

SAVE ON ENERGY ENERGY MANAGER PROGRAM

ENERGY MANAGER PROGRAM – SALARY BASED FUNDING AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, _____,

BETWEEN:

Alectra Utilities Corporation, a corporation governed by the laws of the Province of Ontario,
(the “LDC”)

- and -

_____, a _____ governed by the
laws of _____, the Province of Ontario,
(the “Participant”)

(each of the LDC and the Participant may be referred to as a “Party” and, collectively, the “Parties”).

WHEREAS the Participant wishes to access funding made available through the Save on Energy - Energy Manager Program for the purpose of engaging an Energy Manager;

AND WHEREAS the Participant reasonably expects that it can deliver at a minimum the Annual Savings Target;

AND WHEREAS the LDC has approved the Participant’s request for an Energy Manager;

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Defined Terms

All capitalized terms not herein defined will have the meanings given in SCHEDULE “A”.

2. Annual Savings Target, Maximum Funding Amount and Payment

- a) The Annual Savings Target for each Annual Period is 2,000 MWh based on projects placed into service during the Term and as verified by the Technical Reviewer.

- b) If the Participant does not meet the Annual Savings Target in the first twelve (12) month period as of the Effective Date of this Agreement (“**Annual Period**”) and the LDC approves funding for a second Annual Period, the Shortfall Amount will be added to the Annual Savings Target in the second Annual Period. For certainty, only the Annual Savings Target for the second Annual Period of the Agreement may be adjusted to account for any Shortfall Amount and there shall be no adjustment to the maximum Funding Amount.
- c) If the Participant exceeds the Annual Savings Target in any Annual Period of the Agreement, the surplus savings may be used to offset any Shortfall Amount in any subsequent Annual Period.
- d) The amount payable per Annual Period commencing on the Effective Date or anniversary thereof is 80% of the Energy Manager’s eligible costs to a maximum of \$80,000, for each Annual Period (“**Funding Amount**”) exclusive of Applicable Taxes.
- e) For certainty, the Funding Amount shall represent 80% of the following eligible costs: (i) the total payroll costs of the Energy Manager for the relevant Annual Period including salary, wages and benefits, and contributions, assessments and taxes (for greater certainty, the term “taxes” does not include HST); (ii) training (not otherwise funded by the IESO); and (iii) tools and/or equipment required in the course of the Energy Manager’s daily activities to identify opportunities and/or measure and verify savings, to a maximum of \$80,000 per Annual Period. The Participant shall deliver to the LDC within thirty (30) days of each anniversary of the Effective Date during the Term, or within thirty (30) days of the expiration or termination of the Agreement, documentation showing the total payroll costs, training costs and equipment costs for the Energy Manager for the previous Annual Period, all in a form satisfactory to the LDC, in its sole discretion.
- f) The LDC agrees to pay the Funding Amount to the Participant in accordance with this Section 2 but subject to Sections 5(d) and (e) and to the Participant satisfying all of its obligations contained in this Agreement:
 - i) \$40,000 (“**Initial Payment**”), will be paid within sixty (60) days upon notice to the LDC of the Effective Date and each anniversary of the Effective Date thereof, if applicable; and
 - ii) the balance of the Funding Amount for each Annual Period (“**Balance Payment**”) will be paid within sixty (60) days of the anniversary of the Effective Date
- g) All payments hereunder will be made in Canadian dollars by cheque or by electronic funds transfer to the Participant’s account or such other mode of payment determined by the LDC in its sole discretion.
- h) All payments hereunder are conditional on the Participant providing an invoice to the LDC together with sufficient documentation to support and substantiate the payment of the Funding Amount.

- i) In addition to the Funding Amount, the LDC will pay any applicable taxes on the Funding Amount. The Participant will provide to the LDC sufficient supporting documentation, as requested by the LDC, to facilitate and support the LDC in claiming input tax credits in respect of the Funding Amount. In addition, if the LDC has reasonable grounds to commence a discussion, negotiation or challenge, in any manner whatsoever, with a tax authority regarding the validity of any applicable taxes imposed on the Funding Amount, the Participant will provide such reasonable assistance as may be required by the LDC with such discussion, negotiation or challenge. For greater certainty, in no event shall the LDC be relieved of its obligations under this Agreement, including the LDC's obligation to pay applicable taxes as provided hereunder, pending the outcome of any discussion, negotiation or challenge with a tax authority.

3. Participant's Obligations

In addition to the other obligations contained in this Agreement, the Participant will fulfill the following obligations:

- a) engage an Energy Manager, which to complete, at a minimum, the Energy Manager duties attached hereto in SCHEDULE "B" for each Facility;
- b) employ the Energy Manager on a full time basis during the Term and ensure that the Energy Manager is professionally designated as a Certified Engineering Technician, Certified Engineering Technologist, Certified Energy Manager (CEM), Energy Manager In Training (EMIT) provided such EMIT successfully completes the CEM examination by the end of the first Annual Period of the Energy Manager's employment, a licensed professional engineer in the province of Ontario (P Eng.), with a strong background in energy management, or such other appropriate qualification as may be approved by the LDC in its sole discretion;
- c) if the Energy Manager is a current employee of the Participant, the Participant will provide to the LDC a written commitment from a senior officer that such employee's previous job will be filled by another employee;
- d) if the Energy Manager is contracted by the Participant through an external third party to provide an Energy Manager, the Energy Manager must be available on a full time basis and located at a Facility for a minimum of twelve (12) months as though they were an actual employee of the Participant; and the agreement between the Participant and the external third party will contain, at a minimum, the Energy Manager duties as set out in SCHEDULE "B" for each Facility;
- e) no less than ten (10) Business Days prior to the Effective Date the Participant will deliver a written notice to the LDC confirming that the Participant will commence employment on the Effective Date;
- f) use Commercially Reasonable Efforts to employ the Energy Manager for the balance of the Term;

- g) provide suitable operational support and work supplies to the Energy Manager to allow the Energy Manager to perform the duties as detailed in Section 3(a) of this Agreement;
- h) undertake Commercially Reasonable Efforts to achieve the Annual Savings Target as evidenced by implemented Projects as verified using the International Performance Measurement and Verification Protocol (IPMVP); and
- i) ensure that at least 10% of the Annual Savings Target is attributed to new Projects arising from or related to the Energy Manager’s duties set out in SCHEDULE “B” and not financed by any incentives received from the IESO or the LDC or the Province of Ontario or the Government of Canada.

The Participant represents and warrants that the Energy Manager is not being employed or retained by the IESO or the LDC or their respective successors or assigns and that the Participant will have no claim against the IESO or the LDC or their respective successors in respect of its employment of the Energy Manager by the Participant and shall indemnify, defend and hold the IESO and the LDC and their respective affiliates, and each of their respective directors, officers, employees, shareholders, advisors, and agents harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest on, any and all related actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and all connected reasonable lawyers’ fees and reasonable disbursements) asserted by a third party against or suffered by the Participant relating to, in connection with, resulting from, or arising out of the employment, negligence or wilful misconduct of the Energy Manager.

4. Energy Manager Continuing Training

The Participant shall ensure that the Energy Manager participates in workshops, seminars and/or training programs as may be specified by the LDC related to the identification and/or implementation of measures enabling the Participant to achieve the Annual Savings Target.

5. Reporting Obligations

The Participant will ensure that the Energy Manager prepares and delivers to the LDC, for its approval, the following documents:

- a) No later than six (6) months after the Effective Date, an Energy Management Plan covering each Facility, in order to achieve the Annual Savings Target. The Participant shall deliver an updated Energy Management Plan covering each Facility within thirty (30) days of the end of the Initial Term and any Renewal Term.
- b) Within thirty (30) days of the end of each quarter during the Term, including the quarter at the end of the Term, a quarterly report (“Quarterly Report”) in a form provided by the LDC, which shall include but not be limited to: project description, project application number, expected start and completion date, expected energy savings, expected incentive (if any), project status and number of saveONenergy applications by type (preliminary engineering study, detailed engineering study, project incentive, demand response, retrofit, etc.) submitted by the Participant, the number of employee awareness sessions undertaken by

the Energy Manager and training programs attended by the Energy Manager, plus additional details to demonstrate the progress of the Energy Manager towards the achievement the Annual Savings Target. For any funding period that is less than twelve (12) months, the Participant shall deliver a report within thirty (30) days of the end of the term which will include any information to be included in the last Quarterly Report to the extent that such information is available.

- c) The LDC will review the Energy Management Plan and the Quarterly Report (collectively, the “**Reports**”) to ensure timely filing, completeness and progress from the previous Reports. If the LDC does not approve the Reports, such documents shall be revised by the Participant to address the noted deficiencies and be resubmitted until such time as the Participant obtains the LDC’s approval.
- d) The LDC will not make any Funding Amount payment until it approves each Report required to be submitted by the Participant.
- e) The Energy Manager shall meet with the LDC’s Key Accounts Manager or his/her delegate as may be reasonably requested from time to time to discuss Project opportunities and issues, obtain technical guidance, obtain information and training on all province wide and local conservation programs.
- f) The Participant shall provide such other reports as may be reasonably requested from time to time by the LDC.

6. Communication with Technical Reviewer

The Participant will cooperate and provide on a timely basis any requested information to the LDC or the Technical Reviewer should the LDC or the Technical Reviewer require clarification from the Participant related to any reports or information required under this Agreement. The Participant shall, at the same time as it provides information to the Technical Reviewer, provide a copy of such information to the LDC.

7. Term, Termination and Survival

- a) **Option 1:** The term of this Agreement commences as of the Effective Date and terminates on the date which is 12 months from the Effective Date unless terminated earlier in accordance with the terms of this Agreement (“**Initial Term**”). The term of this Agreement may be extended (“**Renewal Term**”) upon approval by the LDC acting in its sole and absolute discretion provided that no extension may be requested unless the Participant is in full compliance with all of its obligations contained herein (the Initial Term plus the Renewal Term, if any, collectively the “**Term**”). The Participant acknowledges that the Term may not extend past December 31, 2020.

Option 2: The term of this Agreement commences as of the Effective Date and terminates on December 31, 2020 unless terminated earlier in accordance with the terms of this Agreement.

- b) The LDC may terminate this Agreement:
 - i) upon ninety (90) days written notice for any reason;
 - ii) if the Participant fails to have an Energy Manager in place for ninety (90) calendar days or more during any Annual Period during the Term;
 - iii) upon the Participant's failure to observe or perform any obligation required to be observed or performed under this Agreement and such failure continues for a period of thirty (30) calendar days after delivery of written notice by the LDC to cure such failure;
 - iv) upon the Participant's failure to meet, as determined by the Technical Reviewer, (a) a minimum of 80% of the Annual Savings Target, in the first Annual Period; (b) the Annual Savings Target, as adjusted to include any Shortfall Amount, in the second Annual Period; or (c) the Annual Savings Target in any subsequent Annual Period;
 - v) upon thirty (30) days written notice if the Program is terminated; or
 - vi) if the Participant becomes or is declared Insolvent, becomes the subject of any proceeding related to its liquidation or insolvency which is not dismissed within ninety (90) calendar days, or makes an assignment for the benefit of creditors.
- c) This Agreement shall terminate automatically if the Energy Manager has not commenced employment within ninety (90) days of the date set out on the first page of this Agreement.
- d) Sections 2(i), 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 22 and 26, and such other provisions as are necessary for the interpretation thereof and any other provisions hereof, the nature and intent of which is to survive termination or expiration of this Agreement, will survive the expiration or termination of this Agreement.
- e) Upon completion of each Annual Period, the Technical Reviewer will review the Participant's performance to determine if it achieved the Annual Savings Target. If the Energy Manager does not meet the Annual Savings Target in the first Annual Period, the Participant will be required to demonstrate to the satisfaction of the LDC, acting in its sole discretion, that the projects expected for the next Annual Period will be sufficient to attain the cumulative Annual Savings Target for the next Annual Period, failing which this Agreement will terminate. For certainty, the cumulative Annual Savings Target for the next Annual Period shall include any Shortfall Amount for the previous Annual Period.

8. Effect or Expiry or Termination

Upon expiry or termination of this Agreement, the following shall apply:

- a) The Participant will immediately deliver to the LDC all Program Materials;
- b) All relevant provisions of this Agreement which by their nature are required to extend past expiry or termination shall continue in effect after expiry or termination to the extent necessary including those necessary to provide for any invoicing, billings, adjustments and payments and for the delivery by the Participant to the LDC of all reports, if any, required to be delivered up to the date of termination;
- c) The termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such termination or any other rights which the terminating party may have arising out of either the termination or the event giving rise to the termination and shall not affect any continuing obligations of either of the parties under this Agreement; and
- d) The LDC shall have no liability whatsoever to the Participant for any costs, charges, expenditures, losses or damages (whether direct, consequential, special or otherwise) which the Participant or its Representatives may incur as a result of the termination of this Agreement.

9. Environmental Attributes

- a) All right, title and interest in and to all benefits or entitlements associated with decreased environmental impacts now or in the future, direct or indirect, arising as a result of, relating to or in connection with the electricity savings for which an incentive has been paid, and the right to quantify and register these, including any energy efficiency certificate, renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission, reduction allowance (collectively, the “Electricity Savings Environmental Attributes”) will be allocated on a proportionate basis, with the IESO owning an amount equal to the total quantity of Electricity Savings Environmental Attributes multiplied by the Environmental Attribute Funding Percentage (the result being the “IESO Environmental Attributes”) and the Participant owning the remaining quantity of Electricity Savings Environmental Attributes (the “Participant Environmental Attributes”), where Environmental Attribute Funding Percentage means, in respect of an Eligible Measure purchase and installed, the total incentive amount paid to the Participant and funded by the IESO in respect of the Measure, divided by the total amount of actual costs incurred by the Participant that meet the eligibility requirements for such costs set out under these terms and conditions, multiplied by 100, and expressed as a percentage.
- b) The Participant shall notify the IESO in writing prior to assigning, transferring, encumbering, submitting for compliance purposes, trading or otherwise using (collectively, “realizing”) any of the Participant Environmental Attributes, with such notice to include: (i) the quantity of Participant Environmental Attributes to which the Participant believes it is entitled; (ii) the quantity of Electricity Savings Environmental Attributes and the Environmental Attributes Funding Percentage used to determine the quantity of Participant Environmental Attributes; and (iii) supporting calculations and data used to determine the total quantity of Electricity Savings Environmental Attributes and the Environmental Attribute Funding Percentage.

- c) The Participant agrees that all right, title and interest in and to all benefits or entitlements associated with the IESO Environmental Attributes are hereby transferred and assigned by the Participant to, or to the extent transfer or assignment is not permitted, held in trust for, the IESO and its successors and assigns.
- d) The IESO will be entitled unilaterally and without consent deal with such IESO Environmental Attributes in any manner it determines. You acknowledge that the IESO will contact the Participant prior to realizing on any IESO Environmental Attributes.
- e) The Participant agrees that it will, from time to time, upon written direction of the IESO, take all such actions and do all such things necessary to:
 - i) effect the transfer and assignment to, or holding in trust for, the IESO all rights, title and interest in all IESO Environmental Attributes; and
 - ii) certify, obtain, qualify and register with the relevant authorities or agencies IESO Environmental Attributes that are created and allocated or credited pursuant to applicable laws and regulations from time to time for the purpose of transferring such IESO Environmental Attributes to the IESO. The Participant will be entitled to reimbursement by the IESO of the cost of complying with such a direction provided that the IESO, acting reasonably, has approved such cost of compliance in writing prior to the cost being incurred and provided that such reimbursement will be limited to: (x) the total amount of such cost of compliance that have been approved in advanced by the IESO, multiplied by (y) the applicable Environmental Attributes Funding Percentage.

10. Representations and Warranties

The Participant represents and warrants to the LDC as follows, and acknowledges that the LDC is relying on such representations and warranties in entering into this Agreement:

- a) the Participant would not have undertaken the employment of an Energy Manager without the Funding Amount;
- b) the Participant is a Distribution Customer;
- c) the Participant has the potential to deliver at a minimum the Annual Savings Target;
- d) the Participant is not Insolvent;
- e) the Participant has executed and delivered the Release, Waiver and Consent, and has not taken any actions to amend or suspend it or to terminate its existence and it continues in full force and effect as of the date hereof; and
- f) the Participant is acting on its own behalf and, if applicable, on behalf of the Portfolio or Association listed in SCHEDULE "E". **[Note to LDC: if LDC is acting on behalf of Portfolio, Schedule "E" is to be populated; otherwise, insert "N/A" in Schedule "E"]**

11. Audit Rights and Record Keeping

- a) The Participant acknowledges that this Agreement is subject to IESO EM&V Protocols.
- b) During the Term, the Participant shall keep complete copies of all Program Materials including all materials as may be reasonably required for the LDC or Governmental Authorities to verify the services performed and amounts payable pursuant to this Agreement. Upon expiry or termination of this Agreement, the Participant will immediately deliver to the LDC all Program Materials for this Term.
- c) The Participant shall also cooperate with the LDC and Governmental Authorities and assist the LDC or the Governmental Authorities with any measurement and verification activities including making available, on reasonable notice, to the LDC or the Governmental Authorities (or their respective Representatives) such Program Materials as may be reasonably requested by the LDC or the Governmental Authorities, at any time during normal business hours and (i) permit the LDC or the Governmental Authorities (or their respective Representatives) to examine and audit and take copies of such documents and make extracts of the same; and (ii) use Commercially Reasonable Efforts to make available to the LDC or the Governmental Authority (or their respective Representatives) the Participant personnel involved in the performance of the services. The Participant shall also provide copies of any Program Materials to the LDC within twenty (20) days of a written request.
- d) In conducting an audit pursuant to Section 11(c), the LDC shall not unreasonably interfere with the operations of the Participant.
- e) If the result of an audit indicates a material misstatement of monies paid by the LDC to Participant, then the LDC may demand immediate repayment of, or may set-off or deduct from any subsequent payment, any such misstated amount and the Participant shall repay any such amount within thirty (30) days of any such demand.

12. No Warranty

Except as specifically set forth or referenced in this Agreement, there are no representations, warranties, or conditions of either Party, express, implied, statutory or otherwise, regarding any matter, including any implied warranties or conditions of quality or fitness for a particular purpose. Without limiting the generality of the foregoing, the Participant acknowledges that its participation in the Program hereunder is based on its own assessment of the Program and not on any reliance on anticipated or projected results, and that such participation may not result in the achievement of any electricity savings or demand savings, which is expressly disclaimed by the Participant.

13. Limitation of Liability and Indemnity

- a) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY: (A) IN NO EVENT WILL THE PARTICIPANT BE ENTITLED TO RECOVER FROM THE LDC OR ANY OTHER INDEMNIFIED PARTY (AS DEFINED IN SECTION 13(b) BELOW) FOR ANY LIABILITIES, DAMAGES, OBLIGATIONS, PAYMENTS, LOSSES, COSTS OR EXPENSES UNDER OR IN RELATION TO THIS AGREEMENT: (I) ANY AMOUNT IN EXCESS OF THE ACTUAL COMPENSATORY DIRECT DAMAGES, COURT COSTS AND REASONABLE LAWYERS' AND OTHER ADVISORS' FEES SUFFERED OR INCURRED BY THE PARTICIPANT AND IN ANY EVENT LIMITED BY THE FUNDING AMOUNT PAID BY THE LDC HEREUNDER; OR (II) DAMAGES (WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL OR OTHERWISE) FOR (X) LOSS OF PROFIT, OR (Y) DIMINUTION OF VALUE OR LOSS OF USE OF ANY PROPERTY; AND, (B) THE LDC AND THE INDEMNIFIED PARTIES (AS DEFINED IN SECTION 13(b) BELOW) WILL NOT BE LIABLE TO THE PARTICIPANT, ITS SUCCESSORS OR ASSIGNS OR ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS OR REPRESENTATIVES, FOR ANY AMOUNT IN EXCESS OF THE AMOUNTS PAYABLE UNDER THIS AGREEMENT OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE UNDER OR IN RELATION TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY.
- b) The Participant (the "**Indemnifying Party**") will indemnify, defend and hold the LDC, the IESO, the Government of Ontario, the members of the Government of Ontario's Executive Council and their respective affiliates, and each of the foregoing Person's respective directors, officers, employees, shareholders, advisors, third party service providers and agents (including contractors and their employees) (collectively, the "**Indemnified Party**") harmless from and against any and all Claims, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnified Party relating to, in connection with, resulting from, or arising out of (i) any Claim by, or occurrence or event related to, any third party relating to this Agreement; and/or (ii) the negligence or wilful misconduct of the Participant, except in either case to the extent that any injury or damage related to such Claim, occurrence or event is directly attributable to the negligence or wilful misconduct of an Indemnified Party. For greater certainty, in the event of contributory negligence or wilful misconduct of such Indemnified Party, then such Indemnified Party will not be indemnified hereunder in the proportion that the Indemnified Party's negligence or wilful misconduct contributed to any Indemnifiable Loss. The LDC will hold the benefit the Participant's obligations under this Section 13 in the LDC's own right and, in trust, for the benefit of any other Indemnified Party.

14. Confidentiality

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

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

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

provided that any such Person is aware of the provisions of this Section 14 and has entered into a written agreement with the Receiving Party that includes confidentiality obligations in respect of such Confidential Information that are no less stringent than those contained in this Section 14.

- c) Without limiting the foregoing, each Party acknowledges and agrees that:
- i) the LDC will Handle reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, on an ongoing basis as part of its participation in the Program or other CDM Program offered by the IESO and provide such reports, data and other information to the IESO without further notice to or further consent of the Participant; and the LDC and the IESO may disclose and provide reports, data and other information, including Confidential Information of the Participant or its subcontractors or Representatives, to Governmental Authorities;
 - ii) this Agreement and all Confidential Information in the possession or control of the LDC, the IESO or the Participant are subject to Applicable Laws that include the access provisions of MFIPPA or FIPPA, as the case may be, and that as a result, third parties may obtain access to each Party's Confidential Information. Moreover, the LDC and its Representatives are subject to MFIPPA and the IESO and its Representatives are subject to FIPPA, and that MFIPPA or FIPPA, as the case may be, applies to and governs all recorded information in any form or medium that is provided by the LDC or the IESO, respectively, or its Representatives to the Participant or provided by the Participant to the LDC or the IESO, respectively, or its Representatives for the purposes of this Agreement, or created by the Participant in the performance of this Agreement, and that is in the custody or control of the LDC or the IESO, as the case may be (collectively, the "**Records**"), and disclosure of such Records to third parties may be ordered under MFIPPA or FIPPA as applicable;
 - iii) each Party is responsible for ensuring that its agreements with Representatives contemplate and permit such potential access or disclosure, and will be fully liable to any such Representatives for any Claim arising out of or relating to such access;
 - iv) the LDC and the IESO may at any time make public the Participant's participation in the Program and data relating to the Energy Manager, including the achievement of electricity savings and demand savings including the Annual Savings Target, a description of the Projects identified by the Energy Manager and the implementation of such Projects by the Participant, aggregated with other studies in a manner intended to report on the Program; and
 - v) the Participant may acknowledge the assistance provided by the LDC and the IESO in all public communications, provided that the LDC and the IESO will have the right to approve in writing all such public communications in advance.

15. Injunctive Relief

Each Party acknowledges that any violation of the provisions of Section 14 may cause irreparable damage or injury to the other Party (including, in the case of the LDC, any of the other Indemnified Parties), the exact amount of which may be impossible to ascertain, and that, for such reason, in addition to any other remedies available to such Party (including, in the case of the LDC, any of the other Indemnified Parties), such Party (including, in the case of the LDC, any of the other

Indemnified Parties) is entitled to proceed immediately to court in order to obtain, and the other Party will consent to, interim, interlocutory, and final injunctive relief restraining the other Party from breaching, and requiring the other Party to comply with, its obligations under Section 14, without a requirement that a finding of irreparable harm, proof of damages or other criteria for the awarding of injunctive relief be made. Nothing in this Section 15 will be construed to limit the right of a Party (including, in the case of the LDC, any of the other Indemnified Parties) to obtain injunctive relief in any other circumstance in which it may be otherwise entitled to such relief.

16. MFIPPA and FIPPA Compliance

To the extent that the LDC or the IESO, as the case may be, must comply with disclosure obligations under MFIPPA or FIPPA, the Participant agrees (without limiting its obligation set out in Section 14):

- a) to keep the Records in its possession secure;
- b) to provide the Records to the LDC or the IESO, as the case may be, within seven (7) calendar days of being directed to do so by the LDC or the IESO, as the case may be, for any reason under MFIPPA or FIPPA, as applicable, including an access request or privacy issue; and
- c) to implement other specific security measures that in the reasonable opinion of the LDC or the IESO, as the case may be, would improve the adequacy and effectiveness of the Participant’s measures to ensure, for the purposes of MFIPPA or FIPPA, as applicable, the security and integrity of the Records held in the Participant’s possession.

17. Dispute Resolution

If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties will promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, a senior representative from each Party will meet, either in person or by telephone, to attempt to resolve the dispute. Each senior Representative will be prepared to propose a solution to the dispute. If, following such efforts, the dispute is not resolved, the dispute will be settled by arbitration pursuant to SCHEDULE “C” of this Agreement.

18. Schedules

The following schedules are hereby incorporated in and form part of this Agreement:

- Schedule “A” - Definitions
- Schedule “B” – Energy Manager Duties
- Schedule “C” - Arbitration Provisions
- Schedule “D” – Form of Release, Waiver and Consent
- Schedule “E” – List of Participants (if applicable)

19. Headings

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

20. Entire Agreement

Except as otherwise provided, this Agreement, together with the Release, Waiver and Consent, constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

21. Amendments

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by both of the Parties.

22. Governing Law and Attornment

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

23. Successors and Assigns

This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and assigns. This Agreement may not be assigned by the Participant except with the prior written consent of the LDC, which consent may be unreasonably withheld or delayed.

24. Further Assurances

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

25. Severability

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

26. Third Party Beneficiaries

Except as provided in Sections 9, 11, 13, 14, 15, 16 and this Section 26, this Agreement is solely for the benefit of:

- a) the LDC and its successors and assigns, with respect to the obligations of the Participant under this Agreement, and
- b) the Participant and its successors and permitted assigns, with respect to the obligations of the LDC under this Agreement;

and this Agreement will not be deemed to confer upon or give to any other Person any Claim or other right or remedy. The Participant appoints the LDC as the trustee for the IESO of the applicable provisions set out in this Agreement, including Sections 9, 11, 13, 14, 15, 16 and this Section 26, and the LDC accepts such appointment. The LDC is the agent of the IESO for the purpose of Section 9.

27. No Partnership, etc.

Nothing in this Agreement will be deemed to constitute a partnership or joint venture or create any fiduciary relationship between the LDC and the Participant.

28. Force Majeure

The LDC shall not be in default and shall not be deemed to be in default, of its obligations in this Agreement by reason of delay or of failure or inability to perform its obligations hereunder where the said delay, failure or inability is due solely to any cause which is unavoidable or beyond the reasonable control of the LDC, including without limitation any act of God or other cause which frustrates the performance of the LDC's obligations in this Agreement.

29. Notices

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

If to the LDC:

Address: 161 Cityview Blvd., Vaughan, ON L4H 0A9
Telephone: 905-417-6900 Ext. 25098
Attention: Nathalie McLauchlin, Director Program Operations, CDM
Fax: 905-303-4462
E-mail: nathalie.mclauchlin@alectrautilities.com

With copies to:

Attention: Vinay Mehta, Associate General Counsel

Fax: 905-303-4462

E-mail: vinay.mehta@alecrautilities.com

Attention: CDM Department

Fax: 905-303-4462

E-mail: mississaugaconservation@alecrautilities.com

If to the Participant:

Attention:

Address:

Telephone:

Attention:

Fax:

E-mail:

The Participant expressly consents to communications with the LDC by way of commercial electronic messaging for the purposes of this Agreement.

30. Counterparts

This Agreement may be executed in any number of counterparts and all such counterparts will, for all purposes, constitute one agreement binding on both Parties provided that each Party has signed at least one counterpart.

31. Facsimile/Electronic Signatures

This Agreement may be executed and delivered by facsimile transmission or by any other method of electronic transmission and the Parties may rely upon all such signatures as though such signatures were original signatures.



[Remainder of page intentionally left blank. The next page is the execution page.]



IN WITNESS WHEREOF the Parties have executed this Agreement by their duly authorized respective representative(s) as of the date first above written.

ALECTRA UTILITIES CORPORATION

Legal Name of Participant:

Per: _____

Per: _____

Name:

Name:

Title:

Title:

Per: _____

Name:

Title:

[I/We] have authority to bind the corporation

[I/We] have authority to bind the corporation

Per: _____

Per: _____

Name:

Name:

Title:

Title:

Per: _____

Name:

Title:

[I/We] have authority to bind the corporation

[I/We] have authority to bind the corporation

SCHEDULE “A”

DEFINITIONS

In this Agreement, the following terms will have the following meanings:

“**Agreement**” means this Energy Manager Program – Salary Based Funding Agreement, including all recitals and Schedules, as it or they may be amended, restated or supplemented from time to time.

“**Adjusted Annual Savings Target**” an adjusted Annual Savings Target, to be achieved by the Participant for the subsequent Annual Period, based on the Shortfall Amount for the previous 12 month period.

“**Annual Review Report**” refers to the report document completed at the end of each contract year by the Technical Reviewer to convey their assessment of the Energy Manger’s performance against the Annual Savings Target.

“**Annual Savings Target**” means 2,000 MWh, the minimum savings arising in a 12 month period commencing on the Energy Manager’s employment start date or anniversary thereof, as the case may be, from the activities the minimum of which is set out at Section 2(a). Eligible electricity savings shall persist until December 31, 2020.

“**Applicable Law**” means any applicable law, including any statute, legislation, treaty, regulation and any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Governmental Authority.

“**Applicable Taxes**” means any applicable HST and any other applicable sales or use taxes.

“**Association**” means a representative organization providing membership based services and support to multiple Distribution Customers, which may span more than one Local Distribution Company’s territory, within a specific industry, sector or region.

“**Association of Energy Engineers**” means the non-profit professional society that offers energy certification programs.

“**Business Day**” means a day, other than a Saturday or a Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

“**CDM**” means electricity conservation and demand management.

“**Certified Energy Manager**” means an individual certified as a Certified Energy Manager by the Association of Energy Engineers.

“**Certified Engineering Technician**” means an individual certified as a C.Tech. (Certified Technician) by OACETT.

“**Certified Engineering Technologist**” means an individual certified as a C.E.T. (Certified Engineering Technologist) by OACETT.

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

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

“**Confidential Information**” of a Party means any and all information of such Party or any of its affiliates, licensors, customers and employees or other service providers, and information on the Energy Manager Application, and, in the case of the LDC, includes the IESO and Governmental Authorities (the “**Disclosing Party**”) that has or will come into the possession or knowledge of the other Party, or any of their respective affiliates, licensors, customers and employees or other service providers and, in the case of the LDC, includes the IESO, (the “**Receiving Party**”) in connection with or as a result of entering into this Agreement, including information concerning the Disclosing Party’s past, present or future customers, suppliers, technology, or business. Notwithstanding the foregoing, “Confidential Information” does not include information that is:

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

provided, however, that, for the purposes of this Agreement, all Personal Information relating to the LDC or the Participant will constitute Confidential Information, whether or not it falls into one of the exceptions set out in clause (a) through (d) of this definition.

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

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

“**Distribution System**” means a system connected to the IESO-Controlled Grid for distributing electricity at voltages of 50 kV or less and includes any structures, equipment or other thing used for that purpose.

“**Effective Date**” means the date upon which the new Energy Manager hired for the Program commences employment.

“**Energy Manager**” means an energy manager employed or engaged by a Participant whose primary responsibility is to propose and lead methodologies and processes to reduce energy consumption in a Facility.

“**Energy Manager Application**” means an application submitted by the Participant to access funding for the employment of an Energy Manager as may be approved by the LDC in its absolute and sole discretion.

“**Energy Manager Program**” means the IESO’s saveONenergy program designed to provide a funding to a Participant for the purpose of engaging an Energy Manager.

“**Energy Management Plan**” means a document, substantially in the form made available by the LDC completed by the Energy Manager describing the activities and plans required to reduce energy consumption, including electricity consumption, in such Participant’s Facilities and detailing how the Participant is demonstrating leadership in the area of energy conservation by, among other things, developing conservation policies and establishing employee, community and peer-to-peer awareness programs.

“**Energy Manager In Training**” means an individual that has successfully completed the course leading to certification as a Certified Energy Manager by the Association of Energy Engineers but has not yet accumulated the credentials necessary for certification.

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

- a) all rights to any fungible or non-fungible attributes, whether arising from a Facility itself, from the interaction of a Facility with a Distribution System or the IESO-Controlled Grid or because of applicable Laws and Regulations or voluntary programs established by any Governmental Authority;
- b) all rights relating to the nature of the energy source as may be defined and awarded through applicable Laws and Regulations or voluntary programs; and specific Environmental Attributes include ownership rights to any applicable credits, entitlements or other

instruments resulting from the interaction of a Facility or a Measure with a Distribution System or the IESO-Controlled Grid or as specified by applicable Laws and Regulations or voluntary programs;

- c) all rights to quantify and register the foregoing with competent authorities; and
- d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing.

“**Facility**” means a building(s), premises or lands, or part thereof, owned or occupied by the Participant which is covered by this Agreement as more fully described in the recitals to this Agreement.

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

“**Funding Amount**” has the meaning ascribed thereto in Section 2(c).

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

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

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

“**IESO**” means the Independent Electricity System Operator of Ontario established under Part II of the *Electricity Act, 1998* (Ontario), or its successor, having its head office address at: 120 Adelaide St. W., Suite 1600, Toronto, ON M5H 1T1.

“**IESO-Controlled Grid**” has the meaning ascribed to it by the IESO Market Rules.

“**IESO EM&V Protocols**” means the methods and processes that the IESO develops for the evaluation, measurement and verification of CDM programs and initiatives, as such methods and processes may be amended from time to time.

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

“**Insolvent**”, in respect of a Person, means a Person:

- a) who is for any reason unable to meet its obligations as they generally become due or otherwise acknowledges its insolvency,

- b) who has ceased paying its current obligations in the ordinary course of business as they generally become due,
- c) who has ceased to carry on business in the ordinary course,
- d) who institutes any proceeding, takes any corporate action, or executes any agreement to authorize its participation in or the commencement of any proceeding seeking: (a) to adjudicate it a bankrupt or insolvent; (b) liquidation, dissolution, winding-up, reorganization, arrangement, protection, relief or composition of it or any of its property or debts or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or (c) appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its properties and assets, or
- e) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing due.

“Laws and Regulations” means:

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

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

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

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

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

“MW” means a megawatt.

“**MWh**” means a megawatt hour.

“**Ontario Association of Certified Engineering Technicians and Technologists**” or “**OACETT**” means the non-profit, self-governing, professional association that certifies engineering and applied science technicians and technologists in Ontario.

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

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

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

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

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

“**Portfolio**” means a group of collaborating Distribution Customers within a specific industry, sector or region that may span more than one Local Distribution Company territory.

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

“**Program Materials**” means all books, records, reports, analyses, contracts, agreements, accounts, invoices, receipts, vouchers, deliverables (fully or partially completed) and all other information, data or documentation related to the Program or delivered, or to be delivered, by the Participant to the LDC pursuant to this Agreement whether in paper or electronic form.

“**Project**” means one or more Measures, which, when implemented in respect of a Facility, are expected to deliver the Annual Savings Target.

“**Quarterly Reports**” means the report of energy management activities of a Participant completed by an Energy Manager on a quarterly basis in the form made available by the LDC from time to time and delivered to the LDC within thirty (30) days of the end of the quarter.

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

“**Release, Waiver and Consent**” means the release and waiver and consent executed by the Participant in favour of the LDC, among others, and submitted by the Participant in the form appended hereto as SCHEDULE “D”.



“**Representative**” means, in respect of one of the Parties, any one of that Party’s employees, officers, directors, shareholders, contractors, agents, representatives and advisors.

“**Shortfall Amount**” means the amount of the Annual Savings Target or Adjusted Annual Savings Target that was not achieved by an Energy Manager as determined annually by the Technical Reviewer.

“**Technical Reviewer**” means a Person retained by the IESO or the LDC.

SCHEDULE “B”

ENERGY MANAGER DUTIES

In connection with the identification, reporting, and implementation of energy saving opportunities, the minimum duties of the Energy Manager are expressed below. These duties, along with any other obligation set out in the Agreement should be used to develop the Energy Manager’s job description.

- A Energy Tracking & Monitoring** – Provide a database and an energy tracking and monitoring system for each Facility / process that captures current monthly energy consumption and an electrical load inventory of major equipment. The Energy Manager will develop and deliver training to the Participant’s staff on the energy tracking and monitoring system.
- B Primary Assessment** – Review existing energy study reports and perform a high-level assessment, including a walk through audit of each major process area of each site, to identify energy saving opportunities and to identify which systems will require more detailed evaluations.
- C Maintenance and Operating Schedules** – Review and provide a description of the control systems, operating schedules, and maintenance practices at each Facility / process to identify operational savings. Develop maintenance practices and programs to enhance energy efficiency. Examples would include: reprogramming controls to shutdown equipment and lighting when not required, developing a checklist to ensure that all shutdown procedures are properly implemented and followed.
- D Energy Saving Opportunities & Action Plan** – Identify, assess, prioritize and recommend to senior management energy-saving opportunity projects including both capital improvement projects and operational and maintenance changes. This will include the preparation of business cases to justify capital expenditures and the completion of applications to the LDC’s CDM initiatives and to other agencies to maximize funding available for energy-saving projects.
- E Project Implementation & Electrical Energy Savings** – Coordinate the implementation of energy-saving projects, including the planning, budgeting, and scheduling for the design, installation, commissioning, and verification of energy efficiency projects. It is expected that a project manager (not the Energy Manager) would be assigned for large capital projects.
- F Measurement & Verification Strategy** – Work with the Participant to develop a strategy for the Measurement & Verification of energy-saving projects at a corporate level (i.e. not involved at project level).
- G Energy Management Behaviour and Business Process Improvements** – Work to create and foster a sustainable energy management culture at the Participant’s facilities and provide an avenue for employees to recognize and report issues and ideas regarding energy conservation and efficiency.
- H Employee Awareness Program** – Implement employee training and awareness programs to promote energy conservation and communicate the energy efficiency initiatives undertaken.

- I **Assistance to the LDC's Projects** – Coordinate and assist with site inspections by the LDC/ IESO (or their respective designate) from time to time of the various measures implemented at the sole discretion of the IESO or LDC, as the case may be. Collect relevant information regarding additional electrical energy use (equipment purchases, schedule changes, occupancy changes or construction).

- J **Reporting** – Complete Quarterly Reports and the annual Energy Management Plan

SCHEDULE “C”

ARBITRATION PROVISIONS

- a) Subject to Section 17, in accordance with the provisions of this Schedule “C”, any and all differences, disputes, Claims or controversies arising out of or in any way connected with this Agreement, whether arising before or after the expiration or termination of this Agreement, (including any dispute as to whether an issue is arbitrable) will be resolved by arbitration before a single arbitrator (the “**Arbitrator**”) pursuant to the *Arbitration Act, 1991* (Ontario) and otherwise in accordance with the laws of the Province of Ontario.
- b) A Party desiring arbitration hereunder will give written notice of arbitration to the other Party containing a concise description of the matter submitted for arbitration (“**Notice of Arbitration**”). If the Parties fail to jointly appoint an Arbitrator within twenty (20) days thereafter, an Arbitrator will be designated by a judge of the Ontario Superior Court of Justice upon application by either Party. The Arbitrator may determine all questions of law, fact and jurisdiction with respect to the dispute or the arbitration (including questions as to whether a dispute is arbitrable) and all matters of procedure relating to the arbitration. The Arbitrator may grant legal and equitable relief (including injunctive relief), award costs (including legal fees and the costs of the arbitration), and award interest.
- c) The arbitration will be conducted in English in the City of Toronto (unless otherwise agreed to by the Parties) at such place therein and time as the Arbitrator may fix and, failing agreement thereto by the Parties, in accordance with such procedures as the Arbitrator will determine, in accordance with the principles of natural justice. The arbitration and all matters arising directly or indirectly therefrom will be kept strictly confidential by the Parties and will not be disclosed to any third party except as may be compelled by law.
- d) The Arbitrator’s written decision will be delivered to each of the Parties within sixty (60) days following the conclusion of the arbitration hearing. The costs of any arbitration hereunder will be borne by the Parties in the manner specified by the Arbitrator in his or her decision. The decision of the Arbitrator will be final and binding upon the Parties in respect of all matters relating to the arbitration, the conduct of the Parties during the proceedings and the final determination of the issues in the arbitration. There will be no appeal from the decision of the Arbitrator to any court, except on the grounds that the conduct of the Arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario), or solely on a question of law as provided for in such act. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.
- e) Submission to arbitration under this Schedule “C” is intended by the Parties to preclude any action in matters which may be arbitrated hereunder, save and except for enforcement of any arbitral award hereunder.

SCHEDULE “D”

FORM OF RELEASE, WAIVER AND CONSENT

RELEASE, WAIVER AND CONSENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby, for itself and its successors and assigns:

- A A releases and forever discharges each of **Alectra Utilities Corporation** (“the **LDC**”), the Independent Electricity System Operator (“**IESO**”) and their respective representatives, affiliates, third party service providers and agents (collectively, the “**Program Operators**”) and all of the respective past, present and future officers, directors, employees, owners, shareholders, agents, successors and assigns of the Program Operators (collectively, the “**Representatives**”) (the Program Operators and the Representatives hereinafter collectively referred to as “**Releasees**”) from any and all actions, causes of action, suits, complaints, disputes, debts, liabilities, obligations, damages, legal fees, costs, disbursements, expenses, claims and demands of every nature or kind whatsoever and howsoever arising, at law or in equity, or under any statute, including without limitation, claims for property damage, business interruption and personal injury of the undersigned’s employees, officers, directors or licencees, which it can, will or may have by reason of any matter, cause or thing arising as a result of, in relation to or in connection with the attendance on one or more occasions by one or more of the employees, officers, directors, representatives, third party service providers or agents of any or all of the Program Operators (collectively, “**Persons**”) at any and all facilities owned or occupied by the undersigned in connection with, arising out of or relating to the initiatives designed by the IESO for electricity conservation and demand management and directed at one of the commercial and institutional, industrial, low-income or residential electricity consumer groups (collectively referred to as the “**CDM Programs**”), other than in the case of the gross negligence or willful misconduct of such Persons during such attendances;
- B agrees that the undersigned will not make any claim or take any proceedings against any other person or entity with respect to any matter released and discharged in Section A above which may result in any claim arising against any of the Releasees for contribution or indemnity or other relief;
- C without limiting the foregoing, the undersigned acknowledges, agrees and consents that by submitting an application (“**Application**”) to participate in a CDM Program or any initiative thereof, whether or not its Application is ultimately accepted:
 - a) it hereby consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators, including all reports, data, personal information, records showing historical energy use and consumption, and other information of the undersigned or its subcontractors or representatives (collectively, the “**Applicant Information**”) by the Program Operators for purposes relating to the operation, administration or assessment of the CDM Program, any program thereof or the Application, and in connection with any

reporting activities relating to the CDM Program, which shall include, without limitation: (i) sharing of Applicant Information among the Program Operators; (ii) use by the Program Operators of the Applicant Information provided by the Participant to process any of the undersigned’s Applications and to conduct, analyze and report on the results of surveys and modify the CDM Program based on such surveys; (iii) for purposes of reporting, surveys, studies and audits, future conservation programs and the provision to the Program Operators past and current usage for such purposes. The Participant understands that in connection with such reporting, surveys, studies and audits, the Program Operators may contact me directly, including by email or other electronic communications. Pursuant to Canada’s anti-spam legislation (hereinafter “CASL”), the LDC on behalf of the IESO, is hereby requesting your Express Consent (as that term is meant in CASL and its associated Regulations) to contact you at the electronic address identified in this Agreement. If you wish the IESO to communicate with you by email in connection with future conservation programs, customer satisfaction surveys and other related purposes, please confirm by providing your initial here: _____ . The Participant may withdraw this consent at any time by contacting Alectra Utilities Corporation at 161 Cityview Blvd., Vaughan, ON L4H 0A9 or at businessconservation@alectrautilities.com, alectraconservation.com or 1-855-215-7235 or the IESO at 120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1 or at customer.relations@ieso.ca, ieso.ca, saveonenergy.ca or 905-403-6900;

- b) the Program Operators are committed to protecting the personal information in its custody or control in accordance with applicable privacy laws. The Participant may access the LDC’s privacy policy at <http://www.alectrautilities.com/privacy> and the IESO’s privacy policy at <http://www.ieso.ca/privacy>;
- c) it hereby consents to the disclosure by the IESO to the LDC of information regarding the Participant’s past participation in other IESO funded conservation and demand management programs for the purpose of processing the Participant’s Application; and
- d) this Release, Waiver and Consent and all Applicant Information, in the possession or control of the LDC and/or the IESO are subject to applicable laws that include the access provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) (“**MFIPPA**”) or the *Freedom of Information and Protection of Privacy Act* (Ontario) (“**FIPPA**”), as the case may be, and that as a result, third parties may obtain access to the Applicant Information;

- D the foregoing Release, Waiver and Consent will continue in full force and effect for the benefit of the Releasees and will apply to each Application submitted by the undersigned to the LDC and to the extent of any conflict between this Release, Waiver and Consent and the terms of any agreement or other document entered into by the undersigned and one or more of the Program Operators pursuant to or in connection with the CDM Program or any part thereof, or any initiative under any CDM Program, the terms of this Release, and Waiver and Consent will prevail; and
- E this Release, Waiver and Consent will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.



IN WITNESS WHEREOF the undersigned has executed this Release, Waiver and Consent by its duly authorized representative(s) as of the date below written.

Dated: _____

Legal Name of Participant:

Name:

Title:

Name:

Title:

[I/We] have the authority to bind the corporation.



SCHEDULE “E”

LIST OF PARTICIPANTS

The Participant named in this Agreement is acting on its own behalf and as agent for the group of collaborating participants listed below:

N/A

[OR]

[This schedule is either ‘NOT APPLICABLE’ or LDC to list legal names of additional Participants in the case of a Portfolio or Association. It is the LDCs responsibility to establish the “agency” agreement in the case of a Portfolio]