

## SMART METERING AGREEMENT FOR DISTRIBUTORS

THIS AGREEMENT dated this • day of •, 20•.

BETWEEN :

[INSERT DISTRIBUTOR NAME], a distributor licensed by the Ontario Energy Board under the *Ontario Energy Board Act, 1998* (Ontario)

(the “Distributor”)

and

[INSERT NAME OF ORGANIZATION DESIGNATED AS THE SMART METERING ENTITY], designated as the Smart Metering Entity under the *Electricity Act, 1998* (Ontario)

(the “SME”)

### WHEREAS:

- A. The [INSERT NAME] has been designated as the Smart Metering Entity under the *Electricity Act, 1998* (Ontario) for the purpose of co-ordinating the implementation of the Government of Ontario’s Smart Metering Initiative, a key component of which is the MDM/R.
- B. The functions required for the MDM/R were established by the Ministry of Energy and set out in the “Meter Data Management and Repository, Functional Specification, Issue 2.0, November 29, 2006”.
- C. The MDM/R will be utilized to collect, manage, store and retrieve information related to consumers’ use of electricity in Ontario and the SME will, subject to any requirements prescribed by regulation and the protection of privacy, provide and promote non-discriminatory access to that information.
- D. Pursuant to the procurement process managed by the Independent Electricity System Operator, IBM Canada Limited was engaged on December 5, 2006, as an Operational Service Provider for the design, engineering, delivery, installation, configuration, integration, implementation and operation of the MDM/R.

- E. The MDM/R Agreement between the SME and IBM Canada Limited establishes the service levels and certain other terms and conditions under which MDM/R services are provided to distributors.
- F. The OEB's Distribution System Code provides that a distributor shall, upon being requested to do so, enter into an agreement with the SME, in a form approved by the OEB, which sets out the respective roles and responsibilities of the distributor and the SME in relation to smart metering and the information required to be exchanged to allow for the conduct of their respective roles and responsibilities.
- G. The roles and responsibilities of the SME and the Distributor set out under this Agreement reflect the regulatory framework under which the Smart Metering Initiative is being implemented, including the role of the SME in administering the provision of services to distributors pursuant to all MDM/R Agreements.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

## **ARTICLE 1**

### **INTERPRETATION**

- 1.1 **Definitions:** In this Agreement, the following terms and expressions shall have the meanings set out below unless the context otherwise requires:
  - 1.1.1 **"Agreement"** means this Agreement, including the Schedules to this Agreement.
  - 1.1.2 **"AMI"** means the Distributor's advanced metering infrastructure, including the smart meter, Advanced Metering Communication Device (AMCD), Local Area Network (LAN), Advanced Metering Regional Collector (AMRC), Advanced Metering Control Computer (AMCC), Wide Area Network (WAN), and related hardware, software, and connectivity required for a fully functioning data collection system.
  - 1.1.3 **"Authorized Agent"** has the meaning ascribed to it in section 2.7.
  - 1.1.4 **"Billing Quantity Data"** means smart metering data that is ready for use in billing consumers for their consumption or use of electricity based on the time of day when the electricity was consumed or used;
  - 1.1.5 **"Distributor"** has the meaning ascribed to it above and includes the Distributor's directors, officers, employees, contractors, agents, advisors and consultants.
  - 1.1.6 **"Market Rules"** means the Market Rules for the Ontario Electricity Market.
  - 1.1.7 **"MDM/R"** means the Meter Data Management and Repository developed by the SME within which Smart Metering Data is processed to produce Billing Quantity Data and such data is stored for future use.

- 1.1.8 **“MDM/R Agreements”** means the Meter Data Management and Repository Development, Hosting and Support Agreement dated December 5, 2006 between the SME and IBM Canada Limited, and all other agreements between the SME and an Operational Service Provider.
- 1.1.9 **“OEB”** means the Ontario Energy Board or its successor.
- 1.1.10 **“Operational Service Provider”** means IBM Canada Limited and any other party engaged by the SME, excluding the Independent Electricity System Operator, to assist with the development and operation of the MDM/R.
- 1.1.11 **“Party”** means a party to this Agreement.
- 1.1.12 **“Smart Metering Charge”** means any fee payable to the SME in respect of its role and responsibilities in respect of the Smart Metering Initiative and approved by the OEB or otherwise required by law.
- 1.1.13 **“Smart Metering Data”** means data derived from smart meters, including data related to the consumers’ consumption of electricity.
- 1.1.14 **“Smart Metering Initiative”** means those policies of the Government of Ontario related to its decision to ensure Ontario electricity consumers are provided, over time, with smart meters.
- 1.1.15 **“SME”** has the meaning ascribed to it above and includes the SME’s directors, officers, employees, contractors, agents, advisors and consultants.
- 1.1.16 **“SME Steering Committee”** means the forum to represent the interests of the MDM/R service recipients to be established by the SME under section 3.2.
- 1.1.17 **“Terms of Service”** means the terms and conditions made under section 3.1.
- 1.1.18 **“VEE”** means those validation, estimating and editing services, as specified by the SME, that are performed on Smart Metering Data to identify and account for missed or inaccurate Smart Metering Data.
- 1.2 Interpretation:** In this Agreement, unless the context otherwise requires:
- 1.2.1 words importing the singular include the plural and vice versa;
- 1.2.2 words importing a gender include any gender;
- 1.2.3 other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- 1.2.4 the expression “person” includes a natural person, any company, partnership, trust, joint venture, association, corporation or other private or public body corporate, and any government agency or body politic or collegiate;
- 1.2.5 a reference to a thing includes a part of that thing;

- 1.2.6 a reference to an article, section, provision or schedule is to an article, section, provision or schedule of this Agreement;
- 1.2.7 a reference to any statute, regulation, proclamation, order in council, ordinance, by-law, resolution, rule, order or directive includes all statutes, regulations, proclamations, orders in council, ordinances, by-laws or resolutions, rules, orders or directives varying, consolidating, re-enacting, extending or replacing it and a reference to a statute includes all regulations, proclamations, orders in council, rules and by-laws of a legislative nature issued under that statute;
- 1.2.8 a reference to a document or provision of a document, including this Agreement and any externally referenced documents, includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document, as well as any exhibit, schedule, appendix or other annexure thereto;
- 1.2.9 a reference to sections of this Agreement or of any externally referenced documents separated by the word “to” (i.e., “sections 1.1 to 1.4”) shall be a reference to the sections inclusively; and
- 1.2.10 the expression “including” means including without limitation, the expression “includes” means includes without limitation and the expression “included” means included without limitation.
- 1.3 Headings:** The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement, nor shall they be construed as indicating that all of the provisions of this Agreement relating to any particular topic are to be found in any particular article, section, subsection, clause, provision, part or schedule.

## ARTICLE 2

### ROLES AND RESPONSIBILITIES

- 2.1 Compliance with Applicable Law:** The Parties shall comply with the provisions of all applicable laws and any codes issued by the OEB that relate to the Smart Metering Initiative.
- 2.2 Roles and Responsibilities of the SME:** The SME shall:
- 2.2.1 administer the ongoing development of the MDM/R and any associated SME infrastructure required to fulfill the Smart Metering Initiative;
- 2.2.2 co-ordinate with other bodies having regulatory functions with respect to the Smart Metering Initiative, including the OEB and the Ministry of Energy and Infrastructure, as appropriate;
- 2.2.3 conduct such testing as the SME determines appropriate of the MDM/R and the interfaces between the MDM/R and the Distributor’s systems prior to authorizing the Distributor to operate using the MDM/R and in advance of a modification to the MDM/R;

- 2.2.4 cooperate with reasonable testing by the Distributor of the interfaces between the MDM/R and the Distributor's systems requested by the Distributor, including reasonable testing by the Distributor of the interoperation of the Distributor's systems with the MDM/R;
- 2.2.5 provide reasonable and effective training to staff of the Distributor and the Distributor's Authorized Agent on the MDM/R and any associated infrastructure provided by the SME to support the interoperation of the Distributor's systems with the MDM/R;
- 2.2.6 subject to any requirements prescribed by regulation, receive Smart Metering Data, and such other information required by the SME to fulfill its obligations in respect of the Smart Metering Initiative, from the Distributor or the Distributor's Authorized Agent, conduct the applicable VEE processes for such information, and transmit Billing Quantity Data to the Distributor or the Distributor's Authorized Agent in a form that allows the Distributor to bill in accordance with an OEB approved tariff;
- 2.2.7 provide the Distributor with remote access to the MDM/R on a non-discriminatory basis for the purposes of:
  - 2.2.7.1 retrieving and reviewing the Distributor's Smart Metering Data and Billing Quantity Data for any business purpose of the Distributor; or
  - 2.2.7.2 editing the Distributor's Smart Metering Data and other information the Distributor is authorized to edit;

provided that the SME may establish reasonable restrictions on remote access to safeguard the operational integrity of the MDM/R, ensure performance of the MDM/R in accordance with the applicable service levels prescribed in the Terms of Service, perform maintenance on the MDM/R, or resolve an outage of the MDM/R;
- 2.2.8 provide ongoing technical support to the Distributor in relation to the MDM/R and any associated SME infrastructure required to fulfill the Smart Metering Initiative;
- 2.2.9 ensure that Smart Metering Data transmitted to the SME by the Distributor is stored in the MDM/R for 26 months and available to the Distributor for 10 years in an archived format, or as otherwise required by law;
- 2.2.10 perform its obligations under the Terms of Service and make best efforts to ensure that the MDM/R services meet the applicable service levels prescribed in the Terms of Service;
- 2.2.11 work with stakeholders to achieve continuous service through any transition to any subsequent agreement or agreements relating to MDM/R operations;
- 2.2.12 carry out such other roles and responsibilities as are required to fulfill the Smart Metering Initiative.

- 2.3 Smart Metering Charge:** The SME shall invoice the Distributor for and collect the Smart Metering Charge in accordance with settlement procedures identical to those set forth in sections 6.1 to 6.15 of Chapter 9 of the Market Rules *mutatis mutandis*. In any application to the OEB to set the Smart Metering Charge, the SME shall request that the OEB permit the Distributor to pass through the Smart Metering Charge to consumers.
- 2.4 Audit of the MDM/R:** The SME shall cause independent audits of the MDM/R and the MDM/R internal control environment, including relevant controls performed by the SME and the MDM/R Operational Service Providers, to be conducted annually by a nationally recognized audit firm, the scope and objectives of such audits to be relevant to a user organization's internal control as it relates to an audit of financial statements. The audit shall be conducted in accordance with the standards or equivalent standards to those established by the Canadian Institute of Chartered Accountants for audits of controls at a service organization. The audit period shall be at minimum six months in duration, concluding not more than 3 months from the end of the calendar year. The audit report shall be made available to users of the report no later than November 15 of each calendar year. This report shall hereinafter be referred to as the "first audit report". As early as possible and no later than January 15 of the following calendar year, the SME shall issue a management representation letter from the SME Chief Financial Officer stating that controls continue to be in place and working effectively and that there is no change in the control environment between the date of the audit report and December 31, or, at the SME's option in lieu of the representation letter, a second audit report covering the eight month period up to and including November 30 (hereinafter referred to as the "second audit report").

In the event of any qualification or significant exception in an audit report, at the request of the Distributor and subject to the approval of an officer of the SME or a committee of the SME Board or the SME Board, the SME shall cause to have specified procedures performed by a nationally recognized audit firm. The approval of this request shall not be unreasonably withheld. The Distributor's request shall include the specified procedures requested by their external auditor to be performed by the SME's auditor. Notwithstanding the SME's requirement for approval by an officer of the SME or a committee of the SME Board or the SME Board, the SME shall (a) respond to the Distributor's request in writing within 5 business days of receipt of their request with the specified procedures that the SME shall cause to have performed and (b) advise when the results of the specified procedures will be provided to the Distributor. The SME will use commercially reasonable efforts to have the results of the specified procedures provided to the Distributor within 5 weeks of the approval of the request for specified procedures pertaining to the first audit report and within 2 weeks of the approval of the request for specified procedures pertaining to the second audit report, if applicable, or as otherwise agreed between the Distributor and the SME. The SME may consolidate similar requests from multiple Distributors, provided that such consolidation does not negatively impact on the timing of any of the approvals or the delivery of the results of the specified procedures.

In the event of any qualification or significant exception in the audit report, and where all reasonable means have been exhausted with specified procedures to meet Distributors'

financial reporting requirements, Distributors required by law to file audited financial statements with a securities commission and comply with National Instrument 52-109 or equivalent shall have the right to have their financial statement auditor conduct audit procedures of the MDM/R and MDM/R internal control environment, subject to all of the following:

- The scope and objectives of the audit are limited to supporting the audit of and/or certification of Distributor's financial statements;
- Reasonable costs of the audit, including costs of the SME and the MDM/R Operational Service Providers to support the audit, shall be borne by the Distributor; and
- Distributor's external auditor agrees to the SME and MDM/R Operational Service Providers' non-disclosure and information confidentiality terms and conditions.

The SME shall develop and execute a remediation plan to address significant exceptions on a timely basis.

**2.5 Interactions with Customers:** The Distributor shall be solely responsible for interacting with its customers in respect of individual customer data originating from the MDM/R or any individual customer information derived from the MDM/R regardless of whether such data is presented to the customer by the Distributor, the SME or their respective agents.

**2.6 Roles and Responsibilities of the Distributor:** The Distributor shall:

- 2.6.1 ensure that its AMI complies with all of the applicable functional and technical specifications published by the SME with respect to the Smart Metering Initiative and conduct such testing of its AMI as required by the SME to demonstrate such compliance;
- 2.6.2 participate in any testing of the MDM/R and the interfaces between the MDM/R and the Distributor's systems as required by the SME;
- 2.6.3 certify to the SME, in a form acceptable to the SME, that the Distributor has completed any testing required by the SME and is ready to operate using the MDM/R, its AMI and any associated infrastructure required to fulfill the Smart Metering Initiative;
- 2.6.4 transmit to the SME Smart Metering Data and any other information required by the SME under section 2.2.6, retain such information for a minimum of 5 days, and re-transmit such information to the SME upon request;
- 2.6.5 perform its obligations under the Terms of Service as an MDM/R service recipient; and
- 2.6.6 carry out such other roles and responsibilities as are required to fulfill the Smart Metering Initiative.

- 2.7 **Authorized Agent Permitted:** On written notice to the SME, the Distributor may authorize one or more persons to act on the Distributor's behalf as an agent ("**Authorized Agent**") in any or all of the matters related to the Smart Metering Initiative and this Agreement. The authorization shall be in the form specified by the SME. The Distributor is responsible for ensuring that its Authorized Agent is aware of and complies with the terms and conditions of this Agreement.

### ARTICLE 3

#### TERMS OF SERVICE

- 3.1 **Terms of Service:** The SME shall make Terms of Service for the management and operations of the MDM/R under this Agreement and shall publish the Terms of Service on its website.
- 3.2 **Mandate of the SME Steering Committee:** The SME shall establish the SME Steering Committee as a forum to represent the interests of stakeholders. ~~The SME Steering Committee shall have up to 13 representatives where:~~ steering committee will be provided with an opportunity to:
- 3.2.1 provide input in the ongoing development of the Terms of Service and the MDM/R manuals and procedures;
  - 3.2.2 provide input on the SME's provision of MDM/R services and the adherence to the committed service levels as prescribed in the Terms of Service;
  - 3.2.3 consider amendment proposals forwarded by the SME, MDM/R service recipients, or initiated by the SME Steering Committee; and
  - 3.2.4 participate in the consultations, when requested by the SME, on amendments to the MDM/R manuals and procedures.
- 3.3 **Composition of the SME Steering Committee:** The SME Steering Committee shall have up to 13 representatives where:
- 3.3.1 ~~3.2.1~~ a majority of the members shall represent local distribution companies that are receiving service from the MDM/R or otherwise eligible to receive service from the MDM/R;
  - 3.3.2 ~~3.2.2~~ following a date to be established by the SME in consultation with the Ministry of Energy and Infrastructure, up to three members shall represent retail companies that are receiving service from the MDM/R or otherwise eligible to receive service from the MDM/R;
  - 3.3.3 ~~3.2.3~~ up to two members will be members-at large; and
  - 3.3.4 ~~3.2.4~~ one member shall represent the interests of the SME.
- 3.4 **Appointment of the SME Steering Committee:** Except for the members-at-large and the member representing the SME, members of the SME Steering Committee shall

be appointed by the Board of Directors of the *SME* from among nominations made by persons that are receiving service from the MDM/R or otherwise eligible to receive service from the MDM/R. Distributor representatives may also be appointed from nominations submitted by the Board of Directors of the Electricity Distributors Association or any successor organization.

- 3.5** ~~3.4~~ **Amendment to the Terms of Service:** The SME may amend the Terms of Service at any time provided that the SME establishes and follows a process by which the SME Steering Committee may first provide advice and recommendations to the SME on the amendment. When amending the Terms of Service, the SME shall consider the overall cost and schedule impacts of the proposed amendment to the SME and any parties receiving service from the MDM/R, and any anticipated impact on electricity consumers.
- 3.6** ~~3.5~~ **Amendment Proposals:** The SME shall establish a process under which any party receiving service from the MDM/R may propose an amendment to the Terms of Service.
- 3.7** ~~3.6~~ **Manuals and Procedures:** The SME may make and amend manuals and procedures to provide more detailed descriptions of the requirements under the Terms of Service, including any forms required under this Agreement or the Terms of Service, and shall publish any manuals and procedures made under the Terms of Service on its website.

#### ARTICLE 4

#### REPRESENTATIONS AND WARRANTIES

- 4.1 Mutual Representations and Warranties:** Each Party represents and warrants to and covenants with the other Party as follows:
- 4.1.1 it has all the necessary corporate power to enter into and perform its obligations under this Agreement;
  - 4.1.2 the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental action and does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a violation or a breach of or a default under or give rise to a right of termination, greater rights or increased costs, amendment or cancellation or the acceleration of any obligation under (i) any charter or by-law instruments of that Party; (ii) any contracts or instruments to which it is a party or by which it is bound; or (iii) any laws applicable to it;
  - 4.1.3 the individual(s) executing this Agreement, and any document in connection with this Agreement, on its behalf has been duly authorized to execute this Agreement and has the full power and authority to bind the Party;
  - 4.1.4 this Agreement constitutes a legal and binding obligation of the Party, enforceable against the Party in accordance with its terms; and

4.1.5 it holds all permits, licences and other authorizations that may be necessary to enable it to carry on the business and perform its roles and responsibilities under the Smart Metering Initiative and this Agreement.

**4.2 Representations and Warranties of the SME:** The SME represents and warrants to the Distributor that it and any Operational Service Provider have adequate qualified employees and other personnel and organizational and other arrangements that are sufficient to enable it to perform all of its roles and responsibilities under the Smart Metering Initiative and this Agreement.

**4.3 Representations and Warranties of the Distributor:** The Distributor represents and warrants to the SME that:

4.3.1 the Distributor is a **[INSERT FORM OF BUSINESS ORGANIZATION]** duly **[INCORPORATED/ FORMED/REGISTERED]** and existing under the laws of **[JURISDICTION]**;

4.3.2 the Distributor and any Authorized Agent has the authority under any applicable laws to provide Smart Metering Data and any other information required under section 2.2.6 to the SME; and

4.3.3 the Distributor or its Authorized Agent have adequate qualified employees and other personnel and organizational and other arrangements that are sufficient to enable it to perform all of its roles and responsibilities under the Smart Metering Initiative and this Agreement.

## ARTICLE 5

### ACCESS TO MDM/R DATA

**5.1 Disclosure of MDM/R Data:** Subject to its OEB licence, the SME may disclose, use or reproduce any data contained in the MDM/R, including Smart Metering Data and Billing Quantity Data, for any purpose; provided that in making data available to any third party, the data shall be presented in a manner that prevents the specific data of an individual customer of the Distributor being identified with that customer or premises. If the SME is compelled by law, regulation or order of court or tribunal to disclose any data contained in the MDM/R to a third party in a manner other than as provided for under this section 5.1, the SME shall, to the extent permitted by law, provide the Distributor with reasonable notice and the Distributor may seek a protective order or other appropriate remedy to prevent disclosure of the data.

**5.2 Protocol for Access to MDM/R Data:** The SME shall consult with the SME Steering Committee and develop and publish a protocol setting out the procedures it will follow in providing access to MDM/R data while preventing identification of the specific data associated with an individual customer or premises.

**5.3 Freedom of Information and Protection of Privacy Act:** The Distributor acknowledges that SME is bound by the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario) and may be required by order of a court or tribunal to

disclose information provided by the Distributor to SME. The SME acknowledges that the Distributor may be bound by the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario), the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) or other such legislation and may be required by order of a court or tribunal to disclose information provided by the SME to the Distributor.

## ARTICLE 6

### INTELLECTUAL PROPERTY

- 6.1 Intellectual Property Rights:** The Distributor shall not acquire any title, beneficial ownership interests or any intellectual property rights, including any proprietary rights 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, integrated circuit topography or mask work law, or (vi) any other statutory provision or common law principle regarding intellectual or industrial property, including trade secret law, in the MDM/R or any associated infrastructure used by the SME to fulfill the Smart Metering Initiative. Similarly, the SME shall not acquire any such title, interests or rights in respect of the Distributor's AMI, customer information systems, billing systems or any associated infrastructure used by the Distributor to fulfill those objectives.
- 6.2 Survival:** Article 6 of this Agreement shall survive the assignment, transfer or termination of this Agreement.

## ARTICLE 7

### LIABILITY AND INDEMNIFICATION

- 7.1 Limitation of Liability of the SME:** Except as provided in sections 7.5, 7.6 and 7.7, the Distributor shall have no recourse against the SME in respect of any breach of this Agreement, or any loss or damage to the Distributor, which in either case is attributable to an act or omission of any Operational Service Provider. The SME's liability to the Distributor attributable to an act or omission of the SME shall be limited to:
- 7.1.1 actual direct damages and in no event shall the SME be liable to the Distributor in respect of punitive, consequential or indirect damages or loss of profit, loss of data or loss of revenue; and
  - 7.1.2 the cumulative liability of the SME to all MDM/R service recipients (including the Distributor) in connection with an act or omission of the SME under this Agreement shall not exceed an aggregate amount of \$1,000;
- except as provided for in section 7.3 or to the extent that any such damages are recovered by the SME from an Operational Service Provider under section 7.6.
- 7.2 Limitation of Liability of the Distributor:** The Distributor's liability to the SME attributable to an act or omission of the Distributor shall be limited to actual direct damages and in no event shall the Distributor be liable to the SME in respect of punitive,

consequential or indirect damages or loss of profit, loss of data or loss of revenue. The liability of the Distributor to the SME in connection with an act or omission of the Distributor shall not exceed \$1,000.

- 7.3 Indemnification:** The SME shall indemnify and hold harmless the Distributor from any and all claims, losses, liabilities, obligations, actions, judgments, suits, costs, expenses, disbursements and damages incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Distributor to the extent that such claims, losses, liabilities, actions, judgments, suits, costs, expenses, disbursements or damages arise out of a breach of Article 5 of this Agreement.
- 7.4 Duty to Mitigate:** A Party has a duty to mitigate damages, losses, liabilities, expenses or costs relating to any claims that may be made under this Agreement.
- 7.5 Cost Recovery:** The SME shall cooperate with the Distributor (acting individually or in concert with other licenced distributors that are parties to an agreement with the SME) in:

7.5.1 any proceeding before the OEB; and

7.5.2 any initiative to make a submission to, or obtain a legislative or regulatory amendment from, the Province of Ontario;

in which the Distributor seeks a change to any of its rates or charges or other appropriate relief for any of its losses or incremental costs related to any act or omission of the SME, the Operational Service Provider or a service provider of the SME. The SME shall assist in the coordination of the claim or initiative being put forward by the Distributor. Such cooperation by the SME shall include, but not be limited to, promptly providing to the Distributor and the OEB, at the request of the Distributor but at the SME's cost, accurate information, analysis, documents, and evidence. For greater certainty, the SME's obligation to provide assistance under this section shall not be limited to a cost of \$1000 by section 7.1.2.

- 7.6 Reduction of Smart Metering Charge:** If an Operational Service Provider fails to meet the required service levels under an MDM/R Agreement, or otherwise breaches an MDM/R Agreement, and that failure or breach results in a reduction of the fees payable to the Operational Service Provider by the SME, or if any amount is recovered from the Operational Service Provider in respect of any such failure or breach, then an amount equal to the reduction or recovered amount will be:

7.6.1 set aside by the SME as an amount owing to MDM/R service recipients in a variance account approved by the OEB;

7.6.2 reported to the SME Steering Committee along with any pertinent information in the possession of the SME which may assist the SME Steering Committee in determining which MDM/R service recipients were affected by the MDM/R failure or breach; and,

7.6.3 subject to approval of the OEB, subsequently distributed to MDM/R service recipients by the SME ~~in the manner directed by SME Steering Committee.~~

~~The SME Steering Committee shall allocate such funds using any methodology it considers appropriate and resolve any disputes between the Distributor and any other MDM/R service recipient with respect to the allocation of such funds. The Distributor and the SME agree to adhere to all decisions made by the SME Steering Committee with respect to the allocation of such funds. The SME shall apply to the OEB to clear the approved variance account on the earlier of (i) the date on which the balance in the variance account meets or exceeds \$2 million, or (ii) January 26, 2016. As part of its application, the SME will ask the Board to approve the allocation of service level credits amongst MDM/R service recipients as determined by the SME Steering Committee.~~

- 7.7 Monitoring of the Operational Service Provider:** The SME will use commercially reasonable efforts to monitor each Operational Service Provider's performance under, and to enforce the provisions of, its MDM/R Agreement (which shall include, for greater certainty, the diligent pursuit, through legal proceedings if necessary, of any appropriate reductions of fees or recovery of any amounts owing as damages, penalties or otherwise). The Distributor may seek an order of specific performance requiring the SME to take commercially reasonable actions to enforce the provisions of an MDM/R Agreement at the SME's cost.

## ARTICLE 8

### DISPUTE RESOLUTION

- 8.1 Dispute Resolution:** Subject to section 8.3, the Parties shall attempt to settle any dispute in connection with this Agreement or the Smart Metering Initiative through good faith negotiations. If the Parties are unable to resolve the dispute through good faith negotiation, either Party may apply to the OEB for determination of the dispute. A Party shall provide written notice to the other Party of its intention to apply to the OEB for determination of the dispute at least ten (10) business days before filing any application materials with the OEB.
- 8.2 Limitation Period:** Subject to section 8.3, a Party shall commence any proceeding in respect of a dispute under this Agreement or related to the Smart Metering Initiative within two years of the earlier of:
- 8.2.1 the date on which the claim is discovered; or
  - 8.2.2 the date on which this Agreement is terminated under section 11.1.
- 8.3 Smart Metering Charge:** Any dispute between the Parties in respect of the calculation of the Smart Metering Charge shall be determined in accordance with a dispute resolution procedure identical to that set forth in section 2 of Chapter 3 of the Market Rules *mutatis mutandis*. The Distributor shall commence any proceeding in respect of the calculation of the Smart Metering Charge invoiced to it by the SME within the applicable limitation period set forth in section 2.5.1A.3 or 2.5.1A.4 of Chapter 3 of the Market Rules.

## ARTICLE 9

### FORCE MAJEURE

- 9.1 Force Majeure:** If either Party is unable to satisfy any of its obligations under this Agreement due to causes beyond the Party's reasonable control, provided that the Party makes all reasonable efforts to avoid, or if unavoidable, to correct the reason for such delay or failure and gives the other Party prompt notice of such delay or failure, then such Party shall be excused and relieved from its obligation to satisfy such obligation for so long as the event continues and for such reasonable period of time thereafter as may be necessary for the Party to resume performance of the obligation. For the avoidance of doubt, "causes beyond the Party's reasonable control" include an event of fire, flood, earthquake, element of nature, explosions, acts of God, acts of war, terrorism, riots, civil or public disorders or disobedience, strikes, lock-outs, labour disruptions, acts of vandalism, sabotage, or other unlawful acts, and any other similar event beyond the commercially reasonable control of the Party.

## ARTICLE 10

### AMENDMENT AND ASSIGNMENT

- 10.1 Amendment Generally:** Except as otherwise provided in this Agreement, no amendment to this Agreement will be effective until approved by the OEB. A Party may apply to the OEB to amend this Agreement at any time provided that the Party has first consulted with the SME Steering Committee on the merits of the proposed amendment.
- 10.2 Amendment to Section 4.3:** The Distributor may amend the Distributor's corporate information provided under section 4.3 at any time without the approval of the OEB.
- 10.3 Amendment to Schedule "A":** The Distributor or the SME may amend their respective nominated representatives for official notifications listed in Schedule "A" at any time without the approval of the OEB.
- 10.4 Assignment Generally:** Except as provided for in section 11.2, neither Party may assign its rights and obligations under or transfer any of its interest in this Agreement without the prior consent of the other Party, which consent shall not be unreasonably withheld. An assignment under this section does not require the approval of the OEB.

## ARTICLE 11

### TERM AND TERMINATION

- 11.1 Term:** This Agreement is effective as of May 1, 2013. Unless otherwise extended by order of the OEB, this Agreement shall terminate on ~~March 31, 2012~~, January 26, 2016.
- 11.2 Termination of the Smart Metering Entity Role:** If during the term of this Agreement, the SME is no longer designated under the *Electricity Act, 1998* (Ontario) as the Smart Metering Entity, this Agreement shall be assigned to and assumed by the successor Smart Metering Entity.

**11.3 Delivery of Historical Data:** In the event that MDM/R services are no longer being provided under either this Agreement or any subsequent agreement or agreements relating to MDM/R operations, the SME shall, at the request of the Distributor, obtain and deliver to the Distributor the Distributor's Smart Metering Data and Billing Quantity Data stored in the MDM/R. This section 11.3 shall survive the assignment, transfer or termination of this Agreement.

**11.4 Deemed Release of the SME:** Subject to section 6.2, the Distributor will be deemed to release the SME from all obligations, liabilities, claims and demands against SME in respect of the Smart Metering Initiative and this Agreement, whether known or unknown, upon the earlier of:

11.4.1 two years after termination of this Agreement; or

11.4.2 the assumption of any obligations, liabilities, claims and demands against SME in respect of the Smart Metering Initiative and this Agreement by another entity in accordance with section 11.2.

## ARTICLE 12

### MISCELLANEOUS

**12.1 No Agency or Partnership:** The Parties do not intend that any agency or partnership be created between them by this Agreement.

**12.2 No Warranty:** Except as specifically set forth in this Agreement, there are no representations, warranties, or conditions of either Party, express, implied, statutory or otherwise, regarding any matter, including warranties or conditions of merchantable quality or fitness for a particular purpose.

**12.3 Successors and Assigns:** This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

**12.4 Severability:** Any provision of this Agreement that is invalid or unenforceable shall be ineffective to the extent of that invalidity or unenforceability and shall be deemed severed from the remainder of this Agreement, all without affecting the validity or enforceability of the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**12.5 Notices:** Any notice or other communication required or permitted to be given or made under this Agreement shall be sent by courier or other form of personal delivery, by prepaid first class mail, by facsimile or electronic mail and be addressed to the other Party in accordance with the contact information listed in Schedule "A" of this Agreement.

**12.6 Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

- 12.7 Conflict or Inconsistency:** In the event of a conflict or inconsistency between this Agreement and the provisions of the Terms of Service, this Agreement shall prevail. In the event of a conflict or inconsistency between this Agreement and any code issued by the OEB under section 70.1 of the *Ontario Energy Board Act* (Ontario), the code shall prevail.
- 12.8 Amendment to the Market Rules:** If the SME proposes to or receives a proposal to amend any provision of the Market Rules incorporated in this Agreement by reference, the SME shall provide the Distributor with reasonable notice of the proposed amendment and identify what impact the amendment will have upon this Agreement.
- 12.9 Waiver:** No failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof. No provision of this Agreement may be waived except in writing by a Party at its sole discretion, and a waiver on any occasion shall not act as a waiver or bar to the enforcement of the rights of a Party with respect to any other breach or the same breach on any other occasion.
- 12.10 Entire Agreement:** This Agreement represents the complete agreement between the Parties and supersedes all prior communications, understandings and agreements between the Parties, whether written, oral, expressed or implied.
- 12.11 Counterparts:** This Agreement may be executed by the Parties by facsimile or electronic signature and in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute one and the same instrument.

**IN WITNESS WHEREOF** the Parties have, by their duly appointed and authorized representatives, executed this Agreement.

**[INSERT DISTRIBUTOR NAME]**

By: \_\_\_\_\_

Name:

Title:

**[INSERT NAME OF SMART METERING ENTITY]**

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE "A"**  
**NOMINATED REPRESENTATIVES FOR OFFICIAL NOTIFICATIONS**

**SME**

|                             |  |
|-----------------------------|--|
| Name of SME Representative: |  |
| Title:                      |  |
| Address:                    |  |
| City/Province/Postal Code   |  |
| Email address:              |  |
| Phone:                      |  |
| Fax:                        |  |

**Distributor**

|                                     |  |
|-------------------------------------|--|
| Name of Distributor Representative: |  |
| Title:                              |  |
| Address:                            |  |
| City/Province/Postal Code           |  |
| Email address:                      |  |
| Phone:                              |  |
| Fax:                                |  |

Document comparison by Workshare Professional on Thursday, January 31, 2013  
8:41:00 AM

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| Document 2 ID | PowerDocs://SETOR1/6056078/3  |
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| Deletions          | 12    |
| Moved from         | 1     |
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| Style change       | 0     |
| Format changed     | 0     |
| Total changes      | 34    |