

DEEP RETROFIT CHALLENGE PARTICIPANT AGREEMENT

This AGREEMENT made on the [DAY]th day of [MONTH], 2022,

BETWEEN:

CITY OF TORONTO
(the "City")

-and-

[LEGAL NAME OF PARTICIPANT]
(the "Participant")

Background:

The City wishes to demonstrate replicable, cost-effective pathways for achieving deep energy retrofits and supporting at least a 50% reduction in total energy use intensity and greenhouse gas reductions across 10-16 existing buildings, de-risking future investment for other building owners and building market confidence, while also encouraging voluntary compliance with existing building policies and informing future deep retrofit practices (the "**Deep Retrofit Challenge**").

The City has entered into a contribution agreement with Her Majesty the Queen in right of Canada ("**Canada**"), represented by the Minister of Natural Resources, which will fund the Deep Retrofit Challenge (the "**Contribution Agreement**").

The City issued an public invitation for potential participants to apply to the Deep Retrofit Challenge, attached as Schedule H (Application Submission Information Documents), which closed on [MONTH DAY YEAR], in order to flow the funding the City received from Canada under the Contribution Agreement to selected participants through the Deep Retrofit Challenge (the "**Incentive**").

The Participant has submitted a Deep Retrofit Application, attached as Schedule G (Deep Retrofit Application), to the City, which outlines a deep retrofit proposed for the existing building owned by the Participant located at [address] (the "**Building**"), and wishes to receive the Incentive and participate in the Deep Retrofit Challenge (the "**Deep Retrofit Project**").

Following the review of the applications submitted to the Deep Retrofit Challenge, in accordance with the evaluation process outlined in the Application Guide that can be found in Schedule H (Application Submission Information Documents), the Deep Retrofit Application submitted by the Participant has been approved by the City to receive the Incentive and participate in the Deep Retrofit Challenge.

The Participant desires to carry out all aspects of the Deep Retrofit Project in accordance with the terms and conditions in this Agreement and agrees to be liable, responsible and accountable for the proper use of the Incentive and the performance of any Work carried out in relations to the Deep Retrofit Project.

The City and the Participant agree as follows:

1. Definitions

"Agreement" means this Agreement and the attached Schedules A through K.

"Building" means the Participant's building which is eligible to undergo the deep retrofit as a part of the Deep Retrofit Challenge located at [address].

"Building Data" means the data from the Building that is to be collected and provided by the Participant to the City as outlined under Schedule J (Building Data).

"Business Day" means the day on which the City offices generally are open for business in the Province of Ontario.

"City Agreement Manager" means the City employee, as identified in Section 35.4, designated to manage the Agreement on behalf of the City.

"City Participant Manager" means the City employee, as identified in Section 35.5, designated to facilitate the relationship between the City and the Participant, including but not limited to providing guidance, information support, monitoring the progress of the Deep Retrofit Project, and addressing questions regarding the Deep Retrofit Challenge.

"Claim" means the Eligible Costs incurred by the Participant and submitted to the City prior to the end of the Claim Period as part of the Design Incentive, Retrofit Incentive or Performance Incentive, when applicable, as outlined in Schedule E (Claims and Incentives).

"Claim Period" means the time period in which a Claim can be made for Design Incentive, Retrofit Incentive and Performance Incentive, as applicable, as outlined in Schedule E (Claims and Incentives).

"Commissioning Report" means a report completed and submitted by the Participant to the City, in a form satisfactory to the City, once the Retrofit Work under the Deep Retrofit Design Report is completed which includes a final claim for Eligible Costs as it pertains to the Retrofit Incentive, as more particularly described in Schedule A (Reporting Requirements & Schedule) of this Agreement.

"Contract" means a contract between the Participant and a third party at arm's length whereby the latter agrees to provide a product or service to the Participant with respect

to the Deep Retrofit Project, in return for financial consideration that may be claimed as an Eligible Cost.

"Deep Retrofit Application" means a written application applying to participate in the Deep Retrofit Challenge signed and submitted by the Participant on [MONTH DAY YEAR] which has been accepted by the City for the Deep Retrofit Challenge and to receive the Incentive and is attached as Schedule G (Deep Retrofit Application).

"Deep Retrofit Design" is a design completed for the Building and submitted by the Participant, as part of the Deep Retrofit Design Report, that illustrates the major renovation project required to reduce total energy use intensity (including plug loads) by at least 50% from the Building's pre-renovation baseline.

"Deep Retrofit Design Report" means a report completed and submitted by the Participant, in a form satisfactory and accepted by the City, prior to the Participant's commencement of Retrofit Work on the Building, as more particularly described in Schedule A (Reporting Requirements & Schedule) and outlines the Participant's proposed Deep Retrofit Design for the Building. The Deep Retrofit Design Report accepted by the City, by the signing of Form 1 (Template Deep Retrofit Design Acceptance Letter) found in Schedule K (Forms) will become a part of this Agreement by reference under Schedule C (Deep Retrofit Design Report).

"Deep Retrofit Project" means all of the Work to be conducted by the Participant on under this Agreement in relations to the Building required to give effect to the project under the City's Deep Retrofit Challenge.

"Design Incentive" means all Eligible Costs claimed by the Participant within the Claim Period for the development of the Deep Retrofit Design Report, as outlined in Schedule D (Eligible Costs). The Design Incentive will be paid out to the Participant by the City in accordance with Schedule E (Claims and Incentives).

"Eligible Cost(s)" means any expenditure incurred by the Participant for the Deep Retrofit Project that are eligible to be claimed from the Incentive, as outlined under Schedule D (Eligible Costs), within the appropriate Claim Period in accordance with the terms and conditions of this Agreement. For clarification any costs incurred by the Participant before this Agreement is signed by both parties are prohibited as Eligible Costs.

"Eligible Cost Period" means the period of time **starting on the Effective Date** and **ending on January 16, 2026** in which Eligible Costs may be claimed by the Participant from the City, unless otherwise extended by the Executive Director.

"Environmental Laws" means all applicable federal, provincial and municipal laws, regulations, by-laws, orders, rules, policies, or guidelines respecting the protection of the natural environment, public or occupational health or safety, and the manufacture,

importation, handling, transportation, storage, disposal and treatment of environmental contaminants.

"Executive Director" means the City's Executive Director of Environment & Energy Division and includes their designate or successor, if any.

"Fixed Asset" means a tangible non-current asset, including buildings and equipment, acquired not for sale but for use for the Deep Retrofit Project during the Eligible Cost Period.

"Holdback" means the 10 per cent holdback retained by the City from the Design Incentive and the Retrofit Incentive to be paid out to the Participant for Eligible Costs incurred under the Agreement during the Eligible Cost Period, as further described under Schedule E (Claims and Incentives).-The Holdback will be paid out to the Participant as outlined under Section 4.13 (Holdback of Incentive and Payment).

"Incentive" means any monies paid by the City to the Participant under this Agreement, which monies shall be paid during the Term and pursuant to the terms of this Agreement.

"Incentive Limit" means the total maximum incentive the City deems the Building is eligible to receive based on gross floor area and proposed reduction in greenhouse gas emissions, which amount shall not exceed 25 percent of the Total Project Cost up to a maximum of \$500,000, as set out in Schedule E (Claims and Incentives).

"Indemnified Parties" means the City of Toronto and Her Majesty the Queen in right of Canada, including their officers, employees, agents, invitees, and elected or appointed officials, successors and assigns

"Intellectual Property" means any intellectual property recognized by law, including any intellectual property right protected through legislation including governing patents, copyright, trade-marks, and industrial designs.

"Measurement and Verification" means the evaluation of Project energy and emissions performance performed by the City on the Retrofit Work completed on the Building under the Deep Retrofit Project.

"Participant" means all of the owners of the Building that have submitted a Deep Retrofit Application that has been accepted by the City to participate in the Deep Retrofit Challenge and has entered into this Agreement.

"Participant Agreement Manager" means the person, as identified in Section 35.2, designated to manage the Agreement on behalf of the Participant.

"Participant Documents" means all City required written submissions of the Participant throughout the Term, as identified in Section 22.1.

"Participant Intellectual Property" means any Intellectual Property created by the Participant as a part of the Deep Retrofit Project.

"Participant Project Manager" means the person designated by the Participant to manage the Deep Retrofit Project as identified in Section 35.3. The Participant Project Manager may be a third-party hired by the Participant, such as a property manager, engineering consultant, or architect, to assemble the Deep Retrofit Application on behalf of the Participant and/or manage the Work under the Agreement.

"Performance Incentive" means all Eligible Costs claimed by the Participant within the Claim Period after the Participant's successful submission and City's acceptance of the Performance Report and once the City's Measurement and Verification demonstrates that the Retrofit Work on the Building has achieved its proposed reduction in total energy use intensity and greenhouse gas emissions, as further outlined in Schedule D (Eligible Costs). The Performance Incentive will be paid out to the Participant by the City in accordance with Schedule E (Claims and Incentives) and Schedule F (Performance Incentive Emissions Performance Limit).

"Performance Incentive Emissions Performance Limit" means the further limit placed on the Performance Incentive based on the emissions reductions achieved by the Retrofit Work on the Building, as further outlined in Schedule F (Performance Incentive Emissions Performance Limit).

"Performance Report" means a report completed, in a form satisfactory to the City, and submitted by the Participant to the City for acceptance, that is completed one year past the Required Retrofit Competition Date, and as further described in Schedule A (Reporting Requirements & Schedule) of this Agreement.

"Project Budget" means the total budget identified by the Participant to complete the Work required for the Deep Retrofit Project and to meet its obligations under the Agreement. The initial Project Budget will be outlined in the Participant's Deep Retrofit Application, attached as Schedule G (Deep Retrofit Application), and will be replaced with the Project Budget in the accepted Deep Retrofit Design Report, attached as Schedule C (Deep Retrofit Design Report), or any amendment thereto provided by the Participant to the City by Written Notice.

"Quarterly Progress Report" means a report completed and submitted by the Participant to the City, in a form satisfactory to the City and as more particularly described in Schedule A (Reporting Requirements & Schedule) of this Agreement.

"Rent Roll" means a written report that lists all of the current tenants at the Building and contains other important information about each tenant's lease, as outlined in Schedule A (Reporting Requirements & Schedule).

"Report" means those reports to be submitted by the Participant to the City, in a form satisfactory to the City, under this Agreement as outlined in Schedule A (Reporting Requirements & Schedule).

"Required Retrofit Completion Date" means **January 31, 2025**, the date that the Participant shall have completed all of the Retrofit Work as specified in Schedule C (Deep Retrofit Design Report).

"Retrofit" or "Deep Retrofit" means an extensive, holistic overhaul of a building's systems, utilizing best practices with the goal of reducing of total energy use intensity and greenhouse gas emissions by a minimum of 50 percent each.

"Retrofit Incentive" means all Eligible Costs incurred and claimed by the Participant during the Claim Period for the Retrofit Work on the Building, as outlined in Schedule D (Eligible Costs). The Retrofit Incentive will be paid out to the Participant by the City in accordance with Schedule E (Claims and Incentives).

"Retrofit Work" means the Retrofit measures to be performed by the Participant on the Building as outlined in the Deep Retrofit Design.

"Statutory Declaration of Substantial Completion" is referred to in Schedule A (Reporting Requirements and Schedule) and the template attached as Form 2 in 0.

"Substantial Completion Date" means the date, as indicated on the submitted and signed Form 2: Statutory Declaration of Substantial Completion by the Participant from Schedule K (Forms) to the City, in which the Retrofit Work as outline under the Deep Retrofit Design Report has been Substantially Completed.

"Substantially Completed" has the meaning as and shall be determined in accordance with "substantially performed" in subsection 2(1) of the Construction Act, R.S.O. 1990, c. C.30, as amended, and "substantial completion" shall have a corresponding meaning.

"Total Project Cost" means the total costs incurred by the Participant to complete the Deep Retrofit Project.

"Whole-Building Analysis" means that the Building is considered as a single, integrated system rather than as a collection of standalone systems, such as building envelope, HVAC system, renewable energy system, building operations, etc. The Whole-Building Analysis approach facilitates the identification of synergistic relationships between the Building's component systems. The key to Whole-Building Analysis is the use of an integrated design process which brings all relevant disciplines together for an initial charrette-based study of the Deep Retrofit design problem as a whole, based on collaboration and shared information.

"Work" means any and all tasks required to be performed by the Participant under the Agreement, which work includes, but is not limited to: (a) all work required for the Deep

Retrofit Project; (b) all work set out in Schedule A (Reporting Requirements & Schedule); and (c) all work required to complete the Participant's obligations under the Agreement.

2. Agreement Documents and Order of Priority

2.1. The following documents, including this Agreement and the Schedules to the Agreement, are incorporated into and form an integral part of the Agreement. If there is any conflict or disagreement between the various documents making up this Agreement, the documents shall govern in the following order of priority:

- (a) a written amendment to the Agreement, the amendment bearing the later date having priority;
- (b) this signed Agreement, excluding the Schedules;
- (c) Schedule A – Reporting Requirements & Schedule
- (d) Schedule B – Deep Retrofit Design Requirements
- (e) Schedule C – Deep Retrofit Design Report
- (f) Schedule D – Eligible Costs
- (g) Schedule E – Claims and Incentives
- (h) Schedule F – Performance Incentive Emissions Performance Limit
- (i) Schedule G – Deep Retrofit Application
- (j) Schedule H – Application Submission Information Documents
- (k) Schedule I – Description of Deep Retrofit Challenge
- (l) Schedule J – Building Data
- (m) Schedule K – Forms
 - a. Form 1: Template Deep Retrofit Design Acceptance Letter
 - b. Form 2: Statutory Declaration of Substantial Completion
 - c. Form 3: Utility Data Release Form

2.2. This Agreement, including the Schedules incorporated into it, either by reference or attached, constitute the entire agreement between the parties with respect to the subject matter under the Agreement and all other prior agreements, representations, statements, negotiations and undertakings with respect to such subject matter are superseded by this Agreement.

3. Term

3.1. **Term of Agreement.** The term of this Agreement shall come into force on the **final date when signed by both parties** (the "Effective Date") and will terminate on **June 30, 2031**, unless terminated early as outlined in the Agreement (the "Term").

3.2. **Substantial Completion.** The Participant shall have Substantially Completed the Retrofit Work on the Building by the date outlined in the Deep Retrofit Design

Report attached as Schedule C, The actual date of Substantial Completion will be the date indicated on the signed and submitted Form 2: Statutory Declaration of Substantial Completion by the Participant to the City.

- 3.3. **Required Retrofit Completion Date.** The Participant shall have completed all of the Retrofit Work on the Building, as outlined under the Deep Retrofit Design Report, by **January 31, 2025**, unless this date is extended pursuant to this Agreement.

4. Incentive

Incentive Amount

- 4.1. **Amount.** Subject to, and in accordance with, the terms and conditions of this Agreement, the City agrees to provide payment of the Incentive to the Participant to a maximum total amount of which will not exceed the Incentive Limit. Without limiting any other terms or conditions of this Agreement, the maximum amount to be funded by the City to the Participant for the Deep Retrofit Project and all Work related to the Deep Retrofit Project, will not exceed **[\$AMOUNT]**.
- 4.2. **No guarantee of Incentive Limit.** The Participant understands and acknowledges that the Incentive Limit outlined in Section 4.1 above is an upper limit of monies available to the Participant and is not a guarantee of monies and the Incentive available may decrease due, but not limited to, the Participant's Deep Retrofit Project performance outcomes and funding amount the City receives from Canada. Any unused portion of the Incentive by the Participant remains the property of the City.
- 4.3. **Canada Funding.** The Participant understands and acknowledges that the payment of the Incentive, or any portion of the Incentive, is contingent on the funding received by the City from Canada and that the City is under no obligation, whatsoever, to make any payments of the Incentive if the necessary funds are not provided by Canada. In the event that Canada terminates the Contribution Agreement with the City or reduces the level of funding provided to the City under the Contribution Agreement in any way, the Participant acknowledges that the City has the right to immediately upon Written Notice: (i) terminate this Agreement and no longer provide the Incentive, or (ii) reduce the Incentive Limit under the Agreement.
- 4.4. **Notice of Reduction of Incentive.** If the City intends to reduce the amount of the Incentive Limit under the Agreement for any reason, unless as outlined in Section 4.3 above, it will give the Participant at least sixty (60) calendar days' Written Notice of its intention to do so. If, as a result of a reduction in the Incentive Limit, either as outlined in this Section or in Section 4.3 above, the Participant is unable or unwilling to complete the Deep Retrofit Project, the

Participant may, within thirty (30) calendar days of receipt of the City's Written Notice (which notice shall indicate the amount by which the City proposes to reduce the Incentive Limit) and notify the City as to whether or not it wishes to proceed with the Deep Retrofit Project on the basis of the reduced Incentive Limit.

Project Budget

- 4.5. **Changes to Project Budget.** The Participant shall use best efforts to ensure that the expenditures considered Eligible Costs in relation to the Deep Retrofit Project do not exceed the amounts set out in the Project Budget. The Participant shall declare promptly to the City in the next Quarterly Progress Report of any changes to the Project Budget, including any variances between the projected expenditures and the actual expenditures.

Incentive Eligibility

- 4.6. **Deep Retrofit Design Report.** The Participant understands and acknowledges that in the event the Participant does not submit or does not submit to the satisfaction of the City the Deep Retrofit Design Report, as outlined under Section 1 (Deep Retrofit Design Report) in Schedule A (Reporting Requirements & Schedule), the City may terminate the Agreement immediately upon Written Notice.
- 4.7. **Incentive Solely for Eligible Costs.** The Participant agrees that no part of the Incentive shall be used, at any time or for any reason, by the Participant for any purpose other than the Eligible Costs outlined under Schedule D (Eligible Costs).
- 4.8. **City Not Satisfied.** The Participant agrees and acknowledges that at any time the Executive Director, at its sole discretion acting reasonably, is not satisfied with the progress of the Deep Retrofit Project, the standard of the Work performed on the Deep Retrofit Project, or that any other term or condition under the Agreement is not being met the City may decide to not provide any further payment to the Participant of the Incentive, or any portion of it, until the issue has been resolved to the satisfaction of the City, acting reasonably.

Payment of Incentive

- 4.9. **Withhold Incentive.** The Participant acknowledges and agrees that the City is entitled to withhold any amount of the Incentive until such time as the City Agreement Manager is satisfied that:
- (a) the Participant has only requested payment for amounts that are considered Eligible Costs as outlined under Schedule D (Eligible Costs);
 - (b) the Participant has not altered the Deep Retrofit Design without first obtaining acceptance from the City;

- (c) the Retrofit Work completed on the Building will meet the proposed reduction in total energy use intensity and greenhouse gas emissions as outlined in Schedule C (Deep Retrofit Design Report); and
 - (d) the Participant has met all requirements under the Agreement to the satisfaction of the Executive Director.
- 4.10. **Payment of Design Incentive.** The City will pay the Participant a maximum of ten percent (10%) of the Incentive Limit, upon the City's acceptance of the Participant's Deep Retrofit Design Report, to cover Eligible Costs incurred for the development of the Deep Retrofit Design Report during the eligible Claim Period (the "Design Incentive"). Additional payment terms for the Design Incentive are outlined under Schedule E (Claims and Incentives). The Participant acknowledges that there is no guarantee they will receive the total Design Incentive and this is a maximum amount available.
- 4.11. **Payment of Retrofit Incentive.** The City will pay the Participant in two separate installments of a maximum forty percent (40%) during the Claim Period of April 1, 2023 to March 31, 2024 and a maximum of forty percent (40%) during the Claim Period April 1, 2024 to March 31, 2025 to cover Eligible Costs associated with the Retrofit Work outlined under the Deep Retrofit Design Report (the "Retrofit Incentive"). Additional payment terms for the Retrofit Incentive are outlined under Schedule E (Claims and Incentives). The Participant acknowledges that there is no guarantee they will receive the total Retrofit Incentive for each Claim Period and this is a maximum amount available.
- 4.12. **Payment of Performance Incentive.** The City will pay the Participant a maximum of ten percent (10%) of the Incentive Limit, with the final percentage amount of the Incentive being dependent on the final measured emission reduction resulting from the Retrofit Work, during the Claim Period of April 1, 2025 to March 31, 2026 to cover Eligible Costs associated with the Retrofit Work outlined under the Deep Retrofit Design Report (the "Performance Incentive"). The calculation of the final percentage amount to be paid will be based on the final measured emissions reduction resulting from the Retrofit Work on the Building the Participant, as further described under Schedule E (Claims and Incentives) & Schedule F (Performance Incentive Emissions Performance Limit). The Participant acknowledges that there is no guarantee they will receive the total Performance Incentive and this is a maximum amount available.
- 4.13. **Holdback of Incentive and Payment.** The City will retain a ten percent (10%) holdback from the total Design Incentive and Retrofit Incentive to paid out to the Participant under the Agreement (the "Holdback"). The Holdback will be paid out by the City, one year post Required Retrofit Completion Date and upon receipt and City acceptance of the:
- a) Commissioning Report and Performance Report as further described in Schedule A (Reporting Requirements & Schedule), and
 - b) completed Statutory Declaration of Substantial Completion.

4.14. **Interest on Advance Payment.** The Participant shall declare to the City if any of the Incentive is made as an advance payment, and where the amount of interest earned on such advance payment is in excess of one hundred dollars (\$100.00). Such interest on advance payment of the Incentive is deemed to be part payment of the City's Incentive and will be taken into account in the calculation of the final Incentive payment by the City, or repayment by the Participant, as deemed appropriate in the circumstance by the Executive Director.

Incentive Repayment

- 4.15. **Event of Repayment.** The Participant shall repay to the City, no later than thirty (30) calendar days from the date of Written Notice to this effect from the City, as a debt due and owing to the City, the whole or part of the Incentive paid, as determined by the City in the event:
- (i) the Participant breaches any of the terms or conditions of the Agreement and has been noted in default by the City;
 - (ii) the Agreement is terminated for any reason as outlined under Sections 33.1 (Event of Default) and 34.4 (Termination by Participant and Obligations);
 - (iii) if for any reason the amount of the Incentive paid exceeds the Incentive Limit the Participant is eligible for;
 - (iv) the Participant is not entitled to the Incentive paid in the event of:
 - (a) any unexpended advance payment of the Incentive paid in error or excess of the amount of the Eligible Costs actually incurred by the Participant on the Deep Retrofit Project;
 - (b) any Incentive amounts paid in respect of cost which are subsequently determined by the City to be ineligible as Eligible Costs;
 - (c) the Participant ceases operating, winds up or dissolves;
 - (d) any proceedings in bankruptcy or is adjudged a bankrupt commences or has commenced against the Participant;
 - (e) the Participant merges or amalgamates with another party or sells the Building to another party and new Building owner is not willing to be assigned the Agreement;
 - (f) the Participant has knowingly provided false information in their Deep Retrofit Application or any other information provided to the City under the Agreement; or
 - (g) the Participant has used the Incentive for purposes not approved by the City.
- 4.16. **Participant Notification.** The Participant shall immediately notify the City in writing of the occurrence of any of the events described in Section 4.15(iv) (Event Repayment) above.

- 4.17. **Repayment Interest.** The City may require the Participant to pay interest on any amount required to be repaid under Section 4.15 (Event of Repayment) above at the rate of 1.25 percent on the first date of repayment, and every 30 calendar days thereafter on the principal amount owing until the day before the day on which repayment to the City is received (15 percent per annum). Any such amount is a debt due to City of Toronto and is recoverable as such.
- 4.18. This Section shall survive the termination of this Agreement.

5. Eligible Costs

- 5.1. **Eligible Costs.** The Eligible Costs that the Participant may claim from the City for the Incentive are listed in Schedule D (Eligible Costs).
- 5.2. **Payment for Eligible Costs Incurred.** Subject to the terms of this Agreement, the City will only provide the Incentive to the Participant for Eligible Costs incurred for which the goods have been received or the services have been rendered.
- 5.3. **Eligible Costs Only for Project.** Without limiting any other terms or conditions of this Agreement, a Participant's cost may only be considered an Eligible Cost, if at the sole opinion of the Executive Director, they are reasonable and necessary and they are directly related to, and required for, the carrying out of the Deep Retrofit Project.
- 5.4. **No Costs Outside Eligible Cost Period.** Notwithstanding anything in this Agreement and regardless of the Deep Retrofit Project's state of completion, the City shall not be obligated to pay for any cost, which would have been considered Eligible Costs, that are incurred outside of the Eligible Cost Period related to the Deep Retrofit Project or this Agreement or that exceed the limits set out in this Agreement.
- 5.5. **Remove or Add Eligible Costs.** The City may, at its sole discretion and at any time during the Term, add or remove any particular cost as an Eligible Costs, as listed in Schedule D (Eligible Costs), to the Participant, upon providing the Participant with no less than five (5) Business Days' written notice. If an Eligible Cost has been removed and the Participant has incurred the cost prior to receiving written notice the City will still accept the cost as an Eligible Cost. If an Eligible Cost is added by the City and the Participant has incurred this cost prior to its addition the City will consider if it is an Eligible Cost under the Agreement that is eligible for the Incentive.
- 5.6. **Taxes.** The Participant may claim GST and HST as a part of an Eligible Cost submitted for reimbursement from the City. All Eligible Cost invoices submitted to the City by the Participant shall itemize any taxes separately.

- 5.7. **Rebates and Tax Credits.** The Participant agrees that any portion of the cost of any goods or services purchased for which the Participant may claim a GST/HST input tax credit or rebate is excluded from Eligible Costs and is not eligible for reimbursement under the Agreement. The Participant agrees to, as far as reasonably possible and practical, to take advantage of any GST/HST rebates or input tax credits that may be available to them for the Deep Retrofit Project.
- 5.8. **Other Funding.** The Participant agrees and acknowledges that it will not claim any costs for reimbursement from the City as an Eligible Costs if a portion of the cost has received, or is entitled to receive, a financial contribution from another level of government or other source.
- 5.9. **Disputed Eligible Costs.** The parties agree that where there is a dispute as to the eligibility of any of the Participant's cost as an Eligible Costs that the decision of the Executive Director shall be final and binding.
- 5.10. **Labour Costs.** The Participant agrees and acknowledges that it may only claim a direct labour cost for Work performed as an Eligible Costs from the City if the labour cost has been approved in Schedule D (Eligible Costs). If the City has approved labour costs in Schedule D, the payroll rate acceptable for personnel performing the Work shall not exceed the prevailing rate in the same or most similar category or industry, and shall be subject to the Executive Director approval, acting reasonably.

6. Participants Obligations

Representations and Warranties

- 6.1. The Participant represents and warrants to the City, and acknowledges that the City is relying on these representations and warranties, that:
- (a) The Building is located within the geographical borders of the City of Toronto;
 - (b) The Building is considered Part 3 buildings under the Ontario Building Code (i.e. greater than 600m² or greater than three storeys);
 - (c) The Participant is duly incorporated or registered and validly existing in good standing under the laws of Canada and the province of Ontario and has the power and authority to carry on its business, to hold property, and undertakes to take all necessary action to maintain itself in good standing and preserve its legal capacity during the Term of this Agreement;
 - (d) The Participant is the owner(s) of the Building;

- (e) The Building has been occupied for 12 months prior to submission of the Participant's Deep Retrofit Application, unless the Participant receives an exception from the Executive Director;
- (f) The Participant is in good standing with the City, having met the terms and conditions of any previous or current agreement for funding provided by the City;
- (g) All factual matters contained in the Deep Retrofit Application and all supporting material including the required data (Schedule J - Building Data) and Reports submitted are true and accurate in all material respects, and that all estimates, forecasts and other related matters involving judgement by the Participant that have been incorporated into this Agreement were prepared in good faith and to the best of its ability, skill, and judgement;
- (h) The Participant shall proceed diligently and expeditiously to apply for and obtain all applicable federal, provincial and municipal approvals, consents, permits, licenses, and authorizations required for the lawful completion of the Deep Retrofit Project and performance of its obligations under the Agreement;
- (i) The Participant will only use the Incentive provided by the City for the purposes as outlined under this Agreement;
- (j) To the best of its knowledge and belief no bribe, gift, benefit, or other inducement has been paid, given, promised, or offered directly or indirectly to an official or employee of the City or Canada or any such other person with a view to influencing the decision of the City to enter into this Agreement or to influence such person in respect of the administration of this Agreement; and
- (k) The signatory to this Agreement has been duly authorized to execute and deliver this Agreement on behalf of the Participant.

Acknowledgements

6.2. The Participant acknowledges and agrees, and acknowledges that the City is relying on the following, that:

- (a) It shall carry out the Deep Retrofit Project promptly, diligently, and in a professional manner and in accordance with the terms of this Agreement;
- (b) It shall in a good and workerlike manner carry out and give effect to the Deep Retrofit Project and to complete all Work required, including but not limited to the design, procurement, construction, installation, and commissioning of all

Retrofit Work, in accordance with all applicable laws and in accordance with the requirements of government authorities and the terms of this Agreement;

- (c) It shall prepare all materials and documents required in order to obtain any Engineer stamps required in connection with the Deep Retrofit Project and to meet its obligations under the Agreement;
- (d) It shall carry out and perform all the Work required to complete the Deep Retrofit Project, including, but not limited to, all work set out in Schedule C (Deep Retrofit Design Report) and any additional Work required to meet the minimum 50 percent reduction in total energy use intensity and greenhouse gas emissions, while achieving a 20 year payback or better:
- (e) No provision of this Agreement will relieve the Participant from performing all of the Work set out in, and required to give effect to, the Deep Retrofit Project or reduce the Participant's obligation to one of performing only some proportion or other part of the Work required under the Deep Retrofit Project, which would thereby prevent the Participant from meeting its requirements under the Agreement;
- (f) it shall not apply for any above guideline rent increase pursuant to the *Residential Tenancies Act*, as amended, in connection with any portion of the Retrofit Work to the Building funded through the Incentive;
- (g) It shall not disable cooling systems or charge tenants a premium for enabling cooling systems in the Building, if a portion of the Retrofit Work under the Deep Retrofit Project includes the Building's cooling system during the Term of the Agreement;
- (h) It shall not alter, supersede or cancel its articles of incorporation or letters patent or any by-law which would create an inconsistency with the Agreement without prior Written Notice to the City;
- (i) It shall not sell or change ownership, either partially or in full, in the Building which would create an inconsistency with the Agreement without prior Written Notice to the City;
- (j) Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment or agency relationship between the Participant and the City and that the Participant will not hold itself out as an agent or representative of the City. The Participant will have no authority to bind the City;
- (k) All management and supervision of the Deep Retrofit Project, as well as the Participant's responsibilities in relation to the Deep Retrofit Project, are the sole and absolute responsibility of the Participant;

- (l) Nothing in this Agreement creates any undertaking, commitment or obligation by the City with respect to additional or future funding of the Deep Retrofit Project during or after the Term of the Agreement;
- (m) The City's responsibility under the Agreement is limited to providing the Incentive amount to the Participant towards the Eligible Costs for the Deep Retrofit Project in accordance with the terms of the Agreement;
- (n) The City shall not be liable for any obligation entered into by the Participant or any third party in relation to any Work or activities in any way related to the Deep Retrofit Project and the City shall have no obligation to make any payments to, on behalf of, or to the direction of, the Participant for any such obligation;
- (o) It will not lend or give away any of the Incentive provided under the Agreement and that the Participant will not use this Agreement as a form of guarantee or means to underwrite the repayment of any obligation to a third party; and
- (p) it shall not hold out or use the Agreement as collateral or security or the City as a guarantor in order to obtain a loans or other obligation.

General Obligations

- 6.3. **Copy of Agreement.** The Participant shall permit the City to provide an executed copy of this Agreement, and any other information required, to Canada, as applicable.
- 6.4. **Best Value Practices.** The Participant shall ensure that all contracts, equipment, services, and supplies for the Deep Retrofit Project are acquired through a process that ensures the best value for the Incentive expended and good business practices.
- 6.5. **Responsible for Employees.** The Participant, as the employer of its employees shall be wholly responsible for all employment related expenses and liability including, but not limited to, salary, benefits, vacation, illness, termination, and disability and workers' compensation coverage for its employees, whether required statutorily, at common law or otherwise. The Participant agrees and acknowledges that under no circumstances shall the City be responsible either directly or indirectly for these payments at any time.
- 6.6. **Building Access.** During the Term of the Agreement, the Participant shall provide the City reasonable access to the Building and any other premise where the Deep Retrofit Project takes place to assess the Deep Retrofit Project's progress or any element of the Deep Retrofit Project, including after each Report

has been submitted, subject to providing reasonable notice and in compliance with the Participant's safety requirements for such access.

- 6.7. **City Training.** The Participant shall, if requested by the City, participate in any and all training or design charrette sessions requested or required by the City in relations to the Deep Retrofit Challenge, the Deep Retrofit Project, or the Agreement
- 6.8. **Participation in Net Zero Existing Building Strategy Programs.** The Participant shall participate when feasible, at their own expense, in the City's Net Zero Existing Building Strategy programs and policies that may be launched during the Term of the Agreement, including but not limited to:
- a. Annual emissions (and energy) performance reporting, public disclosure and energy labelling (see section 3.2.1 of the Net Zero Existing Buildings Strategy);
 - b. Greenhouse gas emissions performance targets reporting (see section 3.2.2 of the Net Zero Existing Buildings Strategy); and
 - c. Energy audits and retro-commissioning (see section 3.2.3 of the Net Zero Existing Buildings Strategy).
- 6.9. **Commencement of Retrofit Work.** The Participant shall begin the Retrofit Work to be completed for the Deep Retrofit Project within one hundred and twenty (120) calendar days or such other period the City may allow in writing of the City's acceptance of the Deep Retrofit Design Report, in the form of a Deep Retrofit Design Acceptance Letter set out in Schedule K (Forms). The accepted Deep Retrofit Design will become part of this Agreement and be affixed to the Agreement by reference as Schedule C (Deep Retrofit Design Report). In the event the Participant fails to commence the Retrofit Work as per the timeline outlined above, and without Written Notice requesting an extension and demonstrating a new timeline for the commencement of the Retrofit Work acceptable to the City, the City may terminate this Agreement immediately pursuant to Section 33 (Event of Default).
- 6.10. **Changes to Deep Retrofit Project.** The Participant acknowledges that in the event that it makes any substantial change to the Deep Retrofit Project that will prevent the Participant from meeting its obligations under the Agreement, the Participant shall inform the City by Written Notice of these changes as soon as possible and Executive Director may decide, acting reasonably, to provide the Participant with 30 Business Days to resolve the change in order to meet its obligation, otherwise and/or will be entitled to terminate the Agreement, or reject any future Claims made by the Participant.
- 6.11. **Third Party Agreements.** The Participant shall negotiate all agreements with third parties on terms that shall enable the Participant to cancel them upon conditions and terms which shall minimize to the extent possible the Participant's and the third party's cancellation costs in the event of a termination of this

Agreement or a reduction of the Incentive. The Participant and the third party shall co-operate with the City and do everything within their respective powers at all times to minimize and reduce the amount of the City's obligations in the event of an early termination of the Agreement or a reduction of the Incentive.

- 6.12. **Reasonable Requests.** The Participant shall, at all times and immediately upon the request of the City, comply with all reasonable directions of the City in relations to any material requirement of the City that is required for compliance with the City's Contribution Agreement with Canada.

7. Disposition of Fixed Assets

- 7.1. If, prior to the end of the Term of this Agreement, the Participant shall, prior to ceasing to use, selling, leasing, or otherwise disposing of any Fixed Assets, excluding end of life disposal of the Fixed Asset and Intellectual Property, where the cost of the Fixed Asset is part of the Eligible Costs under the Deep Retrofit Project to which the City has contributed under the Agreement, provide Written Notice to the City of its intent to cease to use, sell, lease, or otherwise dispose of the Fixed Asset and obtain permission from the City prior to doing so.
- 7.2. In the event that the City provides the Participant with permission to dispose of a Fixed Asset as outlined under Section 7.1 above, the Participant shall ensure that the Fixed Asset, if directed to do so by the City, will be:
- (a) Sold at fair market value and the funds realized from such sale be used to offset the City's Incentive to the Eligible Costs of the Deep Retrofit Project;
 - (b) Turned over to another organization designated or approved, in writing, by the City; or
 - (c) Disposed of in such other manner as may be determined by the City.

8. Delays

- 8.1. **Project Delays.** The Participant shall provide Written Notice to the City as soon as reasonably possible of any occurrence causing, or likely to cause, delay to the Deep Retrofit Project. However, the Participant agrees and understands that the City will not provide an extension to the Required Retrofit Completion Date despite the Participant's Written Notice to the City of the Deep Retrofit Project delay.

9. Force Majeure

- 9.1. The parties shall not be in default or breach of this Agreement due to any delay or failure to meet any of their obligations caused by or arising from any event

beyond their reasonable control and without their fault or negligence, including any act of God or other cause which delays or frustrates the performance of the Agreement (a "force majeure event").

- 9.2. The performance of the obligation under this Agreement affected by a force majeure event, as set out above, will be delayed by the length of time over which the event lasted. However, should the interruption due to the force majeure event continue for more than thirty (30) calendar days, this Agreement may be terminated by the City.
- 9.3. Should either party claim the existence of a force majeure event, they shall provide prompt notice of the force majeure event to the other party and the party claiming the existence of a force majeure event will provide reasonable satisfactory evidence of the existence of such force majeure event to the other party and use its best efforts to mitigate any damage to the other party. No extension of time will be added to the Required Retrofit Completion Date as a result of a force majeure.

10. Project Records

- 10.1 The Participant shall for a period of seven (7) years following the expiration of the Agreement keep and maintain proper and accurate books, records, accounts, invoices and other documents, in accordance with accepted business and accounting practices, relating to all of the expenditures, including Eligible Costs, and revenues relating to the Deep Retrofit Project (the "Records").
- 10.2 This Section shall survive the termination of this Agreement.

11. Reports

- 11.1. The Participant shall submit to the City all Reports as required and as detailed under Schedule A (Reporting Requirements & Schedule) and in a form satisfactory to the City Agreement Manager, at their sole discretion.

12. Project Assessment

- 12.1. The Participant shall cooperate with the City in the conduct of any evaluation of the Deep Retrofit Challenge, the Deep Retrofit Project, and/or the Agreement that the City may carry out during the Term of the Agreement. Without limiting the generality of the above, if reasonably requested by the City to do so for the purpose of conducting an evaluation or creating a case study, the Participant agrees to participate in any appropriate periodic site visits of the Building,

surveys, interviews, case studies, or other data collection exercises initiated by the City.

13. Audit

- 13.1. During the Term and for a period of not less than seven (7) years from the expiration of the Agreement the Participant shall make available all Records relating to all of the expenditures, including Eligible Costs, and revenues relating to the Deep Retrofit Project, for audit and inspection to an auditor of the City and/or Canada or anyone designated in writing by the City and/or Canada, upon reasonable request and at the expense of the requestor, in order to:
 - (a) conduct a technical audit to verify that the Deep Retrofit Project was implemented in accordance with the Agreement;
 - (b) conduct an audit to verify the accuracy of reports submitted are required under Schedule A (Reporting Requirements and Schedule); and/or
 - (c) conduct an audit pertaining to the utilization of the Incentive provided by the City under the Agreement.
- 13.2. In addition to Section 13.1, the Participant shall permit the City and Canada, or their representative, to make copies and take extracts from such Records and shall furnish the City and/or Canada with such additional information as it may require in reference to such Records.
- 13.3. The Participant agrees that the City may provide copies of any reviews, evaluations, or audit reports produced as a result of Section 13.1 with Canada.
- 13.4. This Section shall survive the termination of this Agreement.

14. Announcements, Recognition , and Promotion

- 14.1. The Participant acknowledges that the name of the Participant, the Building address, name and photos, the amount of the Incentive, and the details of the Deep Retrofit Project, and the terms of this Agreement may be made publicly available by the City.
- 14.2. The Participant shall notify the City at least fifteen (15) Business Days' in advance, and receive written acceptance that the form and manner is satisfactory to the City, in the event the Participant plans to incorporate the City's name and/or logo on any and all communications activities, publications, advertising, and press releases planned by the Participant in relations to the Deep Retrofit Project or any other aspect of the Agreement.
- 14.3. The Participant shall ensure that the City is invited to any community consultations or any public events related to the Deep Retrofit Project, including

providing the City with a minimum two-week notice of the consultation or event and working with the City to ensure the availability of City staff.

- 14.4. The Participant shall cooperate with representatives of the City during any official news releases or ceremonies relating to the announcement of the Deep Retrofit Project and the Deep Retrofit Challenge, including providing access to the Building or attending such new release or ceremonies, as requested by the City with reasonable notice.
- 14.5. The Participant must acknowledge the support of the City and Canada on all materials, websites, social media, reports, murals, events, signage, media interviews, or public-facing communications about the Deep Retrofit Project.
- 14.6. The Participant agrees to display any temporary signs, plaques, or symbols which the City may provide to promote the City and Canada's funding during the Term of the Agreement in such locations at the Building as the City may designate.

15. Deep Retrofit Design

- 15.1. The Participant shall evaluate all materials and data relevant to the development of a Deep Retrofit Design for the Building and shall work with the City to finalize the Deep Retrofit Design for the Retrofit Work to be completed at the Building, as outlined under Schedule B (Deep Retrofit Design Requirements).
- 15.2. The Participant's Deep Retrofit Design will be evaluated as part of the Deep Retrofit Design Report, by the City based on the criteria outlined under 'Deep Retrofit Design Report' of Schedule A (Reporting Requirements & Schedule) and Schedule B (Deep Retrofit Design Requirements).
- 15.3. If the Participant's Deep Retrofit Design Report fails to meet the requirements, as outlined under 'Deep Retrofit Design Report' of Schedule A (Reporting Requirements & Schedule), based on the City's sole discretion acting reasonably, the City will advise the Participant and the Participant will no longer be eligible to receive the Retrofit Incentive or Performance Incentive. The Participant will still be eligible to submit a claim for the Design Incentive, for the Eligible Costs incurred by the Participant up to the end of the eligible Claim Period for the Design Incentive, as outlined in Schedule E (Claim and Incentives).
- 15.4. If the Participant's Deep Retrofit Design Report meets the requirements, as outlined under 'Deep Retrofit Design Report' of Schedule A (Reporting Requirements & Schedule) and the criteria outlined in Schedule B (Deep Retrofit Design Requirements), based on the City's sole discretion acting reasonably, the City will acknowledge acceptance of a satisfactory Deep Retrofit Design Report

by filling out and signing the Deep Retrofit Design Acceptance Letter, as outlined in Schedule K (Forms), Form 1: Template Deep Retrofit Design Acceptance Letter. The accepted Deep Retrofit Design Report and the signed Detailed Acceptance Letter will form part of this Agreement under Schedule C (Deep Retrofit Design Report) even if these documents are not physically attached to this Agreement. The City's acceptance of the Deep Retrofit Design Report constitutes the Participant's continued participation in the Deep Retrofit Challenge and eligibility for the receipt of further Incentive.

- 15.5. The Participant must notify the City of any proposed material changes to the Deep Retrofit Design Report accepted by the City under Section 15.4. Any change to the Participant's accepted Deep Retrofit Design Report, including timeline, budget, the use of the Incentive, must be revealed in Quarterly Progress Reports and will only be permitted after approval from the City except as outlined in Section 4.5 (Changes to Project Budget).

16. Set-Off

- 16.1. The Participant agrees and understands that the City may set-off against any of the Incentive that may be payable to the Participant pursuant to this Agreement, any amounts owed and past due by the Participant to the City for any repayment amount owing to the City under Section 4.15 (Event of Repayment) of under any claim arising out of default of the Participants of its obligations to the City under this Agreement.
- 16.2. This Section shall survive the termination of this Agreement.

17. Compliance with Laws

- 17.1. The Participant shall conduct its business and meet the requirements under this Agreement in compliance with all applicable federal, provincial and municipal laws, and all rules, regulations, by-laws, notices, orders, approvals, directives, protocols, policies and guidelines including, but not limited to, Environmental Laws, the *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act, 1997*, or any successor legislation, as applicable, and shall provide to the City, on request, periodic reports confirming such compliance.
- 17.2. In particular, and without limiting the foregoing, the Participant represents that it has in place occupational health and safety, workplace violence and workplace harassment policies in accordance with the *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act, 1997*.

18. Workplace Safety and Insurance Act

18.1. The Participant shall be in good standing with the Workplace Safety and Insurance Board (“WSIB”) throughout the Term of this Agreement. If requested by the City, the Participant shall produce certificates issued by the WSIB to the effect that they have paid in full their assessment based on a true statement of the amount of payrolls. If the Participant is considered by WSIB to be an independent operator without coverage, the Participant shall provide a letter to that effect from the WSIB.

19. Conflict of Interest and Confidentiality

- 19.1. **No Conflict of Interest.** The Participant and its advisors, consultants partners, directors, officers, employees, agents, subcontractors, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, as determined in the sole and absolute opinion of the City) with the provision of its obligations under this Agreement. The Participant acknowledges and agrees that it shall be a conflict of interest for them to use confidential information of the City that is relevant to the Deep Retrofit Project or otherwise where the City has not expressly authorized such use in writing. For greater certainty, and without limiting the generality of the foregoing, a conflict of interest includes a situation where anyone associated with the Participant is able to benefit financially from the Deep Retrofit Project or where such a person owns or has an interest in an organization that is carrying out work related to the Deep Retrofit Project.
- 19.2. **Disclose Potential Conflict of Interest.** The Participant shall disclose to the City Agreement Manager without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest in relations to this Agreement.
- 19.3. **Municipal Freedom of Information and Protection of Privacy Act.** The Participant acknowledges that the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), as amended, binds the City. Because of the City's MFIPPA obligations, the Participant is advised to identify any information it provides to the City under this Agreement as confidential which may be scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause them injury. The Participant acknowledges that despite the identification of this information as confidential, it may be released in accordance with MFIPPA.
- 19.4. **Confidentiality.** The Participant shall treat as confidential all information of any kind which comes to the attention of the Participant from the City in the course of meeting its requirements under the Agreement and shall not disseminate such information for any reason without the express written permission of the City or otherwise in accordance with *Municipal Freedom of Information Protection of Privacy Act* or other applicable access or privacy law. The Participant may be

required to enter into a confidentiality agreement in a form satisfactory to the City Solicitor.

20. Construction Act

- 20.1. **Definitions.** For the purposes of this Section 20, "supply of services", "improvement", and "holdback" shall have the same meaning, respectively, as defined by the *Construction Act*, R.S.O. 1990, c. C.30, as amended, or any successor legislation.
- 20.2. **Obligations.** The Participant shall at all times comply with the provisions of the *Construction Act* and the Participant hereby indemnifies and saves harmless the City against any and all claims, loss, costs and expenses as a result of any lien or claims for lien in respect of the Deep Retrofit Project. In the event the City receives a notice of lien in respect of City lands adjacent to the Building the Participant shall act in the manner as if it were the "owner", as defined under the *Construction Act*, receiving the notice of lien and proceed expeditiously to ensure said notice is withdrawn and/or a release of lien is provided to the City. Nothing in this Agreement shall authorize the Participant, or imply any consent or agreement or request from the City, to subject the City's estate or interest in the property that is adjacent to the Building subject to the Deep Retrofit Project, to any construction lien or any other lien of any nature or kind whatsoever.
- 20.3. This Section shall survive the termination of this Agreement.

21. Subcontractors

- 21.1. The Participant shall be solely responsible for the payment of any subcontractors employed, engaged or retained by the Participant for the purpose of assisting in the discharge of the Participant's obligations under this Agreement and shall coordinate the services of any such subcontractors. The Participant agrees and acknowledges that under no circumstances shall the City be responsible directly or indirectly for these payments at any time.

22. No Warranty from City

- 22.1. The Participant understands and agrees that no review or approval by the City of the Participant's Deep Retrofit Application, Deep Retrofit Design, or other work, plans, or specifications (the "Participant Documents") submitted to the City shall derogate from the Participant's obligations under this Agreement nor operate as a release of the Participant from any liability or claim in respect of such obligations and the City shall assume no liability or responsibility with respect to any of the Participant Documents submitted to the City.

22.2. This Section shall survive the termination of this Agreement.

23. Emission Credits

23.1. The Participant acknowledges and agrees that the City owns and shall be entitled to retain, register for use, trade and sale, and enjoy all benefits of, all credits and any other rights or benefits resulting from any reduction or displacement in emissions of greenhouse gases or any other pollutants, or that relate to any other environment attributes (together the "Credits") arising out of the Deep Retrofit Project. If through operation of law or any other circumstance title to any Credits arising in the circumstances described herein vests in the Participant then the Participant shall automatically and without formal instrument and for no consideration transfer or otherwise convey such Credits to the City. The Participant agrees that it has no rights to any Credits or the proceeds thereof as a result of the Retrofit Work under the Deep Retrofit Project in accordance with the terms of this Agreement.

23.2. Notwithstanding Section 23.1 above, the Participant shall be entitled to such Credits as are required for the Participant to apply in the determination of its obligations for the Building to meet LEED certification, other certifications or standards, and obtain grants, financial incentives and/or financing from third party providers for the Deep Retrofit Project.

23.3. This Section shall survive the termination of this Agreement.

24. Damage and Destruction

24.1. The Participant shall notify the City Agreement Manager as soon as reasonably possible in the event that the Building is damaged by fire or any other means rendering the Building wholly or substantially unfit for the Retrofit Work under the Deep Retrofit Project (the "Damage").

24.2. In the event of Damage to the Building that renders the Building wholly or substantially unfit for the Retrofit Work or will substantially impact the completion of the Deep Retrofit Project in the opinion of the City, acting reasonably, the City may, without prejudice to any other rights or remedies available to the Participant, suspend the Agreement, including the payment of any further Incentive. If the Participant is unable to reconstruct or repair the Building for use within a reasonable timeframe to ensure that Retrofit Work on the Building under the Deep Retrofit Project is completed by the Required Retrofit Completion Date, the City, at its sole discretion acting reasonably, and without prejudice to any other rights and remedies available to the City, may terminate this Agreement by Written Notice to the Participant. The foregoing does not in any way limit or

restrict the Participant's right to terminate this Agreement as set out in Section 34.4. In the event that the Agreement is terminated as a result of Damage to the Building and the City will no longer provide any further Incentive payments to the Participant..

- 24.3. The Participant shall be responsible for any loss or damage whatsoever to the Building and any of the Participant's property, materials, goods, equipment, or supplies and will maintain the appropriate insurance as required in this Agreement and as any prudent owner of such Building, property, materials, goods, supplies, and equipment would maintain. In the event of physical loss or damage to the Building and/or any of the Work on the Deep Retrofit Project to the Participant, the Participant shall immediately take all necessary steps to rectify the loss or damage by repair, restoration, replacement, or other appropriate means as soon as is reasonably possible at the Participant's own expense. When possible, the Participant shall make a claim for and collect any insurance proceeds to rectify the loss or damage as soon as reasonably possible. The Participant agrees that it will have no claim against the City for any damages or loss to the Participant resulting from any of the Work on the Deep Retrofit Project under the Agreement.
- 24.4. This Section shall survive the termination of this Agreement.

25. Intellectual Property

- 25.1. The intellectual property rights in the Participant Intellectual Property shall vest in the Participant.
- 25.2. The Participant shall supply the City and Canada with all Participant Intellectual Property and the Participant hereby grants in perpetuity to the City and to Canada a non-exclusive, irrevocable and royalty free license to use, modify, translate, adapt, record by any means or reproduce any such Participant Intellectual Property (the "License").
- 25.3. The Participant agrees that the City may grant sublicences of their License to third parties subject to the same terms as the License under Section 25.2 and that the City may make publicly available the Participant Intellectual Property, including placing the Participant Intellectual Property on the City's Open Data Portal.
- 25.4. The Participant agrees to execute any acknowledgements, agreements, assurances or other documents deemed reasonably necessary by the City to establish or confirm the License granted by the Participant under Section 25.2 and the rights granted under Section 25.3 above.

- 25.5. Additionally, with respect to the License granted under Section 25.2, the Participant:
- (a) warrants that the Participant Intellectual Property is original to the Participant and/or that the Participant is the exclusive owner of the Intellectual Property rights of the Participant Intellectual Property;
 - (b) represents and warrants that the Participant Intellectual Property does not violate any Intellectual Property rights of any other person or entity contrary to the *Copyright Act*, R.S.C., 1985, c. C-42, as amended, or otherwise provided at law and that the Participant has full power and authority to license the Participant Intellectual Property;
 - (c) agrees to indemnify and save harmless the City and Canada from all costs, expenses and damages arising from any breach of any such warranty;
 - (d) agrees that use of the Participant Intellectual Property by the City, Canada or a third party granted a sublicense as set out in Section 25.3 will not be deemed to be a breach of any of the Participant's intellectual property rights in any way and no royalty or any other fee shall be payable to the Participant by the City, Canada or anyone sublicensed to use the Participant Intellectual Property; and
 - (e) shall include an acknowledgment, in a manner satisfactory to the City on any Participant Intellectual Property that is produced by it using all or part of the Incentive, acknowledging that the Participant Intellectual Property was produced with the Incentive funds contributed by the City and Canada and identifying the Participant as being solely responsible for the content of such Participant Intellectual Property.
- 25.6. The Participant shall include in the Performance Report, a list of any Participant Intellectual Property produced and that has been licensed to the City and Canada under Section 25.2.
- 25.7. This Section shall survive the termination of this Agreement.

26. Building Data

- 26.1. The Participant shall provide the City with copies of the Building Data as described, in the format, and in accordance with the timeline set out in Schedule A (Reporting Requirements & Schedule).
- 26.2. The Participant hereby grants in perpetuity to the City and to Canada a non-exclusive, irrevocable and royalty free license to use, modify, translate, adapt, record by any means or reproduce any such Building Data (the "Building Data License").

- 26.3. The Participant agrees that the City may grant sublicenses of their Building Data License to third parties subject to the same terms as the Building Data License under Section 26.2 and that the City may make publicly available the Building Data, including placing the Building Data on the City's Open Data Portal.
- 26.4. The Participant agrees to execute any acknowledgements, agreements, assurances or other documents deemed reasonably necessary by the City to establish or confirm the Building Data License granted by the Participant under Section 26.2 and the rights granted under Section 26.3 above.
- 26.5. The City and the Participant agree that no personal information, as defined by *Municipal Freedom of Information and Protection of Privacy Act*, as amended, is to be collected, transmitted, used, or disclosed as part of the Building Data. The Participant will make a good faith effort to ensure the Building Data transferred or shared under Section 26.1 cannot be linked to an identifiable individual. Should either the City or the Participant become aware of any personal information has been transmitted, used, or disclosed as part of the Building Data, the identifying party shall immediately notify the other party by Written Notice and the parties agree to take steps immediately to correct the error.
- 26.6. Rent roll data provided by the Participant to the City on the Building as Building Data is exempt from the Building Data License granted in Sections 26.2, 26.3, and 26.4 above and will not be made publicly available on the City's Open Data Portal.
- 26.7. This Section shall survive the termination of this Agreement.

27. Insurance

- 27.1. The Participant shall, at all times during the Term of the Agreement and any renewal thereof, maintain at its own expense the following policies of insurance:
- i. "All Risks" property insurance in an amount equal to one hundred percent (100%) of the full replacement cost insuring all property owned by the Participant or installed by or on behalf of the Participant, including the Retrofit Work;
 - ii. Commercial general liability insurance, which includes contractual liability, non owned automobile liability, and provisions for cross liability and severability of interests with limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence. The City is to be included as an additional insured.
- 27.2. The Participant shall deliver certificates of insurance to the City upon execution of the Agreement, and including the renewal or the replacement of the insurance policies, without request or demand by the City.

27.3. Each of the policies of insurance provided pursuant to this section shall contain an agreement by the insurer to the effect that it will not cancel any policy, except after thirty (30) calendar days' prior Written Notice to the City.

28. Indemnification

28.1. **Participant Indemnity.** Without limiting any provision in this Agreement, the Participant shall at all times indemnify and save harmless the Indemnified Parties from and against any and all manner of claims, demands, losses, costs, charges, fines, actions and other proceedings whatsoever made or brought against, suffered by or imposed on the Indemnified Parties or their property in respect of any and all losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgments (including reasonable legal fees and costs and any claims for liens made pursuant to the Construction Act, R.S.O. 1990, c. C.30, as amended) (collectively, the "Claims") which the Indemnified Parties, or any of them, may sustain, suffer or be put to resulting from or arising out of, resulting from or sustained as a result of the Participant's negligence or wilful misconduct, as a result of or arising out of or in relation to: (a) the performance of or failure to perform any part of this Agreement or the Deep Retrofit Project or any breach of the terms of the Agreement by the Participant, its officers, servants, employees, agents, consultants, subcontractors, or a third party; (b) the ongoing operation, maintenance and repair of the infrastructure resulting from the Deep Retrofit Project; or (c) any omission or other wilful or negligent act of the Participant or a third party and their respective employees, officers, servants or agents, excepting only those claims, demands, losses, costs, charges and actions that are a result of the gross negligence, breach of contract or breach of any statutory duty of the Indemnified Parties.

28.2. **Intellectual Property Indemnity.** The Participant shall indemnify and save harmless the Indemnified Parties from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgments (including legal fees and costs) arising from infringement, actual or alleged, by the Participant Intellectual Property, its use or misuse, or by any of the Participant Intellectual Property developed or provided or supplied under or used in connection with the Deep Retrofit Project and Agreement of any Canadian, American or other copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.

28.3. This Section shall survive the termination of this Agreement.

29. Indemnified Parties Not Liable

29.1. Without limiting any other provision of this Agreement, the Indemnified Parties shall not be liable for any bodily injury, death or property damage, and any injury to or loss suffered by the Participant or any employee, officer, agent or subcontractor of the Participant, including, but not limited to, death or economic loss, caused by or in any way related to the carrying out of the Deep Retrofit Project, the Work, the Retrofit Work, or the performance of any other obligation under the Agreement.

29.2. This Section shall survive the termination of this Agreement.

30. Duty to Consult with Aboriginal Groups

30.1. The Participant acknowledges that all of the funding that comprises the Incentive comes from Canada and that Canada has a legal duty to consult with Aboriginal groups. In the event Canada deems that a legal duty to consult with Aboriginal groups is triggered by the Deep Retrofit Challenge or the Deep Retrofit Project the City may provide Written Notice to the Participant and may immediately suspend the Agreement in order for Canada to consult with the Aboriginal groups that may be affected.

31. Impact Assessment

31.1. The Participant shall maintain and implement any and all environmental protection measures prescribed by the *Canadian Environmental Assessment Act, 2012*, the *Impact Assessment Act*, and any other applicable environmental protection legislation, regulations, measures, standards, and rules that are applicable to the Work on the Deep Retrofit Project to ensure that the harm to the environment resulting from the Deep Retrofit Project, if any, shall remain minimal. The Participant shall produce any certificates, licenses, and other authorizations required, in respect of laws relating to the environmental protection, in relations to carrying out the Deep Retrofit Project.

31.2. The Participant represents and warrants that the Deep Retrofit Project is not a "designated project" nor a "project" according to the *Canadian Environmental Assessment Act, 2012* or the *Impact Assessment Act*, as amended.

31.3. If, within the Eligible Cost Period, any portion of the Deep Retrofit Project becomes a "designated project" or a "project" carried out on federal land or outside of Canada according to the *Impact Assessment Act*, the parties agree that the City's obligations under this Agreement will be suspended and no further payments of the Incentive will be made until:

(a) In the case of a "designated project":

- i) the Impact Assessment Agency of Canada makes a decision that no assessment of the “designated project” is required and posts that decision; or
 - ii) the decision statement with respect to the “designated project” that is issued to the Participant sets out that the effects that are indicated in the report with respect to the impact assessment of the Deep Retrofit Project are in the public interest.
- (b) In the case of a "project":
 - i) a determination indicating that the carrying out of the Deep Retrofit Project is not likely to cause significant adverse environmental effects by the Minister or another authority referred in the *Impact Assessment Act*; or
 - ii) if the carrying out of the Deep Retrofit Project is likely to cause significant adverse environmental effects, a decision of the Governor in Council indicates that those effects are justified in the circumstances.

31.4. The Participant understands, that in the event that any portion of the Deep Retrofit Project becomes a "designated project" or a "project as defined in Section 31.3 above, the City may terminate this Agreement with immediate effect by giving Written Notice to the Participant. Following such termination, no further Incentives will be distributed under this Agreement, and the City will not be liable for any direct, indirect, consequential, exemplary, or punitive damages, regardless of the form of action, whether in contract, tort, or extra-contractual liability, or otherwise, arising from the termination.

32. Assignment

32.1. The Participant shall not during the Term transfer or assign any interest in this Agreement, without the prior written consent of the City, which consent may be unreasonably withheld or may be subject to such terms and conditions as the City deems appropriate. For the purpose of this Agreement, a transfer or assignment of interest will include any transfer or sale of the Building by the Participant and any transfer in the majority ownership or controlling interest in the Participant, whether through the share of shares, direct acquisition of assets or otherwise. A transfer or assignment of an interest under this Agreement by the Participant does not include a mortgage or other similar obligation placed on the Building. Such written consent shall not under any circumstances relieve the Participant of its liabilities and obligations under this Agreement. The City may terminate this Agreement immediately if the Participant transfers or assigns any interest in this Agreement without prior written consent from the City and the Participant will be responsible for repaying any Incentive received from the City as outlined under Sections 4.15, 4.16 and 4.17.

33. Event of Default

33.1. **Event of Default.** Each and every one of the following events is an “Event of Default” under the Agreement:

- (a) if in the opinion of the City, the Participant fails to conform or comply with any term or covenant contained in this Agreement to be performed or complied with by the Participant;
- (b) if in the opinion of the City, the Participant has made materially false or misleading representations or statements, or provided materially false or misleading information to the City in relations to the Agreement;
- (c) if an order shall be made or an effective resolution passed for the winding up, or liquidation or dissolution of the Participant or the Participant is otherwise dissolved or ceases to carry on its operation;
- (d) if the Participant uses any of the Incentive for a purpose not authorized by this Agreement without the prior written consent of the City;
- (e) if the Participant admits in writing its inability to pay its debts generally as they become due, voluntarily suspends transactions of its usual business, becomes insolvent, bankrupt, makes an assignment for the benefit of its creditors, or a receiver or manager, court appointed or otherwise, is appointed for its assets or if the Participant takes the benefit of any statute from time to time in force relating to bankrupts or insolvent debtors;
- (f) if in the opinion of the City a material adverse change occurs such that the viability of the Participant to meet its obligations under the Agreement is a concern or threatened in the opinion of the City, acting reasonably;
- (g) if in the opinion of the City, the Participant abandons, or attempts to abandon the Deep Retrofit Project as contemplated by the Agreement or ceases to own the Building, and does not assign or transfer its interest in the Agreement as outlined in Section 32 (Assignment) to the new Building owner;
- (h) if the Participant fails to begin the Deep Retrofit Project or meet any of the Agreement timelines, or such other date as agreed to by the City or such period as the City may allow, or, in the opinion of the City, the Participant has failed to proceed diligently with the Deep Retrofit Project or abandons the Deep Retrofit Project in whole or in part;
- (i) if in the opinion of the City, the Participant makes a material change to any element of the Deep Retrofit Project that results in a predicted failure to achieve the Deep Retrofit Design minimum requirements, as outlined under

Schedule B (Deep Retrofit Design Requirements), and/or meet the Required Retrofit Completion Date;

- (j) If the Participant fails to notify the City promptly of any material change in the information contained herein relating to the Participant's business, Deep Retrofit Application, the Deep Retrofit Design Report including the Project Budget and Timeline, or any details of any substantial claims affecting the Participant's ability to meet the requirements of the Deep Retrofit Challenge or undertake the Retrofit Work required to complete the Deep Retrofit Design;
- (k) If the Participant fails to obtain any permits required to completed the Retrofit Work;
- (l) If the Participant fails to pay all taxes, rates, levies, assessments and other charges of every nature in respect of the Deep Retrofit Project, which may be lawfully levied, assessed or imposed against or in respect of the Participant as and when the same becomes due and payable and such defect has not been cured by or remedied by the Participant within thirty (30) calendar days of Written Notice of such defect having been provided to the Participant by the City;
- (m) the Participant fails to maintain insurance in accordance with this Agreement;
- (n) the Participant or any of its respective advisors, partners, directors, officers, employees, agents, subcontractors and volunteers have breached the requirements of Section 19 (Conflict of Interest and Confidentiality);
- (o) any term, condition or undertaking in this Agreement is not complied with and such defect has not been cured by or remedied by the Participant; and
- (p) the Participant neglects or fails to pay the City any amount due in accordance with this Agreement.

33.2. **Written Notice of Default.** If an Event of Default occurs, the City, without restricting any remedies otherwise available, may provide Written Notice to the Participant of the Event of Default. The City may request the Participant at the time of Written Notice to provide a plan, to the satisfaction of the Executive Director within five (5) Business Days of receipt (or within such longer period as the City may allow), as to how they will remedy the Event of Default.

33.3. **Remedies on Default.** If an Event of Default has occurred, and Written Notice of the Event of Default has been given, and the Participant has not remedied the Event of Default to the satisfaction of the Executive Director within thirty (30) Business Days of receipt by the Participant of the initial Written Notice of default, or within such longer period as the City may allow, then the City, in addition to

any remedies otherwise available at law or in equity, may exercise one or more of the following remedies:

- (a) Require the Participant to provide additional information or documents to the City;
- (b) Reduce the Incentive Limit to cover any cost incurred by the City by the Event of Default;
- (c) Immediately suspend any obligation of the City to pay or continue to pay any of the Incentive under the Agreement, including any obligation to pay any Incentive amount owing prior to the date of such suspension. In the event of suspension of Incentive payment the Participant shall still be required to meet its obligations under the Agreement, including the submission of Reports under Schedule A (Reporting Requirements & Schedule) and Schedule J (Building Data);
- (d) Immediately terminate the Agreement and the City's obligation to pay any of the Incentive under the Agreement, including any obligation to pay any Incentive amount owing prior to the date of such termination; and/or
- (e) Direct the Participant to repay all or part of the Incentive which has been paid to the Participant as outlined under Sections 4.15, 4.16 and 4.17.

33.4. **Additional Remedies.** In addition to the remedies described in Section 33.3, the City may commence such legal action or proceedings as it, in its sole and absolute discretion, may deem expedient, without any additional notice under this Agreement. The rights and remedies of the City hereunder are cumulative and in addition to, and not in substitution for, all other rights or remedies otherwise available to the City.

33.5. **Waiver.** The City may, in its sole and absolute discretion, at any time, waive any Event of Default which may have occurred provided that no such waiver extends to, or be taken in any manner whatsoever to affect, any subsequent Event of Default or the right to remedies resulting therefrom, and that no such waiver shall be, or shall be deemed to constitute, a waiver of such Event of Default unless such waiver is in writing from City.

34. Termination

34.1. **Termination Without Cause by City.** In addition to and without limiting the other rights of termination provided in this Agreement, the City may, during the Term, terminate this Agreement at any time upon not less than thirty (30) calendar days' Written Notice to the Participant of its intention to terminate.

34.2. **Obligations in the Event the City Terminates Without Cause.** In the event the City terminates the Agreement without cause, as outlined under Section 34.1:

- a. the City will pay the Participant all Eligible Costs incurred until the date of Written Notice in which it receives a Report outlining its claim submission for Eligible Costs from the Participant within 30 calendar days of receipt of

the Written Notice ("Termination Report"). The City will pay the approved Eligible Costs submitted under the Termination Report within 120 calendar days of receipt from the Participant; and

- b. the Participant shall make no further commitments in relation to the use of the Incentive and shall cancel or otherwise reduce, to the extent possible, the amount of any outstanding commitments in relation to the Incentive and this Agreement.

34.3. **No Liability for Damages Due to City Termination.** The City will not be held liable for any damages incurred to the Participation as a result of the City's termination of the Agreement for any reason.

34.4. **Termination by Participant and Obligations.** In the event the Participant terminates the Agreement, for any reason, the City will no longer provide the Participant any further Incentive and the Participant will pay back to the City all or a portion of the Incentive, as determined by the Executive Director at their sole discretion, as further outlined in Section 4.15, 4.16, and 4.17.

34.5. This Section shall survive the termination of this Agreement.

35. Written Notice

35.1. All notices and demands provided with respect to the Agreement are to be made in writing and served either personally, or by registered mail (return receipt requested), or by email ("Written Notice") as follows:

(a) In the case of the City:

CITY OF TORONTO
Environment & Energy Division
Metro Hall
55 John Street – 2nd Floor
Toronto, Ontario M5V 3C6

Attention: James Nowlan, Executive Director
Email: James.Nowlan@toronto.ca
Phone: (416) 395-6363

Cc'ed to:

Attention: Rae-Ann Miller, Manager, Public Energy Initiatives – Existing Buildings

(b) In the case of the Participant:

[PARTICIPANT LEGAL NAME]
[Address].

Attention; [Name, Position]
Email: [email]
Phone: (XXX) XXX-XXXX

35.2. The Participant Agreement Manager with respect to this Agreement is [Name, Position] or as notified in writing. The Participant Agreement Manager's contact information is as follows:

Email: [email]
Phone: [phone]

35.3. The Participant Project Manager with respect to this Agreement is [Name, Position] or as notified in writing. The Participant Project Manager's contact information is as follows:

Email: [email]
Phone: [phone]

35.4. The City Agreement Manager with respect to this Agreement is Rae-Ann Miller, Manager, Public Energy Initiatives – Existing Buildings or as notified in writing. The City Agreement Manager's contact information is as follows:

Email: Rae-Anne.Miller@toronto.ca
Phone: 416-392-8767

35.5. The City Participant Manager with respect to this Agreement is Sarah Rodrigues, Project Manager, Public Energy Initiatives – Existing Buildings or as notified in writing. The City Participant Manager's contact information is as follows:

Email: sarah.rodrigues@toronto.ca
Phone: 647-828-6657

35.6. Written Notice will be deemed to have been received if:

- (a) delivered by hand, upon receipt;
- (b) sent by email on a Business Day before 4:30 p.m. Toronto time, on the date of sending;
- (c) sent by email on a Business Day after 4:30 p.m. Toronto time or a day other than a Business Day, the next Business Day; or

(d) sent by registered or certified mail during normal postal conditions, on the fifth Business Day after posting or if sent by registered or certified mail and a postal disruption occurs, on receipt.

36. General

- 36.1. **Terms Binding.** The Participant shall take all reasonable measures to ensure that its officers, directors, partners, consultants, employees, agents and sub-contractors shall be bound to observe all of the terms and conditions of this Agreement, including, but not limited to all covenant, representations, and warranties.
- 36.2. **Amendment.** This Agreement shall not be varied or amended except by a document in writing, dated and signed on behalf of the City and the Participant.
- 36.3. **Non-Exclusivity.** The parties agree that this Agreement shall not be considered a guarantee of exclusivity.
- 36.4. **Governing Law.** This Agreement shall be governed by, subject to and construed in accordance with the laws of the Province of Ontario and the laws of Canada, as applicable to the matters herein. Any action or other legal proceeding arising under or with respect to this Agreement (including any motion or other interlocutory proceeding) shall be brought in a Court or a tribunal, whichever may be applicable, sitting in Toronto, Ontario, save and except the Supreme Court of Canada.
- 36.5. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding on the parties and their respective representatives, successors, and assigns.
- 36.6. **Currency.** Any reference to currency is to Canadian currency and any amount advanced, paid or calculated under the Agreement is to be advanced, paid or calculated in Canadian currency.
- 36.7. **Statutes.** Any reference to a statute is to such statute and to the regulation made pursuant to such statute as such statute and regulation may at any time be amended or modified and in effect and to any statute or regulations that may be passes that have the effect of supplementing or superseding such statute or regulation.
- 36.8. **No Waiver.** No action or failure to act by the City shall constitute a waiver of any right afforded to the City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach by the Participant, except as may be specifically agreed to in writing.

- 36.9. **Severability.** The validity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions under the Agreement and such invalid or unenforceable provisions shall be deemed severable.
- 36.10. **Time is of Essence.** Time is of the essence with respect to all provision of this Agreement that specify a time for performance.
- 36.11. **Additional Documents.** The Participant shall, at its sole expense, promptly execute any such additional documents with respect to the Incentive to give effect to the Agreement as the City may from time to time reasonably require.
- 36.12. **Survival.** The parties agree and acknowledge that all obligations in respect to the Agreement that expressly or by their nature need to survive the termination or expiry of this Agreement will continue in full force subsequent to, and notwithstanding, such termination or expiry until and unless they are satisfied or by their nature expire.
- 36.13. **Further Assurances.** Each party shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.
- 36.14. **Counterparts and Electronic Signatures.** This Agreement may be executed in counterpart and may be executed by electronic signature that is received by the City in a file format acceptable to the City. Such electronic signature shall be deemed to be an original signature for the purpose of this Agreement with the same legal effect as an original signature.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF the City and the Participant have respectively executed and delivered this Agreement on the date set out above.

Authorized by **XX**

CITY OF TORONTO

By: _____
Name: Josie Scioli
Title: Deputy City Manager – Corporate Services

Date: _____

I have authority to bind the corporation.

APPROVED AS TO FORM

.....
For Wendy Walberg
City Solicitor

File #

[LEGAL NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____

I have authority to bind the corporation.

Schedule A – Reporting Requirements & Schedule

Types of Reports required to be submitted by the Participant throughout the Term of the Agreement:

1. Deep Retrofit Design Report (Q4 2022/Q1 2023))
2. Quarterly Progress Reports (see example schedule below)
3. Commissioning Report (by January 31, 2025)
4. Performance Report (by January 16, 2026)

Reports Schedule:

The following is an example of Report deadlines for a Deep Retrofit Project that is expected to complete the Retrofit Work by the Required Retrofit Completion Date (January 31, 2025), however each Participant will receive their Deep Retrofit Project's specific reporting timelines upon being accepted as Participant which will be incorporated into this Schedule as Exhibit 1 based on the Participant's Deep Retrofit Project expected Project Completion Date.

Timeline	Reporting Deadlines	Type of Report	Claim Period
[Time of Application Submission] to September 30, 2022			[Time of Application Submission] to March 31, 2023
October 1, 2022 to December 31, 2022	March 31, 2023	Deep Retrofit Design Report	
January 1, 2023 to March 31, 2023			
April 1, 2023 to June 30, 2023	June 30, 2023	Quarterly Progress Report #1	April 1, 2023 to March 31, 2024
July 1, 2023 to September 30, 2023	October 2, 2023	Quarterly Progress Report #2	
October 1, 2023 to December 31, 2023	January 2, 2024	Quarterly Progress Report #3	
January 1, 2024 to March 31, 2024	March 31, 2024	Quarterly Progress Report #4	
April 1, 2024 to June 30, 2024	July 2, 2024	Quarterly Progress Report #5	April 1, 2024 to March 31, 2025
July 1, 2024 to September 30, 2024	September 30, 2024	Quarterly Progress Report #6	
October 1, 2024 to December 31, 2024	December 31, 2024	Quarterly Progress Report #7	
January 1, 2025 to March 31, 2025	January 31, 2025	Commissioning Report	

April 1, 2025 to January 31, 2026	January 16, 2026	Performance Report	April 1, 2025 to March 31, 2026
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1. Deep Retrofit Design Report

Following the completion of the mandatory Deep Retrofit Challenge Design Charrette and training workshops, the Participant will need to provide us the following as part of the Deep Retrofit Design Report, taking into consideration the Deep Retrofit Design Requirements stated in Schedule B (Deep Retrofit Design Requirements):

- ✓ Utility data from at minimum 12 months prior to the commencement of the Retrofit Work until the expiration of the Participant Agreement (March 31, 2031).
- ✓ A financial business case and costing report that demonstrates the total estimated cost of the Deep Retrofit Project with all eligible costs itemized, along with a demonstration of a calculated payback period of 20 years or better.
- ✓ Demonstrate the funding required for the Deep Retrofit Project has been secured;
- ✓ Report of the calibrated pre-retrofit energy model of the Deep Retrofit Project that demonstrates a minimum 50% reduction in total energy use intensity and greenhouse gas emissions preferably using a software program open to the public such as CanQuest or eQuest.
 - A report summarizing pre-retrofit energy model inputs and outputs, and relevant output files and supporting documentation to support the energy model report;
- ✓ Demonstrate a Project timeline that meets the Required Retrofit Completion Date (January 31, 2025), with a built-in contingency period included;
- ✓ All project management documents, including schedules, feasibility studies, risk registers, risk mitigation strategy, and sub-contractor information associated to the management and completion of the Deep Retrofit Project;
- ✓ Schematic drawings and renderings of Deep Retrofit Design that demonstrates a minimum 50% reduction in total energy use intensity and greenhouse gas emissions, as well as the Building's air barrier strategy;
- ✓ Airtightness testing results and plan that shows when and how the building's airtightness will be confirmed;
- ✓ Calculation of projected embodied carbon for major construction materials and process;
- ✓ Documentation for building permits applications or approvals required to undertake the Deep Retrofit Project; and
- ✓ Rent Roll - A written report that lists all of the current tenants at the Building as well as the:
 - Monthly rent amount for each lease.
 - Unit number for each tenant's space.

- Date that each tenant begins to pay rent under the lease (the rent commencement date).
- Lease expiration date.

Once the Deep Retrofit Design Report is submitted to the satisfaction of the City, the City will conduct Measurement and Verification and provide the Participant with a signed Deep Retrofit Design Acceptance Letter in the format as outlined in Form 1 of Schedule K (Forms) at which point the Participant can proceed further on the Deep Retrofit Project under the Agreement.

2. Quarterly Progress Reports:

The Quarterly Progress Reports for Participants will need to include the following, in a form provided by the City pertaining to the relevant reporting period:

- ✓ Total amount of Eligible Costs incurred during the reporting period including an updated cash flow statement and budget description;
- ✓ Any claim and supporting invoices for Design Incentive or Retrofit Incentive whichever is applicable (It is advised that the Participant choose to submit their claim within the Quarterly Progress Report due at end of Fiscal Year, March 31);
- ✓ Project Timing Status;
- ✓ Project Scope Status;
- ✓ Overall summary of project status and achievements;
- ✓ Operational issues and other barriers/challenges;
- ✓ Photos of Deep Retrofit Project progress
- ✓ A statement verifying that all Eligible Costs claimed for during the reporting period are in accordance with the terms of the Agreement; and
- ✓ Any other information required by the Executive Director, acting reasonably.

The Participant shall submit all required Quarterly Progress Reports certified by the Participant in a form satisfactory to the Executive Director, at their sole discretion.

The Participant further agrees that the City has the right, at all reasonable time and on reasonable notice, to inspect the progress of the Deep Retrofit Project and to require the Participant to submit additional reports and information with respect to the Deep Retrofit Project in the form specified by the City, acting reasonably.

3. Commissioning Report

The Participant shall submit a Commissioning Report, completed to the satisfaction of the City, at the latest on the Required Retrofit Completion Date (January 31, 2025).

The Participant shall provide the City Agreement Manager with a Commissioning Report containing the following information to the satisfaction of the Executive Director:

- ✓ Total amount of Eligible Costs incurred to-date including an updated cash flow statement and budget description;
- ✓ Any claim and supporting invoices for Retrofit Incentive;
- ✓ A financial report that declares the total incentive amount received by the Participant and demonstrates how the Incentive was used, including the receipt of goods and/or services being funded by the Deep Retrofit Challenge and all other funding sources, and invoices for the remaining eligible costs;
- ✓ a report on the progress made to implement the Work prior to the Substantial Completion Date including observations on successes, problems, concerns, and any lessons learned;
- ✓ Utility data records to-date;
- ✓ Copies of any non-proprietary reports requested by the City of Toronto arising from and prepared during the course of the Project;
- ✓ Air tightness test results;
- ✓ Supporting evidence that permits are closed and received inspector approval;
- ✓ Photos of Deep Retrofit Project completion;
- ✓ Signed copy of the Statutory Declaration of Substantial Completion as substantially set out in Form 2 of Schedule K (Forms) of the Agreement; and
- ✓ Any other information required by the Executive Director, acting reasonably.

The Participant further agrees that the City has the right, at all reasonable time and on reasonable notice, to inspect the progress of the Deep Retrofit Project and to require the Participant to submit additional reports and information with respect to the Deep Retrofit Project in the form specified by the City, acting reasonably.

4. Performance Report

One year after (i) all of the Retrofit Work under the Deep Retrofit Design Report has been completed or (ii) the Required Retrofit Completion Date (by January 16, 2026), whichever is the earliest, the Participant must provide the following to the City:

- ✓ A final cash flow statement and budget for Total Project Cost demonstrating a 20 year payback or better;
 - Reconciliation of all of the actual costs incurred by the Participant in respect of the Deep Retrofit Project;
 - Reconciliation of all the actual Eligible Costs incurred by the Participant in respect of the Deep Retrofit Project;
- ✓ Any claim and supporting invoices for Performance Incentive;

- ✓ A calibrated post-retrofit energy model report of the Deep Retrofit Project that demonstrates a minimum 50% reduction in total energy use intensity and greenhouse gas emissions preferably using a software program open to the public.
 - a. Relevant output files and supporting documentation to support the energy model report;
 - b. an explanation of any discrepancies between the results and the Expected Results;
- ✓ A report on the observations of the Retrofit Work post-commissioning, problems, concerns, benefits, and any lessons learned;
- ✓ Utility data to-date, with utility data from January 16 to January 31, 2026 delivered to the City by February 2, 2026;
- ✓ Calculation of actual embodied carbon for major construction materials and process;
- ✓ Copies of any non-proprietary reports requested by the City of Toronto arising from and prepared during the course of the Project;
- ✓ Supporting evidence that permits are closed and received inspector approval (if not already provided);
- ✓ Additional Photos of Deep Retrofit Project completion;
- ✓ Rent Roll - A written report that lists all of the current tenants at the Building as well as the:
 - Monthly rent amount for each lease.
 - Unit number for each tenant's space.
 - Date that each tenant begins to pay rent under the lease (the rent commencement date).
 - Lease expiration date; and
- ✓ Any other information required by the Executive Director, acting reasonably.

The Participant further agrees that the City has the right, at all reasonable time and on reasonable notice, to inspect the progress of the Deep Retrofit Project and to require the Participant to submit additional reports and information with respect to the Deep Retrofit Project in the form specified by the City, acting reasonably.

5. Post-Project Annual Reports

On an annual basis after the Performance Report has been submitted and for the remainder of the contract term, the Participant must provide the following to the City:

- ✓ Utility data to-date;
- ✓ Description of any major changes to the Building

Exhibit 1 – Specific Deep Retrofit Project Timelines

[Insert before signing: Any specific reporting and timeline requirements regarding the Participant's Deep Retrofit Project]

TEMPLATE

Schedule B - Deep Retrofit Design Requirements

The Participant's Deep Retrofit Design for the Building outlined in the Deep Retrofit Design Report shall meet the following requirements:

1. Minimum energy use intensity reduction of 50%
2. Minimum greenhouse gas emissions reduction of 50%
3. Maximum payback of 20 years.

TEMPLATE

Schedule C – Deep Retrofit Design Report

To be incorporated by reference upon completion and approval by the City, via the signing of Form 1 (Template Deep Retrofit Design Acceptance Letter) in Schedule K of the Participant's Deep Retrofit Design Report in the form and with the content as outlined in Schedule B (Deep Retrofit Design Requirements).

TEMPLATE

Schedule D – Eligible Costs

Eligible Costs for Design Incentive:

Eligible Costs for the Design Incentive include costs associated with the Participant's development of the Deep Retrofit Design Report during the applicable Claim Period under Schedule E (Claims and Incentives). These Eligible Costs may include, but are not limited to, the following:

- Calibrated pre-retrofit energy modelling for the Deep Retrofit Design;
- Any testing or studies required to complete the Deep Retrofit Design (e.g. net zero feasibility study, air tightness testing, etc.);
- Calculation and report of estimated embodied carbon impact for the Deep Retrofit Design;
- Engineering required (including design, equipment selection, etc.) for the Deep Retrofit Design; and
- Cost of the Deep Retrofit Design drawings and renderings.

Eligible Costs for Retrofit Incentive:

Eligible Costs for the Retrofit Incentive include costs associated with the Retrofit Work to be completed on the Building as outlined in the Deep Retrofit Design Report during the applicable Claim Period under Schedule E (Claims and Incentives). These Eligible Costs may include, but are not limited to, the following Retrofit Work:

- Building envelope: high performance window/balcony door replacements, window/door caulking, exterior wall cladding, solar air heating systems, insulated roofing, and more;
- Mechanical system: building automation systems, make-up air units, garage exhaust fan & CO controls, heat/energy recovery ventilators, ground source or air source electric heat pumps, cooling system upgrades, and more;
- Renewable energy: solar photovoltaics, geothermal heating and cooling (ground or air source) and more;
- Lighting: LED lighting systems and controls;
- Cost associated to increasing load capacity; and
- Any measure recommended in the ASHRAE Level 2 Energy Audit.

Eligible Costs for Performance Incentive:

Eligible Costs for the Performance Incentive include the costs associated with the Deep Retrofit Project that occurs after the submission of the Commissioning Report and prior to March 31, 2026:

- Calibrated post-retrofit energy modelling for the Deep Retrofit Project;
- Calculation and report of actual embodied carbon impact;
- Training of operations/maintenance staff on maintaining efficiency performance; and

- Re-commissioning necessary to improve the performance outcome (must obtain approval from the Agreement Manager).

Non-Eligible Costs:

For greater clarity and without limiting any of the other terms or conditions of the Agreement, the Participant agrees that the following costs, amongst others, will not be an Eligible Cost:

- (a) Costs associated to building improvements not related to reducing greenhouse gas emissions or total energy use intensity, such as accessibility or safety improvements, security technology, furniture, decorative features, landscaping, pavement, parking infrastructure, etc.;
- (b) donations;
- (c) fines and penalties;
- (d) membership fees;
- (e) land acquisition, leasing land, buildings, other facilities, real estate fees and other related costs;
- (f) cost of constructing a building or expanding the existing building, excluding those construction costs incurred as a part of the 'Eligible Costs' under the Deep Retrofit Project;
- (g) financing charges, legal fees, and loan payments and loan interest payments (including those related to easements (e.g. surveys));
- (h) the value of any goods and services which are received through donations or in-kind;
- (i) employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the Participant for the Deep Retrofit Project, and more specifically costs relating to services delivered directly by permanent employees of the Participant;
- (j) meals, hospitality, or incidental expenses of the Participant or any of its consultants or subcontractors;
- (k) any taxes for which the Participant is eligible for a rebate, and any other costs eligible for a rebate;
- (l) costs already covered by another grant or incentive; and
- (m) any cost that have not been expressly approved in the Agreement or in writing by the City Agreement Manager;

Schedule E – Claims and Incentives

The Incentive Limit for each Deep Retrofit Project is:

\$200/m² of gross floor area up to a maximum of \$500,000 or 25% of Total Project Cost, whichever is less.

The Incentive Limit for Deep Retrofit Project at [Insert Building Address] is \$ _____, which means the maximum total Holdback amount could be \$ _____.

	Design Incentive	Retrofit Incentive		Performance Incentive
Claim Period	Claims for any Eligible Costs incurred between time of application submission and March 31, 2023, must be submitted by no later than March 31, 2023.	Claims for any Eligible Costs incurred between April 1, 2023 and March 31, 2024, must be submitted by no later than March 31, 2024.	Claims for any Eligible Costs incurred between April 1, 2024 and March 31, 2025, must be submitted by no later than March 31, 2025.	Claims for any Eligible Costs incurred, between April 1, 2025 and March 31, 2026, must be submitted by no later than March 31, 2026.
Claim Condition	Participant submits a Deep Retrofit Design Report that meets all requirements and is awarded a Letter of Acceptance by the City.	Participant submits all required Quarterly Progress Reports on time, to the satisfaction of the City.	Participant submits all required Quarterly Progress Reports on time, to the satisfaction of the City, and the Participant meets the Substantial Completion date of January 31, 2025 and submits a Commissioning Report that meets all requirements.	Participant submits a Performance Report that meets all requirements by January 16, 2026 and the City's Measurement and Verification process demonstrates that the Deep Retrofit Project achieved its proposed reduction in total energy use intensity and greenhouse gas emissions.

<p>Incentive Amount</p>	<p>All Eligible Costs within claim period no greater than 10% of Incentive Limit.</p> <p>A 10% holdback will apply to the incentive amount paid by the City to the Participant.</p>	<p>All Eligible Costs within claim period no greater than 40% of Incentive Limit.</p> <p>A 10% holdback will apply to the incentive amount paid by the City to the Participant.</p>	<p>All Eligible Costs within claim period no greater than 40% of Incentive Limit.</p> <p>A 10% holdback will apply to the incentive amount paid by the City to the Participant.</p>	<p>All Eligible Costs within claim period, to a maximum based on the formula outlined under Schedule F (Performance Incentive Emissions Performance Limit), no greater than 10% of Incentive Limit.</p> <p>In addition, the Participant will receive the Total Holdback Amount (10% of Design Incentive and Retrofit Incentive the Participant is eligible to) in accordance with the Holdback provision in Section 4.13 of the Agreement.</p>
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NOTES:

- Only one claim for reimbursement of Eligible Costs may be made per Fiscal Year and shall be made at the end of each Fiscal Year.
- All Eligible Costs incurred in a Fiscal Year but not included in the claim will no longer be 'Eligible Costs' in the next claim period.

TEMPLATE

Schedule F – Performance Incentive Emissions Performance Limit

The Performance Incentive is further limited by the emissions reductions achieved by each Deep Retrofit Project per the following table, up to a maximum no greater than 10% of Incentive Limit..

Verified emissions reduction resulting from the Deep Retrofit Project	Additional Performance Incentive Limit
Greater than or equal to 75% reduction	10% of Incentive Limit
Greater than or equal to 60% reduction and less than 75% reduction	6% of Incentive Limit
Greater than or equal to 50% reduction and less than 60% reduction	3% of Incentive Limit
Less than 50% reduction	0% of Incentive Limit (Not Eligible. See Section 4.12 of Agreement)

Schedule G – Deep Retrofit Application

The following documents are hereby incorporated into the Agreement as Schedule G, even if said documents are not physically attached:

- Deep Retrofit Application submitted by the [Participant's Legal Name] on [MONTH DAY YEAR]
- [Other Application Documents]

See Next Page

TEMPLATE

Schedule H – Application Submission Information Documents

The following documents are hereby incorporated into the Agreement as Schedule H, even if said documents are not physically attached:

- [List the various documents that provided information regarding the Deep Retrofit Challenge and the submission of Applications]

TEMPLATE

Schedule I - Description of Deep Retrofit Challenge

Goal:

The goal of the Deep Retrofit Challenge is to de-risk investment in deep energy retrofits, build market confidence, encourage voluntary compliance with existing building policies, and inform future energy codes.

Summary:

The Deep Retrofit Challenge is a competition style program that will support deep energy retrofit projects that deliver significant greenhouse gas emissions reductions in approximately 10 to 16 buildings. Participating buildings ('Participants') will serve to demonstrate the deep energy retrofits needed to move buildings towards net zero emissions, with the goal of accelerating market adoption. Participants will collaborate and compete to retrofit to the highest performance standards. Incentives will be awarded to selected applicants to help offset the cost of performing a deep retrofit of their buildings. Natural Resources Canada has contributed \$5,000,000 to the Deep Retrofit Challenge.

Retrofits should aim to reach an 80 per cent emissions reduction or greater over current building emissions, in alignment with the City's target to reduce emissions to net zero by 2040. Retrofits must follow a comprehensive whole-building analysis that considers the building as a single, integrated system and how components of the building work together.

Participants will be required to make details of their deep retrofits publicly available, including utility energy use and costs, designs, and project costs, to help drive uptake of similar retrofits. Projects will be featured in case studies and recognized for early transformative action.

Deep Retrofit Challenge Participants will receive a grant equal to 25 per cent of their total project costs up to a maximum of up to \$500,000 (depending on gross floor area) to offset the incremental design and construction costs required to achieve maximized emissions reductions.

Expected Results:

It is expected that the Deep Retrofit Challenge will demonstrate replicable, cost-effective pathways for achieving significant energy and greenhouse gas reductions across several different buildings, de-risking future investment for other building owners and building market confidence.

For each selected retrofit project, the Deep Retrofit Challenge requires a minimum 50 percent reduction in total energy use intensity and greenhouse gas emissions, while

further incentivizing Participants to achieve a reduction of 80 percent or more, requiring retrofits to address the whole building and all of its integrated components.

Information from each of the Deep Retrofit Projects, including designs, budgets and performance data will be open-sourced to drive case studies, technical reports and academic research that will help promote community knowledge of deep retrofits and facilitate the uptake of deep retrofits needed to reach the City's net zero by 2040 target.

TEMPLATE

Schedule J – Building Data

As part of the Deep Retrofit Application, applicants will submit the following as attachments which if successfully chosen to be a Participant in the Deep Retrofit Challenge will be included as part of this Agreement, which may be used to inform a case study of the Deep Retrofit Project and may have all or any components of this information available to the public (e.g. Open Data portal, posted online, or through case studies, etc.), excluding any personal information or contact details:

- Feasibility Study or Detailed Engineering Design
- ASHRAE Level 2 Energy Audit Report
- Building Condition Assessment (if available)
- Utility Data such as electricity and natural gas bills (aggregated)

Throughout the Term of the Agreement the Participant will be required to submit the following Building Data, as requested via Reports (see 'Reporting Requirements and Schedule' section below for list of Reports) or independently to the City of Toronto which may be used to inform a case study of the Deep Retrofit Project and may be made available to the public (e.g. Open Data portal, posted online, or through case studies, etc.), excluding any personal information or contact details:

- Utility data¹ from at minimum 12 months prior to the commencement of the Retrofit Work to the end of the Term of the Agreement.
- A financial business case and costing report that demonstrates the total estimated cost of the Deep Retrofit Project with all eligible costs itemized, along with a demonstration of a calculated payback period of 20 years or better;
- Report of the calibrated pre-retrofit energy model of the Deep Retrofit Project that demonstrates a minimum 50% reduction in total energy use intensity and greenhouse gas emissions preferably using a software program open to the public such as CanQuest or eQuest.
 - A report summarizing pre-retrofit energy model inputs and outputs, and relevant output files and supporting documentation to support the energy model report;
- Report of the calibrated post-retrofit energy model of the Deep Retrofit Project that demonstrates a minimum 50% reduction in total energy use intensity and greenhouse gas emissions preferably using a software program open to the public such as CanQuest or eQuest.
 - A report summarizing post-retrofit energy model inputs and outputs, and relevant output files and supporting documentation to support the energy model report;
- A Gantt chart illustrating the Deep Retrofit Project timeline that meets the Required Retrofit Completion Date, with a built-in contingency period included;

¹ Participant must manage all utility meter issues to ensure the City receives complete utility data for the Deep Retrofit Project.

- Risk registers or risk mitigation strategy;
- Schematic drawings and renderings of Deep Retrofit Design that also demonstrates the building's air barrier strategy;
- Airtightness testing results and plan;
- Calculation of projected embodied carbon for major construction materials;
- A final cash flow statement and budget demonstrating actual cost of Deep Retrofit Project and demonstration of a 20 year payback or better;
- A financial report that declares the total incentive amount received by the Participant and demonstrates how the Incentive was used, including the receipt of goods and/or services being funded by the Deep Retrofit Challenge and all other funding sources;
- A final narrative report and/or public report to describe how the Participant contributed to the achievement of the Deep Retrofit Challenge as described in the 'Description of Deep Retrofit Challenge' section, including observations on successes, problems, concerns, and any technical, financial, and environmental lessons learned;
- Copies of any non-proprietary reports requested by the City of Toronto arising from and prepared during the course of the Deep Retrofit Project;
- Rent Roll- A written report that lists all of the current tenants at the Building as well as the:
 - Monthly rent amount for each lease;
 - Unit number for each tenant's space;
 - Date that each tenant begins to pay rent under the lease (the rent commencement date); and
 - Lease expiration date.
- Any other information required by the Executive Director, acting reasonably.

All data provided to the City will undergo a 'privacy' review to ensure no personal information is shared via the City's Open Data portal.

Schedule K – Forms

Schedule K is comprised of the following forms:

Form 1: Template Deep Retrofit Design Acceptance Letter

Form 2: Statutory Declaration of Substantial Completion

Form 3: Utility Data Release Form

TEMPLATE

FORM 1: TEMPLATE DEEP RETROFIT DESIGN ACCEPTANCE LETTER

Deep Retrofit Design Title: _____

Date Received by City: _____

Date Deep Retrofit Design Accepted by the City: _____

Projected Greenhouse Gas Emissions Reduction: _____

Projected Energy Use Intensity Reduction: _____

Projected Project Payback: _____

The City of Toronto, as represented by the Environment & Energy Division, (the "City") has reviewed and accepted this Deep Retrofit Design for [Note to Finalization: location of the Building along with a description of the Deep Retrofit Project]. Therefore, the [Participant's Legal Name] (the "Participant") may continue to participate in the City's Existing Building Deep Retrofit Challenge and receive further Incentive for the Deep Retrofit Project and proceed with the implementation of the Retrofit Work as outlined in the Deep Retrofit Design, in accordance with the terms and conditions outlined in the Agreement dated [Note to Finalization: Add the Effective Date that Agreement was entered into].

CITY OF TORONTO

Signed: _____

Name: _____

Title: _____

[PARTICIPANT LEGAL NAME]

Signed: _____

Name: _____

Title: _____

FORM 2: STATUTORY DECLARATION OF SUBSTANTIAL COMPLETION

Note: To be completed and submitted by the Participant with the Commissioning Report and upon substantial completion of the construction work under the Deep Retrofit Project.

STATUTORY DECLARATION OF SUBSTANTIAL COMPLETION

In the matter of the Agreement entered into between the City of Toronto and [insert Participant's legal name] on _____.

I, _____ a Registered _____ (Engineer or Architect), in the Province of Ontario, do solemnly declare as follows:

1. That I am _____ (title, department, organization) and as such have knowledge of the matters hereinafter set forth in this declaration.
2. That the work identified as Deep Retrofit Design _____ in the above mentioned Agreement _____ (has/has not) been substantially completed as described in the Agreement as of _____ on the ____ day of 20__.
3. That the value (dollar amount) of substantially completed work on the Deep Retrofit Design, by [MONTH DAY YEAR] is _____ (dollars).
4. That the work:
 - a. was carried out by _____ (the prime contractor), between _____ (start date) and _____ (completion date);
 - b. was supervised and inspected by qualified staff;
 - c. conforms with the plans, specifications and other documentation for the work, and
 - d. conforms with applicable environmental legislation, and appropriate mitigation measures have been implemented.

Declared at _____ (City) in the Province of Ontario this _____ day of _____, 20__.

(Signature)

Name:

Title:

FORM 3: UTILITY DATA RELEASE FORMS

[To be Inserted: Forms to be completed by the Participant and given to Toronto Hydro and/or Enbridge Gas granting the release of the Building's utility data to the City of Toronto]

TEMPLATE