

SENT BY ELECTRONIC MAIL AND BY COURIER

November 13, 2015

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

Dear Ms. Walli:

**Re: Application by the Smart Metering Entity for extension of the SME/LDC Agreement
and Disbursement of the Service Levels Credit Account
OEB File: EB-2015-0298**

A. The Applicant

The Smart Metering Entity (SME) was established to administer the Meter Data Management and Repository (MDM/R) and other objectives of the Government's Smart Metering Initiative. The Independent Electricity System Operator (IESO) was subsequently named the Smart Metering Entity by Ontario Regulation 393/07, as amended by Ontario Regulation 233/08.

The SME is currently licensed by the Ontario Energy Board (the OEB or Board) under Licence ES-2007-0750 which is due to expire on January 26, 2016. Accordingly an application has been made to the Ontario Energy Board to renew the SME licence for a period of 5 years and has been given file no EB-2015-0297.

The SME has entered into Agreements with licenced electricity distributors (also known as Local Distribution Companies or LDCs) which expire January 26, 2016 by a May 14th, 2013 Board Order is required to clear the approved 'Service Level Credits' 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. Accordingly an application is hereby made under section 53.8 of the *Electricity Act, 1998* for an extension of the SME/LDC Agreement and under section 78 (3.0.1) of the *Ontario Energy Board Act, 1998* (the Act) for an order to disburse the Service Levels Credit Account.

B. The Application

Extending the SME/LDC Agreement

The SME is requesting that the Board extend the Smart Metering Agreements (the Agreement) the SME has signed with LDCs so that the term of this Agreement aligns with the term of the SME's licence, and the term requested is January 26, 2016 – January 26, 2021 . The current Agreement was agreed to by the Board in a Decision issued February 13, 2013 under the combined dockets EB-2012-0100 / EB-2012-0211 and expires on the same date the current SME licence does, January 26, 2016.

The Agreement ultimately agreed to by the Board was initially developed through negotiation between the SME, the Electricity Distributors Association (the EDA) and LDCs and filed with the Board under docket EB-2012-0100 / EB-2012-0211. Prior to the Board agreeing to the Agreement it was examined and developed further through submissions made on the public record by multiple parties including the IESO, Board Staff and the EDA and was an issue in a November 6, 2012 Technical Conference under docket EB-2012-0100 / EB-2012-0211.

A marked template of the Agreement is attached as Appendix B to this letter showing the changes being proposed. An unmarked template is attached as Appendix A. As per section 5.4.1 of the Board's Distribution System Code the Agreement is in a form approved by the Board and sets out the respective roles and responsibilities of the licenced electricity distributor and the SME or the IESO in relation to metering and the information required to be exchanged to allow for the conduct of these respective roles and responsibilities. Section 11.1 of the Agreement specifically allows the OEB to extend the term of the Agreement through an order of the OEB.

The SME is not proposing any alteration to the Agreement other than the effective dates of the term of the Agreement and, as described below, the date to clear the balance in the Service Levels Credit Account.

The SME has consulted with and informed the EDA and the SME's Steering Committee (the SSC) that it will be applying to the Board to have the term of the Agreement extended to match the term of the SME licence and there have been no objections to this proposal. The SSC Committee was established in June 2013 by the IESO Board of Directors and is comprised of nine representatives from LDCs and one from the SME. A description of the SSC Mandate and its members is attached as Appendix C and is available at <http://www.smi-ieso.ca/sme-steering-committee>

Accordingly, an application is hereby made under section 53.8 of the *Electricity Act, 1998* for an extension of the SME/LDC Agreement and under section 78 (3.0.1) of the *Ontario Energy Board Act, 1998* (the Act) for an order to disburse the Service Levels Credit Account.

Disbursement of the Service Levels Credit Account for the period May 1 2013 – December 31 2014

The OEB decision on the Accounting Order dated May 14th, 2013 requires the SME to file annual reports Cost and Variance Account Reports and to apply to the OEB to clear the approved 'Service Level Credits' 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 stated in the SME Distributor Agreement "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."

The most recent report, the **Smart Meter Entity Annual Cost and Variance Account Report for 2014** was filed in April 2015 and is attached for reference as Appendix D. As stated in this report the account had a credit balance of \$368,711 for the period May 1, 2013 to December 31, 2014 follows:

- \$260,867 for the period of May 1st, 2013 to December 31st, 2013, and
- \$107,844 for the period of January 1st, 2014 to December 31st, 2014

The SME has consulted with and informed the SSC that it will be applying to clear the balance of this account as of January 26, 2016. The SSC members acknowledged and supported the SME's plan to submit the application to clear the accounts in the October/November time frame, with a request for no hearing on the application, and for a plan to disburse the amounts in January.

According, the SME hereby request the Board to approve the allocation of service level credits amongst distributors as determined by the SSC.

Disbursement of the Service Levels Credit Account for the years 2015, 2016 and 2017

The SME requests approval of the Board to disburse the Service Levels Credit Account for the years 2015, 2016 and 2017 in a similar manner as to how the May 1, 2013 – December 31, 2014 period was handled. The SME will continue to file annual Cost and Variance Account Reports and will apply to the OEB to clear the approved 'Service Level Credits' variance account on the earlier of (i) the date on which the balance in the variance account meets or exceeds \$2 million or (ii) October 1, 2018. October 1, 2018 is proposed rather than January, 2018 as the 2017 financials and the variance report will not be available for January, 2018. As stated in the SME Distributor Agreement "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.”

C. Procedural Matters

As no party will be adversely impacted by these amendments to the SME/LDC Agreement it is requested that the proceeding be disposed of without a hearing as allowed through Section 21. (4) of the *Ontario Energy Board Act, 1998*.

D. Attachments:

Appendix A: Revised SME/LDC Agreement, clean version

Appendix B: Revised SME/LDC Agreement, with markups

Appendix C: The Smart Metering Entity Steering Committee, Mandate and Members

Appendix D: April 2015 letter to the Board, Smart Meter Entity Annual Cost and Variance Account Report for 2014 (EB-2012-0100/EB-2012-0211)

E. Contact Information for this Proceeding

The SME requests that a copy of all documents filed with the Board by each party to this proceeding be served on the SME’s counsel in this proceeding as follows:

(a) The SME: Mr. Adrian Pye
Senior Analyst, Regulatory Affairs
Independent Electricity System Operator

Address for Service: 1600-120 Adelaide Street West
Toronto, ON
M5H 1T1

Telephone: (416) 506-2858

Email address: Adrian.Pye@ieso.ca

(b) The SME’s counsel: John Rattray
General Counsel
Independent Electricity System Operator

Address for Service: 1600-120 Adelaide Street West
Toronto, ON
M5H 1T1

Telephone: (416) 506-2856

Email address: John.Rattray@ieso.ca

Please call the undersigned should the Board have any questions about this application.

Yours truly,

ORIGINAL SIGNED BY

Adrian Pye

Appendix A

SME/LDC Agreement

Clean

SMART METERING AGREEMENT FOR DISTRIBUTORS

THIS AGREEMENT dated this _____ day of _____, 2013.

BETWEEN :

_____^a
distributor licensed by the Ontario Energy Board under the *Ontario Energy Board Act, 1998* (Ontario)

(the “Distributor”)

and

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, designated as the Smart Metering Entity under the *Electricity Act, 1998* (Ontario)

(the “SME”)

WHEREAS:

- A. The **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** 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 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 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 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 up to two members will be members-at large; and

3.3.4 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 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 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 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) trademark 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.

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) October 1, 2018. 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 January 26, 2017. Unless otherwise extended by order of the OEB, this Agreement shall terminate on January 26, 2021.
- 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.

[DISTRIBUTOR NAME]

By: _____

Name:

Title:

**INDEPENDENT ELECTRICITY SYSTEM
OPERATOR**

By:

Title:

SCHEDULE “A”
NOMINATED REPRESENTATIVES FOR OFFICIAL NOTIFICATIONS

SME

Name of SME Representative:	Sorana Ionescu
Title:	Director, Smart Metering, Information & Technology Services
Address:	Station A, Box 4474
City/Province/Postal Code	Toronto, Ontario, M5W 4E5
Email address:	sorana.ionescu@ieso.ca
Phone:	(905) 855-6360
Fax:	(905) 855-6471

Distributor

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

Appendix B

SME/LDC Agreement

Marked

SMART METERING AGREEMENT FOR DISTRIBUTORS

THIS AGREEMENT dated this _____ day of _____, 2013.

BETWEEN :

_____^a
distributor licensed by the Ontario Energy Board under the *Ontario Energy Board Act, 1998* (Ontario)

(the “Distributor”)

and

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, designated as the Smart Metering Entity under the *Electricity Act, 1998* (Ontario)

(the “SME”)

WHEREAS:

- A. The **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** 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 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 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 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 up to two members will be members-at large; and

3.3.4 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 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 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 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) trademark 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.

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~~ October 1, 2018. 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 January 26, 2017. Unless otherwise extended by order of the OEB, this Agreement shall terminate on ~~January 26, 2017~~2021.
- 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.

[DISTRIBUTOR NAME]

By: _____

Name:

Title:

**INDEPENDENT ELECTRICITY SYSTEM
OPERATOR**

By:

Title:

SCHEDULE “A”
NOMINATED REPRESENTATIVES FOR OFFICIAL NOTIFICATIONS

SME

Name of SME Representative:	Przemek Tomezak Sorana Ionescu
Title:	Director, Smart Metering-Director, Smart Metering, Information & Technology Services
Address:	Station A, Box 4474
City/Province/Postal Code	Toronto, Ontario, M5W 4E5
Email address:	przemek.tomezak@ieso.ca sorana.ionescu@ieso.ca
Phone:	(905) 855-6360
Fax:	(905) 855-6471

Distributor

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

Appendix C: The Smart Metering Entity Steering Committee, Mandate and Members

The SME Steering Committee

The SME Steering Committee has been established in June 2013 by the IESO Board of Directors, comprising representatives from Local Distribution Companies (LDCs) and the Smart Meter Entity (SME). This Committee replaces the MDM/R Operations Working Group, which has advised the SME since September 2010, on the operation and management of the MDM/R.

Mandate

The SME Steering Committee acts as an advisory panel to the IESO in its role as the Smart Metering Entity (SME) and represents the interests of MDM/R Service Recipients. The SME Steering Committee will be provided with an opportunity to:

- Provide input in the ongoing development of the Terms of Service and the MDM/R manuals and procedures;
- 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;
- Consider amendment proposals forwarded by the SME, MDM/R service recipients, or initiated by the SME Steering Committee; and
- Participate in the consultations, when requested by the SME on amendments to the MDM/R manuals and procedures

Members

The SME Steering Committee currently consists of ten members, nine of which were nominated by the Electricity Distributors' Association. One member is from the SME. Current members are:

- Tracy Manso, Entegrus Powerlines Inc.
- Shelley Parker, Horizon Utilities Corporation

- Danny Relich, Hydro One Networks Inc.
- Michel Provost, Hydro Ottawa Limited
- John McClean, Powerstream Inc.
- Andy Armitage, Thunder Bay Hydro
- Kevin Myers, Veridian Connections Inc.
- Marianne Blasman, Waterloo North Hydro
- Mag Wadie, Independent Electricity System Operator to represent the SME

Quorum Requirements

Five LDC members are the minimum required for a quorum and an SME/IESO representative must attend.

Meetings

SME Steering Committee meetings are held six to eight times per year. Regular meetings include a one-hour MDM/R operations teleconference that is open to all LDCs in the province. Teleconference details will be provided by email. For more information about the SME Steering Committee or teleconferences, contact the Smart Metering Entity.

Appendix D:

**April 2015 letter to the Board,
Smart Meter Entity Annual Cost and Variance Account Report for 2014
(EB-2012-0100/EB-2012-0211)**

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9

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Patrick G. Duffy

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BY EMAIL & RESS

April 10, 2015

File No. 101926-1078

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Smart Meter Entity Annual Cost and Variance Account Report for 2014
(EB-2012-0100/EB-2012-0211)**

On behalf of the Independent Electricity System Operator (the "IESO") in its capacity as the Smart Metering Entity ("SME"), we are providing the Board with the SME's Annual Cost and Variance Account Report for the year ended December 31, 2014 (the "2014 Report"). The 2014 Report is the second of the SME's annual filing with Board for the Smart Metering Charge ("SMC") that is in effect from May 1, 2013 to October 31, 2018.

The 2014 Report addresses the matters identified in section 1.4(d) of the approved Settlement Agreement dated March 28, 2013 (the "Settlement Agreement") and section 6 of the Accounting Order dated May 14, 2013 (the "Accounting Order") in EB-2012-0100/EB-2012-0211. The 2014 Report provides:

- the variances between the SME's budgeted and actual costs for 2014 presented in the form of the Sample Annual Cost Report attached as Appendix C to the Settlement Agreement; and
- the balances of the Costs Account, the Revenue Account and the Service Level Credits Account in the form of the Sample Report set by section 5 of the Accounting Order.

As shown in the 2014 Report, the SME's actual costs for 2014 were \$3,162,443 less than the budgeted amount for 2014 included in the SME's rate application in EB-2012-0100/EB-2012-0211. The reasons for the variance include the following:

TORONTO

MONTRÉAL

OTTAWA

CALGARY

VANCOUVER

NEWYORK

LONDON

SYDNEY

- The SME reduced IESO staff costs of \$407,419 by using lower cost temporary resources and contract resources for project and change initiatives.
- The SME did not require the full amount allocated for the “Provision for MDM/R Upgrades, Maintenance and Changes” resulting in a variance of \$1,725,000.
- Project costs for the “Release 7.6 and Measurement Canada 2012 Upgrade” were deferred from 2014 to 2015 resulting in a variance of \$1,441,246. The deferral was necessary due to a delay in receiving production ready code from the software vendor. Subsequently, the MDM/R was successfully upgraded to new software in March 2015. The delay did not increase the overall cost of the project because: (i) payments to the software vendor were tied to the delivery of quality software; and (ii) the SME managed costs aggressively to mitigate the impact of this delay.
- The SME incurred lower financing costs of \$513,655 due to lower interest rates and a lower overall debt load than was budgeted for in EB-2012-0100/EB-2012-0211.

Under section 1.4(d) of the Settlement Agreement, the SME is required to bring an application to adjust the SMC when its annual costs are over or under forecast by more than \$2 million or explain why an application is not required:

If the SME's total actual costs for a calendar year are over or under the forecast for that calendar year by more than \$2 million, then the SME shall bring an application to adjust the SMC unless it provides a satisfactory explanation to the Board for why an application to adjust the SMC is not required.

The SME submits that an application to adjust the SMC is not warranted at this time for the following reasons:

- A significant proportion of the variance between budgeted and actual costs is due to the deferral of project costs for “Release 7.6 and Measurement Canada 2012 Upgrade” to 2015. Remaining project costs will be incurred early 2015.
- The SME is dependent on the prevailing interest rate for financing its debt and is exposed to fluctuations in the rate. While interest rates remained at historic lows in 2014, the SME does not believe it is prudent to adjust the SMC on the assumption that rates will remain at the current level.
- Approximately 10% of the SME's costs are exposed to fluctuations in the value of the Canadian dollar. Several components of the SME's costs (including annual software maintenance and licence fees) are denominated in US dollars and have increased due to the declining value of the Canadian

dollar. For example, a 1% change in the US dollar relative to the Canadian dollar increases the SME's costs by approximately \$20,000 per year.

As of December 31, 2014 the IESO's SME related debt for the development, implementation and operation of the MDM/R (2006 to April 2013) was \$74.5 million. Any unallocated revenues collected during 2014 and 2015 will be utilized to reduce the SME's debt and associated financing costs. Paying down the SME's debt helps reduce the need for recovering financing costs associated with these historical costs from ratepayers in the future.

By copy of this letter, we are providing the 2014 Report to all Board-approved intervenors in EB-2012-0100/EB-2012-0211 as required by the Settlement Agreement and the Accounting Order. The Settlement Agreement states that intervenors are to have an opportunity to submit comments on the 2014 Report to the Board.

We trust the foregoing will be satisfactory. If you have any questions, please contact the undersigned at the address above.

Yours truly,



Patrick G. Duffy

PD/il

c.c.: Przemek Tomczak, *IESO*
Paula Lukan, *IESO*
Nancy Marconi, *IESO*
Registered Intervenors for EB-2012-0100/EB-2012-0211

encl.

Smart Metering Entity (SME) Financial Report
For the Year Ended December 31, 2014
Issued April 2, 2015

1. SME Annual Cost Report

BUDGET Category	Smart Metering Charge Revenue Requirement	Budget Transfer (1)	Calendar Year: 2014			Explanation
			Budget	Actual	Variance (Budget- Actual)	
BUDGET Category						
MDM/R OPERATIONS						
IESO Costs						
IESO Project Team costs						
IESO Staff Costs	\$ 3,489,975	(\$ 200,327)	\$ 3,289,648	\$ 2,882,229	\$ 407,419	The SME reduced IESO staff and contractor costs by using lower cost temporary resources and contract resources for project and change initiatives.
Contractor Costs	\$ 2,169,309	\$ -	\$ 2,169,309	\$ 2,136,782	\$ 32,527	
Total IESO Project Team Costs	\$ 5,659,284		\$ 5,458,957	\$ 5,019,011	\$ 439,946	
External Fees and Expenses	\$ 497,658	\$ 200,327	\$ 697,985	\$ 559,254	\$ 138,731	The SME's external fees and expenses were less than projected due to measures taken by the SME to aggressively manage such costs.
Regulatory Process: Licensing & Cost Recovery	\$ 10,000	\$ -	\$ 10,000	\$ 800	\$ 9,200	There were no intervenor objections to the SME's filing with the OEB in 2014, which lead to lower regulatory costs than projected in EB-2012-0100/EB-2012-0211.
IESO Communications Support	\$ 53,045	\$ -	\$ 53,045	\$ 72,284	(\$ 19,239)	Communications Support expenses were higher in 2014 than projected, but the SME's total spend on Communications Support for 2013 and 2014 is \$28,000 under the figure approved by the Board in EB-2012-0100/EB-2012-0211.
Total IESO Costs	\$ 6,219,986	\$ -	\$ 6,219,986	\$ 5,651,349	\$ 568,637	

(1) Budget transfer: IESO Board of Directors approved change in budget allocation for the operation of the MDM/R and for MDM/R Changes and Initiatives.

Smart Metering Entity (SME) Financial Report
For the Year Ended December 31, 2014
Issued April 2, 2015

BUDGET Category	Calendar Year: 2014					Explanation
	Smart Metering Charge Revenue Requirement	Budget Transfer (1)	Budget	Actual	Variance (Budget - Actual)	
Vendor Costs						
Vendor Base Contract Costs	\$ 14,073,879	\$ -	\$ 14,073,879	\$ 14,037,843	\$ 36,036	Operating fees associated with some Vendor services were deferred to 2015.
Vendor Change Orders and Infrastructure Improvements	\$ 951,873	\$ -	\$ 951,873	\$ 2,050,031 (\$ 1,098,158)		The variance relates to the Infrastructure Improvements project (Data Mart and Web Service Facility) that was substantially completed in 2014 following planning and procurement in 2013. The 2014 variance is due to the deferral of costs initially planned for 2013. The project is expected to be completed in 2015 following testing by the SME and LDCs.
Software Licenses	\$ 1,345,784	\$ 375,000	\$ 1,720,784	\$ 1,704,493	\$ 16,291	An amount of \$375,000 was reallocated from the budget for Provision for MDM/R Upgrades, Maintenance and Changes to cover higher software license and maintenance fees that are denominated in US dollars.
Total Vendor Costs	\$ 16,371,536	\$ 375,000	\$ 16,746,536	\$ 17,792,367 (\$ 1,045,831)		
Total MDM/R Operations Costs	\$ 22,591,523	\$ 375,000	\$ 22,966,523	\$ 23,443,716 (\$ 477,194)		

Smart Metering Entity (SME) Financial Report

For the Year Ended December 31, 2014

Issued April 2, 2015

		Calendar Year: 2014			
BUDGET Category	Smart Metering Charge Revenue Requirement	Budget Transfer (1)	Budget	Actual	Variance (Budget - Actual)
MDM/R Changes and Initiatives					
Provision for MDM/R Upgrades, Maintenance and Changes	\$ 5,000,000	(\$ 3,275,000)	\$ 1,725,000	\$ -	\$ 1,725,000
Release 7.6 and Measurement Canada 2012 Upgrade	\$ -	\$ 2,600,000	\$ 2,600,000	\$ 1,158,754	\$ 1,441,246
MDM/R Data Access Analysis and Planning	\$ -	\$ -	\$ -	\$ 5,000	(\$ 5,000)
MDM/R Changes	\$ -	\$ 300,000	\$ 300,000	\$ 335,264	(\$ 35,264)
Total MDM/R Changes and Initiatives Costs	\$ 5,000,000	(\$ 375,000)	\$ 4,625,000	\$ 1,499,017	\$ 3,125,983
SUB-TOTAL (Before Financing costs)	\$ 27,591,523	\$ -	\$ 27,591,523	\$ 24,942,734	\$ 2,648,789
Financing Costs	\$ 1,830,755	\$ -	\$ 1,830,755	\$ 1,317,101	\$ 513,655
TOTAL	\$ 29,422,278	\$ -	\$ 29,422,278	\$ 26,259,835	\$ 3,162,443
<p>A total of \$3,275,500 was transferred from the budget for Provision for MDM/R Upgrades, Maintenance and Changes to: (1) \$2,600,000 to Release 7.6 and Measurement Canada 2012 Upgrade (2) \$300,000 to MDM/R Changes, and (3) \$375,000 Software Licenses.</p> <p>Project costs were deferred from 2014 to 2015 resulting in a variance of \$1,441,246. The deferral was necessary due to the delays in receiving production ready code from the software vendor. Subsequently, the MDM/R was successfully upgraded to new software in March 2015. The delay did not increase the overall cost of the project because: (i) payments to the vendor were tied to delivery of a quality software; and (ii) the SME managed costs aggressively to mitigate the impact of the delay.</p> <p>This project is to support the Ministry of Energy sponsored initiative to develop a business case to assess the benefits, costs and implementation considerations for a provincial data access platform (the MDM/R Data Access Platform). This project was initiated in Q4 2014 and is expected to be completed in 2015. Project expenditures remain within authorized budget of \$300K</p> <p>Total spend and projected spend for MDM/R Changes remains within the amounts projected in EB-2012-0100/EB-2012-0211.</p> <p>Variance due to lower interest rates than projected resulting in lower financing costs.</p>					

Smart Metering Entity (SME) Financial Report
For the Year Ended December 31, 2014
Issued April 2, 2015

2. Variance Account Report

Variance Account	Year: 2014		
	SMC Revenue Requirement	Actual	Variance (SMC Revenue Requirement - Actual)
Cost	\$ 29,422,278	\$ 26,259,835	\$ 3,162,443
Revenue	\$ 45,206,527	\$ 45,735,079	\$ (528,551)
Service Level Credits	\$ -	\$ (107,844)	\$ 107,844

Variance Account	Cumulative (2013 to 2014)		
	SMC Revenue Requirement	Actual	Variance (SMC Revenue Requirement - Actual)
Cost	\$ 58,840,821	\$ 50,607,501	\$ 8,233,320
Revenue	\$ 75,344,212	\$ 75,879,514	\$ (535,301)
Service Level Credits	\$ -	\$ (368,710)	\$ 368,710

Smart Metering Entity (SME) Financial Report
For the Year Ended December 31, 2014
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3. SME Financial Report Reconciliation to IESO Audited Financial Statements
for the year ended December 31, 2014
(in thousands of Canadian dollars)

Smart metering charge - actual revenue	45,735
Smart metering charge - annual report	45,735
Amount to reconcile	-

Smart metering expenses - actual expenses	26,260
Smart metering expenses - annual report	27,869
Amount to reconcile	(1,609)

Add: capital spend on MDM/R	2,826
Less: amortization expense	4,543
Less: service level credits	(108)
Total reconciled	(1,609)