

**MASTER SERVICE AGREEMENT**

**by and between**

**The Corporation of the Town of Oakville**

**and**

**Oakville Hydro Corporation**

## MASTER SERVICE AGREEMENT

Master Service Agreement ("Agreement") made as of this 1st day of May 2014, by and between The Corporation of the Town of Oakville of Oakville ("Town of Oakville") and Oakville Hydro Corporation ("Hydro").

WHEREAS, Hydro and the Town of Oakville from time to time requires certain services; and

WHEREAS, Town of Oakville or Hydro (or one of its subsidiaries) have the expertise to provide the services which the other requires.

NOW, THEREFORE, In consideration of the mutual agreements herein contained Town of Oakville and Hydro hereby agree as follows:

### 1. Services

1.1 Scope of Services. Town of Oakville shall provide Hydro or its subsidiary with services or Hydro or its subsidiary shall provide the Town of Oakville with services ("Services") as described in one or more Task Specifications, in substantially the form attached hereto as Exhibit "A", with appropriate insertions, to be issued by the party requiring the services (the "Requiring Party") and accepted by the other party (the "Providing Party"), which incorporate this Agreement by reference ("Task Specifications"). No Services shall be provided by virtue of this Agreement alone but shall be provided in accordance with Task Specifications. As appropriate, Task Specifications will describe the work to be done, results to be achieved, the cost, the start date and the criteria for completion.

1.2 Assignment Commitment. The assignment of the Providing Party under a Task Specification may be terminated as follows:

- (a) by the Requiring Party, on 15 business days' written notice without cause;
- (b) by the Requiring Party, on 1 business days' written notice, if the Requiring Party determines that the work being performed is not satisfactory; or
- (c) by mutual agreement of Town of Oakville and Hydro at any time.

1.3 Working Arrangement. Town of Oakville shall, without charge, have access to Hydro's resources, including, but not be limited to:

- (a) computer resources and software tools;
- (b) physical resources such as desks, local telephones, storage space, office supplies and food facilities;
- (c) ancillary support resources such as typing or word processing, duplicating and data entry.

Town of Oakville shall comply with any of Hydro's rules and regulations, made known to Town of Oakville. Upon termination of this Agreement, Town of Oakville shall promptly return all property belonging to the Hydro, specifically but not limited to, entry passes, pagers, and computer equipment.

1.4 Subsidiaries. Hydro is entering into this Agreement on behalf of its subsidiaries from time to time. Where a Hydro subsidiary enters into a Task Specification with the Town of Oakville, either as a Providing Party or a Requiring Party, the terms of this Agreement shall apply to the subsidiary as if it was a party hereto.

1.5 Subcontractors. The Providing Party may delegate any work to be performed under this Agreement to a subcontractor with the prior written consent of the Requiring Party. Any subcontractor to whom work is delegated shall be bound by the terms of this Agreement, and the Providing Party shall remain responsible and liable for the acts of any subcontractor notwithstanding that the Requiring Party has consented to the delegation of the work. The Requiring Party's rights with respect to removal of the Providing Party's employees shall also apply to subcontractors.

The Providing Party is responsible for paying the subcontractor and filing appropriate information returns, as required by provincial and federal laws and regulations.

## 2. Fees and Expenses.

2.1 Service Fee. The Requiring Party shall pay the Providing Party for Services provided under a Task Specification in accordance with any one or all of the following:

- (a) at an individual rate per hour worked per individual furnished by the Providing Party;
- (b) at an individual rate per task performed; or
- (c) at any other rate agreed to by Hydro and Town of Oakville, set forth in such Task Specification.

"Hours worked" shall mean actual hours spent engaged in providing the Services contemplated by a Task Specification at the Requiring Party's offices or elsewhere, as agreed to by the Requiring Party in writing, or actual hours spent engaged in providing support services necessary for the successful performance of the Services contemplated under a Task Specification.

2.2 Project Changes. If there is a change in the Task Specification, or any Services contained therein, due to changes in the Requiring Party's requirements which requires time or expense charges by the Providing Party in excess of what was contemplated in connection with the preparation of the Services and price quotations in the Task Specification, the Providing Party shall notify the Requiring Party in writing of the fee for such change and provide justification for such fee. If the Requiring Party authorizes in writing such change and fee, there shall be added to the amount listed for such Task Specification the amount of the fee for such change. The cost of any change to the Task Specification, or any of the Services contained

therein, due to the Providing Party's error shall be borne by the Providing Party. No adjustment shall be made for any change which entails no additional cost.

2.3 Travel and Other Expenses. The Requiring Party shall reimburse the Providing Party for all reasonable travel and other expenses (over and above normal daily expenses of working and commuting) in connection with Services furnished under a Task Specification. All such travel and other expenses must be authorized by the Requiring Party prior to being incurred.

2.4 Additional Charges. The Requiring Party shall also pay as additional charges under this Agreement amounts equal to any taxes, however designated, levied, or based on this Agreement, or on Services provided hereunder, including:

- (a) sales; and
- (b) use or service taxes including Harmonized Sales Tax, if applicable; or amounts in lieu thereof paid or payable by the Providing Party in respect of the foregoing excluding any taxes based upon the Providing Party's net or gross income.

In the event that any tax levied hereunder is later held to be invalid, the Providing Party shall refund to the Requiring Party any amount paid by the Requiring Party of the tax held to be invalid.

2.5 Invoices. The Providing Party shall submit invoices in accordance with the milestone payment schedules set forth in the Task Specification for the Services furnished and shall submit monthly invoices to the Requiring Party for travel and other expenses incurred under a Task Specification during the preceding monthly period. The invoices will indicate distribution of charges by labor category, rate, hours worked, fee for the period and applicable expenses, if any. Invoices must be substantiated by receipts for expenses amounting to more than \$25.00 to the extent that receipts for such expenses are normally issued. The Requiring Party shall make payment to the Providing Party within thirty (30) days after receipt of the applicable invoice. All invoices sent to Hydro are to be directed to: Rob Lister, President and Chief Executive Officer, Oakville Hydro Corporation, P.O. Box 1900, 861 Redwood Square Oakville ON, L6J 5E3. All invoices sent to the Town of Oakville are to be directed to: Gord Lalonde, Commissioner and Treasurer, The Corporation of the Town of Oakville, 1225 Trafalgar Road, Oakville, ON, L6H 0H3.

2.6 Non-employee. Representatives of the Providing Party will furnish services to Requiring Party on behalf of the Providing Party and any representative of the Providing Party shall not be deemed to be at any time during this Agreement an employee of the Requiring Party. The Providing Party shall be responsible for all of the taxes related to any payments to such representatives under this Agreement. The Providing Party will be responsible for providing all employment related and professional insurance required by its representatives in the context of providing the Services.

The Providing Party shall indemnify, defend and hold harmless the Requiring Party from and against all claims and actions and all expenses incidental to such claims or actions (including reasonable lawyers' fees) based upon or arising out of any employment related claims by the Providing Party's employees or the Providing Party's subcontractors, or employees of the

Providing Party's subcontractors, including without limitation, for any medical coverage, life insurance, or other benefits from the Requiring Party which may be afforded to the Requiring Party's employees.

2.7 MFIPPA. Both the Town of Oakville and Hydro acknowledge that the other is an institution (as defined by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as the same may be amended from time to time ("MFIPPA")) and that documents in their possession are subject to MFIPPA. The Requiring Party asserts, and the Providing Party agrees, that any customer data provided by the Requiring Party to the Providing Party constitute information provided in confidence as described in MFIPPA. The Providing Party agrees not to disclose any such customer data except as may be required by MFIPPA.

3. Title and Possession. All materials, including but not limited to, financial data, software programs, source code and object code, specifications, formulae, processes, methods, know how, algorithms, data, documents, abstracts and summaries thereof, training aids and printed materials, ("Products") developed in connection with a Task Specification by the Providing Party, or jointly by the Requiring Party and the Providing Party, or by Providing Party pursuant to specifications or instructions provided by the Requiring Party, shall belong exclusively to the Requiring Party.

The Providing Party acknowledges that the Products shall be considered "work for hire" and the exclusive property of the Requiring Party. To the extent the Products are not deemed a "work for hire" under applicable law, the Providing Party hereby irrevocably assigns and transfers to the Requiring Party all right, title and interest in the Products, including but not limited to patent and copyright interests, and shall execute all documents reasonably requested by the Requiring Party for the purpose of applying for and obtaining domestic and foreign patent and copyright registrations.

4. Term. This Agreement shall be effective when signed by both parties and thereafter shall remain in effect until terminated by either party by providing ninety (90) days' prior written notice of such termination. Each Task Specification shall be effective when signed by both parties, and thereafter shall remain in effect until terminated (i) as provided in the applicable Task Specification, or (ii) by either party by providing sixty (60) days' prior written notice of such termination. Termination of a Task Specification shall in no way relieve either party of its duties or obligations incurred pursuant to such Task Specification prior to termination thereof. The provisions of Paragraph 2.6, 3, 5, 6, and 8 shall survive any termination of this Agreement or the Task Specification.

5. Warranties.

5.1 Performance The Providing Party warrants that (i) the Services provided hereunder will be performed by qualified personnel in a good and workmanlike manner in the estimated and projected time specified (except for delays beyond the Providing Party's control or delays caused by the Requiring Party); (ii) where the Service involves one or more Products, the Products will conform to the specifications stated in the Task Specifications; and (iii) where the Service involves one or more Products, neither the Product nor any update or revision thereof will include any virus or mechanism that is designed to delete, disable, interfere with or otherwise harm the Product (or the Requiring Party's hardware, data or other programs), make it

inaccessible to the Requiring Party once the Product has been installed, or that is intended to provide access to or produce modifications not authorized by the Requiring Party.

THE WARRANTIES STATED HEREIN SHALL BE IN LIEU OF ANY AND ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL TOWN OF OAKVILLE OR HYDRO BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

6. Patent, Copyright and Trade Secret Indemnification. The Providing Party shall defend at its sole cost and expense or, at its option, settle, any claim or proceeding brought against the Requiring Party to the extent that it is based on an assertion that any Products constitute direct infringement of any Canadian or United States patent or copyright or misappropriation of a trade secret, and shall indemnify and hold the Requiring Party harmless from and against all costs, damages and expenses, including reasonable lawyer's fees, asserted against the Requiring Party which result from any such claim, provided that the Requiring Party notifies the Providing Party promptly in writing of any such claim or proceeding. Should any Products or any part thereof become, or in the Providing Party opinion be likely to become, the subject of a claim of infringement or the like under the patent or copyright or trade secret laws of Canada or the United States, the Providing Party shall have the right, at the Providing Party's option and expense, either to procure for the Requiring Party the right to continue using the Products, or to replace or modify the Products so that the Products becomes noninfringing. If unable to do either of the foregoing, the Providing Party shall refund the entire fees paid to the Providing Party by the Requiring Party for the infringing Product.

7. Notices. Any notice or other communication given or permitted hereunder shall be in writing and mailed by registered or certified mail as follows:

If to Town of Oakville, to:

The Corporation of the Town of Oakville  
P.O. Box 310, 1225 Trafalgar Road  
Oakville, ON  
L6J 5A6

Attention: Gord Lalonde, Commissioner and Treasurer

If to Hydro, to:

Oakville Hydro Corporation  
861 Redwood Square  
Oakville, ON  
L6J 5E3

Attention: Rob Lister, President and Chief Executive Officer

or, to such other address as either party shall have theretofore designated by notice in writing. Such notice shall be deemed to have been given on the date such notice is deposited in the mail, duly addressed, and with postage prepaid by the other party.

8. Indemnification. The Providing Party shall indemnify, defend, and hold harmless the Requiring Party from and against all claims and actions and all expenses incidental to such claims or actions (including reasonable lawyer's fees), based upon or arising out of damage to property or injuries to persons or other tortuous acts caused or contributed to by the Providing Party or anyone acting under its direction or control or on its behalf in the course of its performance under this Agreement, provided the Providing Party's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the sole negligence of the Requiring Party.

9. No Waiver. Any failure by either party hereto to enforce at any time any term or condition under this Agreement shall not be considered a waiver of that party's right thereafter to enforce each and every term and condition of this Agreement.

10. Entire Agreement. This Agreement and the Task Specifications constitute the entire Agreement between Town of Oakville and Hydro with respect to the matters listed in any Task Specification; and it shall not be amended, altered, or changed except by a written agreement signed by the parties hereto. This agreement replaces the master services agreement made as of February 1, 2011 between the parties. Notwithstanding the foregoing, there are a number of relationships between the Town of Oakville and Hydro which do not form part of this Agreement, including, without limitation, the agreements and relationships listed in Schedule

11. Titles. The titles to the paragraphs of this Agreement are solely for the convenience of the parties, and are not an aid in the interpretation of this Agreement.

12. Governing Law. This Agreement is deemed to be made under and shall be construed according to the laws of the province of Ontario and the laws of Canada applicable therein.

13. Force Majeure. Neither party shall be liable for any delays or failures in performance due to circumstances beyond its control.

14. Assignment. Neither this Agreement nor any rights and duties hereunder may be assigned or transferred, by operation of law or otherwise, or delegated by Hydro or Town of Oakville without the prior written consent of the other party.

15. Final Acceptance Procedure. Unless otherwise set forth within a Task Specification, upon completion of all of the deliverables, the Providing Party shall advise the Requiring Party in writing that it requests final acceptance of its deliverables.

The Requiring Party shall respond within thirty (30) days of its receipt of the request either (i) finally accepting all deliverables, or (ii) detailing those deliverables it considers to be incomplete or not performing in accordance with the material specifications with a description of the deficiency.

If a deficiency is claimed, the Providing Party shall respond to the Requiring Party within fourteen (14) days of receipt of the Requiring Party's response with a plan to cure the deficiency. The plan shall include the period required to cure the deficiency, provided, however, that the cure period may not exceed 90 days. If such deficiency is not cured to the Requiring Party's satisfaction, the Requiring Party shall have the option to extend the cure period or terminate the Task Specification. If the Requiring Party chooses to terminate, it shall either (i) retain all other deliverables and receive a full refund of all fees paid for the unaccepted deliverable, or (ii) return all deliverables and receive a full refund of all fees paid under the Task Specification.



To the extent that deliverables that have been returned to the Providing Party contain any Confidential Information of the Requiring Party, the Providing Party shall destroy all notes, memoranda, programs or other materials, wherever located, which the Providing Party made or possesses relating in any way to any of the foregoing.

IN WITNESS WHEREOF, the undersigned, by their Authorized Representatives, have executed this Agreement as of the day and year first set forth above.

Oakville Hydro Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The Corporation of the Town of Oakville

By: \_\_\_\_\_

Ray Green, CAO

By: \_\_\_\_\_

Vicki Tytaneck, Acting Clerk

**SCHEDULE A**  
**RELATIONSHIPS AND AGREEMENTS OUTSIDE OF THE SCOPE OF THIS**  
**AGREEMENT**

The following relationships and agreement are outside of the scope of this Agreement:

- Amended and Restated Shareholder Direction and Unanimous Shareholder Declaration dated January 17, 2011, as amended from time to time and all promissory notes, shares or other documents relating to The Corporation of the Town of Oakville's ownership of and investment in Oakville Hydro Corporation and/or its subsidiaries.
- Licence Agreement for Rooftop Use made as of June 17, 2011 between The Corporation of the Town of Oakville and Oakville Hydro Energy Services Inc.
- Agreement for Licensed Attachment between Oakville Hydro Electricity Distribution Inc. and The Corporation of the Town of Oakville made as of the 1<sup>st</sup> of August, 2012.
- Lease Agreement dated between The Corporation of the Town of Oakville and Oakville Hydro Electricity Distribution Inc. dated January 15, 2010 for Redwood Square building.
- Sublease Agreement between The Corporation of the Town of Oakville and Oakville Hydro Electricity Distribution Inc. dated September 1, 2012 for space for Purchasing and Facility Management.

**EXHIBIT A  
TASK SPECIFICATION**

This Task Specification identifies the specific information required pursuant to the Master Service Agreement (the "Agreement") dated May 1, 2014 by and between The Corporation of the Town of Oakville ("Town of Oakville") and Oakville Hydro Corporation and hereby incorporates the terms and conditions of the Agreement by reference.

1. Statement of Services:
2. Required Skills:
3. Service To Be Provided:
4. Project Name:
5. Town of Providing Party's Employee(s) Assigned:
6. Start Date:
7. Length/Term Date: \_
8. Requesting Party's Contact:
9. Division & Department:
10. Location:
11. Rate & Total Cost:

[Oakville Hydro entity]

THE CORPORATION OF THE TOWN OF  
OAKVILLE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

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Title

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Title

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Date