



DESIGN DECISION-MAKER AGREEMENT (Version 2.0)

The Participant has applied for, among other things, the Design Decision-Maker Incentive pursuant to the Application submitted to
(the "LDC") under the Initiative. This Agreement is entered into between the Design
Decision-Maker and the LDC.

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1. **DEFINED TERMS:** All capitalized terms not herein defined will have the meanings given in Schedule 1.
 2. **DESIGN DECISION-MAKER INCENTIVE:** The LDC will pay to the Design Decision-Maker a Design Decision-Maker Incentive in connection with the Custom Project(s) described in the Application and approved by the LDC, subject to certain terms and conditions.
 3. **AMOUNT OF DESIGN DECISION-MAKER INCENTIVE:** The Design Decision-Maker acknowledges that the total amount of the Design Decision-Maker Incentive is based upon estimated demand savings or electricity savings based on the Application and will be the maximum amount payable hereunder. The estimated amount of such incentive for each Custom Project is identified in the project appendix to the approved Application for that project and will be the maximum amount payable in respect of each such project. Upon the completion of each such project, the LDC will recalculate the amount of such incentive based upon the best available information at such time. The total amount of the Design Decision-Maker Incentive determined by the LDC will be paid by the LDC as a lump sum payment within 90 days of the completion of the last of the Custom Project(s) and of the last of the new construction/major renovation final evaluation and incentive reports being finalized. The Design Decision-Maker acknowledges and agrees that it is in the LDC's discretion to determine which projects require the completion and approval of a new construction/major renovation final evaluation and incentive report.
 4. **REPRESENTATIONS AND WARRANTIES:** The Design Decision-Maker represents, warrants and agrees that (a) all information in this Agreement is true and complete; and (b) all of the Design Decision-Maker Eligibility Criteria have been satisfied.
 5. **CONSENT TO USE INFORMATION AND INDEMNITY:** The Design Decision-Maker understands and agrees that by entering into this Agreement: (a) it hereby consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators, including personal information (if applicable) and records showing historical energy use and consumption (if any) (collectively, the "Information") by the Program Operators for purposes relating to the operation, administration or assessment of the Initiative or this Agreement, and in connection with any reporting activities relating to the Initiative, which will include: (i) sharing of Information among the Program Operators; (ii) use by the Program Operators of the Information provided by the Design Decision-Maker to conduct, analyze and report on the results of surveys and modify the Initiative based on such surveys; and (iii) disclosure to the Ontario Energy Board, the Independent Electricity System Operator, the Ontario Ministry of Energy or the Ontario Environmental Commissioner or their respective successors; and (b) it will indemnify and save harmless each of the Program Operators and their respective directors, officers and employees from any and all liability and all claims, losses, damages (including indirect or consequential damages), expenses and proceedings for personal injury (including death) or property damage of any person relating to, in connection with, resulting from, or arising out of the Initiative, including by reason of the actual or alleged implementation of any Custom Project(s) and its operation or any other matter contemplated by this Agreement.
 6. **EVALUATION, MEASUREMENT AND VERIFICATION; AUDIT:** The Design Decision-Maker will participate in any surveys, studies, audits, evaluations or verifications conducted by the LDC or the OPA or their respective agents and other service providers (collectively, the "Program Operators") in connection with the Initiative, including for the purpose of proper administration, monitoring and verification of this Agreement or evaluation of the Initiative, and will provide to the Program Operators reasonable access to the Design Decision-Maker's records relating to the project for such purposes.
 7. **NO WARRANTY:** Except as specifically set forth or referenced in this Agreement, there are no representations, warranties, or conditions of either party to this Agreement, express, implied, statutory or otherwise, regarding any matter, including any implied warranties or conditions of quality, workmanship, safety, legal compliance or fitness for a particular purpose. Without limiting the generality of the foregoing, the Design Decision-Maker acknowledges that its participation in the Initiative is based upon its own assessment of the Initiative and not on any reliance on anticipated or projected results, and that such participation may not result in the achievement of any electricity savings, which is expressly disclaimed by the Design Decision-Maker.
 8. **SUBCONTRACTING BY THE LDC:** The LDC may subcontract any of its responsibilities under this Agreement to an affiliate or a third party.
 9. **MISCELLANEOUS:** Except as otherwise provided, this Agreement constitutes the entire agreement between the parties hereto 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. This Agreement may not be varied, amended or supplemented except by an agreement in writing executed by both of the parties hereto. 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. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. This Agreement will not be assigned by the Design Decision-Maker to another person other than an affiliate except with the prior written consent of the LDC, which consent may not be unreasonably withheld or delayed. Each of the parties hereto 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. 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



HIGH PERFORMANCE NEW CONSTRUCTION

Agreement, which will remain in full force and effect. The insertion of headings is for convenience of reference only and will not affect the interpretation of this Agreement. Any reference in this Agreement to the terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Section or other part of this Agreement. Unless otherwise indicated, any reference in this Agreement to a Section or Schedule refers to the specified section of or schedule to this Agreement. The word “including” means “including without limitation”, and the words “include” and “includes” have a corresponding meaning.

10. **TERM AND TERMINATION:** This Agreement will terminate 90 days following the payment of the Design Decision-Maker Incentive by the LDC or as otherwise determined by the LDC in its reasonable discretion. The provisions of Sections 4, 5, 6, 9 and 11 will survive the termination of this Agreement.
11. **THIRD PARTY BENEFICIARIES:** Except as provided in Sections 5, 6 and 11, this Agreement is solely for the benefit of:
- (a) the LDC, and its successors and assigns, with respect to the obligations of the Design Decision-Maker under this Agreement, and
 - (b) the Design Decision-Maker, 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 Design Decision-Maker appoints the LDC as the trustee for the OPA of the applicable provisions set out in this Agreement and the LDC accepts such appointment.
12. **FACSIMILE/ELECTRONIC SIGNATURES:** This Agreement may be executed and delivered by facsimile transmission or by any other method of electronic execution and the parties hereto may rely upon all such signatures as though such signatures were original signatures.

I, the Design Decision-Maker, certify that I understand and agree to the terms and conditions as set forth above in this Agreement.

DESIGN DECISION-MAKER/LEGAL COMPANY NAME

AUTHORIZED SIGNATURE

DATE (DD/MM/YYYY)

**SCHEDULE 1****DEFINITIONS**

Capitalized terms not otherwise defined in this Agreement will have the following meaning:

"Agreement" means this Design Decision-Maker Agreement, including all Schedules attached hereto, as may be amended, restated or supplemented from time to time.

"Applicable Building Code" means (a) the "building code" as defined in the *Building Code Act, 1992* (Ontario), as may be amended, , and (b) any other applicable building code imposed by the municipality (if any) to the extent that it supersedes or prevails over the Ontario Building Code, or any part thereof.

"Application" means the application submitted by the Participant which, among other things, describes the Custom Project(s) and includes all associated worksheets and other supporting documents.

"Custom Project" means, in respect of a new construction or major renovation, a project that satisfies the custom project eligibility criteria as described in the participant agreement attached to the Application.

"Design Decision-Maker Eligibility Criteria" means the following eligibility criteria for a Design Decision-Maker:

- (a) is an architect or professional engineer (as an individual or any other Person), and be licensed to practice in the Province of Ontario;
- (b) is not an employee of the Participant;
- (c) is designated as the "Design Decision-Maker" by the Participant in the Application; and
- (d) has signed off on the final design plans for Custom Project(s) as required by the Applicable Building Code.

"Design Decision-Maker Incentive" means the incentive payable by the LDC directly to the Design Decision-Maker in connection with the Custom Project(s).

"Information" has the meaning given to it in Section 5.

"Initiative" means the Commercial and Institutional New Construction and Major Renovation Initiative 2011 - 2014.

"OPA" means the Ontario Power Authority or its successor.

"Participant" means a person who has (a) submitted an Application which was approved by the LDC; (b) agreed to the terms and conditions in the Application and the participant agreement; and (c) satisfied the applicable eligibility criteria.

"Period" means a continuous period of at least 48 months starting on the first day of the month immediately following the month in which the LDC pays the Design Decision-Maker Incentive hereunder.

"Program Operators" has the meaning given to it in Section 6.