



DESIGN DECISION-MAKER AGREEMENT (Version 5.0)

The Participant has applied for, among other things, the Design Decision-Maker Incentive pursuant to the Application submitted to PowerStream Inc. (the “LDC”) under the High Performance New Construction program. This Agreement is entered into between the Design Decision-Maker and the LDC.

1. **DEFINED TERMS:** All capitalized terms not herein defined will have the meanings given in Schedule 1.
2. **DESIGN DECISION-MAKER INCENTIVE:** The LDC will pay to the Design Decision-Maker a Design Decision-Maker Incentive in connection with the Custom Project(s) described in the Application and approved by the LDC, subject to certain terms and conditions.
3. **AMOUNT OF DESIGN DECISION-MAKER INCENTIVE:** The Design Decision-Maker acknowledges that the total amount of the Design Decision-Maker Incentive is based upon estimated demand savings or electricity savings based on the Application and will be the maximum amount payable hereunder. The estimated amount of such incentive for each Custom Project is identified in the project appendix to the approved Application for that project and will be the maximum amount payable in respect of each such project. Upon the completion of each such project, the LDC will recalculate the amount of such incentive based upon the best available information at such time. The total amount of the Design Decision-Maker Incentive determined by the LDC will be paid by the LDC as a lump sum payment within 90 days of the completion of the last of the Custom Project(s) and of the last of the new construction/major renovation final evaluation and incentive reports being finalized. The Design Decision-Maker acknowledges and agrees that it is in the LDC’s discretion to determine which projects require the completion and approval of a new construction/major renovation final evaluation and incentive report.
4. **REPRESENTATIONS AND WARRANTIES:** The Design Decision-Maker represents, warrants and agrees that (a) all information in this Agreement is true and complete; and (b) all of the Design Decision-Maker Eligibility Criteria have been satisfied.
5. **CONSENT TO USE INFORMATION AND INDEMNITY:** The Design Decision-Maker understands and agrees that by entering into this Agreement: (a) it hereby consents to the collection, use, disclosure and other handling of any information it provides to the Program Operators, including personal information (if applicable) and records showing past and current energy usage(collectively, the “**Information**”) by the Program Operators for purposes relating to the operation, administration or assessment of the Initiative or this Agreement, and in connection with any reporting activities relating to the Initiative, which will include: (i) sharing of Information among the Program Operators; (ii) use by the Program Operators of the Information provided by the Design Decision-Maker to conduct, analyze and report on the results of surveys and modify the Initiative based on such surveys; and (iii) disclosure to the Ontario Energy Board, the Ontario Ministry of Energy or the Ontario Environmental Commissioner or their respective successors; and (b) it will indemnify and save harmless each of the Program Operators and their respective directors, officers and employees from any and all liability and all claims, losses, damages (including indirect or consequential damages), expenses and proceedings for personal injury (including death) or property damage of any person relating to, in connection with, resulting from, or arising out of the Initiative, including by reason of the actual or alleged implementation of any Custom Project(s) and its operation or any other matter contemplated by this Agreement. The Design Decision-Maker understands and agrees that the IESO may contact the Design Decision-Maker directly including by email and other electronic communication for purposes of follow-up surveys, studies and audits, future conservation programs, customer satisfaction surveys and other related purposes. The Design Decision-Maker may withdraw its consent at any time by contacting the LDC at savonenergybusiness@powerstream.ca or IESO at saveonenergy@ieso.ca.

6. PRIVACY. The Program Operators are committed to protecting the personal information in its custody or control in accordance with applicable privacy laws. The Design Decision-Maker may access the PowerStream Inc. privacy policy at http://www.powerstream.ca/ContentMgr/images/PowerStream_Privacy.pdf, the Collus PowerStream Corp. privacy policy at <http://www.colluspowerstream.ca/privacy>, and the IESO's privacy policy at www.ieso.ca/Pages/Privacy-Policy.aspx.
7. EVALUATION, MEASUREMENT AND VERIFICATION AUDIT: The Design Decision-Maker will participate in any surveys, studies, audits, evaluations or verifications conducted by the LDC or the IESO or their respective agents and other service providers (collectively, the “**Program Operators**”) in connection with the Initiative, including for the purpose of proper administration, monitoring and verification of this Agreement or evaluation of the Initiative, and will provide to the Program Operators reasonable access to the Design Decision-Maker’s records relating to the project for such purposes. Notwithstanding the foregoing, the Design Decision-Maker may market, report and publish environmental benefits and savings results associated with participation in the Program.
8. NO WARRANTY: Except as specifically set forth or referenced in this Agreement, there are no representations, warranties, or conditions of either party to this Agreement, express, implied, statutory or otherwise, regarding any matter, including any implied warranties or conditions of quality, workmanship, safety, legal compliance or fitness for a particular purpose. Without limiting the generality of the foregoing, the Design Decision-Maker acknowledges that its participation in the Initiative is based upon its own assessment of the Initiative and not on any reliance on anticipated or projected results, and that such participation may not result in the achievement of any electricity savings, which is expressly disclaimed by the Design Decision-Maker.
9. SUBCONTRACTING BY THE LDC: The LDC may subcontract any of its responsibilities under this Agreement to an affiliate or a third party.
10. MISCELLANEOUS: Except as otherwise provided, this Agreement constitutes the entire agreement between the parties hereto in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement. This Agreement may not be varied, amended or supplemented except by an agreement in writing executed by both of the parties hereto. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. This Agreement will ensure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. This Agreement will not be assigned by the Design Decision-Maker to another person other than an affiliate except with the prior written consent of the LDC, which consent may not be unreasonably withheld or delayed. Each of the parties hereto will, from time to time, on written request of the other party, do all such further acts and execute and deliver or cause to be done, executed and delivered all such further things as may be reasonably required in order to fully perform and to more effectively implement the terms of this Agreement. The invalidity, unenforceability or illegality of any provision in this Agreement will not, to the extent permitted by applicable law, affect the validity, enforceability or legality of any other provision of this Agreement, which will remain in full force and effect. The insertion of headings is for convenience of reference only and will not affect the interpretation of this Agreement. Any reference in this Agreement to the terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Section or other part of this Agreement. Unless otherwise indicated, any reference in this Agreement to a Section or Schedule refers to the specified section of or schedule to this Agreement. The word “including” means “including without limitation”, and the words “include” and “includes” have a corresponding meaning.



11. **TERM AND TERMINATION:** This Agreement will terminate 90 days following the payment of the Design Decision-Maker Incentive by the LDC or as otherwise determined by the LDC in its reasonable discretion. The provisions of Sections 4, 6, 7, and 12 will survive the termination of this Agreement.
12. **THIRD PARTY BENEFICIARIES:** Except as provided in Sections 6, 7 and 12, this Agreement is solely for the benefit of:
- (a) the LDC, and its successors and assigns, with respect to the obligations of the Design Decision-Maker under this Agreement, and
 - (b) the Design Decision-Maker, and its successors and permitted assigns, with respect to the obligations of the LDC under this Agreement;
- and this Agreement will not be deemed to confer upon or give to any other person any claim or other right or remedy. The Design Decision-Maker appoints the LDC as the trustee for the IESO of the applicable provisions set out in this Agreement and the LDC accepts such appointment.
13. **FACSIMILE/ELECTRONIC SIGNATURES:** This Agreement may be executed and delivered by facsimile transmission or by any other method of electronic execution and the parties hereto may rely upon all such signatures as though such signatures were original signatures.

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

DESIGN DECISION-MAKER/LEGAL COMPANY NAME	AUTHORIZED SIGNATURE	DATE (DD/MM/YYYY)
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*Title (Mr., Mrs., Miss. etc.) ____ *First Name: _____ *Last Name _____

*Phone Number: _____ Alternative Phone Number: _____

Fax Number: _____

*Address Line 1: _____

Address Line 2 (optional): _____

*Street Type: _____ Street Direction: _____

*City: _____ *Province: _____ *Postal Code: _____

Company Name: _____

Company Website: _____



Contact information

PowerStream Inc.

Mailing Address: 161 Cityview Blvd.

Vaughan, ON L4H 0A9

Toll Free: 1-855-215-7235

Email: saveonenergybusiness@powerstream.ca

Website: www.powerstream.ca/forbusiness

Independent Electricity System Operator

Mailing Address: 120 Adelaide Street West, Suite 1600

Toronto, ON M5H 1T1

Toll Free: 1- 877-797-9473

Email: saveonenergy@ieso.ca

Website: www.ieso.ca

SCHEDULE 1

DEFINITIONS

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

"Above Base Case Energy Savings" means the aggregate natural gas and electricity savings (expressed as a percentage) for Custom Projects as calculated by the Custom Worksheet (calculated as the aggregate natural gas and electricity consumption in the Base Case, minus natural gas and electricity consumption in the Energy Efficiency case, divided by the natural gas and electricity consumption in the Base Case and rounded down to the nearest 0.5%).

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

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

"Base Case" means the baseline assumption that the new construction or major renovation subject to the Application would be completed without a Participant Incentive and would meet minimum requirements of the applicable building code.

"Custom Measure" means a Measure not comprising a Prescriptive Measure or Engineered Measure and that involves one or more of the following:

- (a) replacement of existing equipment with equipment that is more efficient;
- (b) purchase and installation of new energy efficient equipment for lighting, space heating, water heating, and/or space cooling;
- (c) replacement of oversized existing equipment with more appropriate sized equipment; or
- (d) improvement of thermal performance of a building envelope through increased insulation, installation of new energy efficient windows and frame, low emissive window glazing or low emissive roof barriers.

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

"Demand Savings" means the estimated, determined or actual kilowatt reduction in electricity demand (as the context may require), attributable to the installation of a Custom Measure.

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

- (a) is an architect or professional engineer (as an individual or any other Person), and be licensed to practice in the Province of Ontario;
- (b) is not an employee of the Participant;
- (c) is designated as the "Design Decision-Maker" by the Participant in the Application; and
- (d) endorses all project plans



“Design Decision-Maker Incentive” means the incentive payable by the LDC directly to the Design Decision-Maker in connection with the Custom Project(s) calculated as:

- (a) \$50 per kW of Demand Savings or \$0.00625 per kWh of Energy Savings, where the Above Base Case Energy Savings are less than or equal to 25%;
- (b) \$100 per kW of Demand Savings or \$0.0125 per kWh of Energy Savings, where the Above Base case Energy Savings are greater than 25% and less than or equal to 50%; or
- (c) \$150 per kW of Demand Savings or \$0.1875 per kWh of Energy Savings, where the Above Base Case Energy Savings are greater than 50%.

“Energy Savings” means the estimated, determined or actual kilowatt hour reduction in energy consumption (as the case may require), attributable to the installation of a Custom Measure during the first year after completion of the Project.

“Engineered Measure” means Measures listed on an Engineered Worksheet.

“Engineered Worksheet” means the worksheets describing Engineered Measures in the form made available by the IESO, as updated from time to time.

“IESO” means the Independent Electricity System Operator or its successor.

“Information” has the meaning given to it in Section 5.

“Initiative” means the High Performance New Construction (HPNC) program.

“LDC” means the LDC named in the Application.

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

“Prescriptive Measure” means Measures listed on a Prescriptive Worksheet.

“Prescriptive Worksheet” means the worksheets describing Prescriptive Measures in the form made available by the IESO, as updated from time to time.

“Program” means High Performance New Construction Program.