time.
- (g) If the Program Management System is out of service for greater than ten (10) Business Days, the OPA will devise a reasonable work-around and the LDC will use Commercially Reasonable Efforts to comply with such work-around instructions

provided by the OPA from time to time. The OPA shall be responsible for all reasonable incremental expenses directly related to the LDC complying with such work around instructions.

2.6 OPA Third Party Service Providers

- (a) The OPA may, in its discretion, retain third party service providers (each, an “**OPA Other Service Provider**”) to perform any of its responsibilities under this Master Agreement. The OPA will require that each OPA Other Service Provider is suitably qualified, licensed and experienced, assumes responsibility and liability for the quality of all work and materials in relation to Eligible Measures that it supplies, and carries insurance consistent with applicable industry standards.
- (b) At the OPA’s request, the LDC will cooperate with and assist OPA Other Service Providers in order to coordinate the OPA’s performance with the performance of the obligations of the LDC, including to the extent necessary for the foregoing purpose: (i) making available and providing information to the OPA and OPA Other Service Providers regarding any Registered Initiative; and (ii) upon the OPA’s request, complying with the instructions of OPA Other Service Providers to the extent relevant to the proper implementation of the Registered CDM Programs.
- (c) Except as contemplated by the terms of a Registered Initiative, the LDC will not provide instructions to any OPA Other Service Provider. If the LDC reasonably requires amendments to the duties performed by an OPA Other Service Provider or if the LDC has complaints regarding such OPA Other Service Provider, the LDC will submit all such requests and complaints in writing to the OPA. The OPA will assess such requests and complaints and determine the corrective action, if any, required, after considering input from the LDC.
- (d) The retention of an OPA Other Service Provider will not relieve the OPA from any obligation or liability under this Master Agreement. The OPA will remain responsible for the performance of all or any part of its obligations set out in this Master Agreement performed by any OPA Other Service Provider to the same extent as if such obligations were performed by the OPA. Any breach of this Master Agreement by any OPA Other Service Provider will be deemed to be a breach of this Master Agreement by the OPA.

2.7 Subcontracting by LDC

- (a) The LDC may subcontract any of its responsibilities under this Master Agreement to an Affiliate or a third party (each, an “**LDC Other Service Provider**”). In procuring goods or services for purposes relating to any CDM Program or otherwise to the performance by the LDC of its obligations under this Master Agreement, the LDC will comply with the applicable requirements set forth in Section 4.1.

- (b) The LDC will require that each LDC Other Service Provider is suitably qualified, licensed and experienced, assumes responsibility and liability for the quality of all work and materials in relation to Eligible Measures that it supplies and carries insurance consistent with applicable industry standards. Except as contemplated by the terms of a Registered Initiative, the OPA will not provide instructions to any LDC Other Service Provider.
- (c) The LDC will use Commercially Reasonable Efforts to:
 - (i) obtain industry standard warranties from any LDC Other Service Provider with which it subcontracts for the installation of Eligible Measures and in respect of any materials or equipment installed in connection with an Eligible Measure; and
 - (ii) engage subcontractors and material or equipment suppliers jointly or otherwise in cooperation with other Local Distribution Companies in order to achieve cost efficiencies.
- (d) The subcontracting of all or any part of the LDC's obligations set out in this Master Agreement to any LDC Other Service Provider will not relieve the LDC from any obligation or liability under this Master Agreement. The LDC will remain responsible for the performance of all or any part of its obligations set out in this Master Agreement performed by any LDC Other Service Provider to the same extent as if such obligations were performed by the LDC. Any breach of this Master Agreement by any LDC Other Service Provider will be deemed to be a breach of this Master Agreement by the LDC.

2.8 Participant Agreements

- (a) Subject to Section 2.8(b), where the Initiative Schedule for a Registered Initiative requires that the LDC enter into a Participant Agreement with an Eligible Person:
 - (i) such requirement will be stated in such Initiative Schedule;
 - (ii) a form of Participant Agreement will be provided by the OPA as an exhibit to such Initiative Schedule; and
 - (iii) the LDC will not modify in any way such Participant Agreement prior to entering into it with an Eligible Person.
- (b) If the applicable Initiative Schedules expressly permit it, the LDC may opt not to use the form of Participant Agreement provided by the OPA for a Registered Initiative, in which case, the LDC will enter into its own form of Participant Agreement; provided, however, that:

- (i) such form of Participant Agreement will contain, at a minimum and without modification, all of the provisions that are contained in the form of Participant Agreement provided by the OPA and identified as being mandatory provisions by the applicable Initiative Schedule; and
- (ii) the LDC will not include in its own form of Participant Agreement any provisions that could reasonably be expected to conflict or be inconsistent with a provision identified as mandatory pursuant to Section 2.8(b)(i).
- (c) The LDC will administer each Participant Agreement in accordance with the terms and conditions thereof and will use Commercially Reasonable Efforts to enforce its rights and perform its obligations thereunder.
- (d) Except in the case of a breach or default by a Participant under a Participant Agreement pursuant to which the LDC has decided, acting reasonably, to terminate such Participant Agreement, the LDC will not cause, consent to, or permit, any termination of a Participant Agreement or any material amendment, modification, variance or waiver of timely compliance with any terms or conditions of a Participant Agreement, other than amendments or modifications to cure any defective provisions contained therein. For certainty, any proposed amendment or variance of a provision identified as mandatory pursuant to Section 2.8(b) is deemed to be material.

2.9 Compliance with Laws and Regulations

- (a) The LDC will at all times during the Term be a Local Distribution Company and be licensed by the OEB as an electricity distributor.
- (b) The OPA will at all times during the Term be licensed by the OEB to exercise its powers and perform its duties under the *Electricity Act, 1998*.
- (c) Each Party will comply, in all material respects, with all Laws and Regulations required to be complied with in the performance of its obligations hereunder.
- (d) Each Party will 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 hereunder.

2.10 Company Representative

The LDC and the OPA will each, by notice to the other, appoint, from time to time, a representative (a “**Company Representative**”), who will be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose instructions, requests and decisions, provided the same are in writing signed by the respective Company Representative, will be binding on the appointing Party as to all matters

pertaining to this Master Agreement; provided, however, that the Company Representatives will not have the power or authority to amend this Master Agreement except as provided in Section 1.7. Except as otherwise provided herein, the Company Representatives will be the first point of contact between the Parties. The initial Company Representative for each Party is set forth in Schedule A-3, and in the case of the LDC, such initial Company Representative is deemed to be the LDC's conservation officer.

ARTICLE 3 CHANGE MANAGEMENT PROCESS

3.1 Change Terms

- (a) Except as provided in Section 3.1(b) and Section 3.1(c), the terms and conditions set out in Schedule A-4 (the "**Change Terms**") will apply to each request for the following:
 - (i) any Minor Change, and
 - (ii) any Major Change, including any addition of a CDM Program or any Additional Initiatives.
- (b) The Change Terms will not apply to any of the following:
 - (i) the termination of any existing Initiative, Registered Initiative, CDM Program or Registered CDM Program or the deletion of any existing Initiative Schedule applicable to a Registered Initiative in any of the foregoing cases in accordance with Section 3.3(a)(ii), Section 7.3 or any provision of Article 10; or
 - (ii) any addition of Registered Initiatives or Registered CDM Programs pursuant to Section 3.2 or Section 3.3(a)(i).
- (c) Unless otherwise expressly provided in this Master Agreement, all other amendments or supplements to this Master Agreement will be made in accordance with Section 1.7.
- (d) Each Party acknowledges and agrees that it will be bound by any rights and obligations that it may become entitled to and liable to perform pursuant to the Change Terms. Each Party will take all actions within its control to cause the EDA Representative to implement the Change Terms. It is the intention of the Parties that the Change Terms and the terms of Section 3.1 will be binding upon the OPA and all Participating LDCs that participate in a Registered CDM Program or a Registered Initiative.

3.2 C&I, Industrial and Low Income Programs

- (a) The Parties acknowledge that the Energy Audit Initiative, the Efficiency: Equipment Replacement Incentive Initiative and the Direct Install Lighting and Water Heating Initiative are the initial Initiatives forming the C&I Program (the **“Initial C&I Initiatives”**). In order to finalize the remaining Initiatives forming the C&I Program and the Industrial Program, the OPA will, and the LDC will cause the EDA Representative to:
 - (i) take all necessary steps to collaborate to finalize the Initiative Schedule for the New Construction Initiative and the form of the Participant Agreements applicable thereto as soon as possible but in any event no later than January 31, 2011;
 - (ii) take all necessary steps to collaborate to finalize the Initiative Schedules for the Direct Service Space Cooling Initiative and the Building Commissioning Initiative (the **“Remaining C&I Initiatives”**) and the form of the Participant Agreements applicable thereto as soon as possible but in any event no later than February 18, 2011; and
 - (iii) take all necessary steps to collaborate to finalize the Initiative Schedules for the Industrial Program and the forms of the Participant Agreements applicable thereto as soon as possible but in any event no later than February 28, 2011.

If the C&I Program is already a Registered CDM Program in respect of the LDC, the Remaining C&I Initiatives, when finalized, will be deemed to be Registered Initiatives that are part of such Registered CDM Program following notice by the OPA to the LDC of such finalization.

- (b) If and when the OPA introduces the Industrial Program or the Low Income Program, it will notify the LDC of the method by which the LDC may be Registered in respect of such CDM Program. If the LDC chooses to deliver any such CDM Program it will submit a Registration in accordance with such notification. Once Registered, each Additional Initiative Schedule will be duly entered into as an amendment to this Master Agreement in accordance with Section 1.7 and the Initiative described therein will be deemed to be a Registered Initiative that is part of such CDM Program, which will be deemed to be a Registered CDM Program. Until such time as the Remaining C&I Initiatives and the Industrial Program Initiatives are available, the Parties will use Commercially Reasonable Efforts to devise a reasonable work-around for the Program Management System functions that are not yet available in order to implement the C&I Program Initiatives and the Industrial Program Initiatives.

3.3 Changes by LDC

- (a) No more frequently than once a calendar year of the Term, the LDC may:
- (i) if it has not Registered for participation in such CDM Program pursuant to Section 3.2 (or has so Registered but subsequently terminated its participation pursuant to Section 3.3(a)(ii)), effective as of the first day of a calendar month, Register for participation in a CDM Program by providing the OPA with notice of its intention to Register for such CDM Program at least thirty (30) days prior to the intended effective date; and
 - (ii) effective as of January 1, terminate its participation in a Registered CDM Program, provided that it has participated in such Registered CDM Program for at least one year (or part thereof in the case of a Registered CDM Program that the LDC participates in pursuant to Section 3.2), by providing the OPA with notice no later than the December 1 immediately preceding the intended January 1 effective date of its intention to terminate its participation in such Registered CDM Program, and the provisions of Section 10.3(b) will become effective, *mutatis mutandis*, as if the OPA had terminated the Registered CDM Programs or Initiative Schedules pursuant to Section 10.3(a).
- (b) Once the LDC has Registered to participate in a CDM Program in accordance with Section 3.3(a), each Initiative pertaining to such CDM Program will become a Registered Initiative, the Initiative Schedules for which will be deemed to form part of this Master Agreement. For greater certainty, the submission of a Registration by the LDC in respect of such CDM Program after the Effective Date will not reduce or increase the amount of the Program Administration Budget of the LDC but will result in the payment schedule for such CDM Program in Table 1 of Schedule A-5 being revised by the OPA to proportionately increase the remaining semi-annual advances on the remaining first Business Days of January and July in the remainder of the Term to permit such amount to be paid in full during the remaining Term. The first semi-annual payment will be made no later than twenty (20) days after the date that the LDC is so Registered and the LDC has delivered an invoice for such payment in accordance with Section 4.6, and the remaining payments will be made on the remaining first Business Days of January and July.

ARTICLE 4 FUNDING AND PAYMENT TERMS

4.1 General Principles Applicable to LDC's Use of OPA-Provided Funding

- (a) The LDC represents, warrants and covenants that it has, and will at all times during the Term maintain, internal by-laws, policies or other binding rules designed to ensure prudent use by the LDC of ratepayer funds, including rules relating to: (A) the LDC's procurement of products and services from third party service providers; and (B) expenses that, if incurred by or on behalf of the LDC, its employees or representatives, are properly incurred and therefore eligible for reimbursement by the LDC (collectively, the "**LDC Expenditure Policies**") that:
 - (i) are consistent with Laws and Regulations; and
 - (ii) have been approved by the LDC's board of directors (or equivalent) or an individual or committee authorized by such board.
- (b) The LDC will use the funds provided to it by the OPA hereunder in good faith and in a reasonable and prudent manner in accordance with the LDC Expenditure Policies and only for purposes solely related to the OPA-Contracted Province-Wide CDM Programs. Without limiting the generality of the preceding sentence, the LDC will:
 - (i) use the Program Administration Budget only for LDC Eligible Program Administration Expenses;
 - (ii) not exceed the permitted amounts for an LDC Eligible Program Administration Expense provided for in the LDC Expenditure Policies; and
 - (iii) follow competitive procurement processes unless a competitive procurement process is not required for a specific transaction pursuant to the LDC Expenditure Policies.

4.2 Program Administration Budget Amounts

- (a) The OPA will provide pre-funding in accordance with Table 1 of Schedule A-5 to the LDC for LDC Eligible Program Administration Expenses incurred by the LDC during the Term in the performance of its obligations in respect of each Registered CDM Program. The total of such pre-funding in respect of a Registered CDM Program will not exceed such CDM Program's Program Administration Budget, as set forth in Section 1 of Schedule A-5, as such amount may be adjusted in accordance with the terms hereof.
- (b) Except as provided in this Section 4.2 for the C&I Program, the OPA will advance to the LDC semi-annually, but not earlier than the first Business Day of each January

and July of the Term, an amount calculated as the percentage of the Program Administration Budget for each applicable Registered CDM Program for the applicable six-month period as set forth in Table 1 of Schedule A-5; provided, however, that the OPA will only be required to advance funds pursuant to this Section 4.2(b) in respect of a CDM Program from the time that such CDM Program is Registered as provided in Section 3.2 or Section 3.3, as applicable. If the LDC has Registered to deliver the C&I Program when it comprises only the Initial C&I Initiatives, the OPA will advance on or before the 20th day following the C&I Program becoming a Registered CDM Program and receipt by the OPA of the invoice required by Section 4.6 half of the Program Administration Budget pre-funding amount payable for the first six-month period of the Term as set forth in Table 1 of Schedule A-5. On or before the 20th day following the Remaining C&I Initiatives becoming Registered Initiatives pursuant to Section 3.2(a) and receipt by the OPA of the invoice required by Section 4.6, the OPA will advance the remaining half of such first Program Administration Budget pre-funding amount. The LDC may only use the funds advanced pursuant to this Section 4.2(b) to pay LDC Eligible Program Administration Expenses as they become due. The LDC will not use any part of the Program Administration Budget for a Registered CDM Program to pay LDC Eligible Program Administration Expenses incurred in connection with another Registered CDM Program or any other matter.

4.3 Participant Based Funding and Participant Incentives Payments

The OPA will pay to the LDC monthly in accordance with the applicable Initiative Schedule the Participant Based Funding Amount and Participant Incentives, if any, for each Registered Initiative. For certainty, not all Initiatives provide for Participant Based Funding Amounts or Participant Incentives.

4.4 Capability Building Funding Payments

The OPA will pay to the LDC monthly in accordance with the applicable Initiative Schedule the Capability Building Funding Amount, if any, for each Registered Initiative. For certainty, not all Initiatives provide for Capability Building Funding Amounts.

4.5 Cost Efficiency Incentive

For each Registered CDM Program, the LDC is entitled to receive and retain from the funds of such Registered CDM Program's Program Administration Budget that remain unspent and not payable as incurred but unpaid LDC Eligible Program Administration Expenses at the end of the Term, an incentive (the "**Cost Efficiency Incentive**") as calculated pursuant to Schedule A-5, provided that:

- (a) no LDC Event of Default has occurred and is continuing;

- (b) LDC Eligible Program Administration Expenses are less than the Program Administration Budget for such Registered CDM Program;
- (c) the LDC has used Commercially Reasonable Efforts to achieve the Electricity Savings Target and the Peak Demand Savings Target for such Registered CDM Program; and
- (d) such Registered CDM Program has not been terminated pursuant to Article 10 or otherwise.

4.6 Payment Procedure and Invoicing

- (a) The OPA will not be obligated to pay any amount pursuant to Sections 4.2 to 4.5, inclusive, unless it has received from the LDC invoices issued in accordance with this Section 4.6 with respect to Program Administration Budget pre-funding, Participant Based Funding Amounts, Capability Building Funding Amounts and Participant Incentives (in each case, plus Applicable Taxes) payable to the LDC by the OPA, as applicable.
- (b) The OPA will use Commercially Reasonable Efforts to provide functionality in the Program Management System to enable the creation and administration of billing reports for each Registered CDM Program (“**Billing Reports**”). Following notice from the OPA of the implementation of this functionality, the LDC will use the functions relating to the creation and administration of Billing Reports pursuant to the reasonable instructions received from the OPA, as such instructions may be reasonably amended or modified from time to time.
- (c) The LDC will invoice the OPA with respect to all Program Administration Budget pre-funding, Participant Based Funding Amounts, Capability Building Funding Amounts and Participant Incentives, and each invoice (other than for Program Administration Budget amounts) must attach the Billing Report that is generated by the Program Management System pertaining to such invoiced amounts. For certainty, invoices for Program Administration Budget pre-funding are for administration purposes and supporting information is not required to be submitted therewith by the LDC.
- (d) Prior to the implementation of the Billing Report functionality of the Program Management System, or if the OPA notifies the LDC that the Program Management System is not in service, the LDC will prepare invoices for submission to the OPA and will attach all supporting documentation and information to the invoice, all in form and substance acceptable to the OPA, acting reasonably, pursuant to this Section 4.6 and as may be further provided in the respective Initiative Schedules.
- (e) The LDC is entitled to invoice the OPA at any time for the period of time set forth in the invoice (the “**Billing Period**”) for:

- (i) payment of the percentage of the Program Administration Budget for each Registered CDM Program payable to the LDC in the Billing Period (which must correspond with the payment schedule in Table 1 of Schedule A-5);
- (ii) payment of the Participant Based Funding Amount or the Capability Building Funding Amount, if any, for the Registered Initiatives for which the LDC performed its obligations in such Billing Period;
- (iii) advanced funding of the Participant Incentives that the LDC is required to pay to Participants pursuant to a Participant Agreement entered into by the LDC in respect of the Registered Initiatives; and
- (iv) funding of the Participant Incentives that the LDC is required to pay to Participants, or that the LDC directs the OPA to pay to a Participant or third party, pursuant to a Participant Agreement following the implementation of Eligible Measures pursuant to the Participation Agreement entered into by the LDC in respect of the Registered Initiatives,

(the total of such amounts being the “**Funding Amount**”). The LDC will provide one invoice to the OPA in respect of each Registered CDM Program for the Funding Amount for such Billing Period, clearly stating the Registered Initiatives and the types of payments pursuant to Sections 4.2 to 4.5, inclusive, comprising such Funding Amount, and as such invoice and the invoicing requirements in respect thereof, if any, may be provided for in the applicable Initiative Schedule.

- (f) The LDC will be paid by the OPA on or before the twentieth day (the “**Payment Date**”) following receipt of an Invoice in accordance with this Section 4.6.
- (g) The OPA will have no obligation to pay any amount invoiced if the invoice was delivered to the OPA more than one hundred and fifty (150) days following the date on which the LDC’s right to invoice the OPA for such payment arose, regardless of the invoice date.
- (h) The OPA may dispute any part of an invoice or withhold payment of any portion of any amounts due to the LDC under this Master Agreement if the OPA asserts in good faith that:
 - (i) any of the amounts requested for payment are not LDC Eligible Program Administration Expenses, Participant Based Funding Amounts, Capability Building Funding Amounts, Participant Incentives or are otherwise not in compliance with this Master Agreement; or
 - (ii) an invoice or supporting materials submitted by the LDC are not in accordance with the criteria specified in this Master Agreement.

- (i) The OPA will provide notice to the LDC of any such dispute or withholding within ten (10) Business Days of receipt of such invoice together with reasons for such rejection. The LDC will provide any additional information requested or take such other steps necessary to substantiate the invoice or correct any deficiency or error therein. The OPA may withhold payment of the disputed amount until the dispute or failure is resolved in accordance with this Section 4.6(i) and, for greater certainty, any such withholding will not thereby constitute or be deemed to constitute a default or breach by the OPA of this Master Agreement. If within twenty (20) Business Days of the LDC's receipt of such notice the Parties have not resolved the dispute or failure or the OPA has not notified the LDC that it will pay the withholding, the Parties will refer the dispute for resolution in accordance with the process set out in Article 13. Failure by the OPA to give notice of a dispute or failure or the payment by the OPA of an amount invoiced will not affect the OPA's right to later initiate a Dispute with respect to such amount, provided the OPA exercises the foregoing right within one hundred and twenty (120) days after having actual knowledge (including through the exercise of its audit rights pursuant to Section 7.1) that such amount should be the subject of a Dispute.

4.7 Representations in Invoices

- (a) Upon submission by the LDC of each invoice submitted pursuant to Section 4.6(a), such invoice will be deemed to contain the following representations from the LDC:

"LDC hereby represents to the Ontario Power Authority and acknowledges that the Ontario Power Authority is relying on such representations:

 - 1. This invoice is in relation to a Registered CDM Program.
 - 2. This invoice and the information provided herein are true and complete in all materials respects.
 - 3. The amounts in this invoice are all Program Administration Budget advances, Participant Based Funding Amounts, Capability Building Funding Amounts or Participant Incentives payable to the LDC in accordance with the terms and conditions of such Registered CDM Program and/or Registered Initiative.
 - 4. The LDC is in compliance with all of its obligations under the Master Agreement."
- (b) If the LDC is unable to provide the representation contemplated by 4.7(a), it will provide notice to the OPA with a reasonably detailed explanation.

4.8 Responsibility for Taxes

- (a) In addition to any amounts payable to the LDC under this Agreement and in connection with the performance of its obligations or a Participant Incentive hereunder, the OPA will pay to the LDC any applicable HST and any other applicable sales or use taxes ("**Applicable Taxes**"). Where mandated, any Applicable Taxes collected by the LDC under this Section 4.8 will be held in trust and timely accounted for in a return filed by it with the Canada Revenue Agency, or other appropriate Governmental Authority, for the reporting period in which the liability for such Applicable Taxes arose. The LDC will provide to the OPA sufficient supporting documentation, as requested by the OPA, to facilitate and support the OPA in claiming input tax credits in respect of such amounts paid. In addition, if the OPA has reasonable grounds to challenge whether Applicable Taxes should be paid by the OPA on any such amounts, the LDC will use Commercially Reasonable Efforts to provide assistance to the OPA with such challenge.
- (b) The LDC will be responsible for all Taxes and amounts exigible on, imposed in respect of or relating to the revenues earned by the LDC in the performance of its obligations hereunder or attributable to any payments pursuant to Sections 4.2 to 4.5, inclusive, Taxes based on its own capital or net income, employment Taxes in respect of the LDC's personnel, and Taxes on any property owned by the LDC. In addition, the LDC will be responsible for all Applicable Taxes incurred by the LDC in the performance of its obligations hereunder. The LDC will be responsible for the arrangements to pay all such Taxes and Applicable Taxes in a timely manner when due and payable.

4.9 Funding Payment Recovery

If the LDC recovers funds from a Participant pursuant to a Participant Agreement or any other arrangement relating to a Registered Initiative, including by the enforcement of the LDC's rights pursuant to a Participant Agreement or otherwise, such funds will be repaid by the LDC to the OPA forthwith following receipt by the LDC.

4.10 Post-Termination Administration Costs

- (a) Following the expiration of the Term, the LDC will provide to the OPA on or before February 28, 2015, together with its accounting of the LDC Eligible Program Administration Expenses contemplated by Section 8.1(a)(i), an estimate of its Post-Termination Administration Costs from and after December 31, 2014 (the **"2015 Estimate"**). Upon the OPA's receipt and approval of the LDC's 2015 Estimate, the Cost Efficiency Incentive will be calculated pursuant to Section 4.5 and Schedule A-5 and the LDC shall repay to the OPA the positive difference, if any, between the aggregate Program Administration Budget amounts advanced to the LDC for all Registered CDM Programs less the aggregate of the Cost Efficiency Incentives and LDC Eligible Program Administration Expenses for such Registered CDM Programs.
- (b) As a final reconciliation of the Post-Termination Administration Costs, the LDC will provide to the OPA after December 31, 2015 and on or before February 28, 2016 an accounting of its actual Post-Termination Administration Costs incurred during the preceding calendar year and an updated estimate of the remaining Post-Termination Administration Costs (the **"2016 Estimate"**), if any. Upon the OPA's receipt of the foregoing information and approval of the LDC's 2016 Estimate, the Cost Efficiency Incentive calculation will be recalculated pursuant to Section 4.5 and Schedule A-5 using the actual Post-Termination Administration Costs incurred during 2015 and the approved 2016 Estimate instead of the 2015 Estimate. If as a result of this reconciliation the calculation of the Cost Efficiency Incentive produces a different result than the calculation conducted in Section 4.10(a), the relevant Party will pay to the other Party the difference, subject to Section 4.10(d).
- (c) In the event a Registered CDM Program was terminated prior to the end of the Term, the LDC will provide to the OPA after December 31, 2015 and on or before February 28, 2016, together with the information contemplated in Section 4.10(b), if any, an accounting of its actual Post-Termination Administration Costs for the period commencing on the effective date of the termination of such Registered CDM Program and ending December 31, 2015, together with an estimate of any remaining Post-Termination Administration Costs relating to such Registered CDM Program. Upon the OPA's receipt of the foregoing information and approval of the LDC's estimate, if any, if the LDC's original estimated Post-Termination Administration Costs is greater than the actual Post-Termination Administration Costs and updated estimate, the LDC shall repay to the OPA the difference.
- (d) For certainty, nothing in this Section 4.10 will result in the OPA providing funding in excess of such CDM Program's Program Administration Budget.

ARTICLE 5 OWNERSHIP AND LICENCE

5.1 Ownership of OPA Property

- (a) As between the LDC and the OPA, the OPA and its licensors are and will be the exclusive owner of all of the following and all Intellectual Property Rights therein (collectively, the “**OPA Property**”):
 - (i) all hardware, software, systems, documentation, content, Trade-marks, Confidential Information or other information or intellectual property (including business rules and business processes) that is or has been procured, created or developed: (A) by the OPA (whether alone or jointly with one or more Persons, including the LDC and the OPA Other Service Providers, and whether such activities occurred prior to or after the Effective Date and independent of or in connection with the CDM Programs), including the Program Management System; or (B) by the LDC or any LDC Other Service Provider that relates to the CDM Programs and uses funding provided to the LDC by the OPA pursuant to this Master Agreement including case studies prepared by the LDC or LDC Other Service Providers and marketing materials developed by the LDC or LDC Other Service Providers for any Registered Initiatives (other than LDC Marks used in such marketing materials);
 - (ii) all OPA Marks; and
 - (iii) all reports and other information created, generated, output or displayed by the Program Management System or as a result of the delivery of the CDM Programs.
- (b) All right, title and interest, including all Intellectual Property Rights, in OPA Property will vest in the OPA, immediately upon creation and regardless of the state of completion of such OPA Property.
- (c) The LDC will acquire no rights to any OPA Property other than the licence rights expressly granted in Section 5.4.

5.2 Notice, Assignment and Waiver

- (a) The LDC will notify the OPA of any OPA Property procured, created or developed by the LDC or any LDC Other Service Provider, including case studies prepared by the LDC or LDC Other Service Providers and marketing materials developed by the LDC or LDC Other Service Providers for any Registered Initiatives (other than LDC Marks used in such marketing materials).

- (b) As partial consideration for the payments described in Article 4, the LDC:
 - (i) hereby assigns and transfers to the OPA;
 - (ii) agrees to assign and transfer to the OPA; and
 - (iii) agrees to require LDC Other Service Providers to assign and transfer to the OPA,

as and when created, all right, title and interest, including Intellectual Property Rights, throughout the world in and to all OPA Property to the extent any right, title, interest or Intellectual Property Right in OPA Property does not automatically and immediately vest in the OPA.

- (c) The LDC will require all LDC personnel and personnel of LDC Other Service Providers to waive, for the benefit of the OPA, their respective moral rights in and to the OPA Property.

5.3 Ownership of LDC Property

- (a) The LDC is and will be the exclusive owner of all of the following and all Intellectual Property Rights therein (collectively, the “**LDC Property**”):
 - (i) all hardware, software, systems, documentation, content, Trade-marks, Confidential Information or other documentation or intellectual property (including business rules and business processes) that is or has been procured, created or developed by the LDC and that was not procured, created or developed using funding provided to the LDC by the OPA pursuant to this Master Agreement (whether alone or jointly with one or more Persons, other than the OPA or an OPA Other Service Provider, and whether such activities occurred prior to or after the Effective Date and independent of or in connection with the CDM Programs), other than OPA Property;
 - (ii) all LDC Marks; and
 - (iii) all marketing collateral or other materials containing any LDC Marks and no OPA Marks.
- (b) All right, title and interest, including all Intellectual Property Rights, in the LDC Property will vest in the LDC, immediately upon creation and regardless of the state of completion of such the LDC Property.
- (c) The OPA will acquire no rights to any LDC Property other than the licence rights expressly granted in Section 5.5.

5.4 Grant of Licences by OPA to the LDC

- (a) The OPA grants to the LDC, during the Term, a fully paid-up, royalty-free, non-exclusive, non-transferable licence to:
 - (i) access, use and copy OPA Property (other than any OPA Marks), to the extent required by the LDC in order to market, support, implement and deliver the Registered Initiatives; and
 - (ii) allow LDC Other Service Providers to exercise the rights referred to in Section 5.4(a)(i) for the purposes set out in Section 5.4(a)(i).
- (b) The OPA grants to the LDC, during the Term, a non-exclusive, non-transferable, royalty-free licence to display the OPA Marks solely in connection with the performance by the LDC of its obligations in Section 2.3(b). All such displays of the OPA Marks must comply with the applicable Marketing Standards.

5.5 Grant of Licences by the LDC to the OPA

- (a) The LDC grants to the OPA, an irrevocable, fully paid-up, royalty-free, non-exclusive licence during the Term to:
 - (i) access, use and copy all LDC Property (other than LDC Marks) to the extent required by the OPA in order to design, develop, market, support, implement and deliver the CDM Programs and Initiatives; and
 - (ii) allow OPA Other Service Providers to exercise the rights referred to in Section 5.5(a)(i) for the purposes set out in Section 5.5(a)(i).
- (b) The LDC grants to the OPA, during the Term, a non-exclusive, non-transferable, royalty-free licence to display the LDC Marks solely in connection with the performance by the OPA of its obligations in Section 2.3(a). All such displays of the LDC Marks will comply with the reasonable guidelines with respect to the display of the LDC Marks provided by the LDC to the OPA from time to time.

5.6 Grant of Sublicence by the OPA to the LDC

In addition to the terms set forth in Section 5.4(b), the following terms apply with respect to the Ministry Marks:

- (a) The OPA hereby grants to the LDC a fully paid-up, royalty-free, non-exclusive, non-transferable sublicence (the “**Sublicence**”) to use, advertise and display the Ministry Marks in association with the CDM Programs.
- (b) The Ministry Marks are key visual identifiers of the CDM Programs. The form of each of the Ministry Marks is set out in the attached Schedule A-7. The

specifications of each of the Ministry Marks, including colour and font, are also set out in Schedule A-7. The Ministry Marks must be identified with the footnote "A mark of Her Majesty the Queen in right of Ontario and protected under Canadian trademark laws. Used under sublicense." or such other footnote set forth in the Marketing Standards from time to time.

- (c) The LDC acknowledges that the Ministry Marks and the whole of the goodwill associated therewith, whether now existing or arising in the future, are the exclusive property of Her Majesty the Queen in right of Ontario, as represented by the Ministry of Energy. The LDC will acquire no right, title or interest in or to the Ministry Marks, and any and all goodwill associated therewith will enure exclusively to the benefit of the Ministry of Energy.
- (d) Each and every use by the LDC of one or more of the Ministry Marks must comply with all of the conditions set out below:
 - (i) the use of the Ministry Marks must be in accordance with the form and specification set out in Schedule A-7 (unless otherwise directed under Section 5.6(f)). Any modification of the Ministry Marks is specifically prohibited, except that the Ministry Marks, when used as word marks, may appear in any form;
 - (ii) the LDC will not register, or apply for the registration of, any trade-mark, corporate name, trading style or domain name integrating, in whole or in part, the Ministry Marks, or any confusingly similar trade-marks, corporate names, trading styles or domain names;
 - (iii) the LDC will not use the Ministry Marks in a manner which could, in the OPA's reasonable opinion, bring the Ministry Marks, the OPA, or the Ministry of Energy into disrepute or which could otherwise damage the goodwill attaching to the Ministry Marks;
 - (iv) the use of the Ministry Marks must be in a context that is factually correct and not misleading;
 - (v) the Ministry Marks may be used solely for the purposes of advertising and promotional activities that are related to the CDM Programs; and
 - (vi) the use of the Ministry Marks must comply with all federal, provincial and municipal laws and regulations.
- (e) From time to time, if requested by the OPA, the LDC will provide to the OPA samples of any advertising, promotional materials, signs, displays or other materials on which the Ministry Marks are used or displayed in connection with the offering for performance or performance of any services. From time to time, if requested by

the OPA, upon reasonable advance notice from the OPA, the LDC will allow the OPA to inspect the premises of the LDC, or any other premises where wares bearing the Ministry Marks are being distributed or where services are being performed in association with the Ministry Marks to ensure that the LDC is maintaining the standard and quality of products and services required by the OPA.

- (f) If directed to do so by the Ministry of Energy, the OPA or its authorized representative may give directions to the LDC relating to the colour, font, proportion and correct usage standards of the Ministry Marks, and all such directions will be followed promptly by the LDC after a reasonable notice period to be agreed on between the LDC and the OPA.
- (g) The LDC will keep proper records related to each use of the Ministry Marks in accordance with Section 7.1 for the term of the Sublicence and for the following three (3) years, and the records will be open to audit and inspection by the OPA in accordance with that Section.
- (h) The LDC will promptly notify the OPA in writing of: (i) any actual, suspected or threatened infringement of the Ministry Marks of which the LDC becomes aware; and (ii) any allegation or complaint made to the LDC by any third party that the Ministry Marks are invalid, that use of the Ministry Marks infringes any third party rights, or that the Ministry Marks are confusingly similar to any other trade-mark or trade name. The LDC will not make any admissions in respect of these matters other than to the OPA and will, in each case, provide the OPA with all relevant information in its possession at the sole cost and expense of the OPA. The LDC may not institute any proceedings with respect to any actual or suspected infringement of the Ministry Marks without the prior written consent of the OPA.
- (i) The OPA may, on five (5) months prior notice to the LDC, terminate the Sublicence at any time for any reason.
- (j) On the expiration or termination of this Agreement or the Sublicence, as the case may be, the LDC will cease to use all the Ministry Marks, and will destroy all copies of the Ministry Marks in its possession or under its control.

5.7 Use of Program Personal Information

Each Party will have the right to use Program Personal Information (in individual or aggregate form) in connection with the exercise of its rights or performance of its obligations under this Master Agreement. In addition, the OPA will have the right to use Program Personal Information for internal purposes in connection with the fulfilment of its mandate and objectives relating to electricity systems in Ontario.

5.8 Mutual Representations and Warranties

- (a) The OPA represents and warrants that it has obtained from third parties all authority, power and right to grant to the LDC the licences set forth in Section 5.4 and the Sublicence.
- (b) The LDC represents and warrants that it has obtained from third parties all authority, power and right to grant to the OPA the licences set forth in Section 5.5.

ARTICLE 6 ENVIRONMENTAL ATTRIBUTES

6.1 Environmental Attributes

- (a) Except with the prior written consent of the OPA, such consent not to be unreasonably withheld, all Environmental Attributes arising in respect of Electricity Savings for which a Participant Incentive has been paid or in respect of equipment or appliance replacement or decommissioning funded by the OPA, whether existing now or arising in the future (the “**OPA Environmental Attributes**”) will be owned by the OPA, and neither the LDC nor the Participant will have an entitlement to any such OPA Environmental Attributes. It will not be unreasonable for the OPA to withhold its consent in order to comply with Laws and Regulations, which for the purposes of this Section only includes any written policy instructions provided by the Ontario provincial government, including the Ministry of Energy. All other Environmental Attributes arising in relation to a Participant will be owned by the Participant and neither the LDC nor the OPA will have an entitlement thereto. The OPA will respond to a written request for consent under this Section 6.1(a) within 20 Business Days of receipt thereof.
- (b) The LDC hereby transfers and assigns to, or to the extent transfer or assignment is not permitted, holds in trust for, the OPA such OPA Environmental Attributes, and the OPA thereafter will own all rights, title, and interest in and to all such OPA Environmental Attributes.
- (c) The LDC will, and each Participant Agreement will provide that the Participant will, from time to time, upon written direction of the OPA, take all such actions and do all such things necessary to effect the transfer and assignment to, or holding in trust for, the OPA, all rights, title, and interest in all such OPA Environmental Attributes.
- (d) The LDC will, and each Participant Agreement will provide that the Participant will, from time to time, upon written direction from the OPA, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies such OPA Environmental Attributes that are created and allocated or credited pursuant to applicable Laws and Regulations from time to time for the purposes of transferring such OPA Environmental Attributes to the OPA in

accordance with this Article 6. The LDC will, and each Participant Agreement will provide that the Participant will, be entitled to reimbursement of the cost of complying with a direction under this Section 6.1(d), provided that the OPA or the LDC, as the case may be, acting reasonably, has approved such cost in writing prior to the cost being incurred by the LDC or the Participant, respectively.

ARTICLE 7 GOOD GOVERNANCE

7.1 Audit Rights and Record Keeping

- (a) For a period of seven (7) years or such other period of time specified by Laws and Regulations, where applicable, the LDC will, for purposes of confirming that the LDC has performed its obligations in accordance with this Master Agreement keep complete and accurate books, accounts, and records and all other data required for the purpose of proper administration, monitoring and verification of this Agreement and all of the Registered Initiatives, including records of its revenue received and expenses incurred and paid in connection with each Registered Initiative, all Applications, Participant Agreements, work orders, reports and supporting documents, invoices, receipts, other vouchers and all information received from Participants related to a Registered Initiative.
- (b) The LDC will on reasonable notice from the OPA, at any time during normal business hours: (i) permit the OPA or its designate to examine and audit and take copies of such documents and make extracts of the same; and (ii) use Commercially Reasonable Efforts to make available to the OPA or its designate LDC personnel and the personnel of the LDC Other Service Providers involved in the performance of this Master Agreement as reasonably requested by the OPA for purposes of Section 7.1(a).
- (c) In conducting an audit pursuant to Section 7.1(a) the OPA shall:
 - (i) not unreasonably interfere with the operations of the LDC; and
 - (ii) provide copies of and review and discuss with the LDC the results and findings of any audit conducted hereunder prior to the finalization thereof, and the LDC may prepare and submit a response to such results and findings within fifteen (15) days of receipt thereof from the OPA for consideration and consultation by the OPA prior to finalizing the audit.
- (d) Without limiting any other remedies of a Party hereunder, if an audit conducted and finalized pursuant to Section 7.1(a) discloses that there has been an overpayment or underpayment by the OPA or a misappropriation or misuse of funds by the LDC, the amount of the overpayment, underpayment, misappropriation or misuse will be payable or repayable to the OPA or to the LDC, as the case may be, promptly

following such disclosure. The cost of an audit will be an expense of the OPA; provided, however that if the result of such audit indicates a material misappropriation or misuse of funds paid by the OPA to the LDC, then, the OPA may demand immediate repayment of, or may set-off or deduct from any subsequent payment, any such misappropriation or misuse as determined by such audit and the LDC will pay the entire reasonable cost of such audit. Without limitation of the foregoing, if such audit reveals a misuse of Program Administration Budget funds that is not material, the OPA may elect to disqualify such amounts as LDC Eligible Program Administration Expenses and will notify the LDC of such election.

7.2 Quality Assurance Inspections

- (a) The LDC will on at least five (5) Business Days' prior notice, during normal business hours, but no more frequently than once a calendar year in respect of any Registered Initiative or the provisions, collectively, in the body of the Master Agreement, provide reasonable access to the OPA or its designate to its premises for the purpose of performing an inspection or technical audit to confirm that the LDC has performed its obligations in respect of such Registered Initiative in accordance with this Master Agreement and/or for purposes of implementing the OPA EM&V Protocols. The LDC will notify the OPA ahead of time of, and the OPA will comply with, any and all security and safety measures currently prescribed by the LDC at the LDC's premises at the time of such audit.
- (b) In conducting an inspection or audit under Section 7.2(a) that reveals any failure by the LDC to perform its obligations hereunder, the OPA will provide copies of and review and discuss with the LDC the results and findings of any inspection or audit conducted hereunder prior to the finalization thereof, and the LDC may prepare and submit a response to such results and findings within fifteen (15) days of receipt thereof from the OPA.
- (c) Any inspection or audit under Section 7.2(a) by or on behalf of the OPA shall not relieve the LDC of any of its obligations to comply with the terms of this Master Agreement. In no event will any inspection or audit by the OPA hereunder be an acknowledgement by the OPA that there has been or will be compliance with this Master Agreement.

7.3 Program Administration Spending and Monitoring

- (a) If at any time after the date eighteen (18) months after the Effective Date, in either Party's opinion, acting reasonably and in good faith, any report, invoice, CDM Annual Report, audit, review or other evidence indicates that: (i) the amount of the Program Administration Budget spent by the LDC is materially higher or lower than the expected amount of spending up to such time; (ii) the verified or unverified Peak Demand Savings or Electricity Savings of the LDC achieved up to such time in respect of a Registered CDM Program are materially lower than the Savings

Milestones expected to be achieved up to such time (as compared to the Savings Milestones as at the Effective Date or as otherwise determined by a Party, acting reasonably); or (iii) the Savings Milestones, Peak Demand Savings Target or Electricity Savings Target have changed from the Savings Milestones, Peak Demand Savings Target or Electricity Savings Target as at the Effective Date or the LDC's CDM Target has changed from the LDC's CDM Target as at the Effective Date, then within thirty (30) days of receipt of notice from either Party, a Senior Conference will be convened.

- (b) Either Party may table at such Senior Conference, and the Parties will act reasonably and in good faith to achieve agreement in respect of, a plan to normalize the spending of the Program Administration Budget, to achieve the Peak Demand Savings Target or Electricity Savings Target or to remedy the shortfalls in achieving the Savings Milestones, as applicable (a "**Remediation Plan**"). A Remediation Plan may propose the reallocation of the Program Administration Budgets between Registered CDM Programs, modifications to the delivery or design of any Initiative or CDM Program, the development of new Initiatives or CDM Programs, provided that any obligation on the OPA to implement or undertake any Remediation Plan will be at the sole discretion of the OPA. The LDC will provide any information specified by the OPA for the purposes of evaluating the LDC's proposed Remediation Plan or to prepare or modify its own Remediation Plan. The OPA will provide any reasonably available information regarding the LDC's implementation of each Registered Initiative in question, as requested by the LDC. If during such Senior Conference the Parties are unable to agree upon a Remediation Plan or any other solution to the subject matter of the Senior Conference, then the OPA may terminate such Registered CDM Program pursuant to Section 10.6 or 10.7 (without the application of Section 10.6(c) or 10.7(c), as applicable). In the event of such termination, the OPA will provide an explanation as to the reason therefor.
- (c) Notwithstanding the provisions of Section 7.3(a), if any CDM Program becomes a Registered CDM Program pursuant to Section 3.2 or Section 3.3(a)(i) more than six (6) months after such Initiative or CDM Program became available for Registration, the OPA may require the LDC to promptly participate in a Senior Conference pursuant to Section 7.3(a).

ARTICLE 8 REPORTING REQUIREMENTS

8.1 LDC Reporting Requirements

- (a) The LDC will provide to the OPA:
 - (i) on or before February 28 of each year commencing on February 28, 2012 and ending on February 28, 2015, an accounting of the LDC Eligible Program Administration Expenses incurred by the LDC for the preceding calendar

- year in respect of each Registered Initiative with expenses broken down as specified in Schedule A-6;
- (ii) the data and reports as specified in each Initiative Schedule for each Registered CDM Program; and
 - (iii) any information relating to this Agreement reasonably requested by the OPA that is available to the LDC using Commercially Reasonable Efforts.
- (b) The LDC will provide to the OPA (if it is not explicitly addressed in its CDM Strategy or CDM Annual Report) within 30 days of it becoming Registered for a CDM Program, its Savings Milestones for such Registered CDM Program.

8.2 Reporting Requirements

- (a) Provided that the LDC has complied with its obligations pursuant to Sections 2.5, 8.1 and 9.1, the OPA, based upon the best information then available to it, will provide to the LDC:
- (i) if requested by the LDC, by the end of each calendar quarter the unverified Electricity Savings and Peak Demand Savings estimates (in kWh and kW) of the LDC arising from each Registered Initiative for the immediately preceding calendar quarter;
 - (ii) by August 1 of the second year of the Term and by August 1 of each of the three years thereafter, drafts of the report contemplated by Section 8.2(a)(iii) to the extent available; and
 - (iii) by September 1 of the second year of the Term, and by September 1 of each of the three years thereafter, a report listing the estimated Electricity Savings and Peak Demand Savings of the LDC arising from each Registered Initiative during the immediately preceding calendar year reported by rate class.

ARTICLE 9 EVALUATION, MEASUREMENT AND VERIFICATION

9.1 Evaluation, Measurement and Verification

- (a) Each CDM Program and Initiative will be subject to the OPA EM&V Protocols. The OPA EM&V Protocols will include evaluations of:
- (i) the effectiveness of each CDM Program in meeting its objectives and achieving Electricity Savings and Peak Demand Savings;

- (ii) the effectiveness of each Initiative, including, if practicable, the components of each such Initiative, in meeting its objectives and achieving Electricity Savings and Peak Demand Savings; and
 - (iii) the actual Electricity Savings and Peak Demand Savings of the LDC arising from each Registered Initiative.
- (b) In furtherance of the OPA EM&V Protocols, the LDC will cooperate with the OPA and will collect information as may be reasonably prescribed by the OPA in respect of each Registered Initiative and make available such information to the OPA in the form and with the frequency as may be reasonably prescribed by the OPA. Without limitation of the generality of the foregoing, the LDC will:
 - (i) provide the OPA at its request the following information:
 - (A) for all Participants, name, account number, address and phone number;
 - (B) for all Participants, rate class; and
 - (C) for a sampling of Participants sufficient for the OPA to evaluate a Registered Initiative pursuant to the OPA EM&V Protocols, historical consumption data as is reasonably required by the OPA to establish a baseline of electricity consumption for such Participants provided that such historical consumption data is reasonably available;
 - (ii) collaborate with the OPA to establish a baseline of electricity consumption for non-Participants or other representative control group sufficient for the OPA to evaluate a Registered Initiative pursuant to the OPA EM&V Protocols, including by using Commercially Reasonable Efforts to provide access to historical consumption data in anonymized form for such representative control group; and
 - (iii) for three (3) years from the date of collection, keep proper and accurate records of such information prescribed by the OPA in this Section 9.1 and make available such records and applicable personnel in accordance with the provisions of Section 7.1; and
 - (iv) make available all books, accounts and other records contemplated by Section 7.1 in accordance with the provisions of Section 7.1.
- (c) The LDC will appoint a knowledgeable individual who will cooperate with the OPA and participate in the conduct of the OPA EM&V Protocols as reasonably required by the OPA.

- (d) Subject to the provisions of Article 12, the OPA may publish the results arising from the OPA EM&V Protocols from time to time.
- (e) The OPA will issue the OPA EM&V Protocols by March 31, 2011 and will consult with the EDA from time to time with respect to the determination of Peak Demand Savings and Electricity Savings for purposes of the OPA EM&V Protocols.

ARTICLE 10

TERM, DEFAULT AND REMEDIES

10.1 Term

- (a) This Master Agreement will commence on the Effective Date and terminate on December 31, 2014 unless terminated prior thereto pursuant to the terms hereof (the “**Term**”). For certainty, no Participant Incentives will be paid by the OPA for Projects completed after December 31, 2014 and, accordingly, the LDC will not enter into any Participant Agreement that may require that a Participant Incentive be paid for a Project completed after December 31, 2014 unless the LDC will pay such Participant Incentive from its own funds.
- (b) An Initiative Schedule may set out the term of such Initiative and any terms and conditions relating to the termination or extension of such Initiative (the “**Initiative Term**”). If the Initiative Term of an Initiative Schedule extends past the termination or expiration of the Term, then such Initiative Schedule, including the terms and conditions of this Master Agreement applicable to such Initiative Schedule, will survive the termination or expiration of the Term.
- (c) Unless the OPA notifies the LDC otherwise, a notice pursuant to Section 10.6(a) will be deemed to have been given effective as of June 30, 2014 with a Cessation Period ending on December 31, 2014, and the provisions of Sections 10.6(a) and 10.6(b) will become effective as of June 30, 2014, *mutatis mutandis*.

10.2 Events of Default by the LDC

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

- (a) The LDC fails to make any payment required under this Master Agreement or any Participant Agreement when due and such failure is not remedied within the Cure Period.
- (b) The LDC fails to perform or observe any of its obligations under this Master Agreement in any material respect (except to the extent constituting a separate LDC Event of Default) and such failure is not remedied within the Cure Period.

- (c) The LDC is in breach of any obligation under Article 5 and such breach is not remedied within ten (10) days from the date the OPA provides notice to the LDC of such breach.
- (d) The LDC is in breach of its OEB licence in a manner that materially adversely affects the LDC's ability to perform its obligations under this Master Agreement and such breach is not remedied within the Cure Period.
- (e) By agreement, decree, judgment or order of a Governmental Authority, the LDC agrees to be treated as or is adjudicated bankrupt or insolvent or any substantial part of the LDC's property is sequestered or subject to the appointment of any third party and such agreement, decree, judgment, order or appointment continues in effect unrevoked, undischarged and unstayed for a period of thirty (30) days after the entry or implementation thereof.
- (f) The LDC 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.
- (g) The LDC makes a material misrepresentation, misstatement or omission in any report, invoice or any other information submitted by the LDC to the OPA and such misrepresentation, misstatement or omission is not made true or correct or otherwise remedied within the Cure Period; provided, however, if such misrepresentation, misstatement or omission is in relation to the LDC's obligations under Section 5.6, any such misrepresentation, misstatement or omission, whether material or not, will not be subject to the Cure Period but must be corrected within thirty (30) days from the date the OPA provides notice to the LDC of such breach.
- (h) The LDC misappropriates, or uses in a manner not expressly provided herein, any funding provided to the LDC by the OPA hereunder, and such misappropriation or misuse is not remedied within ten (10) days from the date the OPA provides notice to the LDC of such breach.
- (i) The LDC is in breach of any obligation under Article 12 and such breach is not remedied within five (5) days from the date the OPA provides notice to the LDC of such breach.

10.3 Remedies of the OPA

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

- (i) by declaring a termination date not later than thirty (30) days from the date of such notice terminate this Master Agreement;
 - (ii) by declaring a termination date not later than thirty (30) days from the date of such notice terminate the LDC's ability to participate in any Registered CDM Program or Registered Initiative by declaring that the Initiative Schedule(s) in respect of which the LDC Event of Default is continuing is terminated;
 - (iii) suspend payment of any amounts owing hereunder to the LDC until such time as the LDC Event of Default has been remedied to the satisfaction of the OPA, acting reasonably;
 - (iv) set off any amounts owing to the LDC hereunder against any amounts then or thereafter owing to the OPA by the LDC;
 - (v) terminate the Sublicence if the LDC Event of Default arises in relation to the LDC's obligations under Section 5.6;
 - (vi) only in connection with an LDC Event of Default arising in respect of the LDC's obligations related to a Program Administration Budget, prescribe any additional conditions on the use by the LDC of the Program Administration Budget, including (A) requiring the LDC to implement more stringent quality control measures, (B) pre-authorization by the OPA of the payment by the LDC of amounts that the LDC intends to categorize as LDC Eligible Program Administration Expenses, (C) reduction of amounts payable in respect of expenses that the LDC has previously characterized as LDC Eligible Program Administration Expenses and (D) disqualification from future spending of any LDC Eligible Program Administration Expenses; or
 - (vii) demand the prompt repayment of the Program Administration Budget held by the LDC and not yet spent on, or incurred and payable but not yet paid in respect of, LDC Eligible Program Administration Expenses.
- (b) If the OPA exercises any of its remedies identified in Section 10.3(a)(i) or Section 10.3(a)(ii), then with respect to the Registered CDM Program or Registered Initiatives terminated and without limitation of the OPA's remedy pursuant to Section 10.3(a)(iv):
- (i) the LDC will immediately stop marketing, soliciting, accepting Applications, entering into Participant Agreements or otherwise increasing any Person's obligations or liabilities in respect of such Registered Initiatives;
 - (ii) the OPA will, subject to its receipt of the LDC's invoices in accordance with Section 4.6:

- (A) pay to the LDC the amounts the LDC has spent, or that it has incurred and that are payable, under this Master Agreement as LDC Eligible Program Administration Expenses in respect of such Registered Initiatives up to and including the date of termination of such Initiative, including, subject to Section 4.6(g), payment of invoices in respect of such incurred amounts where the invoices are dated after the date of such termination;
 - (B) pay to the LDC any Participant Based Funding Amounts or Capability Building Funding Amounts in respect of such Registered Initiatives that were payable by the OPA to the LDC up to and including the date of termination of such Initiative but that remain unpaid to the date of termination of such Initiative; and
 - (C) for so long as the LDC continues to perform its obligations pursuant to Section 2.8 and to provide invoices in accordance with Section 4.6 in respect thereof, pay to the LDC Participant Incentives for Participant Agreements in good standing duly entered into and in effect prior to or on the date of termination of such Initiative; and
- (iii) if such termination results in the termination of a Registered CDM Program in its entirety:
- (A) subject to Section 4.10(c), the LDC will be entitled to retain from any remaining amounts held by the LDC as part of the Program Administration Budget for such Registered CDM Program the Post-Termination Administration Costs in respect of such Registered CDM Program;
 - (B) the OPA will not be obligated to continue to make any payments in respect of such Registered CDM Program other than those provided in Section 10.3(b)(ii)(C); and
 - (C) the Parties will true-up the Program Administration Budget for such Registered CDM Program as at the date of such termination such that: (x) any remaining amounts held by the LDC as part of the Program Administration Budget for such Registered CDM Program will be promptly repaid to the OPA; or (y) other than as provided in Section 10.3(b)(ii)(C), instead of making any payments contemplated by this Section 10.3(b) the OPA may net the amount of any such payments against any such remaining amounts of the Program Administration Budget held by the LDC. For certainty, the operation of this Section 10.3(b)(iii) will not result in the OPA paying to the LDC any amount in excess of the Program Administration Budget for such Registered CDM Program nor result in the LDC repaying to the

OPA any amount duly spent or incurred in respect of LDC Eligible Program Administration Expenses in respect of such Registered CDM Program.

10.4 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 and such failure is not remedied within the Cure Period.
- (b) The OPA is in breach of its OEB licence in a manner that materially adversely 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 perform or observe any of its material obligations under this Master Agreement in any material respect (except to the extent constituting a separate OPA Event of Default) and such failure is not remedied within the Cure Period.
- (d) The OPA is in breach of any obligation under Article 5 and such breach is not remedied within ten (10) days from the date the LDC provides notice to the OPA of such breach.
- (e) The OPA is in breach of any obligation under Article 12 and such breach is not remedied within five (5) days from the date the LDC provides notice to the OPA of such breach.

10.5 Termination by the LDC for Default

- (a) If any OPA Event of Default occurs and is continuing, then, upon written notice to the OPA, the LDC may by declaring a termination date not later than thirty (30) days from the date of such notice:
 - (i) terminate this Master Agreement; or
 - (ii) terminate the Initiative Schedule for any Registered Initiative pursuant to which the OPA Event of Default occurred.
- (b) Subject to the provisions of Section 10.3, upon any such termination:
 - (i) the OPA will, subject to its receipt of the LDC’s invoices in accordance with Section 4.6:
 - (A) pay to the LDC the amounts the LDC has spent, or that it has incurred and that are payable, under this Master Agreement as LDC Eligible

Program Administration Expenses in respect of such Registered Initiative up to and including the date of termination of such Initiative, including, subject to Section 4.6(g), payment of invoices in respect of such incurred amounts where the invoices are dated after the date of such termination;

- (B) pay to the LDC any Participant Based Funding Amounts or Capability Building Funding Amounts in respect of such Registered Initiative that were payable by the OPA to the LDC up to and including the date of termination of such Initiative but that remain unpaid to the date of termination of such Initiative; and
 - (C) for so long as the LDC continues to perform its obligations pursuant to Section 2.8 and to provide invoices in accordance with Section 4.6 in respect thereof, pay to the LDC Participant Incentives for Participant Agreements in good standing duly entered into and in effect prior to or on the date of termination of such Initiative.
- (c) If any OPA Event of Default set out in Sections 10.4(a), 10.4(b) or 10.4(c) has occurred and has been continuing for a period of one hundred and twenty (120) days, then, upon written notice to the OPA, the LDC may immediately:
- (i) terminate this Master Agreement; or
 - (ii) terminate any Initiative Schedule pursuant to which the OPA Event of Default occurred,

and the provisions of Section 10.7(b) will become effective, *mutatis mutandis*, as if the OPA had terminated the Registered CDM Programs or Initiative Schedules listed in such notice of termination.

10.6 Cessation of Registered CDM Program or Registered Initiative

- (a) Upon receipt by the LDC of notice from the OPA requesting that the Parties commence the cessation of a Registered CDM Program or Registered Initiative, the LDC will work in good faith with and assist the OPA to the extent required to cease providing the Registered CDM Program or Registered Initiative within a period ending no earlier than six months from the date of receipt of such notice (the "**Cessation Period**"), which will include, at a minimum:
 - (i) the development of a plan for the cessation of the Registered CDM Program or Registered Initiative that sets out, at a minimum (the "**Cessation Plan**"):
 - (A) each Party's responsibilities for the performance of the obligations set out in the plan;

- (B) the plan and time line for the cessation of the Registered CDM Program;
 - (C) the steps to be taken for minimizing any impact to Participants caused by the cessation of the Registered CDM Program;
 - (D) details relating to any incremental reporting to be provided during the Cessation Period; and
- (ii) the performance of the obligations of the each of the Parties set out in the Cessation Plan.
- (b) During the Cessation Period, the LDC will take steps to wind down in an orderly manner the marketing, solicitation, and acceptance of Applications and the entering into of Participant Agreements, and will take any other reasonable steps to avoid increasing any Person's obligations or liabilities in respect of such Registered CDM Program or Registered Initiative following the Cessation Period. On the last day of the Cessation Period:
 - (i) the Registered CDM Program or Registered Initiative shall terminate; and
 - (ii) subject to Section 4.10(c), the provisions of Section 10.3(b)(ii) or 10.3(b)(iii), as applicable, will apply *mutatis mutandis*.
- (c) If the Registered CDM Program or Registered Initiative is terminated under this Section 10.6, except in the case where the Registered CDM Program or Registered Initiative is required to be terminated pursuant to Laws and Regulations, if the LDC still must achieve during the remainder of the Term its Electricity Savings Target and Peak Demand Savings Target, the OPA will use Commercially Reasonable Efforts to work with the LDC to introduce a replacement CDM Program or Initiative.

10.7 Immediate Termination by the OPA of Registered CDM Program or Registered Initiative

- (a) The OPA may, at its option, terminate any Registered CDM Program or Registered Initiative with immediate effect by providing written notice to the LDC.
- (b) If the OPA terminates any Registered CDM Program or any Initiative Schedule for a Registered Initiative pursuant to Section 10.7(a), then with respect to the Registered Initiatives terminated:
 - (i) the OPA will, subject to its receipt of the LDC's invoices in accordance with Section 4.6:
 - (A) pay to the LDC the amounts the LDC has spent, or that it has incurred and that are payable, under this Master Agreement as LDC Eligible

Program Administration Expenses in respect of such Registered Initiatives up to and including the date of termination of such Initiative, including, subject to Section 4.6(g), payment of invoices in respect of such incurred amounts where the invoices are dated after the date of such termination;

- (B) pay to the LDC any Participant Based Funding Amounts or Capability Building Funding Amounts in respect of such Registered Initiatives that were payable by the OPA to the LDC up to and including the date of termination of such Initiative but that remain unpaid to the date of termination of such Initiative; and
 - (C) for so long as the LDC continues to perform its obligations pursuant to Section 2.8 and to provide invoices in accordance with Section 4.6 in respect thereof, pay to the LDC Participant Incentives for Participant Agreements in good standing duly entered into and in effect prior to or on the date of termination of such Initiative; and
- (ii) if such termination results in the termination of a Registered CDM Program in its entirety:
- (A) subject to Section 4.10(c), the LDC will be entitled to retain from any remaining amounts held by the LDC as part of the Program Administration Budget for such Registered CDM Program the Post-Termination Administration Costs in respect of such Registered CDM Program;
 - (B) the OPA will pay to the LDC the Immediate Wind-down Costs in respect of such Registered CDM Program;
 - (C) the OPA will not be obligated to continue to make any payments in respect of such Registered CDM Program other than those provided in Section 10.7(b)(i)(C); and
 - (D) the Parties will true-up the Program Administration Budget for such Registered CDM Program as at the date of such termination such that: (x) any remaining amounts held by the LDC as part of the Program Administration Budget for such Registered CDM Program will be promptly repaid to the OPA; or (y) other than as provided in Section 10.7(b)(i)(C), instead of making any payments contemplated by this Section 10.3(b) the OPA may net the amount of any such payments against any such remaining amounts of the Program Administration Budget held by the LDC. For certainty, the operation of this Section 10.7(b)(ii) will not result in the OPA paying to the LDC any amount in excess of the Program Administration Budget for

such Registered CDM Program nor result in the LDC repaying to the OPA any amount duly spent or incurred in respect of LDC Eligible Program Administration Expenses in respect of such Registered CDM Program.

- (c) If the Registered CDM Program or Registered Initiative is terminated under this Section 10.7, except in the case where the Registered CDM Program or Registered Initiative is required to be terminated pursuant to Laws and Regulations, if the LDC still must achieve during the remainder of the Term its Electricity Savings Target and Peak Demand Savings Target, the OPA will use Commercially Reasonable Efforts to work with the LDC to introduce a replacement CDM Program or Initiative.

10.8 Survival

- (a) Neither the expiration of the Term nor the earlier termination of this Master Agreement will release either of the Parties from any obligation or liability incurred prior to such expiration or termination.
- (b) The provisions of this Master Agreement requiring performance or fulfilment after the expiration or earlier termination of this Master Agreement, including Section 2.8(c), Section 2.8(d), Section 4.6(i), Section 4.8, Section 4.9, Section 5.4, Section 5.5, Section 5.6, Article 6, Section 7.1, Section 8.2(a), Section 9.1, Article 11, Article 12, Article 13, Section 14.4 and this Section 10.8, such other provisions as are necessary for the interpretation thereof and any other provisions hereof, the nature and intent of which is to survive termination or expiration of this Master Agreement, will survive the expiration or earlier termination of this Master Agreement.
- (c) For certainty, the continued existence of materials distributed to third parties during the Term that bear the OPA Marks or the Ministry Marks will not constitute infringement of the other Party's Intellectual Property Rights, provided that the appearance of the OPA Marks or the Ministry Marks, as applicable, complies with the applicable Marketing Standards and licence requirements and restrictions set forth in Article 5.

ARTICLE 11 LIMITATION OF LIABILITY AND INDEMNIFICATION

11.1 No Warranty

Except as specifically set forth or referenced in this Master Agreement, there are no representations, warranties, or conditions of either Party, express, implied, statutory or otherwise, regarding any matter. Without limiting the generality of the foregoing, the LDC acknowledges that its participation in any CDM Program hereunder is based on its own assessment of such CDM Program and the Initiatives comprising it and not on any reliance on anticipated or projected results, and that such participation may not result in the achievement of any Electricity Savings, Peak

Demand Savings or the LDC's OEB-approved CDM targets, each of which is expressly disclaimed by the LDC.

11.2 Exclusion of Certain Damages

Notwithstanding anything contained herein to the contrary:

- (a) in no event will a Party be entitled to recover from the other Party for any liabilities, damages, obligations, payments, losses, costs, or expenses under this Master Agreement or in relation to this Master Agreement:
 - (i) any amount in excess of the actual compensatory direct damages, court costs and reasonable lawyers' and other advisor fees suffered or incurred by such Party; or
 - (ii) damages (whether direct or indirect, consequential or otherwise) for (x) loss of profit, or (y) diminution of value or loss of use of any property;
- (b) neither Party will be liable to the other Party for any special, indirect, incidental, punitive, exemplary or consequential damages, which may arise under or in relation to this Master Agreement, regardless of whether such liability arises under contract, tort or any other legal theory;

provided, however:

- (A) a Party will be entitled to recover from the other Party the types of damages described in Sections 11.2(a)(ii) and (b) where such damages arise in respect of a breach by a Party of its obligations contained in Article 12; and
- (B) Sections 11.2(a)(ii) and (b) will not limit the indemnity provided by an Indemnifying Party pursuant to Section 11.3 or Section 11.4 for damages suffered by a third party and claimed against an Indemnified Party.

11.3 Indemnification by the LDC

The LDC (the "**LDC Indemnifying Party**") will be liable for and will indemnify, defend and hold the OPA, the Government of Ontario, the members of the Government of Ontario's Executive Council and their respective Affiliates, and each of the foregoing Person's respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees and which, for greater certainty, does not include other Local Distribution Companies) (in this context, collectively, the "**OPA 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 by a third party against or suffered by the OPA Indemnified Party relating to, in connection with, resulting from, or arising out of (i) the negligence or wilful misconduct of the LDC Indemnifying Party or (ii) the breach by the LDC of any provision of this Master Agreement; except to the extent that such Indemnifiable Loss is attributable to the negligence or wilful misconduct of the OPA Indemnified Party or any Person for whom the OPA is responsible hereunder or at law or the breach by the OPA of any provision of this Master Agreement. For greater certainty, in the event of contributory negligence or breach of the OPA Indemnified Party, then such OPA Indemnified Party will not be indemnified hereunder in the proportion that the OPA Indemnified Party's negligence or breach contributed to any Indemnifiable Loss.

11.4 Indemnification by the OPA

The OPA (the "**OPA Indemnifying Party**") will be liable for and will indemnify, defend and hold the LDC, its Affiliates, and each of the foregoing Person's respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees and which, for greater certainty, does not include other Local Distribution Companies) (in this context, collectively, the "**LDC Indemnified Party**") harmless from and against any and all Indemnifiable Losses, asserted by a third party against or suffered by the LDC Indemnified Party relating to, in connection with, resulting from, or arising out of (i) any activity conducted by the LDC in carrying out its obligations with respect to the transfer, assignment, holding, certification, procurement, qualification or registration of the OPA Environmental Attributes required by Article 6, (ii) the negligence or wilful misconduct of the OPA Indemnifying Party or (iii) the breach by the OPA of any provision of this Master Agreement, except to the extent that such Indemnifiable Loss is attributable to the negligence or wilful misconduct of the LDC Indemnified Party or any Person for whom the LDC is responsible hereunder or at law or the breach by the LDC of any of the terms of this Master Agreement. For greater certainty, in the event of contributory negligence or breach of the LDC Indemnified Party, then such LDC Indemnified Party will not be indemnified hereunder in the proportion that the LDC Indemnified Party's negligence or breach contributed to any Indemnifiable Loss. For certainty, the provisions of this Section 11.4 do not apply to any Environmental Attributes retained by a Participant.

11.5 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 an indemnity provided for in Section 11.3 or Section 11.4 may apply, the Indemnified Party will notify the Indemnifying Party in writing of such fact. The Indemnifying Party will 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 has reasonably concluded that there may be legal defences available to it which are

different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party will 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 will promptly confirm that it is assuming the defence of the Indemnified Party by providing written notice to the Indemnified Party. Such notice will 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 Indemnified Party be entitled to indemnification under Section 11.3 or Section 11.4, and the Indemnifying Party fails to assume the defence of such claim (which failure will be assumed if the Indemnifying Party fails to provide the notice prescribed by Section 11.5(a)), the Indemnified Party will, at the expense of the Indemnifying Party, contest (or, with the prior written consent of the Indemnifying Party, acting reasonably, 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 11.3 or Section 11.4, as the case may be, 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 11.3 or Section 11.4, 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.

ARTICLE 12 CONFIDENTIALITY AND PRIVACY

12.1 Confidentiality Covenant

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

(i) to a third party that is not a Representative of the Receiving Party if and to the extent required by a Governmental Authority or otherwise as required by Laws and Regulations, provided that such Party must first give the Disclosing Party notice of such compelled disclosure (except where prohibited by Laws and Regulations from doing so) and must use Commercially Reasonable Efforts to provide the Disclosing Party with an opportunity to take such steps as it desires to challenge or contest such disclosure or seek a protective order. Thereafter, the Receiving Party may disclose the Confidential Information of the Disclosing Party, but only to the extent required by Laws and Regulations and subject to any protective order that applies to such disclosure; and

(ii) to:

- (A) its accountants, internal and external auditors and other professional advisors if and to the extent that such Persons need to know such Confidential Information in order to provide the applicable professional advisory services relating to such Party's business;
- (B) potential permitted assignees or successors of the Receiving Party if and to the extent that such Persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other transaction or transfer involving the business, assets or services provided by the Receiving Party; and
- (C) employees of each Party and the OPA Other Service Providers or LDC Other Service Providers, as applicable, if and to the extent that such Persons need to know such Confidential Information to perform their respective obligations under this Master Agreement;

provided that any such Person is aware of the provisions of this Section 12.1 and has entered into a written agreement with the Receiving Party that includes confidentiality obligations in respect of such Confidential Information that are no less stringent than those contained in this Section 12.1.

- (c) The OPA may disclose Confidential Information of the LDC to the OEB, IESO, the Minister of Energy and the Environmental Commissioner's Office or their respective successors for Handling by such Persons provided that the OPA has in place with any such Person a written agreement that includes confidentiality obligations in respect of such Confidential Information that are comparable to those contained in this Section 12.1.
- (d) Without limiting the foregoing, each Party acknowledges and agrees that:

- (i) this Master Agreement and all Confidential Information in the possession or control of the OPA or the LDC are subject to Laws and Regulations that include the access provisions of FIPPA or MFIPPA, and that as a result, third parties may obtain access to each Party's Confidential Information; and
- (ii) each Party is responsible for ensuring that its agreements with Other Service Providers contemplate and permit such potential access, and will be fully liable to any such Other Service Provider for any Claim arising out of or relating to such access.

12.2 Privacy

- (a) Each Party acknowledges that all Personal Information collected by or accessible to such Party in the course of administering or offering the CDM Programs or otherwise complying with the terms and conditions of this Master Agreement ("**Program Personal Information**") constitutes not only Personal Information of the individual to whom the information relates but also Confidential Information of such Party to which the provisions of Section 12.1 and Privacy Laws apply, except to the extent such provisions are inconsistent with this Section 12.2, which prevails in the case of any such inconsistency. In addition to the obligations set out in Section 12.1(a), and notwithstanding the disclosure rights set out in Section 12.1(b), each Party will:
 - (i) Handle all Program Personal Information in accordance with all applicable Privacy Laws;
 - (ii) perform its obligations under this Agreement in a manner that will enable the other Party to comply with Privacy Laws;
 - (iii) promptly notify the other Party if such Party receives notice from any Governmental Authority alleging that either Party has failed to comply with Privacy Laws in connection with the performance of this Master Agreement, or if such Party otherwise becomes aware that either Party may have failed or may in the future fail to comply with Privacy Laws in connection with the performance of this Master Agreement;
 - (iv) cooperate and comply with any requests or instructions issued by any privacy or data protection authority, including the Canadian privacy commissioner and any other Governmental Authority applicable to such Party; and
 - (v) provide reasonable assistance to the other Party in responding to and addressing any complaint relating to the Handling of Program Personal Information.
- (b) Without limiting the obligations set forth in Section 12.2(a), the Party responsible for approving an Application of an Eligible Person will, prior to approving such

Application, ensure that such Application contains the consents required by Laws and Regulations in order to enable the Party receiving or approving such Application to permit each Party to Handle Program Personal Information in order to (i) deliver the CDM Programs or as contemplated in Sections 5.7 and 9.1 and (ii) otherwise comply with the terms and conditions of this Master Agreement and Laws and Regulations. The Parties acknowledge that such approving Party will have met its obligation if (x) such Application is an Application submitted through the Program Management System that cannot be modified or altered without the consent of the OPA, or (y) if such Eligible Person submitting an Application submits a form of Application or executes a form of Participant Agreement prescribed by the applicable Initiative Schedule, without amendment.

- (c) If a Person refuses to provide the consents referred to in Section 12.2(b), each Party will ensure that such Person is not able to submit an Application for, or become a Participant under, the applicable Registered Initiatives for which the Party is responsible for obtaining the consents referred to in Section 12.2(b).

12.3 Injunctive Relief

Each Party acknowledges that any violation of the provisions of this Article 12 may cause irreparable damage or injury to the other Party, the exact amount of which may be impossible to ascertain, and that, for such reason, in addition to any other remedies available to such Party, such Party is entitled to proceed immediately to court in order to obtain, and the other Party will consent to, interim, interlocutory, and final injunctive relief restraining the other Party from breaching, and requiring the other Party to comply with, its obligations under this Article 12, without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made. Nothing in this Section 12.3 will be construed to limit the right of a Party to obtain injunctive relief in any other circumstance in which it may be otherwise entitled to such relief.

ARTICLE 13 DISPUTE RESOLUTION

13.1 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 will be settled in accordance with this Article 13.

13.2 Senior Officers

The aggrieved Party will 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 Party, as selected by each Party in its discretion, will confer in an

effort to resolve the Dispute (a “**Senior Conference**”). If the Dispute cannot be resolved by a Senior Conference within thirty (30) days of the date the Dispute arose or such later date as agreed to by the Parties, the Dispute will be resolved by arbitration in accordance with Sections 13.3, 13.4 and 13.5 below.

13.3 Arbitrators

The Parties will submit any arbitration under this Master Agreement 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 will within ten (10) more days choose one individual who will sit on a three-member arbitration panel. The two arbitrators appointed will name the third arbitrator within ten (10) days or, if they fail to do so within that time period, either Party may make an application to a court of competent jurisdiction for appointment of the third arbitrator. Any arbitrator selected to act under this Master Agreement will be qualified by education, training and experience to pass on the particular question in Dispute and will have no connection to either of the Parties other than acting in previous arbitrations.

13.4 Procedures of Arbitration

The arbitrator or arbitration panel selected pursuant to Section 13.3 (hereinafter referred to as the “**arbitrator**”) will not have any current or past business or financial relationships with any Party (except prior to arbitration). The arbitrator will provide each of the Parties an opportunity to be heard and will conduct the arbitration hearing in accordance with the provisions of the Arbitration Act. Unless otherwise agreed by the Parties, the arbitrator will render a decision within ninety (90) days after the end of the arbitration hearing and will notify the Parties in writing of such decision and the reasons therefor. The arbitrator will be authorized only to interpret and apply the provisions of this Master Agreement and will have no power to modify or change this Master Agreement in any manner. The decision of the arbitrator will be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the Arbitration Act or solely on a question of law as provided for in the Arbitration Act. The Arbitration Act will govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement will be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party will bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party will bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party will otherwise be responsible for its own costs incurred during the arbitration process.

13.5 Disclosure/Confidentiality

All proceedings and the making of the award in respect of Section 13.4 will be in private and the Parties will ensure that the conduct of the arbitration and the terms of the award will, subject to registration of the award in any court, be kept confidential unless the Parties otherwise agree; provided, however, that such obligation to maintain confidentiality will not prohibit any Party from complying with Laws and Regulations. All information disclosed, including all statements made and

documents produced, in the course of the arbitration will be held in confidence and no Party will rely on, or introduce as evidence in any subsequent proceeding, any admission, view, suggestion, notice, response, discussion or position of either Party or any acceptance of a settlement proposal or recommendation for settlement made during the course of the arbitration, except (i) as required by Laws and Regulations; or (ii) to the extent that disclosure is reasonably necessary for the establishment or protection of a Party's legal rights against a third party or to enforce the award of the arbitrator or to otherwise protect a Party's rights under the arbitration.

13.6 Exclusion

This Article 13 will not apply to an arbitration arising pursuant to Schedule A-4 except as expressly provided in Schedule A-4.

ARTICLE 14 MISCELLANEOUS

14.1 Further Assurances

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

14.2 Severability

The invalidity, unenforceability or illegality of any provision in this Master Agreement as finally determined pursuant to Section 13.4 will not, to the extent permitted by law, affect the validity, enforceability or legality of any other provision of this Master Agreement, which will remain in full force and effect.

14.3 Binding Agreement

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

14.4 Independent Legal and Tax Advice

- (a) The LDC acknowledges that it has entered into this Agreement willingly with full knowledge of the obligations imposed by the terms hereof. The LDC, by execution hereof, acknowledges that it has been afforded the opportunity to obtain independent legal and other advice and confirms by the execution hereof that it has either done so or waived its right to do so and agrees that this Agreement constitutes a binding legal obligation and that it is estopped from raising any claim on the basis that it has not obtained such advice.

- (b) In particular, the LDC acknowledges that it understands the meanings of the provisions of the Participant Agreements or the meanings of the provisions stipulated as mandatory, as applicable, and further acknowledges that the OPA is not providing any legal or tax advice in respect of the Participant Agreements to be entered into by the LDC.

14.5 Third Party Beneficiaries

Except as otherwise set out in this Master Agreement, this Master Agreement will 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.

14.6 Assignment

Neither Party may assign this Master Agreement, in whole or in part, without the prior written consent of the other Party, which consent may not be unreasonably withheld.

14.7 Notices

Any notice to be given under this Master Agreement unless expressly provided otherwise herein must be in writing and will be given by facsimile or e-mail or by hand-delivery as provided. Any notice, if sent by facsimile or e-mail, will be deemed to have been received on the Business Day following the day of sending, or if delivered by hand will be deemed to have been received on the Business Day it is delivered to the applicable address noted below. Either Party may, by notice of change of address to the other Party, change its address to which notices are to be sent. Notices and other communications must be addressed as set forth in Schedule A-3.

IN WITNESS WHEREOF, the Parties have entered into this Master Agreement as of the date first written above.

SCHEDULE A-1

DEFINITIONS

In this Master Agreement the following terms shall have the following meanings:

“Additional Initiative” means an Initiative applicable to a Registered CDM Program but that is not a Registered Initiative (i) as at the Effective Date or (ii) pursuant to Section 3.2 or Section 3.3(a)(ii).

“Additional Initiative Notice Period” has the meaning given to it in Schedule A-4.

“Additional Initiative Schedule” means a Schedule setting forth the terms and conditions of: (i) a Registered Initiative, as attached to this Master Agreement in accordance with the provisions of Section 3.2 or Section 3.3(a)(ii); or (ii) an Additional Initiative, as attached to this Master Agreement in accordance with the Change Terms.

“Affiliate” has the meaning given to it in the *Business Corporations Act* (Ontario).

“Applicable Taxes” has the meaning given to it in Section 4.8(a).

“Application” means, in respect of an Initiative, any form of request that must be completed by a Person (as prescribed by the applicable Initiative) in order to participate in such Initiative, including a completed application form.

“Arbitration Act” means the *Arbitration Act, 1991* (Ontario).

“Billing Period” has the meaning given to it in Section 4.6(e).

“Billing Report” has the meaning given to it in Section 4.6(b).

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

“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.

“Capability Building Funding Amount” means, in respect of an Initiative, a funding amount payable to the LDC or a Participant to assist with the implementation of organizational measures that facilitate the delivery of CDM generally or certain CDM Programs specifically, as specified in the Initiative Schedule for such Initiative.

“CDM” means electricity conservation and demand management.

“CDM Annual Report” means the LDC’s “Annual Report” as defined in the CDM Code.

“CDM Code” means the Conservation and Demand Management Code for Electricity Distributors, as approved by the OEB.

“CDM Program” or **“OPA-Contracted Province-Wide CDM Program”** means a group of Initiatives designed by the OPA pursuant to the Directive and directed at one of the Commercial and Institutional, Industrial, Low-Income or Residential electricity consumer groups, as set forth in Schedule A-2. The specific names of the CDM Programs are set forth in Schedule A-2.

“CDM Strategy” means the LDC’s “CDM Strategy” as defined in the CDM Code.

“CDM Target” has the meaning given to it in the CDM Code.

“Cessation Period” has the meaning given to it in Section 10.6(a).

“Cessation Plan” has the meaning given to it in Section 10.6(a)(i).

“Change Management Parties” means the EDA Representative and the OPA.

“Change” means an amendment, modification or supplement of this Master Agreement made or proposed other than pursuant to Section 3.1(b).

“Change Dispute” has the meaning given to it in Section 6(d) or 9(f) of Schedule A-4, as the context may require.

“Change Request” means a Notice of Minor Change, an LDC Change Request or a Major Change Request, as the context may require.

“Change Response” has the meaning given to it in Section 6(a) of Schedule A-4.

“Change Terms” has the meaning given to it in Section 3.1(a).

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

“Collaboration Process” has the meaning given to it in Section 1 of Schedule A-4

“Commercial and Institutional” or **“C&I”** means, with respect to a particular group composed of electricity consumers, General Service < 50 kW Accounts, General Service > 50kW Accounts or Large Users, and not electricity consumers defined as Residential or Industrial.

“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 Initiatives contemplated by, this Master Agreement.

“Company Representative” has the meaning given to it in Section 2.10.

“Confidential Information” of a Party means any and all information of such Party or any of its Affiliates, licensors, Participants, customers (including information regarding a customer that is a consumer, wholesaler or generator), and employees or Other Service Providers, and information on Applications, and, in the case of the OPA, Governmental Authorities (the **“Disclosing Party”**) that has or will come into the possession or knowledge of the other Party or any of its Affiliates or Other Service Providers (the **“Receiving Party”**) in connection with or as a result of entering into this Agreement, including information concerning the Disclosing Party’s past, present or future customers, suppliers, technology, or business. Notwithstanding the foregoing, “Confidential Information” does not include information that is:

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

provided, however, that, for the purposes of this Master Agreement, all Personal Information concerning any Participant or Person submitting an Application for a Registered Initiative will constitute Confidential Information, whether or not it falls into one of the exceptions set out in clause (a) through (d) of this definition.

“Cost Efficiency Incentive” has the meaning given to it in Section 4.5.

“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 or breach described in Section 10.2 (in the case of a failure or breach of the LDC) and Section 10.4 (in the case of a failure or breach of the OPA) or such longer period of time as the notifying Party may determine in its sole discretion.

“Directive” has the meaning set forth in the recitals hereto.

“Disabling Code” means any virus, Trojan horse, worm, logic bomb, drop-dead device, backdoor, shutdown mechanism or similar software, hardware, system or combination of any of the foregoing that is intended or designed to, is operable to, is likely to or has the effect of disabling, deleting, erasing, denying authorized access to, permitting unauthorized access to, repossessing, damaging, destroying, corrupting or otherwise affecting or interfering with the Program Management System or the normal use of any of OPA’s hardware, software or systems or any data or files on or used in conjunction with any of the aforementioned.

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

“Dispute” has the meaning given to it in Section 13.1.

“Distribution Consumer” means an electricity consumer, whether or not a customer of the LDC, that is directly connected to, or behind the meter of another electricity consumer connected to, the LDC’s Distribution System and is in the LDC’s service area.

“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.

“EDA” means the Electricity Distributors Association, or such successor thereto as the EDA or such successor may notify the OPA from time to time.

“EDA Representative” means the board of directors of the EDA or any individual or committee of the EDA appointed by the board of directors of the EDA for the purpose of this Agreement and of which the OPA has received written notice.

“Effective Date” has the meaning first set forth in the preamble to this Master Agreement.

“Electricity Savings” means electricity savings determined pursuant to the OPA EM&V Protocols.

“Electricity Savings Target” means, for a specific Registered CDM Program, the portion of the LDC’s CDM Target that relates specifically to a reduction of electricity consumption that the LDC expects to result from such Registered CDM Program (and, for certainty, not from Board-Approved CDM Programs (as defined in the CDM Code)) as stated in the LDC’s CDM Strategy or CDM Annual Report, as such CDM Target may change from time to time in accordance with Laws and Regulations.

“Eligibility Criteria” means, in respect of an Initiative, the criteria set out in the applicable Initiative Schedule that a Person must meet in order to be eligible to participate in such Initiative.

“Eligible Costs” means, in respect of an Initiative, costs and expenses of a Participant payable or reimbursable to such Participant as provided in the applicable Initiative Schedule.

“Eligible Measures” means, in respect of an Initiative, Measures as defined or described in the applicable Initiative Schedule.

“Eligible Person” means, in respect of an Initiative, a Person that meets the applicable Eligibility Criteria.

“Environmental Attributes” means all benefits and entitlements associated with a Measure or a Facility having decreased environmental impacts resulting from the implementation of an Eligible Measure, including:

- (a) all rights to any fungible or non-fungible attributes, whether arising from a Facility itself, from the interaction of a Facility with a Distribution System or the IESO-Controlled Grid or because of applicable Laws and Regulations or voluntary programs established by any Governmental Authority;
- (b) all rights relating to the nature of the energy source as may be defined and awarded through applicable Laws and Regulations or voluntary programs; and specific Environmental Attributes include ownership rights to any applicable credits, entitlements or other instruments resulting from the interaction of a Facility or an Eligible Measure with a Distribution System or the IESO-Controlled Grid or as specified by applicable Laws and Regulations or voluntary programs;
- (c) all rights to quantify and register the foregoing with competent authorities; and
- (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing.

“Facility” means the buildings, premises or lands, or part thereof, owned or occupied by an Eligible Person or a Participant and in respect of which such Eligible Person intends to participate, or such Participant is participating, in an Initiative.

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

“Funding Amount” has the meaning given to it in Section 4.6(e).

“General Service < 50 kW Account” has the meaning given to such term in the annual Yearbook of Electricity Distributors.

“General Service > 50 kW Account” has the meaning given to such term in the annual Yearbook of Electricity Distributors.

“Good Industry Practice” means, in respect of any aspect of any Eligible Measure, care and disposal of materials, or other actions or obligations contemplated in this Master Agreement or an Initiative Schedule, in each case, that have been or ought to have been performed by a Person, and subject always to Laws and Regulations, the exercise of the degree of skill, diligence, prudence and foresight and practice which could reasonably and ordinarily be expected from a skilled and

experienced Person engaged in: (i) carrying out the same type of responsibilities of such Person in performing such actions or obligations as contemplated in this Master Agreement or an Initiative Schedule; or (ii) carrying out responsibilities, whether individually or as a package of responsibilities, which could reasonably be regarded as being comparable to the responsibilities of such Person as contemplated in this Master Agreement or an Initiative Schedule; in each case, performing its obligations under the same, reasonably comparable or similar circumstances and utilizing all the information available at the relevant time.

“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, the Electricity Commissioner’s Office, and any Person acting under the authority of any of the foregoing, but excluding the OPA.

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

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

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

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

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

“Immediate Wind-down Costs” means the costs of the LDC directly related to immediately winding up a Registered CDM Program, being:

- (a) in respect of each agreement between the LDC and LDC Other Service Providers that the LDC has entered into specifically for the purposes of performing its obligations under this Master Agreement, and which the LDC has demonstrated that, after using Commercially Reasonable Efforts, it is unable to use for itself or transfer or assign to another Person, the amount of the accrued or committed expenses, costs and termination fees, if any, that the LDC is required to pay pursuant to such LDC Other Service Provider agreement in order to terminate such agreement;
- (b) any unrecoverable up-front expenditures made by the LDC in order to perform its obligations under this Master Agreement in respect of such Registered CDM Program; and

- (c) any other reasonable costs incurred by the LDC in assisting the OPA to terminate such Registered CDM Program,

but not including forgone revenue or profit, or any costs or expenses that could have been mitigated.

“Indemnifiable Loss” has the meaning given to it in Section 11.3.

“Indemnified Party” means an LDC Indemnified Party or an OPA Indemnified Party.

“Indemnifying Party” means an LDC Indemnifying Party or an OPA Indemnifying Party.

“Industrial” means, with respect to a particular group composed of electricity consumers, General Service > 50 kW Accounts or Large Users that carry on an activity in the Province of Ontario falling into North American Industry Classification System categories 31, 32 and 33 (Manufacturing) or subcategories 113 (Forestry and Logging), 1153 (Support Activities for Forestry) and 212 (Mining, except Oil and Gases).

“Initial C&I Initiatives” has the meaning given to it in Section 3.2(a).

“Initiating Party” has the meaning given to it in Schedule A-4.

“Initiative” means one or more Measures, and the activities pursuant to which such Measure or Measures are delivered, and **“Initiatives”** means each such Initiative, collectively. The specific names of certain Initiatives are set forth in Schedule A-2.

“Initiative Schedule” means a Schedule that sets forth the terms and conditions of one or more Initiatives and, for greater certainty, includes each Additional Initiative Schedule.

“Initiative Term” has the meaning given to it in Section 10.1(b).

“Insolvency Legislation” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada) or any analogous 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 Rights” means:

- (a) any and all proprietary rights anywhere in the world provided under: (i) patent law; (ii) copyright law (including moral rights); (iii) trade-mark law; (iv) design patent or industrial design law; (v) semi-conductor chip or mask work or integrated circuit topography law; or (vi) any other statutory provision or common law principle applicable to this Agreement, including trade secret law, that may provide a right in either hardware, software, content, documentation, Confidential Information, Trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how generally, or the expression or use of such hardware, software, content,

documentation, Confidential Information, Trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how; and

- (b) any and all applications, registrations, licences, sub-licences, franchises, agreements or any other evidence of a right in any of the foregoing.

“**kV**” means kilovolt.

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Large User**” has the meaning given to such term as in the annual *Yearbook of Electricity Distributors*.

“**Laws and Regulations**” means:

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

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

“**LDC Custom Microsite**” has the meaning given to it in Section 2.3(c).

“**LDC Eligible Program Administration Expenses**” means expenses of the LDC:

- (a) that comprise reasonable costs of the LDC incurred prior to the Effective Date associated with preparing for the launch of the CDM Programs in 2011;
- (b) are incurred after the Effective Date and are directly related to a Registered CDM Program;
- (c) are Immediate Wind-down Costs; or
- (d) are Post-Termination Administration Costs,

and that:

- (i) have been actually incurred by the LDC (except in the case of estimated Post-Termination Administration Costs), including by payment to an LDC Other Service Provider;
- (ii) do not include any LDC fees or mark-ups (which prohibited mark-ups include, for example, profit margin, management or other service fees, but do not include fully-burdened overhead allocated by the LDC in accordance with Ontario Energy Board's report of November 28, 2007, *Application of Cost Allocation for Electricity Distributors* (EB-2005-7-0667); and
- (iii) in the case of an expense for the purchase of a capital asset, include only the applicable yearly cost of such asset attributable to the asset during the period that is the shorter of the Term and the life of the asset, based on an amortization of the asset over its life in accordance with the approach to the amortization of comparable assets applied to the LDC by the OEB in connection with the LDC's regulated operations,

and, for certainty, are not Participant Incentives, supplements of Participant Incentives or expenses of the LDC for which the LDC has been paid a Capability Building Funding Amount or a Participant Based Funding Amount.

"LDC Event of Default" has the meaning given to it in Section 10.2.

"LDC Expenditure Policies" has the meaning given to it in Section 4.1.

"LDC Indemnified Party" has the meaning given to it in Section 11.4.

"LDC Indemnifying Party" has the meaning given to it in Section 11.3.

"LDC Marks" means the LDC marks that are provided by the LDC to the OPA from time to time.

"LDC Microsite Pages" has the meaning given to it in Section 2.3(b)(iii).

"LDC Other Service Provider" has the meaning given to it in Section 2.7(a).

"LDC Property" has the meaning given to it in Section 5.3(a).

"Local Distribution Company" means the owner or operator of a Distribution System that is licensed by the OEB as an electricity distributor.

"Low Income" means, with respect to a particular group of electricity consumers, electricity consumers that are below specified household income levels, are recipients of specified social benefits, are social and assisted housing residents or that satisfy other criteria established in an Initiative Schedule.

"Major Change" means a Change that is not a Minor Change.

“Major Change Acceptance” has the meaning given to it in Section 9(c) of Schedule A-4.

“Major Change Notice Period” has the meaning given to it in Section 9(b) of Schedule A-4.

“Major Change Request” has the meaning given to it in Section 9(a) of Schedule A-4.

“Marketing Standards” means in respect of the CDM Programs, the branding standards developed by the OPA, as modified from time to time pursuant to Section 2.3(a)(iv), setting out the requirements, standards and protocols applicable to the marketing of the CDM Programs and the Initiatives across all marketing channels.

“Master Agreement” means this Master CDM Program Agreement, including all recitals and Schedules, and Exhibits and Appendices attached to Schedules from time to time, as it or they may be amended, restated or supplemented from time to time.

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

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

“Microsite” has the meaning given to it in Section 2.3(a)(v).

“Ministry Marks” means the following trade-marks:

- (i) Cleaner Ontario in English
- (ii) Cleaner Ontario in French
- (iii) Phrase “Our Province. Our Future” in English
- (iv) Phrase “Our Province. Our Future” in French
- (v) Cleaner Ontario Logo in English
- (vi) Cleaner Ontario Logo in French

“Ministry of Energy” means Her Majesty the Queen in right of Ontario, as represented by the Minister of Energy.

“Minor Change Notice Period” has the meaning given to it in Schedule A-4.

“Minor Changes” has the meaning given to it in Section 2(b) of Schedule A-4.

“Notice of Additional Initiative” has the meaning given to it in Section 5(b) of Schedule A-4.

“Notice of Intention to Change” has the meaning given to it in Section 3(a) of Schedule A-4.

“Notice of Minor Change” has the meaning given to it in Section 5(b) of Schedule A-4.

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

“OPA” has the meaning given to it in the preamble of this Master Agreement.

“OPA EM&V Protocols” means the methods and processes that the OPA develops for the evaluation, measurement and verification of OPA-Contracted Province-Wide CDM Programs and each of the Initiatives, as such methods and processes may be amended from time to time.

“OPA Environmental Attributes” has the meaning given to it in Section 6.1(a).

“OPA Event of Default” has the meaning given to it in Section 10.4.

“OPA Indemnified Party” has the meaning given to it in Section 11.3.

“OPA Indemnifying Party” has the meaning given to it in Section 11.4

“OPA Marks” means the marks identifying the CDM Programs and Initiatives provided in the Marketing Standards other than the Ministry Marks and “peaksaver”.

“OPA Other Service Provider” has the meaning given to it in Section 2.6(a).

“OPA Property” has the meaning given to it in Section 5.1(a).

“OPA’s Cost Effectiveness Tests” has the meaning given to it in the CDM Code.

“Other Service Provider” means either an LDC Other Service Provider, an OPA Other Service Provider or both, as applicable.

“Participant” means, in respect of an Initiative, an Eligible Person whose Application has been accepted by the LDC or the OPA, or an Eligible Person receiving a Participant Incentive and party to a Participant Agreement, as applicable, and in each case that has met all applicable requirements for participation in such Initiative as set out in the applicable Initiative Schedule, including the entering into of any required Participant Agreement.

“Participant Agreement” means, in respect of an Initiative, any one or more agreements that an Eligible Person entitled to receive a Participant Incentive must enter into in order to participate in such Initiative or to receive such Participant Incentive.

“Participant Based Funding Amount” means, in respect of an Initiative, a funding amount payable by the OPA to the LDC directly or as reimbursement for an LDC Other Service Provider for the performance of delivery tasks pertaining to such Initiative as specified in the Initiative Schedule for such Initiative.

“Participant Incentives” means, in respect of an Initiative, the financial incentive paid or payable to, or a discount received or receivable by, the Participant or a third party, as applicable, pursuant to the applicable Initiative Schedule or Participant Agreement.

“Participating LDCs” means all Local Distribution Companies prescribed an OEB-approved CDM target for their respective service areas.

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

“Payment Date” has the meaning given to it in Section 4.6(f).

“Peak Demand Savings” means electricity peak demand savings determined pursuant to the OPA EM&V Protocols.

“Peak Demand Savings Target” means, for a specific CDM Program, the portion of the LDC’s CDM Target that relates specifically to peak electricity demand savings that the LDC expects to result from such Registered CDM Program (and, for certainty, not from Board-Approved CDM Programs (as defined in the CDM Code)) as stated in the LDC’s CDM Strategy or updated in the LDC’s CDM Annual Report, as such CDM Target may change from time to time in accordance with Laws and Regulations.

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

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

“Post-Termination Administration Costs” means the reasonable and prudent costs of the LDC, as estimated by the LDC and approved by the OPA, acting reasonably, to comply with: (i) all of its obligations that survive the expiration or earlier termination of this Master Agreement or of a Registered CDM Program and that are directly related to the Registered CDM Programs that expire or are terminated; and (ii) all of its obligations directly related to winding up such Registered CDM Programs in an orderly manner, including all staffing, servicing and other resources which have been allocated to such Registered CDM Programs, after the expiration or earlier termination of this Master Agreement or of a Registered CDM Program.

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

“Program Administration Budget” or **“PAB”** means, with respect to a CDM Program, the funding amount for such CDM Program available to the LDC for spending on LDC Eligible Program

Administration Expenses, set forth in section 1 of Schedule A-5, as adjusted from time to time in accordance with the provisions of the Master Agreement.

“Program Management System” means the OPA CDM Program on-line management system, as it may be modified or replaced from time to time.

“Program Personal Information” has the meaning given to it in Section 12.2(a).

“Project” means one or more Eligible Measures that are expected to be undertaken pursuant to an Initiative.

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

“Registered” means, in relation to a Registered Initiative or a Registered CDM Program that was not deemed to be a Registered Initiative or a Registered CDM Program pursuant to Sections 3.1, that (a) each of the following has occurred: (i) a Registration was submitted by the LDC to the Program Management System identifying each CDM Program and Initiative in which the LDC chose to participate in accordance with the provisions of each such Initiative Schedule; (ii) the OPA notified the LDC through the Program Management System that it was willing to enter into this Master Agreement in respect of such CDM Programs and Initiatives; and (iii) the LDC evidenced its acceptance through the Program Management System of the terms and conditions of this Master Agreement; or (b) the LDC has followed the Registration procedure in accordance with Section 3.2 or 3.3(a)(ii).

“Registered CDM Programs” means: (i) the CDM Program or CDM Programs for which the LDC has been Registered; and (ii) the CDM Program or CDM Programs deemed to be included in the Registered CDM Programs pursuant to the Change Terms.

“Registered Initiatives” means: (i) the Initiative or Initiatives for which the LDC has been Registered; and (ii) the Additional Initiative or Additional Initiatives deemed to be included in the Registered Initiatives pursuant to the Change Terms.

“Registration” means the information prescribed by the OPA that the LDC is required to submit to the Program Management System or otherwise in order to be Registered.

“Remaining C&I Initiatives” has the meaning given to it in Section 3.2(a).

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

“Residential” means electricity consumers in Ontario that are classified as residential in the most recent *Yearbook of Electricity Distributors* published by the OEB.

“Responding Party” has the meaning given to it in Section 9(a) of Schedule A-4.

“Savings Milestones” means, for a specific CDM Program, the peak demand savings that the LDC anticipates to achieve for each year of the Term in order to meet its Peak Demand Savings Target and the electricity savings that the LDC anticipates to achieve for each year of the Term in order to meet its Electricity Savings Target, as the same are set forth in the LDC’s CDM Strategy and Annual Report, as each is submitted pursuant to the CDM Code.

“Senior Conference” has the meaning given to it in Section 13.2.

“Sublicence” has the meaning given to it in Section 5.6(a).

“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), and payments in lieu of taxes under the *Electricity Act, 1998* (Ontario), or other additional amounts imposed by any Governmental Authority in respect thereof, but does not include Applicable Taxes.

“Term” has the meaning given to it in Section 10.1(a).

“Trade-marks” means trade-marks, trade-names, brands, trade dress, business names, domain names, designs, graphics, logos and other commercial symbols and indicia of origin whether registered or not and any goodwill associated therewith.

SCHEDULE A-2

CDM PROGRAMS AND INITIATIVES

RESIDENTIAL PROGRAM

Conservation Instant Coupon Booklet Initiative

HVAC Incentives Initiative

Bi-Annual Retailer Event Initiative

Appliance Retirement Initiative

Appliance Exchange Initiative

Home Energy Assessment Tool Initiative

Midstream Electronics Initiative

Midstream Pool Equipment Initiative

Residential and Small Commercial Demand Response Initiative* (effective July 1, 2011)

Residential New Construction Initiative

COMMERCIAL AND INSTITUTIONAL PROGRAM (sometimes referred to herein as the “C&I Program”)

Energy Audit Initiative**

Efficiency: Equipment Replacement Incentive Initiative**

Direct Install Lighting and Water Heating Initiative

Direct Service Space Cooling Initiative (to be provided later per Section 3.2)

Building Commissioning Initiative** (to be provided later per Section 3.2)

New Construction Initiative (to be provided later per Section 3.2)

INDUSTRIAL PROGRAM (to be provided later per Section 3.2)°

Process and System Upgrades Initiatives 2011-2014: Preliminary Engineering Study Initiative

Process and System Upgrades Initiatives 2011-2014: Detailed Engineering Study Initiative

Process and System Upgrades Initiatives 2011-2014: Project Incentive Initiative

Process and System Upgrades Initiatives 2011-2014: Monitoring & Targeting Initiative

Process and System Upgrades Initiatives 2011-2014: Metering & Instrumentation Library (enabling measure)

Process and System Upgrades Initiatives 2011-2014: Energy Manager Initiative

Process and System Upgrades Initiatives 2011-2014: Key Account Manager Initiative

Demand Response 1 Initiative

Demand Response 3 Initiative

LOW INCOME PROGRAM (to be provided later per Section 3.2)

(Names of specific Initiatives to be determined)

- * denotes Initiatives available to both the Residential and C&I customer sectors
- ** denotes Initiatives available to both the C&I and Industrial customer sectors
- o all Initiatives in the Industrial Program are available to the C&I customer sector

SCHEDULE A-3

CONTRACT ADMINISTRATION

1. Notices and other communications will be addressed as follows:

- (a) If to the OPA for communications other than invoices or Registered Initiative inquiries or complaints from the public:

Ontario Power Authority
Suite 1600
120 Adelaide Street West
Toronto, Ontario M5H 1T1
Attention: Vice President, Conservation
Fax: 416-967-1947
E-mail: Andrew.Pride@powerauthority.on.ca

With a copy to:

Attention: General Counsel
Fax: 416-969-6383
E-mail: Michael.Lyle@powerauthority.on.ca

- (b) If to the OPA for invoices for payment:

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

- (c) If to the OPA for Registered Initiative inquiries or complaints from the public:

Ontario Power Authority
Suite 1600
120 Adelaide Street West
Toronto, Ontario M5H 1T1
Attention: LDC Support
Fax: 416-967-1947
E-mail: LDC.Support@powerauthority.on.ca

- (d) If to the LDC for communications other than Registered Initiative inquiries or complaints from the public:

Name of the LDC:

Address:

City/Town:

Postal Code:

Attention:

Fax:

E-mail:

- (e) If to the LDC for Registered Initiative inquiries or complaints from the public:

Name of the LDC:

Address:

City/Town:

Postal Code:

Attention:

Fax:

E-mail:

Any notices of an Event of Default or termination of this Master Agreement will only be given by hand delivery.

2. The initial Company Representatives of the Parties are:

- (a) for the OPA:

Name: _____

Title: _____

- (b) for the LDC:

Name: _____

Title: Conservation Officer

3. The HST registration numbers of the Parties are:

- (a) for the OPA:

Number: 854195039RT0001

- (b) for the LDC:

Number: _____

SCHEDULE A-4

CHANGE TERMS

1. **Introduction**

The Parties acknowledge that the CDM Programs and the Initiatives have been developed in collaboration between the OPA, certain Local Distribution Companies and the EDA Representative, primarily through the activities of certain working groups. The Parties acknowledge and agree that the OPA, the Participating LDCs and the EDA Representative will, during the Term, take reasonable steps to continue such collaboration for, among other things, managing any necessary or desirable changes to the CDM Programs and the Initiatives (the “**Collaboration Process**”). Notwithstanding that the LDC may elect to not participate directly in the Collaboration Process, it is the intention of the Parties that the OPA and the EDA Representative and, the Participating LDCs will implement the Collaboration Process in a manner that reflects principles to be determined by working groups to be continued or established, which principles will include continuous improvement of the Initiatives, consistency and predictability of the Initiatives from the perspective of the Parties and the Participants, objective rationale for change, materiality thresholds for change, focus on province-wide scope and adherence to the Directive and Laws and Regulations.

2. **Definition of “Minor Change”**

- (a) The Parties acknowledge and agree that:
 - (i) pursuant to the Directive, the OPA is required to design the CDM Programs and to take all reasonable steps to collaborate with Local Distribution Companies in respect thereof; and
 - (ii) the LDC does not participate in the Initiatives that are not Registered Initiatives.
- (b) In the context of the foregoing, “**Minor Changes**” are Changes that comprise only the following, provided that they are in compliance with the Directive:
 - (i) any change in (i) a Participant Incentive, (ii) an Eligible Measure, (iii) any Eligibility Criteria, (iv) the form of an Application, (v) the provisions of the Residential and Small Commercial Demand Response Initiative that relate to dispatch rules applicable to such Initiative, or (vi) a Participant Agreement, (not including, for certainty, any Participant Agreement that has already been entered into by the LDC and is in force) in any of such cases that:
 - A. is not reasonably expected to materially reduce the predicted Electricity Savings or Peak Demand Savings of such Initiative over the remainder of the Term;

- B. is reasonably expected to materially reduce the predicted Electricity Savings or Peak Demand Savings of such Initiative over the remainder of the Term but that requires such change in order to maintain the cost effectiveness of such Initiative, as determined pursuant to the OPA's Cost Effectiveness Tests; or
 - C. is reasonably required as the result of a change, modification or other amendment of the OPA EM&V Protocols;
- (ii) any modification, supplement or replacement of a form of a Participant Agreement required pursuant to a Minor Change arising in clauses (i) to (v), inclusive, of Section 2(b)(i) of this Schedule, but only to the extent so required and, in any event, not in respect of any Participant Agreement that has already been entered into by the LDC and that is in force;
 - (iii) any amendment or modification to the Draft Allocation Methodology (as defined in Initiative Schedule "B-1") once finalized pursuant to Exhibit I-1 to Initiative Schedule "B-1"; and
 - (iv) any amendment, modification, supplement or replacement of any term or condition of any form of Participant Agreement (not including, for certainty, any Participant Agreement that has already been entered into by the LDC and is in force) or of this Master Agreement:
 - A. ensuring continuing compliance with the Directive or any other Laws and Regulations which is, in the good faith opinion of the OPA, necessary or desirable and not prejudicial to the LDC;
 - B. providing, in the good faith opinion of the OPA, additional protection for the LDC; or
 - C. removing any conflicts or inconsistencies in such agreement or making minor corrections which are, in the good faith opinion of the OPA, necessary or desirable and not prejudicial to the LDC.

3. Notice of Intention to Change by the OPA

- (a) The OPA will request a Change by delivering to the EDA Representative and the LDC a written document describing the proposed Change (a "**Notice of Intention to Change**"). The Notice of Intention to Change will include the following information:
 - (i) a description of the Change, including whether it is a Minor Change, an Additional Initiative or some other Major Change, and of how and when the

proposed Change would be implemented, the reason for the Change and whether there is urgency to the proposed Change;

- (ii) a description and analysis of the anticipated changes that implementation of the Change would have on the performance of the LDC's obligations in accordance with this Master Agreement, if any;
- (iii) a statement of any new Participant Incentives or of any change to the Participant Based Funding Amounts, Capability Building Funding Amounts or to the Participant Incentives, along with a description of the OPA's methodology for the calculation of these amounts;
- (iv) the expected time period and nature of the steps to be undertaken under the Collaboration Process with respect to the proposed Change or, if such steps have already occurred, the nature and the extent of such collaboration;
- (v) identification of any terms or conditions of the Master Agreement that the OPA proposes would be amended as a result of the Change along with the specific amendments that the OPA proposes to make to the Master Agreement or to the form of any Participant Agreement;
- (vi) in the case of a Notice of Intention to Change for an Additional Initiative, a draft Additional Initiative Schedule, unless the Collaboration Process is required to occur prior to drafting the terms of such Additional Initiative Schedule; and
- (vii) in the case of a Notice of Intention to Change for a Minor Change, unless the Collaboration Process is required to occur prior to drafting the following documents, a proposed replacement Exhibit, Appendix or other supplement to an Initiative Schedule, an amending agreement to this Master Agreement, or such other evidence of such Minor Change as determined by the OPA, acting reasonably, none of which if deemed to be effective pursuant to the provisions of this Schedule will require execution by the LDC to be effective.

4. **Notice of Intention to Change by the LDC**

The LDC may request a Change only through the EDA Representative, which will be required to request Changes on behalf of the LDC and all other affected Participating LDCs by the delivery to the OPA of a Notice of Intention to Change (an "**LDC Change Request**"). An LDC Change Request must contain the information required to be included by the OPA in a Notice of Intention to Change pursuant to Section 3 of this Schedule, excluding as required by Section 3(vi) and (vii) of this Schedule.

Minor Changes and Additional Initiatives

5. Collaborative Steps and Notice of Change

- (a) Following the receipt by the LDC and the EDA Representative of a Notice of Intention to Change for a Minor Change or for an Additional Initiative, the LDC and the OPA will take all actions within their respective control to cause the proposed Collaboration Process to occur.
- (b) If based on such Notice of Intention to Change the EDA Representative advises the OPA that the Minor Change or Additional Initiative should be implemented as proposed, the OPA will provide notice to the LDC that the Change Management Parties have agreed to a Minor Change or Additional Initiative and will deliver a **“Notice of Minor Change/Additional Initiative”** (as applicable) to the LDC and the EDA Representative. A Notice of Minor Change/Additional Initiative will be in substantially the form of the Notice of Intention of Change previously delivered in respect of such proposed Minor Change/Additional Initiative, as updated to take into account any developments arising up to the time of the issuance of the Notice of Minor Change/Additional Initiative, including the preparation of the relevant documents listed in Section 3(a)(vi) and 3(a)(vii) of this Schedule.
- (c) If the OPA reasonably and in good faith determines that it has taken all reasonable steps to either (i) cause the proposed Collaboration Process to occur or (ii) participate in the Collaboration Process in respect of such proposed Minor Change or Additional Initiative, it may deliver a Notice of Change/Additional Initiative (as applicable) to the LDC and the EDA Representative.
- (d) A Notice of Minor Change/Additional Initiative will take effect on the ninetieth (90th) day following the date of such notice (the **“Minor Change/Additional Initiative Notice Period”** (as applicable)) or an earlier date specified therein if (i) such earlier date has been agreed to by the Change Management Parties or, (ii) in the absence of such agreement, in a case of urgency specified by the OPA. Following the delivery of a Notice of Change/Additional Initiative, in respect of a Minor Change or an Additional Initiative,
 - (i) subject to Section 7 of this Schedule, such Minor Change will be binding on the LDC and the OPA; or
 - (ii) subject to Section 8 of this Schedule, such Additional Initiative will be binding on the LDC and the OPA.

6. Objection to Minor Change from EDA Representative

- (a) Following a Notice of Minor Change, the EDA Representative may deliver a response (**“Change Response”**) to the OPA within thirty (30) days of delivery of the

Notice of Minor Change objecting to the Notice of Minor Change only on the following grounds:

- (i) the proposed Change is not a Minor Change as defined in Section 2(b) of this Schedule;
- (ii) the OPA has failed to act in accordance with the Change Terms with respect to such Minor Change in any material respect; or
- (iii) the implementation of the Notice of Minor Change is not required on an urgent basis if the Notice of Minor Change so provides.

If the EDA Representative does not deliver a Change Response within such thirty (30) day period it will be deemed to have agreed with such Notice of Minor Change.

- (b) If the EDA Representative objects to a Notice of Minor Change on behalf of the LDC and all other Participating LDCs affected by such Notice of Minor Change, such Change Response will include the following information:
 - (i) the grounds set out in Section 6(a) of this Schedule for objecting to the Change;
 - (ii) an analysis of the elements of the Change and the consequences thereof that substantiate the grounds for objecting to the Change;
 - (iii) any other details reasonably required by the OPA to enable the OPA to reassess the anticipated impact of the Change; and
 - (iv) a good faith counter proposal or alternative to the manner of implementation of the Change.
- (c) The issuance of a Change Response will suspend the running of the Minor Change Notice Period. If at any time the Change Management Parties agree upon the Minor Change or any amendments to the proposed Minor Change and the EDA Representative provides notice to the OPA that the Minor Change should be implemented as amended:
 - (i) the OPA will provide notice to the LDC that the Change Management Parties have agreed to a Minor Change and, if necessary to reflect any agreed amendments, will re-issue the Notice of Minor Change; and;
 - (ii) the Minor Change Notice Period will recommence; and
 - (iii) subject to Section 7 of this Schedule, such Minor Change will be binding on the LDC and the OPA.

- (d) Following receipt by the OPA of a Change Response from the EDA Representative objecting to a Minor Change in whole or in part pursuant to Section 6(b) of this Schedule, the OPA may:
 - (i) withdraw the Notice of Minor Change;
 - (ii) revise and re-issue the Notice of Minor Change accepting the counter proposal or alternative to the manner of implementation of the Change proposed by the EDA Representative; or
 - (iii) reject the Change Response (a “**Change Dispute**”).

If the OPA re-issues the Notice of Minor Change in accordance with clause (ii):

- A. the Minor Change Notice Period will recommence,
 - B. subject to Section 7 of this Schedule, such Minor Change will be binding on the LDC.
- (e) If there is a Change Dispute then the OPA may elect to have such Change Dispute determined by binding arbitration pursuant to Section 11(b) of this Schedule and the running of the Minor Change Notice Period will be suspended until such arbitration is completed or the parties to the arbitration have otherwise agreed.

7. **Objection by LDC to Minor Change**

- (a) If no Change Response is provided by the EDA Representative within the required thirty-day period in Section 6(a) of this Schedule or if the OPA notifies the LDC that the Change Management Parties have agreed upon the Minor Change, such Minor Change will be binding on the LDC and the OPA with effect on the last day of the Minor Change Notice Period and the Master Agreement will be deemed to be amended as provided in the Notice of Minor Change, as it may have been amended or re-issued.
- (b) If the LDC does not agree with the Minor Change on the basis that such Minor Change will (due to the LDC's size, customer mix, or service area location) adversely affect the LDC in a manner that is different from other Participating LDCs, the LDC may, no later than thirty (30) days after the delivery of a Notice of Minor Change that has been agreed to (or deemed to be agreed to) by the Change Management Parties, request a waiver or modification of such Minor Change. The OPA shall reasonably consider such request and, if further information is required, the Parties may agree to meet to discuss the request; provided, however, if the OPA does not agree with such request the provisions of Section 7(a) of this Schedule will be effective nevertheless.

- (c) Notwithstanding the provisions of Section 7(a) of the Schedule, if the Minor Change only affects the provisions of one or more Initiative Schedules for Registered Initiatives and the LDC does not agree with the terms and conditions of such Minor Change, it may, prior to the end of the Minor Change Notice Period, provide notice to the OPA objecting to such Minor Change. Such notice will be deemed to be notice of the LDC's intention to terminate each Initiative Schedule affected by such Minor Change, and:
 - (i) each such Initiative Schedule will be of no further force or effect as at the end of the calendar month in which such notice is provided by the LDC; and
 - (ii) the Master Agreement will be deemed to be so amended as at such time.

8. **Objection by LDC to Additional Initiative**

- (a) If the OPA provides the LDC with a Notice of Additional Initiative, provided that the proposed Additional Initiative is in respect of one of the LDC's Registered CDM Programs, such Additional Initiative will be binding on the LDC and the OPA with effect on the last day of the Additional Initiative Notice Period and the Master Agreement will be deemed to be amended as provided in the Notice of Additional Initiative. Alternatively, the OPA may notify the LDC of the method by which the LDC may be Registered in respect of any such Additional Initiative. In either case, each Additional Initiative Schedule that so amends this Master Agreement will be deemed to be a Registered Initiative that is part of the Registered CDM Program identified in such Additional Initiative Schedule.
- (b) Notwithstanding the foregoing, if the LDC does not agree with the terms and conditions of such Additional Initiative, it may, prior to the end of the Additional Initiative Notice Period, provide notice to the OPA together with an explanation regarding why it is not cost effective or practical for the LDC to deliver such Additional Initiative in its service area. The OPA will consider such explanation, acting reasonably, and may agree that the Additional Initiative will not be binding on the LDC.

Major Changes

9. **Major Change Notice and Acceptance or Rejection by Change Management Parties**

- (a) Following the receipt by (i) the LDC and the EDA Representative of a Notice of Intention to Change with respect to a Major Change, or (ii) by the OPA of an LDC Change Request for a Minor Change or a Major Change (in either case the receiving party is the "**Responding Party**" and the Party initiating the change request is the "**Initiating Party**", any such Minor Change will be deemed to be a Major Change for purposes of Sections 9, 10, 11 and 12 of this Schedule, and any such change request is a "**Major Change Request**"), the LDC and the OPA will take all actions

within their respective control to cause the proposed Collaboration Process to occur and for the Change Management Parties to negotiate the proposed Major Change in good faith.

- (b) As part of the Collaboration Process and negotiation, the Change Management Parties will attempt to agree on a notice period for the Major Change to take effect in the event that the Change Management Parties are able to agree upon the Major Change Request (the “**Major Change Notice Period**”).
- (c) If at any time (i) the Responding Party is the EDA Representative and it has delivered to the OPA on behalf of the LDC and the other Participating LDCs affected by such Notice of Intention to Change a response accepting the OPA’s request, or (ii) the Responding Party is the OPA and it has delivered to the LDC and the EDA Representative a response accepting the LDC Change Request (in either case, a “**Major Change Acceptance**”) the OPA will prepare a Change Order in accordance with Section 12(a) of this Schedule.
- (d) The OPA may at any time withdraw any Notice of Change that it submitted.
- (e) The EDA Representative may at any time withdraw any LDC Change Request that it submitted.
- (f) If the reason for the Major Change Request is a change in Laws or Regulations and if the Change Management Parties are unable to agree upon such Major Change Request within thirty (30) days following the issuance of such Major Change Request by the OPA (a “**Change Dispute**”), then the OPA may elect to have the subject matter of the Major Change Request determined by binding negotiation and/or arbitration pursuant to Section 11 of this Schedule in order to effect such Major Change in a manner that will permit the Parties to perform their respective obligations hereunder in accordance with such change in Laws and Regulations.

10. **Objection by LDC to Major Change**

- (a) If the LDC does not agree with a Major Change on the basis that such Major Change will (due to the LDC’s size, customer mix, or service area location) adversely affect the LDC in a manner that is different than other Participating LDCs, the LDC may, no later than thirty (30) days after the delivery of a Change Order prepared by the OPA following a Major Change Acceptance, request a waiver or modification of such Major Change. The OPA shall reasonably consider such request, and, if further information is required, the Parties may agree to meet to discuss the request; provided, however, if the OPA does not agree with such request the Major Change will be effective in respect of the LDC in accordance with such Change Order issued by the OPA in accordance with the Major Change Acceptance delivered.

- (b) Notwithstanding the issuance of a Major Change Acceptance, if the proposed Major Change was introduced pursuant to a Notice of Intention to Change by the OPA and:
 - (i) if the Major Change only affects the provisions of one or more Initiative Schedules for Registered Initiatives and the LDC does not agree with the terms and conditions of such Major Change, it may, prior to the end of the Major Change Notice Period, provide notice to the OPA objecting to such Major Change and electing to terminate each Initiative Schedule affected by such Major Change. Following such notice:
 - A. each Initiative Schedule listed in such notice will be of no further force or effect as at the end of the calendar month in which such notice is provided by the LDC; and
 - B. the Master Agreement will be deemed to be so amended; or
 - (ii) if the Major Change affects the provisions of the Master Agreement other than as contained in one or more Initiative Schedules and the LDC does not agree with the terms and conditions of such Major Change, it may, prior to the end of the Major Change Notice Period, provide notice to the OPA of its rejection of the Major Change and the OPA may:
 - A. withdraw its Change Request; or
 - B. negotiate with the LDC in good faith the terms and conditions pursuant to which the Major Change described in its Major Change Request will be implemented and not implement such Major Change for the LDC or any other Participating LDC affected by such Major Change unless and until an agreement satisfactory to the OPA is reached with the LDC.
- (c) For certainty, the LDC may not provide a notice of objection with respect to a Major Change Acceptance if such Major Change Acceptance arises from an LDC Change Request.

11. Group Negotiation/Arbitration

- (a) If the OPA elects to have a Change Dispute in respect of a Major Change determined by group negotiation and/or arbitration pursuant to this Section 11 of this Schedule, then the Parties and, at the OPA's discretion, the Participating LDCs that are affected by the Major Change Request and are required by the OPA to participate, shall engage in good faith negotiations to amend this Master Agreement and the respective agreements of such Participating LDCs in accordance with the change in Laws and Regulations in a manner that will permit the Parties to perform their respective obligations hereunder.

- (b) If (x) the OPA has made the election pursuant to Section 6(e) of this Schedule to arbitrate a Change Dispute for a Minor Change, or (y) the Parties fail to reach agreement on the amendments described in Section 11(a) of this Schedule and the OPA so elects, the matter shall be determined by mandatory and binding arbitration to be conducted in accordance with the procedures set out in Article 11, as modified as follows:
- (i) the Parties and, at the OPA's discretion, the Participating LDCs that are required by the OPA to participate shall participate in the arbitration;
 - (ii) if the LDC fails to participate in such arbitration, the LDC acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the LDC shall be bound by the award of the arbitrator and the subsequent amendments to this Master Agreement made by the OPA to implement such award;
 - (iii) the application of section 7(2) of the Arbitration Act is expressly excluded;
 - (iv) the OPA and the LDC intend, and will take all reasonable action as is necessary or desirable to ensure, that there be a speedy resolution to the Change Dispute, and the arbitrator will conduct the arbitration of the Change Dispute with a view to making a determination and order as soon as possible;
 - (v) despite section 28(1) of the Arbitration Act, an arbitrator will not, without the prior written consent of the Change Management Parties, retain any expert;
 - (vi) each of the OPA's and the LDC's submissions will each set out:
 - A. the detailed terms and conditions under which it proposes that the Change be implemented for the remainder of the Term; and
 - B. rejection of the implementation of the Change as proposed by the other Party and the reasons for such rejection;
 - (vii) the OPA's submission will also set forth the OPA's budget limit for the CDM Program that is the subject matter of the Change Dispute and the remaining availability of funds payable by the OPA in respect of the Change (the "**Funding Limit**");
 - (viii) if the arbitrator's award requires the OPA to pay an aggregate amount in excess of the Funding Limit, the OPA may within 60 days of such award
 - A. seek approval of its board of directors to increase the Funding Limit;
or

- B. withdraw the Change Request that gave rise to the arbitration, in which case the arbitrator's award will provide that the Change will not be effective. In no event will the arbitrator's award require the OPA to pay an aggregate amount in excess of the Funding Limit if it does not seek or obtain the approval of its board of directors to increase the Funding Limit necessary to give effect to such award;
- (ix) each of the LDC and the OPA will bear its own costs incurred in conducting the arbitration, and will share equally the costs of any third party (other than each Party's legal counsel) associated with the arbitration.
- (c) Subject to Section 11(b)(viii) of this Schedule, following the receipt of the determination of the arbitrator, the OPA will prepare a Change Order that provides for the making of the Change on the terms and conditions determined by the arbitrator.
- (d) No amounts paid or payable by the OPA to the LDC will be used by the LDC to pay any costs or expenses in any way directly or indirectly related to a negotiation or arbitration pursuant to this Section 11 or any other matter contemplated by this Schedule.

12. **Implementation of Major Changes**

- (a) The Parties will not implement any Major Change unless an instrument setting out the terms and conditions pursuant to which the Major Change will be made (a "**Change Order**") has been (i) agreed upon by the Change Management Parties or (ii) prepared by the OPA to implement the determination of an arbitrator, and, in either case, the LDC has been notified of such Change Order.
- (b) Upon the receipt of a notice (A) signed by the Change Management Parties of a Change Order pursuant to Section 9(c) of this Schedule (but subject to the rights of the LDC pursuant to Section 10(a) of this Schedule) or (B) of a Change Order to implement the determination of an arbitrator:
 - (i) the LDC and the OPA will be obligated to implement the Change described in the Change Order in accordance with the terms and conditions of the Change Order; and
 - (ii) if the Change Order expressly states that it is intended to amend this Master Agreement and identifies the specific amendments to be made, then the Change Order will be deemed incorporated into and will constitute a formal amendment to this Master Agreement and all provisions of this Master Agreement which are expressly amended as part of the Change Order will be amended accordingly.

13. Miscellaneous

- (a) Changes requested by the OPA concurrently will be considered by the EDA in the order determined by the OPA.
- (b) Upon the OPA's reasonable request, the Parties will amend and restate this Master Agreement to reflect a consolidation of all Changes made to this Master Agreement.

SCHEDULE A-5**FUNDING AMOUNTS****1. Program Administration Budget and Payment Schedule**

The Program Administration Budget for each Registered CDM Program is the amount set forth for the period “2011- 2014” in Table 1 of Exhibit A-5-1 under the heading “Program Administration Budget (\$)”.

The payment schedule for the Program Administration Budget for each Registered CDM Program is as set forth in the following Table 1:

Table 1: Payment Schedule and Payment Percentage of Program Administration Budgets for Registered CDM Programs per OPA-Contracted Province-Wide CDM Program

Payment Month	Residential Program	Commercial & Institutional Program	Industrial Program
January 2011	15%	20%	20%
July 2011	15%	20%	20%
January 2012	15%	15%	15%
July 2012	15%	15%	15%
January 2013	10%	10%	10%
July 2013	10%	10%	10%
January 2014	10%	5%	5%
July 2014	10%	5%	5%
Total	100%	100%	100%

The Parties acknowledge that the Program Administration Budget for the LDC for each Registered CDM Program has been determined based upon, among other considerations: (a) the number of electricity consumers in the LDC’s service area, as determined by the LDC as at the Effective Date, and expected to be eligible in the CDM Programs applicable to such consumers; (b) a percentage allocation to the LDC of the Province-wide peak demand savings target and the electricity savings target for all CDM Programs as such percentage is determined by dividing the LDC’s CDM Target by the aggregate CDM Targets of the LDC and all other Participating LDCs; and (c) a Term of four years.

The Parties also acknowledge that Province-wide peak demand savings target and electricity savings target set forth in Table 2 has been allocated among the LDC and all Participating LDCs in the same

manner as the funds available for the aggregate Program Administration Budgets for the LDC and all Participating LDCs.

Table 2: CDM Program Savings by Year and by Term

Year	Residential Program		Commercial & Institutional Program		Industrial Program	
	MWh	MW	MWh	MW	MWh	MW
2011	327,431	52.846	604,041	120.590	213,890	52.014
2012	484,320	78.168	617,940	123.365	221,795	53.937
2013	541,370	87.376	631,180	126.008	222,906	54.207
2014	550,879	88.910	641,839	128.136	221,409	53.843
Total	1,904,000	307.300	2,495,000	498.100	880,000	214.000

2. Cost Efficiency Incentive

The Cost Efficiency Incentive will be calculated for each Registered CDM Program as a percentage of the cost savings represented by the difference between the PAB Budget and the Actual Spend, where:

“PAB Budget” is the Program Administration Budget for the applicable Registered CDM Program, as such amount may be adjusted pursuant to Section 3.2, Section 3.3, Section 7.3 or Article 10; and

“Actual Spend” is the aggregate, without duplication of: (i) LDC Eligible Program Administration Expenses for the applicable Registered CDM Program spent or incurred by the LDC during the Term (and in the case of incurred expenses, paid within ninety (90) days following the Term); and (ii) the estimated or actual, as the case may be, Post Termination Administration Costs for the applicable Registered CDM Program spent or incurred, or expected to be spent or incurred, by the LDC after the Term.

The Cost Efficiency Incentive will be the sum of two tiers of incentives:

- (a) in the first tier, if Actual Spend is greater than or equal to 95% and less than 100% of PAB Budget, the LDC will be eligible to retain 60% of the difference of PAB Budget less Actual Spend and the remaining 40% will be returned to the OPA; and
- (b) in the second tier, if Actual Spend is greater than or equal to 80% and less than 95% of PAB Budget (i.e. saving between 20% and 5%), the LDC may retain 80% of the difference of 95% of PAB Budget less Actual Spend and the remaining 20% will be returned to the OPA.

No amounts may be retained by the LDC for amounts above the positive difference of PAB Budget less Actual Spend that exceeds 20% of PAB Budget.

Actual Spend (as % of PAB Budget)	Cost Efficiency Incentive Share for LDC
≥ 95% - 100%	60%
≥ 80% - <95%	80%
< 80%	0%

Exhibit A-5-1 to Schedule A-5

Table 1 to Exhibit A-5-1: 2011 – 2014 LDC Program Administration Budget

CDM Program	Residential	C & I	Industrial
	Program Administration Budget (\$)	Program Administration Budget (\$)	Program Administration Budget (\$)
2011 - 2014			

[Note to Finalization: The amounts to be recorded in the cells of Table 1 above in respect of the Registered CDM Programs have been agreed to and accepted by the LDC as at the Effective Date.]

SCHEDULE A-6

REPORTING REQUIREMENTS

- (a) The LDC shall break down the LDC Eligible Program Administration Expenses into the “**LDC Eligible Program Administration Expense Categories**” (listed in Exhibit A-6-1) and will report on these expenses by Registered Initiative.
- (b) For each applicable Registered CDM Program the LDC shall identify the LDC Eligible Program Administration Expenses spent in respect of each LDC Eligible Program Administration Expense Category for each Registered Initiative on an Initiative by Initiative basis.
- (c) In breaking down the LDC Eligible Program Administration Expenses into the LDC Eligible Program Administration Expense Categories for shared expenses that cannot be allocated solely to one Registered CDM Program or one Registered Initiative, the LDC will use an activity analysis to assess the nature and extent of the functions being performed by the LDC in respect of which the LDC Eligible Program Administration Expenses are being allocated. The analysis must include the identification of all activities performed by the LDC in respect of each Registered Initiative and allocate expenses to CDM Program delivery activities (as opposed to regulated activities) as provided by the CDM Code.
- (d) All LDC Eligible Program Administration Expenses that are required to be reported pursuant to this Schedule will be reported net of recoverable Applicable Taxes that may have been incurred by the LDC on such expenses.

Exhibit A-6-1 to Schedule A-6

Categories for Reporting of LDC Eligible Program Administration Expenses

The following categories must be used, as applicable, for the reporting of LDC Eligible Program Administration Expenses:

- (a) all salaries and labour costs including benefits;
- (b) LDC Other Service Provider expenses;
- (c) billing and collection expenses;
- (d) customer care, advertising, and marketing expenses;
- (e) information technology expenses;
- (f) office equipment expenses; and
- (g) any other expense that the LDC can show is relevant and necessary for a Registered Initiative.

SCHEDULE A-7

MINISTRY MARKS

1. Cleaner Ontario
2. L'Ontario plus propre
3. Our Province. Our Future
4. Notre province. Notre future
5. Cleaner Ontario logo design in color (below)
6. Cleaner Ontario Logo in black and white (below)
7. L'Ontario plus propre logo design in color (below)
8. L'Ontario plus propre logo design in black and white (below)





UNDERTAKING NO. J3.4

REFERENCE

Hearing Day May 3, 2011 Tr. p. 97

UNDERTAKING NO. J3.4: to PROVIDE COPIES OF WRITTEN COMMUNICATION
BETWEEN TORONTO HYDRO AND THE OPA, as referenced.

RESPONSE

The email request from Chris Tyrrell of Toronto Hydro Electric System Limited ("THESL") to Andrew Pride, OPA's Vice-President of Conservation, dated March 7, 2011, requesting the OPA's support with regard to THESL's application to the OEB for Board-Approved CDM Programs is filed as Attachment 1 to this exhibit.

From: Chris Tyrrell [ctyrrell@torontohydro.com]
Sent: Monday, March 07, 2011 10:08 AM
To: Andrew Pride
Cc: Michael Marchant
Subject: OPA Support Letter for Toronto Hydro's OEB Board Approved Programs

Attachments: THESL_APPLN_CDMPrograms_20110110.PDF



THESL_APPLN_CDM
Programs_201101...

Good morning Andrew,

Hope all is well....

As you are aware, Toronto Hydro is starting the intervenor review / hearing process relating to Toronto Hydro's first set of (9) OEB CDM Applications and would like to request a letter of support from OPA stating "Toronto Hydro's OEB CDM program submissions are non-duplicative of the existing province wide programs". While we don't believe the letter is an explicit OEB Code filing requirement, fundamentally it is the basis of the review and would be very helpful to minimize the number of IR's and expedite the process. For your reference, the following is the OEB schedule:

Mon, February 28, 2011 - Submissions from THESL and Intervenors on Draft Issues List
Fri, March 18, 2011 - Interrogatories due from Intervenors Fri, April 1, 2011 -
Interrogatories responses due Thursday, April 28, 2011 - Oral Hearing begins

To assist OPA in your review, I have attached the nine applications and copied our prime Toronto Hydro program contact to answer / coordinate a response to any questions you may have during your review.

If you have any questions, let me know. Your support is very much appreciated.

Regards,

Chris Tyrrell
VP, Customer Care & Chief Conservation Officer Toronto Hydro 5800 Yonge Street Toronto,
ON M2M 3T3 e-mail:ctyrrell@torontohydro.com

Office - (416) 542-3143
Cell (416) 716-3391

Consider the environment before printing. Thank you.

UNDERTAKING NO. J3.5

REFERENCE

Hearing Day May 3, 2011 Tr. p. 105

UNDERTAKING NO. J3.5: TO PROVIDE ESTIMATED FIGURE OPA MIGHT BE PROVIDING FOR PROGRAMS.

RESPONSE

For the purpose of its Strategy Plan dated October 22, 2010, THESL estimated its budget for the OPA-Contracted Province-Wide Programs to be \$252 million based on the MW and GWh targets found on page 3 of that document. This amount included Program Administration Budget ("PAB"), Participant Based Funding Amount, Capability Building Funding Amount and customer incentives, but excluded costs borne directly by the OPA.

The OPA does not have an estimate for the incentive amount that will be paid out for THESL as this is a variable amount that will be a function of THESL's savings target as set out in THESL's CDM Strategy and its program success. For an overview, the OPA has provided a breakdown of program and incentive costs by sector for the province as set out in Table 1 below.

Table 1 - Program and Incentive Costs by Sector for the Province

Program	Delivery Cost	Annual Projections				4-year
		2011	2012	2013	2014	Total
Consumer	Customer Incentives	71	92	99	97	359
	Program Costs	59	54	44	44	201
	Total Delivery	130	146	143	141	560
Low Income Single Family Home	Customer Incentives	10	13	16	17	56
	Program Costs	6	5	5	5	21
	Total Delivery	16	18	21	22	77
Business	Customer Incentives	71	80	89	90	330
	Program Costs	81	63	46	33	223
	Total Delivery	152	143	135	123	553
Industrial	Customer Incentives	17	37	39	41	134
	Program Costs	22	22	21	19	84
	Total Delivery	39	59	60	60	218
Aboriginal	Customer Incentives	2	4	4	5	15
	Program Costs	2	2	3	3	10
	Total Delivery	4	6	7	8	25
Total		341	372	366	354	1433

UNDERTAKING NO. J3.6

REFERENCE

Hearing Day May 3, 2011 Tr. p. 131

UNDERTAKING NO. J3.6: [1] TO ADVISE WHETHER CONDITIONS WERE PUT ON \$50 MILLION ALLOCATED TO TORONTO HYDRO WITH RESPECT TO IMPLEMENTATION OF CDM PROGRAMS; [2] TO ADVISE WHETHER PERCENTAGE ALLOCATIONS WERE THE SAME AS THOSE IN EXHIBIT No. K3.6.

RESPONSE

1. PAB is only to be used for LDC Eligible Program Administrative Expenses for the specific Registered CDM Program for which it is allocated, as set out in Section 4.1(b)(i) of the Master Agreement.
2. The percentage allocations are not the same as those in Exhibit K3.6. There are differences in the percentage allocations because the PAB funding is designed to capture fixed costs associated with administering the programs whereas the overall budget reflects customer incentive payments as well as program administration costs and other costs.

UNDERTAKING NO. J3.7

REFERENCE

Hearing Day 3, May 3, 2011 Tr. p. 131

UNDERTAKING NO. J3.7: TO PROVIDE EXPLANATION OF DIFFERENCE BETWEEN \$1,356,000,000 FIGURE IN EXHIBIT J3.6 [K3.6] AND \$1.4 BILLION IN OPA BUDGET.

RESPONSE

Exhibit K3.6 includes the budget for three OPA-Contracted Province-Wide Programs: Residential, Commercial and Industrial. Exhibit K3.6 does not include an amount for the Low-Income Program. This omission explains the difference between the total budget for the OPA-Contracted Province-Wide Program, which is \$1.433 million, and the budget amount set out in Exhibit K3.6, which is \$1.356 million. It should be noted that the budget included in Exhibit K3.6 has been replaced by a revised budget. The revised budget is included in the OPA's response to Undertaking No. J3.5.

