



## **DECISION AND ORDER**

**EB-2021-0292**

### **THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR, IN ITS CAPACITY AS THE SMART METERING ENTITY**

**Application to provide access to de-identified electricity  
consumption data to third parties that are Canadian  
Governmental Entities**

**BEFORE: Michael Janigan**  
Presiding Commissioner

**Allison Duff**  
Commissioner

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**March 24, 2022**

## TABLE OF CONTENTS

1	OVERVIEW.....	1
2	PROCESS.....	2
3	BACKGROUND.....	3
4	DECISION.....	6
	4.1 SETTLEMENT PROPOSAL.....	6
5	ORDER.....	8

### SCHEDULE A

## 1 OVERVIEW

The Independent Electricity System Operator (IESO), in its capacity as the Smart Metering Entity (SME), filed an application with the Ontario Energy Board (OEB) on October 29, 2021 under section 78 of the *Ontario Energy Board Act, 1998* (OEB Act). The application requested OEB approval to:

- Expand third party access to de-identified smart meter data beyond the IESO and OEB to Canadian Governmental Entities
- Provide access to de-identified smart meter data under a no-fee model for standard requests, with costs covered by the Smart Metering Charge
- Provide access to de-identified smart meter data under a cost recovery model for complex requests
- Use basic terms of the Data Use Agreement and the provision to tailor the Data Use Agreement to suit specific circumstances

On February 15, 2022, the IESO filed a settlement proposal, which reflected a full settlement between the IESO and participating intervenors.

The OEB approves the settlement proposal as filed (see Schedule A).

The OEB has reviewed the settlement proposal and finds that its provisions are in the public interest and represent a reasonable framework for third-party access and the protection of consumer privacy.

The OEB agrees with OEB staff that the SME should consider expediting its assessment of expanding access to Meter Data Management Repository (MDM/R) data to entities beyond Canadian Governmental Entities sooner than 2025.

## 2 PROCESS

The OEB issued a Notice of Hearing on November 16, 2021.

Procedural Order No. 1 was issued on December 13, 2021, in which the OEB granted intervenor status to the Building Owners and Managers Association (BOMA), Consumers Council of Canada (CCC), Electricity Distributors Association, Energy Probe Research Foundation (Energy Probe), Ontario Sustainable Energy Association (OSEA) and Vulnerable Energy Consumers Coalition (VECC). BOMA, CCC, Energy Probe, OSEA and VECC applied for and were granted cost eligibility.

The OEB established a streamlined process to review the SME's application in response to the IESO's request. The schedule provided for a settlement conference before initial discovery. Parties were granted the opportunity to clarify matters related to the SME's evidence and to develop an issues list at the outset of the settlement conference. Parties were advised to use the IESO's proposed issues list<sup>1</sup> as the starting point for their discussions relating to the development of an issues list. The OEB noted in Procedural Order No. 1 that because there would be no initial discovery, any settlement proposal must provide sufficient detail in support of any settled issues.

A virtual settlement conference took place on January 17, 18 and 20, 2022. The SME and intervenors participated in the settlement conference (collectively, the Parties). OEB staff attended the settlement conference but was not a party to the settlement proposal.

The SME filed a settlement proposal with the OEB on February 15, 2022. OEB staff supported the settlement proposal through its submission filed on February 23, 2022.

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<sup>1</sup> EB-2021-0292, Cover Letter to Application, p. 2, October 29, 2021.

### 3 BACKGROUND

The IESO was designated as the SME in 2007 by a regulation made under the *Electricity Act, 1998*.<sup>2</sup> The SME manages the (MDM/R), which contains the electricity consumption data used by electricity distributors to bill customers. The SME cannot operate without a licence from the OEB,<sup>3</sup> and cannot charge fees without an order of the OEB.<sup>4</sup>

Section 53.8 of the *Electricity Act, 1998* establishes the objects of the SME, which include the following:

2. To collect and manage and to facilitate the collection and management of information and data and to store the information and data related to the metering of consumers' consumption or use of electricity in Ontario, including data collected from distributors and, if so authorized, to have the exclusive authority to collect, manage and store the data.

[...]

4. To provide and promote non-discriminatory access, on appropriate terms and subject to any conditions in its licence relating to the protection of privacy, by distributors, retailers, the IESO and other persons,
  - i. to the information and data referred to in paragraph 2

[...]

8. To recover, through just and reasonable rates, the costs and an appropriate return approved by the Board associated with the conduct of its activities.

In 2016, the OEB extended the SME's licence and expressed its opinion on the SME's progress in realizing the potential of the MDM/R:

Innovation is about creating new value. The SME, through its provision of reliable provincial energy consumption data from over 4 million meters, was in part established to provide an opportunity for provincial electricity agencies, individual local distribution companies, and third parties seeking to create new value to benefit consumers. Ontario's head start on smart

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<sup>2</sup> O. Reg. 393/07 (Smart Metering Entity), effective March 28, 2007.

<sup>3</sup> *Electricity Act, 1998*, s. 53.7(1).

<sup>4</sup> OEB Act, s. 78(2.1).

meters is an opportunity that could be leveraged to enhance innovation. The opportunity must be pursued in a more timely way. The OEB is of the view that closer regulatory scrutiny is required to ensure that the SME move with increased speed to enhance the value of the MDM/R data.

In that licence Order, the OEB required the SME to collect from distributors, beginning in 2017, certain information associated with each smart meter (namely the postal code, the distributor rate class, and occupant change data – modified where necessary to render it non-personal information), and to prepare an implementation plan for providing third party access to the collected data.

The SME filed an application with the OEB on December 4, 2018 (the 2018 Application) seeking approval to amend its licence to enable it to provide access to certain non-personal data about electricity usage to third parties at market prices.<sup>5</sup>

In its review of the 2018 Application, the OEB acknowledged the efforts of the SME to address privacy concerns and to consult with stakeholders. However, the OEB was of the view that a more comprehensive consumer engagement process should take place before a decision regarding third party access to MDM/R data could be made. Accordingly, the OEB did not approve the SME's 2018 Application as filed (although the OEB permitted the SME to proceed with making Public Offerings available – Public Offerings are highly aggregated MDM/R consumption data that are provided without charge).

In its Decision and Order on the SME's 2018 Application, the OEB stated that "the OEB would like the SME to proceed cautiously given the concerns expressed."<sup>6</sup> The SME was directed to develop a revised proposal for third party access after further consultation with consumers, and to submit a new application to the OEB by the end of 2021.

Following the OEB's Decision and Order on the 2018 Application, the SME stated in this application that in preparing a third-party access plan, it had considered the results of the consumer research conducted by Ipsos in late 2020. The research involved consultation with 1,701 residential and small commercial smart meter consumers who provided their opinions on sharing de-identified consumption data with third parties. The SME stated that it also considered the comments and feedback provided by intervenors and other stakeholders in consultations completed in support of this application and the spirit of the OEB's decision on the SME's 2018 Application.

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<sup>5</sup> EB-2018-0316.

<sup>6</sup> Decision and Order, October 24, 2019 (EB-2018-0316), at p. 15.

The SME is proposing to provide access only to Canadian Government Entities. This approach is supported by the preference indicated by consumers in the research conducted by Ipsos.<sup>7</sup>

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<sup>7</sup> EB-2021-0292, Exhibit B, Tab 1, Schedule 1, P. 3.

## 4 DECISION

### 4.1 Settlement Proposal

The Settlement Proposal was structured around a proposed issues list that was agreed upon by Parties.<sup>8</sup> The issues list was not the same as proposed by the SME in its application. The settlement proposal represented the Parties' full settlement on all of the issues list. The settlement proposal contained further explanation and rationale on specific issues.

The key elements of the settlement proposal include:

- The SME will limit access to Canadian Government Entities as proposed in the application
- The SME will charge \$145/hour to fulfill both standard and non-standard requests, not only non-standard requests as originally proposed
- The SME will use the basic terms of proposed Data Use Agreement, and the SME will retain the ability to tailor the Data Use Agreement to suit the specific circumstances of any particular data request
- The SME will provide information on third-party access requests received by the SME in the preceding calendar year, in conjunction with its annual reporting<sup>9</sup> to the OEB and intervenors on the Smart Metering Charge<sup>10</sup>
- The SME will track costs associated with fulfilling requests for data access and any revenue generated from requestors, with the exception of requests made by the IESO or the OEB, in a new variance sub-account to the SME Balancing Variance Account (BVA) to be called the Third-Party Access Variance Account. The balance of the TPA Variance Account will be considered for future disposition as part of the BVA.
- The SME will have the necessary arrangements for an Ethics Review Committee in place prior to providing third party access.

OEB staff filed a submission on February 23, 2022, supporting the settlement proposal.

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<sup>8</sup> EB-2021-0292, Settlement proposal, p. 5.

<sup>9</sup> [Annual Reports on Smart Metering Charge](#).

<sup>10</sup> EB-2017-0290, Exhibit B, tab 1, schedule 1, p. 3.



OEB staff encouraged the SME to consider expediting its assessment of expanding access to MDM/R data to entities beyond Canadian Governmental Entities to sooner than 2025, based on the lessons the SME will have learned under the approach set out in the settlement proposal.

## Findings

The OEB has reviewed the settlement proposal and finds that its provisions are in the public interest and represent a reasonable framework for third-party access and the protection of consumer privacy. Accordingly, the OEB approves the settlement proposal and provides for its implementation by SME in this Decision and Order.

The OEB agrees with OEB staff that the SME should consider expediting its assessment of expanding access to MDM/R data to entities beyond Canadian Governmental Entities sooner than 2025. It is not necessary to have two years of lessons learned under the approach set out in the settlement proposal before considering access expansion and seeking feedback from consumers and the potential market.

The OEB also confirms that the annual reporting required in accordance with the settlement proposal shall be posted on the OEB website and available for public access.

The OEB has made provision for SME to file a draft accounting order for the new variance sub-account to the SME Balancing Variance Account called the Third-Party Access Variance Account.

## 5 ORDER

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Settlement Proposal attached as Schedule A is approved.
2. The SME shall charge Canadian Governmental Entities requests at \$145/hour, with the exception of requests made by the IESO or the OEB which shall be fulfilled at no charge.
3. The SME shall file with the OEB and forward to intervenors a Draft Accounting Order for the Third-Party Access Variance Account by **March 31, 2022**.
4. Cost eligible intervenors shall file with the OEB, and forward to the SME, their respective cost claims by **April 14, 2022**.
5. The SME shall file with the OEB, and forward to intervenors, any objections to the claimed costs by **April 21, 2022**.
6. Intervenors shall file with the OEB, and forward to the SME, any responses to any objections for cost claims by **April 28, 2022**.
7. The SME shall pay the OEB's costs of and incidental to this proceeding upon receipt of the OEB's invoice.

Please quote file number, **EB-2021-0292**, for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All

participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business day, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Michael Bell at [Michael.Bell@oeb.ca](mailto:Michael.Bell@oeb.ca) and OEB Counsel, Ian Richler at [Ian.Richler@oeb.ca](mailto:Ian.Richler@oeb.ca).

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)

Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto March 24, 2022

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar

**SCHEDULE A**  
**DECISION AND ORDER**  
**THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR**  
**EB-2021-0292**  
**MARCH 24, 2022**

Patrick G. Duffy  
Direct: +1 416 869 5257  
pduffy@stikeman.com

February 15, 2022  
File No.: 101926.1144

**By E-mail and RESS**

Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4

Attention: Nancy Marconi, Acting Registrar

Dear Ms. Marconi:

**Re: Independent Electricity System Operator / Smart Metering Entity  
2021 Third Party Access Application  
Ontario Energy Board File No.: EB-2021-0292  
Settlement Proposal**

On behalf of the Independent Electricity System Operator (“**IESO**”) in its capacity as the Smart Metering Entity (“**SME**”), enclosed is the settlement proposal pursuant to the Board’s Procedural Order No. 1 issued on December 13, 2021 (“**PO No. 1**”).

The proposal was filed through the Board’s RESS portal on February 15, 2022.

Please contact me if you have any questions or concerns about this matter.

Yours truly,



Patrick G. Duffy

PGD/

cc. Miriam Heinz and Adrian Pye, *IESO*  
Michael Bell and Ian Richler, *Ontario Energy Board*  
Ted Wigdor, Kathryn Farmer and Brittany J. Ashby, *Energy Distributors Association (EDA)*  
Julie Girvan, *Consumers Council of Canada (CCC)*  
Mark Garner and John Lawford, *Vulnerable Energy Consumers Coalition (VECC)*  
Albert Engel, Ian Jarvis, Gillian Henderson and Matthew Rutledge, *Building Owners and Managers Association (BOMA)*  
Tom Ladanyi, *Energy Probe Research Foundation*  
Joanna Vince, Raeya Jackiw and Travis Lusney *Ontario Sustainable Energy Association (OSEA)*

**Independent Electricity System Operator,  
in its capacity as the Smart Metering Entity**

**Application to provide access to de-identified electricity  
consumption data to third parties that are Canadian Governmental Entities**

**Settlement Proposal**

**EB-2021-0292**

**February 15, 2022**

## TABLE OF CONTENTS

<b>A.</b>	<b>PREAMBLE</b> .....	<b>3</b>
<b>B.</b>	<b>OVERVIEW</b> .....	<b>4</b>
<b>C.</b>	<b>THE ISSUES LIST</b> .....	<b>5</b>
<b>D.</b>	<b>THE SETTLED ISSUES</b> .....	<b>6</b>
	1. Is the proposal that access only be provided to those listed, the “Canadian Governmental Entities” as defined in Ex B-6-5 Defined Terms & Acronyms appropriate? .....	6
	2. Is the SME’s proposal to de-identify data shared with Canadian Governmental Entities appropriate?.....	7
	3. Is the proposal that the costs for providing access for standard requests should be recovered through the Smart Meter Charge appropriate? .....	9
	4. Is the proposal that, for non-standard requests, access should be provided at cost and charged to the requestor appropriate? Is the proposed rate of \$145 per hour appropriate?.....	9
	5. What is the appropriate accounting treatment of costs and revenues from third party access? 9	
	6. Are the basic terms of the Data Use Agreement appropriate?.....	10
	7. Does the application sufficiently respond to prior Board direction in EB-2018-0316? .....	10
	8. What mechanism should be used to review the SME’s Third Party Access program in the future? .....	12

## APPENDICES

- Appendix “A” Third Party Request Process Flow Chart
- Appendix “B” Customer Concern or Complaint Process Flow Chart
- Appendix “C” Draft Data Use Agreement

## A. PREAMBLE

This Settlement Proposal is filed with the Ontario Energy Board (“**OEB**”) in connection with the Application by the Independent Electricity System Operator (“**IESO**”), designated as the Smart Metering Entity (“**SME**”), to provide access to de-identified electricity consumption data to third parties that are Canadian Governmental Entities as defined in the Application.

In Procedural Order No. 1, dated December 13, 2021, the OEB established a streamlined process to address the Application, by way of an early Settlement Conference that would provide the parties with an opportunity to clarify matters related to the SME’s evidence and develop an issues list. This proposed settlement agreement provides sufficient detail in support of any settled issues as required by Procedural Order No. 1. Where there is clarification to the evidence the changes have been included providing a direct link between each settled issue and the supporting evidence.

A Settlement Conference was held virtually on January 17, 18, and 20, 2022. Andrew Mandyam and Brandon Ott of Utilis Consulting acted as facilitators for the Settlement Conference. This Settlement Proposal arises from the Settlement Conference.

The SME and the following intervenors, as well as OEB technical staff (“**OEB Staff**”), participated in the Settlement Conference:

- Building Owners and Managers Association Toronto (“**BOMA**”)
- Consumers Council of Canada (“**CCC**”)
- Electricity Distributors Association (“**EDA**”)
- Energy Probe Research Foundation (“**Energy Probe**”)
- Ontario Sustainable Energy Association (“**OSEA**”)
- Vulnerable Energy Consumers Coalition (“**VECC**”)

The Settlement Proposal deals with the relief sought in this proceeding. As set out in more detail below, a full settlement has been reached on all issues.

The SME and all intervenors listed above have agreed to the settlement described on the following pages. Any reference to “**Parties**” in this Settlement Proposal is intended to refer to the SME and the intervenors listed above.

All Parties participated virtually in the Settlement Conference and subsequent discussions. OEB Staff is not a party to the Settlement Proposal. After the Settlement Proposal is filed, OEB Staff will file a submission on the Settlement Proposal. Also, as noted in the OEB’s *Practice Direction on Settlement Conferences*, OEB Staff who participated in the Settlement Conference are bound by the same confidentiality and privilege rules that apply to the Parties to the proceeding.

This document is called a “Settlement Proposal” because it is a proposal by the Parties to the OEB to settle the issues in this proceeding. It is termed a proposal as between the Parties and the OEB. However, as between the Parties, and subject only to the OEB’s approval of this Settlement Proposal, this document is intended to be a legal agreement, creating mutual obligations, and binding and enforceable in accordance with its terms. As set forth below, this Settlement Proposal is subject to a condition subsequent, that if it is not accepted by the OEB in its entirety, then unless amended by the Parties, it is null and void and of no further effect. In entering into this agreement, the Parties understand



and agree that, pursuant to the *Ontario Energy Board Act, 1998*, the OEB has exclusive jurisdiction with respect to the interpretation or enforcement of the terms hereof.

Best efforts have been made to identify all the evidence that relates to each settled issue. The supporting evidence for each settled issue is identified individually by reference to its exhibit number in an abbreviated format; for example, Exhibit B, Tab 3, Schedule 1 is referred to as B-3-1. The identification and listing of the evidence that relates to each settled issue is provided to assist the OEB. The Settlement Proposal describes the agreements reached on the issues list and the settled issues. The Settlement Proposal provides a direct link between each settled issue and the supporting evidence in the record to date.

In this regard, the Parties are of the view that the evidence provided, as supplemented by the information contained in and appended to this Settlement Proposal, is sufficient to support the Settlement Proposal in relation to the settled issues and, moreover, that the quality and detail of the supporting evidence, together with the corresponding rationale, will allow the OEB to make findings agreeing with the proposed resolution of the settled issues. If the OEB does not accept the proposed settlement of any issue, then subject to the Parties' agreement on non-severability set out in the final paragraph below, further evidence may be required on the issue for the OEB to consider it fully.

None of the Parties can withdraw from the Settlement Proposal except in accordance with Rule 30 of the OEB's *Rules of Practice and Procedure*. Further, unless stated otherwise, a settlement of any particular issue in this proceeding is without prejudice to the positions Parties might take with respect to the same issue in future proceedings.

The Parties acknowledge that the Settlement Conference (including subsequent related discussions) is confidential in accordance with the OEB's Practice Direction on Settlement Conferences. The Parties understand that confidentiality in that context does not have the same meaning as confidentiality in the OEB's *Practice Direction on Confidential Filings*, and the rules of that latter document do not apply. Instead, in the Settlement Conference, and in this Settlement Proposal, the Parties have interpreted "confidential" to mean that the documents and other information provided during the course of the Settlement Conference, the discussion of each issue, the offers and counteroffers, and the negotiations leading to the settlement of each issue during the Settlement Conference are strictly privileged and without prejudice. None of the foregoing is admissible as evidence in this proceeding, or otherwise, with one exception, the need to resolve a subsequent dispute over the interpretation of any provision of this Settlement Proposal.

Further, the Parties shall not disclose those documents or other information to persons who were not attendees at the Settlement Conference. The Parties agree that "attendees" is deemed to include, in this context, persons who were not virtually in attendance at the Settlement Conference but were: a) any persons or entities that the Parties engage to assist them with the Settlement Conference, and b) any persons or entities from whom they seek instructions with respect to the negotiations; in each case provided that any such persons or entities have agreed to be bound by the same confidentiality provisions. It is fundamental to the agreement of the Parties that none of the provisions of this Settlement Proposal are severable. If the OEB does not, prior to the commencement of the hearing of the evidence in this proceeding, accept the provisions of the Settlement Proposal in their entirety, there is no Settlement Proposal (unless the Parties agree that any portion of the Settlement Proposal that the OEB does accept may continue as a valid Settlement Proposal).

## **B. OVERVIEW**

The Parties have reached a package settlement of issues in this proceeding (the "**Package Settlement**").

The Package Settlement includes agreement on an Issues List and acceptance of the SME'S proposals in respect of all issues.

### **C. THE ISSUES LIST**

In accordance with Procedural Order No. 1 and as part of the Package Settlement, the Parties have developed and agreed upon the following issues list for this proceeding:

1. Is the proposal that access only be provided to those listed, the “Canadian Governmental Entities” as defined in Ex B-6-5 Defined Terms & Acronyms appropriate?
2. Is the SME’s proposal to de-identify data shared with Canadian Governmental Entities appropriate?
3. Is the proposal that the costs for providing access for standard requests should be recovered through the Smart Meter Charge appropriate?
4. Is the proposal that, for non-standard requests, access should be provided at cost and charged to the requestor appropriate? Is the proposed rate of \$145 per hour appropriate?
5. What is the appropriate accounting treatment of costs and revenues from third party access?
6. Are the basic terms of the Data Use Agreement appropriate?
7. Does the application sufficiently respond to prior Board direction in EB-2018-0316? Specifically:
  - The application should summarize the SME’s consultation with consumers including what it heard from consumers about the notion of selling de-identified consumption data.
  - A marketing plan should be developed to ascertain the demand for this data, its potential use and what third parties are prepared to pay. The plan should address pricing to ensure reasonably priced access by commercial and non-commercial users. Such a plan might also inform both the likely success of the self-funding access model coupled with the size of the commercial and non-commercial demand.
  - The SME should propose a protocol for receiving and dealing with consumer complaints regarding the release of the data. The OEB notes that the SME has proposed an Ethics Committee which could address any issues associated with the potential use of the data by a purchaser.
  - The application should consider how to inform consumers of the fact that de-identified information will be released to third parties.
  - The SME should seek approval of the basic terms of any Data Use Agreement with third parties. While recognizing that Data Use Agreements may need to be tailored to match the specific circumstances surrounding any particular release of data, the OEB’s view is that there should be certain generic protections built into such agreements.
8. What mechanism should be used to review the SME’s Third Party Access program in the future?

The Parties acknowledge that any incremental costs that may be incurred by local distribution companies as a result of the SME providing third party access is not within the scope of this proceeding and was not considered as part of the Settlement Conference.

## D. THE SETTLED ISSUES

### 1. Is the proposal that access only be provided to those listed, the “Canadian Governmental Entities” as defined in Ex B-6-5 Defined Terms & Acronyms appropriate?

The SME’s Application proposes to expand the access or sharing of the data beyond the OEB and the IESO to Canadian Governmental Entities, which is defined in Ex B-6-5 Defined Terms & Acronyms as:

Federal and provincial governments, including ministries, agencies, boards, commissions, tribunals and wholly-owned corporations, or in the case of non-share capital corporations, where such corporations are controlled by a federal or provincial governments, as well as municipalities (or regional governments), universities, school boards, hospitals and First Nations. First Nations means a “council of the band” as that term is defined in subsection 2(1) of the *Indian Act* (Canada). “Canadian Governmental Entities” does not include private sector entities, publicly traded companies, individual doctors, professors, or government officials and all those entities that do not fall in one of the categories outlined above.

As part of the Package Settlement, the Parties agree that the SME’s proposal is appropriate provided there is a clear process for the SME’s evaluation of whether a party requesting data (referred to as the “requestor”) is a Canadian Governmental Entity and that the requestor have a right to have the SME’s decision reviewed by the Ethics Review Committee. The SME will have the necessary arrangements for the Ethics Review Committee in place prior to providing third party access.

For that purpose, the parties agree upon the revised description of the role and composition of the Ethics Review Committee to replace the description in Ex B-3-1 Terms of Access Principles:

As part of the intake process, the SME will constitute the Ethics Review Committee in the event that:

- (i) the SME determines the requestor is not a Canadian Governmental Entity and the requestor gives notice that it wishes to have the SME’s decision reviewed;
- (ii) in the view of the SME, a request raises potential ethical considerations to review and assess the nature of the request; or
- (iii) the requestor submits a complaint about the SME’s data access process.

The composition of the Ethics Review Committee will consist of at a minimum, an IESO Director-level employee, Legal Counsel and an external party with expertise in ethics and large data sets. The outcome of the Ethics Review Committee’s evaluation can result in a request being denied, further review with the requestor/modifications or acceptance.

Decisions from the Ethics Review Committee will be communicated to the requestor.

The SME shall keep records of any complaints received from requestors.

Two flowcharts are attached as appendices:

- A flow chart depicting the SME’s process of evaluating and fulfilling a third party request for access to data, including the role of the Ethics Review Committee as Appendix “A”.
- A flow chart depicting the SME’s interaction with the customer complaints process of local distribution companies (“LDCs”), is attached as Appendix “B”.

The Parties further agree that the SME, in conjunction its annual reporting to the OEB on the Smart Metering Charge (the “**SMC**”) as required by EB-2017-0290, will provide information on the third party access requests received by the SME in the preceding calendar year (the “**SME Annual Report**”). The SME Annual Report shall be sent to all Parties and OEB Staff by April 30 of each year. The Parties and OEB Staff may ask the SME questions on the SME Annual Report within 10 days of the report being sent by the SME and the SME will respond to these questions. The SME will file the report with the OEB by May 31 of each year. A copy of the final SME Annual Report will also be provided to all Parties of this Settlement Proposal.

The information related to data requests provided in the SME Annual Report shall include:

- the name of each requestor;
- a summary of the use case for each request;
- whether the request was granted or denied and, in the event of a denial, the reason for the denial and whether the denial was reviewed by the Ethics Review Committee; and
- the number of complaints from requestors received by the SME.

The SME agrees that it will be bound by the annual reporting obligations in this Settlement Proposal regardless of the outcome of its next SMC application.

*Evidence:* The evidence in relation to this issue includes the following:

A-1-1	Application
B-1-1	The Proposed Third Party Access Plan
B-3-1	Terms of Access Principles
B-6-5	Defined Terms & Acronyms

## **2. Is the SME’s proposal to de-identify data shared with Canadian Governmental Entities appropriate?**

The SME’s Application proposes to de-identify data shared with Canadian Governmental Entities in accordance with the methodology described and reviewed in Ex B–6-2, Privacy Analytics: An Independent Assessment of the IESO’s Planned Privacy Strategy for Third Party Data Access (the “**Privacy Analytics Assessment**”). For the purposes of the Application, the term “data” was defined in Ex B-6-5 as follows:

Any of the information and data related to the metering of consumers’ consumption or use of electricity in Ontario, including the information the OEB required the SME to collect in its decision in EB-2016-0284.

The Privacy Analytics Assessment was premised on the implementation of the following measures by the SME:

- Data shared with recipients will be aggregated and no individual-level data will be shared.
- Household-level indicators, even in pseudonymized form, will not be shared with recipients.
- To protect the identities of consumers, any data shared with recipients will be aggregated in groups of at least:

- 6 premises if there is an enforceable data use agreement in place with the data recipient;
  - 9 premises if there is no contract in place but there are clear terms of use with a trusted recipient;
  - 15 premises if the data is to be released publicly (further aggregation may be warranted to prevent geographically targeted advertising);
  - Alternative group sizes are possible with alternative privacy protections (e.g., highly controlled environments might warrant a group size of 3).
- 
- Only the average or total energy consumption data across postal code areas may be shared, along with the number of premises in each postal code area.
  - There is sufficient variability in electricity consumption data between consumers contributing to the average value in each postal code area
  - A dominance rule of 75% will be followed.
  - The year that occupants move in and out of premises will never be shared (the day and month are not collected).

The SME will implement the methodology described and reviewed in Ex B–6-2, including the measures identified above, in providing third party access to de-identified customer data. On that basis, the Parties agree that the proposal is appropriate as part of the Package Settlement.

The SME's proposal is designed in accordance with the *De-identification Guidelines for Structured Data*, June 2016 published by the Information and Privacy Commissioner of Ontario (the "**2016 IPC Guidelines**"). In the event the 2016 IPC Guidelines are amended by the Information and Privacy Commissioner ("**IPC**") in a manner that requires a change in the methodology described and reviewed in this application, the SME will provide notice of any change to the OEB and the Parties to this Settlement Proposal.

*Evidence:* The evidence in relation to this issue includes the following:

B-1-1	The Proposed Third Party Access Plan
B-3-1	Terms of Access Principles
B-6-2	Privacy Analytics: An Independent Assessment of the IESO's Planned Privacy Strategy For Third Party Data Access
B-6-5	Defined Terms & Acronyms
EB-2018-0316, B-I-10, Sched 4.20	Information and Privacy Commissioner of Ontario. 2016. "De-Identification Guidelines for Structured Data."

3. **Is the proposal that the costs for providing access for standard requests should be recovered through the Smart Meter Charge appropriate?**
4. **Is the proposal that, for non-standard requests, access should be provided at cost and charged to the requestor appropriate? Is the proposed rate of \$145 per hour appropriate?**
5. **What is the appropriate accounting treatment of costs and revenues from third party access?**

The Parties propose to settle issues 3, 4 and 5 on the following basis as part of the Package Settlement.

The SME's Application proposes to provide access to standard data sets without charge and to recover any associated costs from ratepayers through the Smart Meter Charge ("**SMC**"). The SME has estimated that providing TPA standard requests and the public offerings of highly aggregated smart meter data to be approximately \$350,000 per year or approximately \$0.07/smart meter per year, based on the SME receiving up to 40 requests. Under the SME proposal "non-standard" requests would be recovered directly from the requesting party at a charge of \$145/hour.

The SME has agreed to charge for both standard and non-standard requests at a charge of \$145/hour, with the exception of requests made by the IESO or the OEB which shall be fulfilled at no charge in accordance with the OEB's prior direction. The \$145/hr represents the IESO's fully allocated labour costs. The Parties agree that the proposed rate of \$145/hour is appropriate.

The Parties agree that the SME will track costs associated with fulfilling requests for data access and any revenue generated from requestors in a new variance sub-account to the SME Balancing Variance Account ("**BVA**") to be called the "TPA Variance Account". The balance of the TPA Variance Account will be considered for future disposition as part of the BVA. It is the parties' expectation that the information with respect to actual costs will be made available in a future SME application. Nothing in this Settlement Proposal should be construed as limiting the Parties, including the SME, from proposing an adjustment to the SME fees in lieu of, or in combination with, the \$145/hour or other hourly charge, in a future SME application.

In accordance with the settlement of these issues, the Table 1 in Ex B-5-1 is replaced by the revised tariff table below.

	<b>Rate</b>	<b>Costs are recovered</b>	<b>Revenue and costs are tracked</b>
Public offerings of highly aggregated smart meter data	\$0	Recovered through the Smart Meter Charge as approved by the OEB in EB-2018-0316	N/A
Requests from IESO or OEB	\$0		N/A
Canadian Governmental Entities Request	\$145/hour	From the Canadian Governmental Entities requestor	TPA Variance Account

*Evidence:* The evidence in relation to this issue includes the following:

- |       |   |
|-------|---|
| B-1-1 | The Proposed Third Party Access Plan  |
| B-5-1 | Costs and the Suggested Tariff Sheet for Fulfilling Standard and Non-Standard Data Requests |

## **6. Are the basic terms of the Data Use Agreement appropriate?**

The SME's Application proposes that the OEB approve the basic terms of a Data Use Agreement (the "DUA") in accordance with the OEB's direction in EB-2018-0316.

As part of the Package Settlement, the Parties agree that the SME's proposal is appropriate and that the basic terms of the DUA approved by the OEB should be the following:

- License provisions setting out the scope of the data user's entitlements to use the data and making clear that it will not acquire any rights or title in the data not set out in the agreement.
- Restrictions on use of the data, including ensuring it is only used for the purpose outlined in the use case and will not be used to contact individuals to whom the data relates.
- Requirements to safeguard the data, including administrative, physical, organizational and technological safeguards.
- Requirements relating to appropriate policies and procedures about the security of the data, including as related to retention, transfer and destruction of information.
- Requirements to notify the SME in the event of demands for the data, unauthorized access to the data and any actual or suspected "data incident".
- Confidentiality requirements.
- Provisions that allow for the SME's assessment of compliance with the terms of the DUA.
- A right for the SME or its authorized representatives or both, with reasonable notice, to access the data user's premises, systems or logs to audit and verify the data user's compliance with the DUA.

A sample of a draft DUA is attached as Appendix "C" for information purposes. For the reasons set out in Ex B-4-1, the Parties agree that the SME should have flexibility to tailor the DUA to adapt to the needs of the requestor and/or the use case, while ensuring the protections outlined above remain in place.

*Evidence:* The evidence in relation to this issue includes the following:

- |       |                                      |
|-------|--------------------------------------|
| B-1-1 | The Proposed Third Party Access Plan |
| B-4-1 | The Data Use Agreement               |

## **7. Does the application sufficiently respond to prior Board direction in EB-2018-0316?**

The Parties agree that, as modified by the terms of this Package Settlement, the SME's Application sufficiently responds to each of the specific directions made in the OEB's prior decision in EB-2018-0316. These were specifically:

- The application should summarize the SME's consultation with consumers including what it heard from consumers about the notion of selling de-identified consumption data.
  - The SME retained IPSOS to assist in a consumer consultation. The SME's consumer consultation is summarized in Ex A-3-1. The IPSOS report "IESO Smart Meter Data Research" was included as Ex B-6-1.
- A marketing plan should be developed to ascertain the demand for this data, its potential use and what third parties are prepared to pay. The plan should address pricing to ensure reasonably priced access by commercial and non-commercial users. Such a plan might also inform both the likely success of the self-funding access model coupled with the size of the commercial and non-commercial demand.
  - As set out at Ex A-3-1, the SME did not complete a marketing plan because the data will only be provided to Canadian Governmental Entities.
- The SME should propose a protocol for receiving and dealing with consumer complaints regarding the release of the data. The OEB notes that the SME has proposed an Ethics Committee which could address any issues associated with the potential use of the data by a purchaser.
  - The consumer complaint process has been outlined in the flowchart attached as Appendix "B".
  - The SME will provide all LDCs a direct point of contact at the SME.
  - If the SME is unable to resolve the consumer complaint, the consumer will have access to the IPC's review process.
  - As set out in Issue 1, the Ethics Review Committee will be responsible for reviewing requestor complaints.
- The application should consider how to inform consumers of the fact that de-identified information will be released to third parties.
  - As described in Ex A-3-1, the SME will make educational materials available in written format and on its website explaining the purpose of third party access, the benefits to Ontarians, the organizations that will have access and the process to enable such access, the privacy, ethical and security practices to protect the data. The SME will work with the LDCs to leverage these materials for use on call center scripts or on their websites.
  - The SME does not propose to contact consumers with smart meters to inform them that access to the deidentified data held by the SME will be provided to the eligible category. LDCs who wish to inform their consumers of this initiative will be enabled and supported by the IESO through the communication materials described above.
- The SME should seek approval of the basic terms of any Data Use Agreement with third parties. While recognizing that Data Use Agreements may need to be tailored to match the specific circumstances surrounding any particular release of data, the OEB's view is that there should be certain generic protections built into such agreements.



- This matter is dealt with under Issue 6.

B-1-1	The Proposed Third Party Access Plan
B-3-1	Responding to the Board's Directions in EB-2018-0234
B-6-1	IPSOS IESO Smart Meter Data Research
B-6-2	Privacy Analytics: An Independent Assessment of the IESO's Planned Privacy Strategy For Third Party Data Access

**8. What mechanism should be used to review the SME's Third Party Access program in the future?**

The Parties agree that the SME's third party access program should be reviewed in the future with the benefit of the SME's experience in providing access to Canadian Governmental Entities.

To achieve this objective, the SME will include in the SME Annual Report for 2024 (to be filed by April 30, 2025) an assessment of the third party access program that will include at least two full years of experience with the program (2023 and 2024). At a minimum, the SME will include:

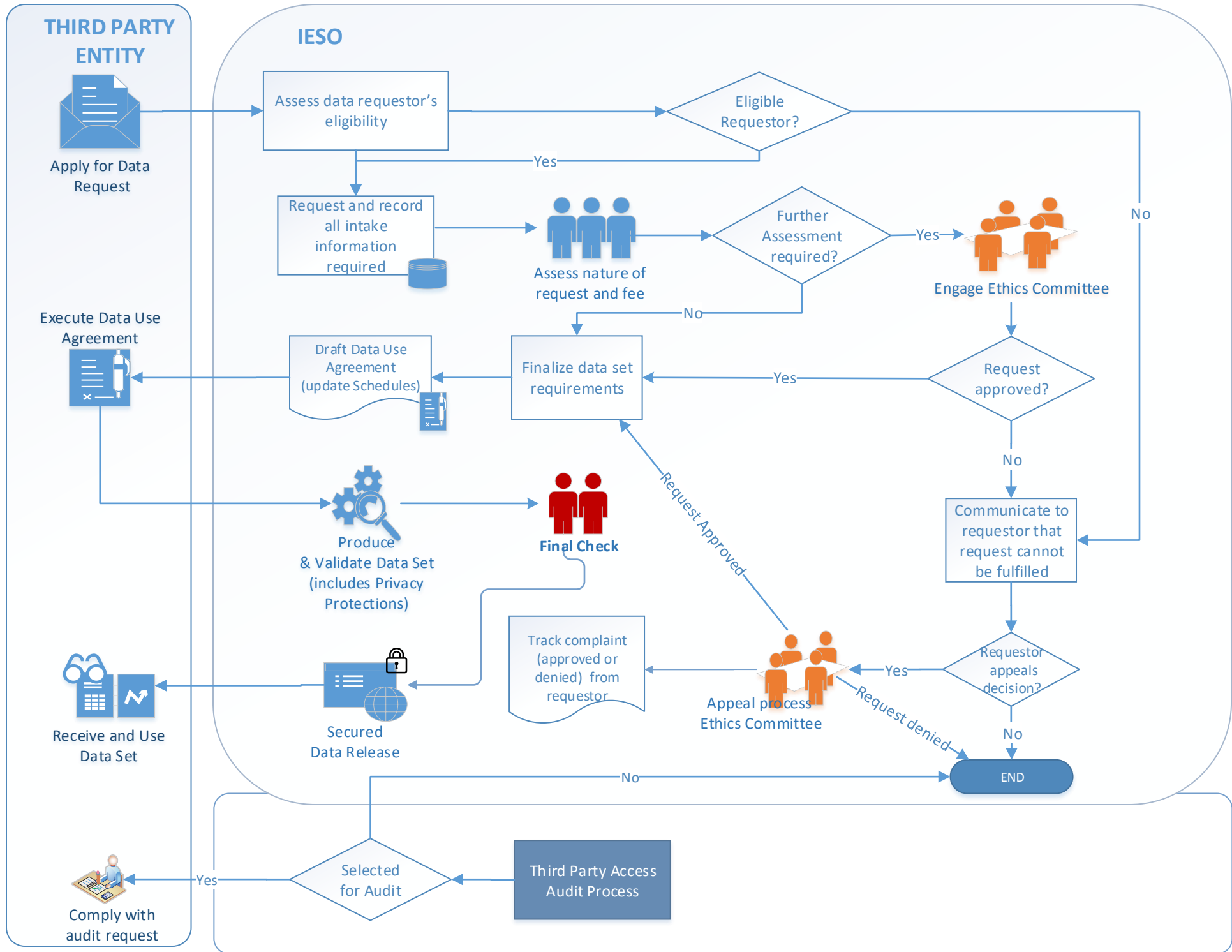
- an assessment of expanding third party access to other non-commercial entities and, in the event the SME is not proposing to expand access, an explanation of its rationale for not doing so; and
- an assessment of implementing an option for customers to opt out of providing third party access to their data held by the SME, including seeking input from local distribution companies on the feasibility of implementing this option.

*Evidence:* The evidence in relation to this issue includes the following:

B-1-1	The Proposed Third Party Access Plan
B-3-1	Responding to the Board's Directions in EB-2018-0234

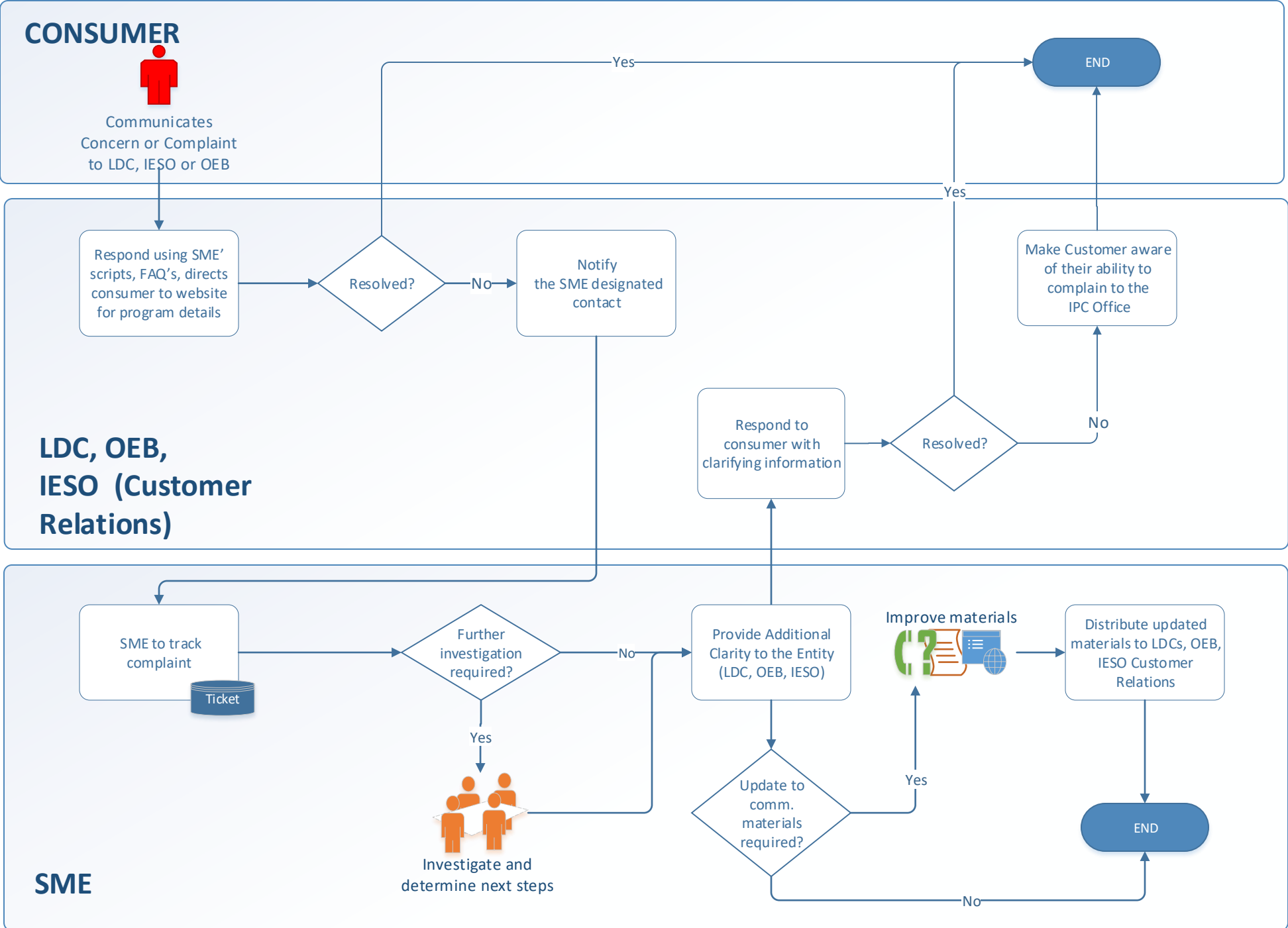
**Appendix A**  
**Third Party Request Process Flow Chart**

# APPENDIX A



**Appendix B**  
**Customer Concern or Complaint Process Flow Chart**

# APPENDIX B



**Appendix C**  
**Draft Data Use Agreement**

**SMART METERING ENTITY THIRD PARTY ACCESS IMPLEMENTATION  
DATA USE AGREEMENT**

This Data Use Agreement is made as of [•], between the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR (the “IESO”)** and [•] (the “Data User”).

**RECITALS**

- A. The IESO, in its role as the Smart Metering Entity for Ontario (“SME”), operates the province’s Meter Data Management/Repository (“MDM/R”) in which it receives and maintains customer electricity usage data generated by smart meters installed at residential and general service <50kW customer premises across Ontario and related information;
- B. The Data User has requested access to Data (as hereinafter defined);
- C. This Agreement describes the terms and conditions upon which the IESO has agreed to provide the Data to the Data User for the purpose of the Use Case(s) (as hereinafter defined) and the Data User has agreed to receive and use the Data solely for such purpose(s).

FOR VALUE RECEIVED, the Parties agree as follows:

**1. Definitions**

- 1.1 Capitalized terms not otherwise defined herein shall have the meanings set forth in Schedule 1 to this Agreement.

**2. Grant of License**

- 2.1 Subject to the Data User’s compliance with the terms of this Agreement, including the restrictions on use in Section 3, the IESO grants to the Data User during the Term of this Agreement a non-exclusive, non-sublicensable, non-transferable license to use the Data solely for the Use Case.
- 2.2 The Data will be delivered or made accessible to the Data User in a format and using one or more secure file transfer protocols identified by the IESO in its sole discretion.
- 2.3 The Data User acknowledges and agrees that:
- (a) the Data, including all copies, derivations and manipulations, is the confidential and proprietary information of the IESO; and
- (b) subject to Section 2.4, the Data User shall acquire no right, title or interest in or to any Data, including any copies, derivations or manipulations.
- 2.4 Subject to the Data User’s compliance with the terms of this Agreement, including the restrictions on use in Section 3, the Data User may use and distribute for its own benefit and the benefit of third parties the Derivative Works acquired by the Data User from the Use Case.

**3. Restrictions on Use; Safeguarding**

- 3.1 The Data User represents, warrants and covenants to the IESO as follows:
- 3.1.1 The Data User shall access, Process or otherwise use the Data (and shall cause its permitted employees, agents and contractors to access, Process or otherwise use the Data) solely for the Use Case.
- 3.1.2 Except to the extent set out in Schedule 3, the Data User shall not link or attempt to link the Data, including any copies, derivations or manipulations, to any other data;
- 3.1.3 The Data User shall not identify or attempt to identify any individual or other person whose Data or information is included in or was used to create the Data; nor contact or attempt to contact any individual or other person to whom the Data relates (such as a customer of a local electricity distribution company) regarding the Data for the purpose of the Use Case.
- 3.1.4 The Data User shall not distribute or disclose the Data to any employee, agent or contractor other than those provided for in section 3.1.6 nor any third party except: (i) if and to the extent authorized in Schedule 3 or (ii) as required by Applicable Law.

- 3.1.5 The Data User shall protect all Data with administrative, physical, organizational and technological safeguards that are appropriate to the nature and sensitivity of the Data, applying all such safeguards, including related policies and procedures necessary to protect the Data from unauthorized access, use, alteration, destruction or disclosure, which safeguards shall meet or exceed industry best practices and regulatory requirements and standards, including IPC Guidance.
- 3.1.6 The Data User shall limit access to any Data to its employees, agents and contractors who have a need for such access in order to conduct the Use Case and only if such employees, agents and contractors have entered into a binding agreement with the Data User that contains obligations, including but not limited to confidentiality obligations, which are no less stringent than the obligations on the Data User set out in this Agreement.
- 3.1.7 The Data User shall designate a contact person in Schedule 2 to:
- (a) facilitate the Data User's compliance with Applicable Law and this Agreement; and
  - (b) ensure that all employees, agents and contractors of the Data User are appropriately informed (and receive related training) of their duties under Applicable Law and this Agreement.
- 3.1.8 The Data User shall identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of the Data that could result in a Data Incident and take all steps necessary to mitigate or eliminate such risks.
- 3.1.9 The Data User shall ensure the integrity, security, availability and good working order of its electronic information systems and all related components and interfaces, hardware and software to ensure its ability to receive, handle, safeguard and securely Destroy the Data in accordance with this Agreement.
- 3.1.10 The Data User shall have in place protocols, policies, controls, procedures, systems and personnel training including without limitation administrative, technological and physical safeguards, (i) to ensure that anyone with access to the Data understands their obligations in respect of the Data, (ii) to ensure only authorized access to the Data, and (iii) to prevent the disruption, theft, loss, attempted re-identification, unauthorized access, linking, copying, modification, use, disclosure or disposal of the Data, which afford a degree of protection to the Data that meets or exceeds industry and regulatory requirements and standards, including without restriction IPC Guidance.
- 3.1.11 The Data User shall maintain policies, procedures and systems for the retention and destruction of the Data held by it in accordance with Applicable Law and IPC Guidance.
- 3.1.12 The Data User shall ensure that its permitted agents and contractors maintain policies, procedures and systems in accordance with the Data User's obligations under this Agreement.
- 3.1.13 The Data User shall only move, remove, relocate or transmit any Data within the Data User's facilities or systems and with appropriate measures to ensure the security, confidentiality and integrity of the Data, including appropriate secure encryption technology to protect Data while in transit (e.g. on laptops, removable media, or over the Internet).
- 3.1.14 The Data User shall ensure at all times that the Data and all data, databases or other records containing the Data that are stored, handled, Processed or otherwise used in connection with the Use Case are kept secure, protected and logically separate from any other information, data, data bases or records stored, handled, Processed or otherwise used by or on behalf of the Data User.
- 3.1.15 Except if and to the extent expressly authorized by the IESO in Schedule 3, the Data User shall not Process or otherwise use any Data outside of Canada.
- 3.1.16 In the course of conducting the Use Case, the Data User shall comply with Applicable Law and at all times shall conduct itself in a manner that does not cause the IESO to be in contravention of Applicable Law.
- 3.2 The Data User shall be responsible for compliance by all Data User's employees, agents and contractors with the provisions of this Agreement and Applicable Law.



- 3.3 Unless prohibited by Applicable Law, the Data User shall notify the IESO immediately of any demand, order or other requirement of a court, governmental authority or other third party to disclose or provide access to any Data and shall take all reasonable steps requested by the IESO to respond to such demand, order or requirement, including without restriction assisting the IESO in opposing disclosure or access through court proceedings.
- 3.4 The Data User acknowledges that the IESO is subject to the access to information provisions of FIPPA and shall assist and cooperate with the IESO in connection with any request for access to the Data pursuant to such provisions. If the Data User receives an access to information request, it shall immediately notify the IESO and shall comply with the IESO's directions with respect to such request.
- 3.5 Unless prohibited by Applicable Law, the Data User shall notify the IESO immediately if it becomes aware of any inquiry, investigation, audit or other regulatory action by any governmental authority in connection with the Data or which may involve access to the Data and shall cooperate with the IESO in responding to any such regulatory action.

#### 4. **Data Incidents**

- 4.1 The Data User shall immediately provide written notice to the IESO (specifically to the Notice Contact and the Smart Metering Entity Contact listed in Schedule 2), of any actual or suspected Data Incident, unless prohibited by Applicable Law. In the event of any such Data Incident, the Data User shall provide all necessary co-operation and assistance requested by the IESO to enable it to comply with the IESO's requirements, provided such co-operation and assistance requested is not prohibited by Applicable Law. The Data User shall develop, maintain and follow processes and procedures to detect, address and remedy Data Incidents including without restriction an Incident Response Protocol. Upon becoming aware of any Data Incident, the Data User, in consultation with the IESO, shall immediately implement its Incident Response Protocol and take all appropriate steps to remedy and minimize the effects of such Data Incident.

#### 5. **Confidentiality**

- 5.1 Except as expressly set out in this Agreement, the Data User shall not use, disclose, or permit any person to obtain any Confidential Information, in written, tangible or other form, learned from or provided by the IESO, whether directly or indirectly, without the prior consent of the IESO. The Data User shall ensure that any employee, agent or contractor having access to the IESO's Confidential Information complies with this provision. The Parties acknowledge that disclosure of Confidential Information may cause serious and irreparable harm which cannot be adequately compensated for in damages and accordingly agree that the IESO shall be entitled to obtain injunctive relief, in addition to any other appropriate remedy at law or in equity, to prevent such disclosure. The IESO has no obligation to maintain the confidentiality of any information provided by the Data User pursuant to this Agreement, including the notice information included in Schedule 2 and the Use Case information included in Schedule 3.

#### 6. **Inquiries; Audit**

- 6.1 The Data User shall promptly and properly respond to all reasonable inquiries from the IESO with respect to the Data User's collection, use, disclosure, storage, Processing and handling of Data and the Data User's compliance with this Agreement. Without limiting the foregoing, the Data User will provide to the IESO or its authorized representatives or both a copy of the Data User's Incident Response Protocol or any other policies or documents relevant to the Data User's obligations pursuant to this Agreement.
- 6.2 The Data User shall permit the IESO or its authorized representatives or both, with reasonable notice, to access the Data User's premises or systems and logs to audit and verify the Data User's compliance with this Agreement including, without limitation, the security measures used to protect Data and the systems and processes established and used by the Data User with respect to the collection, use, disclosure, storage, Processing and handling of Data. The Data User shall permit the IESO to enter onto the Data User's premises or provide the IESO with appropriate access to the systems and logs for such purposes. If any audit reveals the Data User's current or prior non-compliance with this Agreement, the Data User will reimburse the IESO for the costs the IESO incurred in carrying out the audit and related activities.

## 7. **Limitation of Liability and Disclaimer**

- 7.1 The IESO and its service providers have no responsibility for and do not make any representation, warranty or condition of any kind regarding the quality, accuracy, validity, reliability or completeness of the Data, which is provided to the Data User on an “as is” basis. Other than as explicitly stated in this Agreement, to the greatest extent permitted by Applicable Law (a) the IESO disclaims all representations, warranties and conditions, express, statutory or implied, including but not limited to any representations or warranties or conditions of merchantability, accuracy or fitness for a particular purpose, and (b) the IESO does not warrant that the Data will be error free or services will be uninterrupted and the IESO disclaims all conditions, warranties and representations regarding availability of Data, service levels or performance. In no event shall the IESO nor any of its service providers be liable for any direct, indirect, incidental, special or consequential damages suffered by the Data User in connection with this Agreement, including as a result of the Data or the provision of or failure to provide the Data to the Data User under this Agreement, whether or not the possibility of such loss or damages was disclosed to or reasonably could have been foreseen by the IESO or any of its suppliers.
- 7.2 The Data User agrees not to bring any action against the IESO’s service providers in respect of any matter disclaimed on their behalf in this Agreement.

## 8. **Indemnification**

- 8.1 The Data User agrees to indemnify, defend and hold the IESO, members of its board of directors and its officers, employees and representatives harmless from any and all losses (including loss of use of property), damages, fines, penalties, deficiencies, costs and expenses (including interest, court costs, reasonable fees and expenses of lawyers, accountants and other experts and professionals, and other reasonable fees and expenses of litigation, arbitration, dispute, mediation or other proceedings or of any claim, demand, default, grievance, assessment, suit, action, cause of action, or other proceeding), liabilities, settlement amounts, judgements, claims, demands, suits, actions, causes of action, or other proceeding of any kind or nature arising out of or in any way relating to any act, omission or misrepresentation made by the Data User, its employees, agents, contractors or their respective representatives under this Agreement.
- 8.2 To the extent indemnification obligations of the Data User arise in respect of a claim, demand, suit, action, cause of action, or other proceeding made or commenced by a third party:
- 8.2.1.1 the IESO will notify the Data User in writing within ten (10) Business Days after its receipt of notice of any claim, demand, suit, action, cause of action, or other proceeding under this Section 9; and
- 8.2.1.2 the Data User will have (subject to Section 8.3) to participate through its legal counsel in the defence.
- 8.3 The IESO shall have the right to approve, acting reasonably, the legal counsel selected by the Data User to participate in the defence of any matter for which the IESO is to be indemnified by the Data User.

## 9. **Termination**

- 9.1 This Agreement shall continue in effect for the Term set out in Schedule 2, unless earlier terminated in accordance with the terms of this Section 9.
- 9.2 The IESO may cease providing Data to the Data User, at any time, by giving the Data User notice in accordance with Section 13.
- 9.3 If either Party becomes aware of any material breach of the terms of this Agreement, it will take steps to contain and remediate the breach and promptly notify the other Party.
- 9.4 This Agreement may be terminated by either Party at any time on thirty (30) days’ notice and immediately in the event of a material breach by the other Party. For certainty, the IESO may terminate the Agreement immediately upon any of the following events, each of which shall be considered a material breach by the Data User:

- 9.4.1 a Data Incident;
- 9.4.2 the Data User undergoing a Change of Control or the Data User notifying the IESO that it is planning to undergo a Change of Control;
- 9.4.3 the Data User assigning this Agreement without the IESO's consent, as required by Section 14.1;
- 9.4.4 a general assignment for the benefit of the Data User's creditors, a voluntary petition in bankruptcy, or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, liquidation, or similar relief in relation to the Data User;
- 9.4.5 the appointment of a receiver, trustee, custodian or similar agent on account of insolvency or in respect of any Data User property;
- 9.4.6 the Data User ceasing to operate as a going concern or the taking of any steps to wind up or otherwise terminate the Data User's existence as a legal entity;
- 9.4.7 the filing of an involuntary petition in bankruptcy or other insolvency proceeding against the Data User that is not dismissed within 90 days thereafter; and
- 9.4.8 a failure by the Data User to comply with Applicable Law or IPC Guidance relevant to Processing or otherwise use of the Data.

## 10. **Obligations on Termination**

- 10.1 Forthwith upon termination of this Agreement unless otherwise agreed to in writing by the Parties the Data User shall cease Processing or otherwise using any Data and either securely return to the IESO, or upon the IESO's request, securely Destroy all Data, and deliver to the IESO a Certificate of Destruction, in a form provided or approved by the IESO, covering all Data that was obtained or Processed or otherwise used by or on behalf of the Data User pursuant to this Agreement. Notwithstanding the foregoing, after the termination of this Agreement, to the extent applicable, the Data User may retain Data found in electronic form as part of its backup system, provided any such copies of the Data are not accessed, Processed or otherwise used and any such Data will be securely Destroyed in accordance with the Data User's ordinary schedule for the destruction of such backup system storage. Following termination of this Agreement, in respect of any Data not immediately returned or Destroyed the Data User shall have the obligation to handle such Data in accordance with the terms and conditions of this Agreement.

## 11. **Survival**

- 11.1 Except as otherwise provided herein, those sections of this Agreement which, by the nature of the rights or obligations set out therein, might reasonably be expected to survive any termination or expiry of this Agreement (including Sections 1, 2.2, 2.3, 3.1, 3.2, 3.3, 3.4, 3.5, 4, 5, 6, 7, 8, 9.3, 10, 11, 12, 15, 17 and 20) shall survive any termination or expiry of this Agreement.

## 12. **Independent Contractors**

- 12.1 In giving effect to this Agreement, no Party shall be or be deemed to be a partner, agent or employee of the other for any purpose. The relationship of one Party to the other Party shall be that of independent contractors and nothing in this Agreement shall constitute a partnership or a joint venture between the Parties. Nothing in this Agreement constitutes authority for Data User to make commitments that bind the IESO or otherwise act on behalf of the IESO.

## 13. **Notice**

- 13.1 All notices, requests, demands or other communications (collectively, "Notices") to be given by a Party under this Agreement shall be given in writing by regular mail, courier service, personal delivery or by email to the address for each Party provided in Schedule 2 or such other address as may be provided in writing by a Party to the other Party from time to time. Notices will be deemed to have been given in the case of delivery by: (a) postal service, five Business Days after such notice is sent; (b) courier service, one Business Day after such notice is sent; or (c) email (or other electronic mail service) or personal delivery, on that Business Day if delivered or transmitted before 4:30 p.m. on a Business Day and otherwise at the opening of business on the following Business Day.

**14. Assignment; Change of Control**

- 14.1 The Data User may not assign its rights or obligations under this Agreement without the prior written consent of the IESO. Any assignment without such consent will be void and of no force. The Data User shall provide the IESO with no less than 15 days' prior written notice of a Change of Control.

**15. Further Assurances**

- 15.1 The Data User agrees that it shall do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and shall cause the doing of all such acts and the execution of all such further documents as are within its power to cause the doing or execution of, as the IESO may from time to time reasonably request in writing and as may be necessary or desirable to give effect to this Agreement.

**16. Number and Gender**

- 16.1 In this Agreement, unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

**17. Entire Agreement**

- 17.1 This Agreement, and any agreements and other documents to be delivered pursuant to it or referenced herein, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, oral or written, between the Parties. The execution of this Agreement has not been induced by, nor do any of the Parties rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgements not expressly made in this Agreement or in the agreements and other documents to be delivered pursuant hereto.

**18. Severability**

- 18.1 Should any provision of this Agreement be found to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and the remainder of this Agreement shall remain in full force and effect.

**19. Amendments**

- 19.1 This Agreement may be amended, modified or supplemented, including to add additional Use Cases to Schedule 3 of this Agreement, only by written agreement signed by both of the Parties.

**20. Governing Law**

- 20.1 This Agreement shall be interpreted, construed, and governed by and in accordance with the laws of the Province of Ontario and the federal laws of Canada, applicable therein and shall be treated, in all respects, as an Ontario contract. The Parties agree to submit to the exclusive jurisdiction of the courts of Ontario.

**21. Headings**

- 21.1 The division of this Agreement into separate sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**22. [Intentionally not included]**

**23. Counterparts and Validity of Electronic Signatures.**

- 23.1 This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which taken together will be deemed to constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement by such Party. Each Party agrees that any electronic signatures, whether digital or encrypted, of either of the Parties affixed to this Agreement are intended to authenticate this record and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by

a Party with the intent to authenticate such record, including documents executed, scanned and transmitted electronically.

24. **Schedules**

24.1 The following schedules are attached to and incorporated into this Agreement by reference and deemed to be part hereof:

Schedule 1 – Definitions

Schedule 2 – Notice and General Terms

Schedule 3 - Use Cases

24.2 In the event of any conflict between the body of this Agreement and Schedule 3, Schedule 3 shall govern, and between the Agreement and the other schedules, the body of the Agreement shall govern.

**IN WITNESS WHEREOF** the Parties have duly executed this Agreement as of the date first above written.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

per:

\_\_\_\_\_

Name: **Sorana Ionescu**  
Title: **Director, Smart Metering Entity**

I have authority to bind the IESO

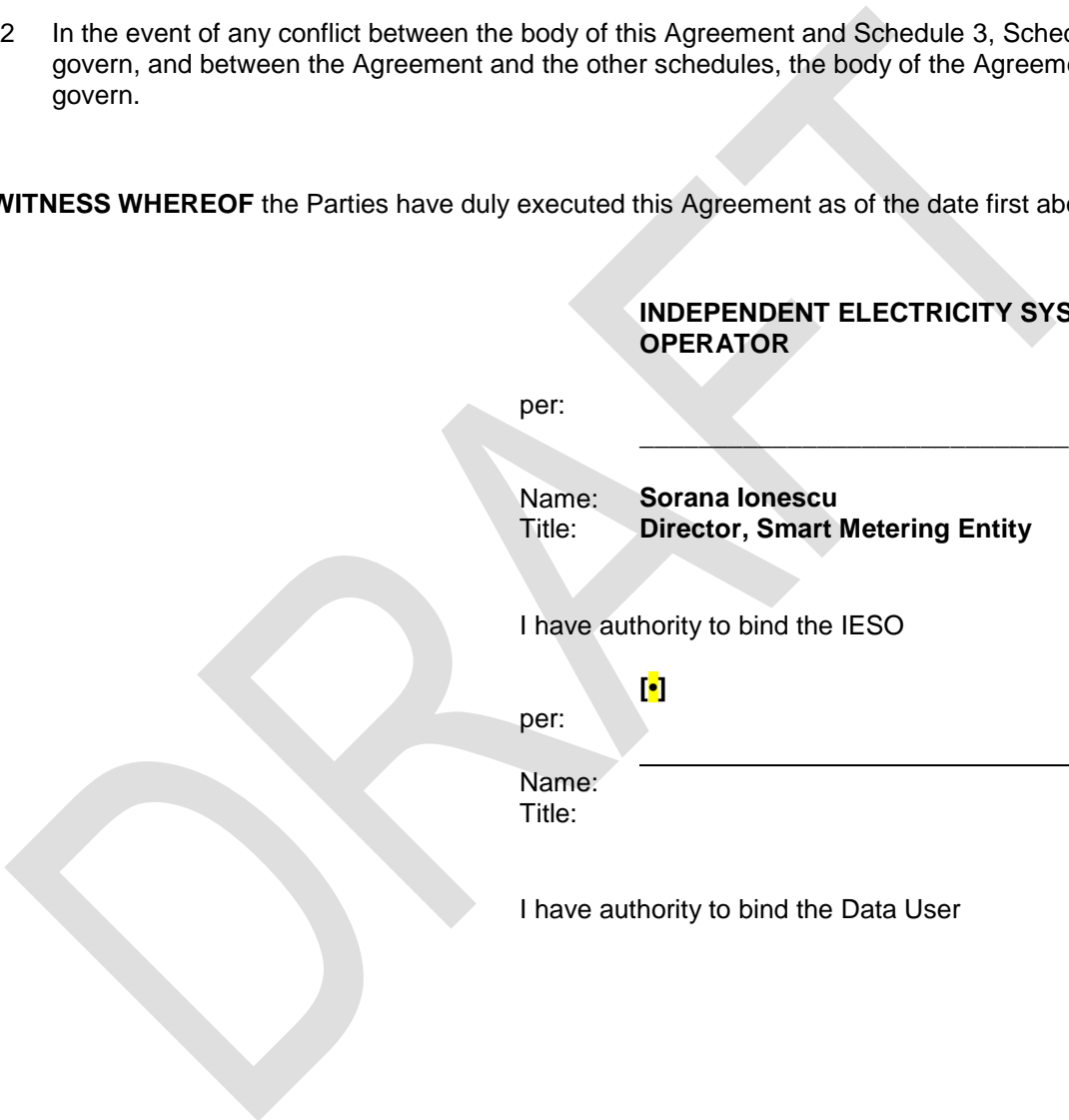


per:

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Name:  
Title:

I have authority to bind the Data User



## Schedule 1 to the Data Use Agreement dated [ ] between the Independent Electricity System Operator and [ ]

### Definitions

**“Agreement”** means this agreement including the recitals and schedules to this agreement, as may be amended through a written amendment executed by both Parties.

**“Applicable Law”** means any law, rule, statute, regulation, by-law, order, or judicial, arbitral, administrative, ministerial or departmental judgment, award, decree, treaty, directive, or other requirement or guideline, in each case, published or in force at any time during the term of the Agreement that governs or regulates the IESO or the Data User, including without restriction FIPPA and IPC Guidance.

**“Business Day”** means any day except Saturday, Sunday or any holiday observed by the IESO.

**“Change of Control”** means, with respect to the Data User, that control of the Data User is acquired by a third party. “Control” means, with regard to the Data User, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the Data User, whether through the ownership of securities, by contract, or otherwise.

**“Confidential Information”** means any non-public information, data, know-how and trade secrets in any form that are designated as “confidential” or that a reasonable person knows or reasonably should understand to be confidential. Confidential Information includes all data, information, material, or any item in any form, relating to,

- the Data;
- the business or management of the IESO, its affiliates or its licensors;
- the customers of the IESO;
- software; and
- the negotiated terms of this Agreement;

but excludes the Derivative Works once publicly released, the fact that the Parties have entered into this Agreement, the Agreement itself and any information or data (other than the Data) that,

- is provided to the IESO by the Data User, including the notice information included in Schedule 2 and the Use Case information included in Schedule 3;
- is or becomes publicly available through no fault of the Data User;
- is already in the rightful possession of the other Data User prior to its receipt from the IESO;
- is independently developed by the other Data User without access to or use of the Confidential Information of the IESO; or
- is rightfully obtained by the Data User from a third party without breach of any confidentiality restrictions.

**“Data”** means those elements of the De-identified Data described in Schedule 3 and any other data or information directly or indirectly provided by the IESO to the Data User for the purpose of the Use Case.

**“Data Incident”** means any theft or loss of, unauthorized access to, or unauthorized collection, use, disclosure, alteration, copying, distribution or disposal of the Data, or any other event or occurrence or effect in respect of the Data which has or may have the potential to have an unfavourable or negative impact on the Data or any person, business, organization, including any residential and general service <50kW customer premise, including without restriction any actual or attempted linking of Data to an individual, including actual or attempted re-identification or attempted re-identification of an individual, or unauthorized use or disclosure of the Data.

**“De-identified Data”** means customer electricity usage data generated by a smart meter and one or more of the following associated with that smart meter: customer postal code, distributor rate class, or

commodity rate class, that has been modified where necessary (as determined by the IESO) before it is collected in the MDM/R to render it non-personal information. Non-personal information is information from which there has been removed any information that (i) identifies an individual, or (ii) for which there is a reasonable expectation that the information could be used, either alone or with other information, to identify an individual.

**“Derivative Works”** means any newly created intellectual property and those insights or know-how acquired by the Data User from the Use Case but does not include the Data nor any copies or manipulations of the Data.

**“Destroy”** means, with respect to any Data, to take all necessary steps to:

- physically eliminate all print and other hard copies of it; and
- permanently erase, scrub, or otherwise obliterate all electronic, digital or other versions of it, including from every item of equipment and all media (including without restriction disks, tapes, computers, servers, removable media and related peripheral equipment such as disk arrays, tapes or disk backup units).

**“Effective Date”** has the meaning given to that term in Schedule 2.

**“FIPPA”** means the *Freedom of Information and Protection Privacy Act* (Ontario), as may be amended from time to time.

**“Incident Response Protocol”** means a protocol and process setting out the Data User’s internal procedures for responding to a Data Incident providing for: identification and containment, notification and reporting, and investigation and remediation, all in compliance with IPC Guidance and industry standards.

**“IPC Guidance”** means guidance issued by the Information and Privacy Commissioner of Ontario with respect to personal information and De-identified Data, including without limitation the Information and Privacy Commissioner’s publications entitled *“De-identification Protocols: Essential for Protecting Privacy”* (June 2014), and *“De-identification Guidelines for Structured Data”* (June 2016), as may be amended or supplemented.

**“Party”** means the IESO or the Data User and **“Parties”** means both of them.

**“Process”**, **“Processing”** and **“Processed”** means any use of or operation or set of operations which is performed upon or in connection with the Data and associated data or information, by any means including without limitation, collection, recording, analysis, consultation, organization, maintenance, storage, adaptation, modeling, retrieval, disclosure or otherwise making available, combination, matching, erasure or destruction.

**“Term”** has the meaning given to that term in Schedule 2.

**“Use Case”** means the one or more use case(s) described in Schedule 3.

**Schedule 2 – Notice and General Terms**

**Contact Information and Use Case**

<b><u>DATA USER /REQUESTING ORGANIZATION</u></b>			
<b>Name:</b>			
<b>Address:</b>		<b>City:</b>	
<b>Province:</b>		<b>Postal Code:</b>	
<b>Use Case Contact</b>			
<b>Name:</b>			
<b>Title:</b>			
<b>Email:</b>			
<b>Phone:</b>			
<b>Notice Contact</b>			
<b>Name:</b>			
<b>Title:</b>			
<b>Email:</b>			
<b>Phone:</b>			
<b><u>INDEPENDENT ELECTRICITY SYSTEM OPERATOR</u></b>			
<b>Address:</b>		<b>City:</b>	Toronto
<b>Province:</b>		<b>Postal Code:</b>	
<b><u>Smart Metering Entity Contact</u></b>			
<b>Name:</b>			
<b>Title:</b>			
<b>Email:</b>			
<b>Phone:</b>			
<b>With a copy to:</b>			
<b>Attention:</b>			
<b>Email:</b>	SmartMeterData@ieso.ca		
<b>Phone:</b>			
<b>Notice Contact</b>			
<b>Name:</b>			
<b>Title:</b>			
<b>Email:</b>			
<b>Phone:</b>			
<b>With a copy to:</b>			
<b>Attention:</b>	General Counsel		
<b>Email:</b>	general.counsel@ieso.ca		
<b>Phone:</b>	905-855-4150		
<b><u>GENERAL TERMS</u></b>			
This Agreement becomes effective as of the date the Data is delivered, in whole or in part, by the IESO to the Data User (the “Effective Date”).			
<b>Term</b>			
The term of this Agreement commences on the Effective Date and expires with the Period of Use applicable to the last Use Case validly in effect under Schedule 3, unless earlier terminated pursuant to Section 9 of this Agreement (the “Term”).			



**Renewal**

*[The Term of this Agreement may be extended upon signed written agreement of the parties for a period of 1-3 years.]*

DRAFT

Schedule 3 – Use Case(s)

<b>USE CASE 1</b>
<b>Description</b>
<i>[add description of the use case and identify the permitted analysis and planning activities with detail adequate to ensure that the permitted uses of Data are clear]</i>
<b>Data Description</b>
<i>[add description of the De-identified Data that is to be made accessible to the Data User]</i>
<b>Permitted Third Parties</b>
<i>[add description of any persons who may be permitted access to the data per Section 3.1.4]</i>
<b>Data Processing and Use Outside of Canada</b>
<i>[an internal assessment on information security in the country must be performed before the IESO can agree to processing Data outside of Canada pursuant to Section 3.1.15 and may be subject to additional terms and conditions, as applicable; remove if not applicable]</i>
<b>Linking of Data</b>
<i>[pursuant to section 3.1.2, identify any proposed Linking of the Data to other data, including the origins and nature of the other data and the purpose for the Linking; a data or privacy risk analysis may be undertaken before the IESO agrees to permit the Data User to Link the Data to other data, and such Linkage may be subject to additional terms and conditions, as applicable; remove if not applicable]</i>
<b>Period of Use</b>
The Data User can use the Data provided under Use Case 1 for a period of up to [1-3 years] from the effective date (the “Period of Use – Use Case 1”).