

November 1, 2012

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
26th Floor, Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Walli

**Re: PowerStream Inc. (Licence ED-2004-0420)  
2013 Electricity Distribution Rates Application EB-2012-0161**

The Oral Hearing held on September 29, 2012 at the Board's offices resulted in PowerStream having a number of undertakings. The responses to these undertakings are attached. These responses have been sent by e-mail to the parties and have been filed on RESS.

We trust that this is satisfactory, but if further information is needed, please do not hesitate to contact the undersigned.

Yours truly,

*Original signed by*

Tom Barrett  
Manager, Rate Applications

**PowerStream Inc.**  
**Responses to Undertakings of:**  
**October 29, 2012 Oral Hearing**

UNDERTAKING NO. J1.1: TO PROVIDE THE DIFFERENCE BETWEEN REVENUE  
REQUIREMENT ON A MIFRS AND CGAAP BASIS FOR 2013

**RESPONSE:**

The revenue requirement under MIFRS is \$162.2 million, as filed in the Settlement Agreement. This amount includes the effects of applying the PP&E deferral account to reduce the rate base by \$2.4 million, and amortizing it over four years to reduce the depreciation expense by \$0.6 million.

PowerStream did not budget or forecast 2013 on a CGAAP basis. For purposes of this undertaking PowerStream has forecast rate base and revenue requirement for 2013 on a CGAAP basis by “bringing forward” the 2012 CGAAP PP&E amounts and converting the IFRS values for depreciation and capitalization of overhead costs to CGAAP amounts based on the relationship of the corresponding amounts for 2011 and 2012. The resulting 2013 CGAAP revenue requirement is \$167.8 million which is \$5.6 million higher than the revenue requirement determined under MIFRS.

UNDERTAKING NO. J1.2: TO PROVIDE THE DIFFERENCE BETWEEN THE  
HALF-YEAR AND THE FULL-YEAR REVENUE FOR CUSTOMERS ASSUMED TO  
HAVE BEEN IN PLACE AT THE BEGINNING OF 2014

**RESPONSE:**

The distribution revenue, for customers added in 2013, would be \$1.2 million higher on a full year basis.

UNDERTAKING NO. J1.3: TO PROVIDE CALCULATIONS FOR AS MANY YEARS AS POSSIBLE FOR THE DIFFERENCE BETWEEN MONTHLY IN-SERVICE AND HALF-YEAR RULE.

**RESPONSE:**

PowerStream started to track and record depreciation based on the in-service month starting in 2010. PowerStream does not have the necessary information in the fixed assets subledger to perform this calculation for years before 2010. This information has been provided for 2010 and 2011 in the evidence filed in response to Energy Probe Interrogatory #32.

In undertaking J1.4, PowerStream has provided the gross additions for 2012 to September 30. Accounting for contributed capital is not completed until year end. As a result, PowerStream is unable to make a comparison of in-service to “half-year” depreciation expense for 2012.

It is PowerStream’s view that an estimate of six months in-service on average for additions (“half-year rule”) in 2012 and 2013 is the most appropriate basis for forecasting depreciation. PowerStream uses this assumption in its internal budgeting.

UNDERTAKING NO. J1.4: TO PROVIDE CAPITAL ADDITIONS, PROJECTS  
FINISHED, BY DOLLARS, MONTH TO MONTH, FOR 2012

**RESPONSE:**

The table below shows the gross capital additions to in-service fixed assets by month for 2012 up to September 30, 2012 the most recent closed month for financial reporting. Accounting for contributed capital is not completed until year end.

**Table J1.4-1: IN-SERVICE ADDITIONS BY MONTH 2012 YEAR TO DATE (\$000)**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Gross additions	\$ 4,363	\$ 4,937	\$ 3,018	\$ 6,651	\$ 5,543	\$ 8,938	\$ 4,313	\$ 5,198	\$ 2,939

UNDERTAKING NO. J1.5: TO FILE POSTPONEMENT AGREEMENTS FOR  
SUBORDINATION RELIED UPON

**RESPONSE:**

PowerStream has attached the postponement agreements signed by the City of Barrie, City of Markham (formerly the Town of Markham) and the City of Vaughan which subordinate the promissory notes held by the Shareholder to the Toronto Dominion Bank debt.

As evidenced in section 4.1 of the promissory notes, the notes are also subordinated to the EDFIN debentures. Those postponement agreements were signed when the debentures were issued in August 2002 by the predecessor utilities. PowerStream has been unable to locate these documents but continues to search. When these documents are found, they will be filed.

## SUBORDINATION AND POSTPONEMENT AGREEMENT

Subordination and Postponement Agreement dated as of June 24, 2002 entered into among Barrie Hydro Distribution Inc. (the "Borrower"), The Toronto-Dominion Bank ("TD") and the Corporation of the City of Barrie (the "City").

WHEREAS the Borrower is indebted to (i) TD pursuant to the Senior Indebtedness, and (ii) the City pursuant to the Junior Indebtedness;

AND WHEREAS the parties hereto have agreed that the City will subordinate and postpone its right to payment of interest and repayment of principal under the Junior Indebtedness to TD's right of payment of interest and repayment of principal under the Senior Indebtedness in the manner hereinafter set forth;

IN CONSIDERATION of the mutual agreements herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Definitions.** All capitalized terms in this Agreement and not otherwise defined herein have the meanings ascribed to them in the Credit Agreement. In this agreement, unless the context otherwise requires, the following words and phrases will have the meanings set forth below:

"Credit Agreement" means the revolving credit and non-revolving term loan agreement dated as of October 30, 2000 between the Borrower and TD, as amended by Amendment Letter No. 1 dated March 8, 2001 and accepted by TD on March 15, 2001, by Waiver and Amendment Agreement No. 2 dated July 17, 2001 and by Amending Agreement No. 3 dated as of November 1, 2001 as same may be renewed, replaced, extended, amended, supplemented or modified from time to time.

"Event of Bankruptcy" means, in respect of any person, that such person shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally as they become due, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against any such person seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts or any other similar proceedings under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or for the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, including without limitation any such proceeding under the *Companies' Creditors Arrangement Act* (Canada) and, in the case of any such proceeding instituted against such person (but not instituted by such person), either such proceeding shall remain undismissed or unstayed for a period of 30 days or any of the actions sought in such proceeding (including, without



limitation, the entry of an order for relief against such person or for the appointment of a receiver, trustee, custodian or other similar official for such person or for any substantial part of its property) shall occur; or such person shall take any action to authorize any of the actions set forth above.

**"Junior Indebtedness"** means the indebtedness, liabilities and obligations of the Borrower to the City under or in respect of the Note.

**"Note"** means the unsecured promissory note dated October 30, 2000 issued by the Borrower in favour of the City and the resolution of the Borrower dated May 23, 2002, evidencing the indebtedness of the Borrower to the City in the aggregate principal amount of Cdn. \$20,000,000 with an annual interest rate of 7.5% and a term of two years commencing January 1, 2002.

**"Senior Indebtedness"** means all indebtedness, liabilities and obligations of the Borrower to TD under or in respect of the Credit Agreement.

## **Section 2. Notice of Default and Acknowledgement.**

(1) The City shall, from time to time, promptly notify TD of any breach, default or event of default of which it has knowledge pursuant to the Junior Indebtedness owed to it.

(2) The City hereby acknowledges and agrees that it shall not, without the prior written consent of TD:

- (a) amend, supplement, extend, modify, replace or vary the Junior Indebtedness or the terms and conditions applicable thereto including, but not limited to, increasing the indebtedness, the interest rate or the payment obligations of the Borrower thereunder or otherwise altering or affecting the obligations of the Borrower thereunder or in any manner altering or affecting the validity, enforceability or effectiveness of this agreement or the priorities and subordination and postponement provided for herein;
- (b) attempt to enforce, realize upon or collect any amounts under the Junior Indebtedness, except for interest payments permitted to be paid pursuant to section 3(2) hereunder;
- (c) take any security from the Borrower or its Subsidiaries for the Junior Indebtedness;
- (d) commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to the Borrower or its Subsidiaries or any of them; or
- (e) transfer, assign, pledge or otherwise deal with the Junior Indebtedness or any documents evidencing the Junior Indebtedness.

### Section 3. Subordination and Postponement.

(1) Except as TD may hereafter expressly consent in writing, which consent may be arbitrarily withheld, the payment of all Junior Indebtedness, except for interest payments permitted to be paid pursuant to section 3(2) hereunder, shall be postponed and subordinated to the payment in full in cash of all Senior Indebtedness and, without limiting the generality of the foregoing, the City agrees that:

- (a) no payments, repayment, prepayment or other distributions whatsoever (including by way of cash or set-off) in respect of any Junior Indebtedness, except for interest payments permitted to be paid pursuant to section 3(2) hereunder, shall be made, applied or sued for or received by the City; no proceedings shall be taken for the recovery of Junior Indebtedness, except for interest payments permitted to be paid pursuant to section 3(2) hereunder, directly or indirectly; no reduction or attempted reduction of any amount owing in respect of the Junior Indebtedness shall be made or received, whether by way of the provision of credit or otherwise and no property or assets of the Borrower or any of its affiliates shall be applied to the purchase or other acquisition or retirement of any Junior Indebtedness, except for interest payments permitted to be paid pursuant to section 3(2) hereunder;
- (b) neither the Junior Indebtedness nor any part thereof, except for interest payments permitted to be paid pursuant to section 3(2) hereunder, shall be capable of being declared due and owing;

(2) Interest payments in respect of the Junior Indebtedness may be paid to the City by the Borrower as such payments become due and payable, provided that:

- (a) at the time any such payment is to be made, such payment is permitted under section 10.4.7 of the Credit Agreement; and
  - (b) no Default or Event of Default under the Credit Agreement exists and is continuing.
- (3) In addition to any other rights TD may have under this agreement, TD may, from time to time, at its sole discretion and without notice to the City, extend or renew for one or more periods (whether or not longer than the original period), alter or exchange any of the Senior Indebtedness, or release or compromise any obligation of any nature of any obligor with respect to any of the Senior Indebtedness;

### Section 4. Rights of City.

(1) At any time and from time to time the City may, as it sees fit extend the time for payment of the Junior Indebtedness and grant waivers, indulgences, forbearances or other accommodations at the request of the Borrower, its Subsidiaries or any other person in respect of the Junior Indebtedness.

**Section 5. Obligations Hereunder Not Affected.**

(1) All agreements contained herein shall remain in full force and effect irrespective of:

- (a) any change in the time, manner or place of payment of, or in any other term of, all or any of the Senior Indebtedness or any agreement or instrument delivered in connection therewith, including, without limitation, any increase in the Senior Indebtedness resulting from the extension of additional credit to the Borrower or any of its Subsidiaries or otherwise;
- (b) any manner of application of collateral, or proceeds thereof, to all or any of the Senior Indebtedness, or any manner of sale or other disposition of any collateral or any other property or assets of the Borrower or its Subsidiaries or any of them;
- (c) any change, restructuring or termination of the corporate structure or existence of the Borrower or its Subsidiaries, the City or any of them; or
- (d) any other circumstance which might otherwise constitute a defense available to, or a discharge of the Borrower, any Subsidiary of the Borrower or the City of its agreements hereunder.

(2) The terms of this agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Senior Indebtedness is rescinded or must otherwise be returned by TD or any of them upon the insolvency, bankruptcy or reorganization of the Borrower, any of its Subsidiaries or otherwise, all as though such payment had not been made.

**Section 6. Specific Performance.** TD is hereby authorized to demand specific performance of these terms of subordination, whether or not the Borrower, any Subsidiary of the Borrower, the City or any of them shall have complied with the provisions hereof, and the City hereby irrevocably waives any and all defenses that might be available at law or in equity as a bar to such remedy.

**Section 7. TD Priority on Enforcement or Liquidation, etc.** In the event of any payment being required to be made by the Borrower or its Subsidiaries or any of them under the Junior Indebtedness or the Senior Indebtedness upon any realization or enforcement of remedies by TD or the City (to the extent permitted hereunder) or upon an Event of Bankruptcy relating to the Borrower, its Subsidiaries or any of them, the Senior Indebtedness shall first be paid in full in cash before the City shall be entitled to receive and to retain any payment or distribution in respect of the Junior Indebtedness (to the extent such payment or distribution was not received by the City with the consent of TD prior to the events set out above) including without limitation any such payment or distribution pursuant to a claim or claims filed by the City in such proceedings, and, in order to implement the foregoing, all payments and distributions of any kind or character in respect of the Junior Indebtedness to which the City would be entitled if the Junior Indebtedness were not subordinated pursuant to this agreement shall be made directly to TD until payment in full in cash of the Senior Indebtedness.

**Section 8. TD Payments.** In the event that the City receives any payment or other distribution of any kind or character from the Borrower, or its Subsidiaries or any of them in respect of any of the Junior Indebtedness, other than payments on the Junior Indebtedness expressly permitted by the terms of this agreement, such payment or other distribution shall be received in trust for TD and promptly turned over by the City to TD, for application to the payment of all Senior Indebtedness remaining unpaid to the extent necessary to repay all such amounts.

**Section 9. Waiver by the City.** The City hereby waives (i) notice of acceptance by TD of this agreement; (ii) notice from TD of the existence or creation or non-payment of all or any of the Senior Indebtedness; and (iii) all diligence in the collection or the protection of, or the realization upon, the Senior Indebtedness or any part thereof.

**Section 10. TD Satisfaction.** This agreement shall in all respects be a continuing agreement and shall remain in full force and effect until the credit facilities established under the Credit Agreement have been cancelled and terminated and the Senior Indebtedness has been repaid in full in cash.

**Section 11. TD Rights in Addition.** Subject to the provisions hereof, the rights of TD hereunder shall be in addition to and not in substitution for any other rights or remedies that TD shall at any time have against the Borrower, its Subsidiaries or any of them pursuant to the Credit Agreement, or any agreement or instrument delivered in connection therewith.

**Section 12. No Impairment of TD.** TD shall not be prejudiced in its rights under this agreement by any act or failure to act of the Borrower, any of its Subsidiaries, the City or any of them or any non-compliance of the Borrower, any of its Subsidiaries, the City or any of them with any agreement or obligation, regardless of any knowledge thereof which TD may have or with which TD may be charged.

**Section 13. Representations of the City.** To induce TD to consent to the Junior Indebtedness the City represents and warrants to TD and, upon each of which representation and warranty TD specifically relies, as follows:

- (a) as at the date hereof the City does not hold any indebtedness of the Borrower or any of its Subsidiaries other than indebtedness comprised by the Junior Indebtedness;
- (b) the terms of the Note are set out exclusively in the promissory note dated October 30, 2000 issued by the Borrower to the City and the resolution of the Borrower dated May 23, 2002, and that there are no other terms or conditions applicable to the Note except as set out in such documents;

(c) the City:

- (i) is a corporation duly organized and validly subsisting and is qualified to carry on business under the laws of its jurisdiction of incorporation or formation;
- (ii) has full corporate right, power and authority or right, power and authority to enter into and perform its obligations under this agreement; and
- (iii) has duly authorized the execution and delivery of this agreement by all necessary action, has duly executed and delivered this agreement and this agreement constitutes a legal, valid and binding obligation of it enforceable against it in accordance with its terms.

**Section 14. Representations of the Borrower.** To induce TD to consent to the Junior Indebtedness the Borrower represents and warrants to TD and, upon each of which representation and warranty TD specifically relies, as follows:

- (a) as at the date hereof the City does not hold any indebtedness of the Borrower or any of its Subsidiaries other than indebtedness comprised by the Junior Indebtedness; and
- (b) the terms of the Note are set out exclusively in the promissory note dated October 30, 2000 issued by the Borrower to the City and the resolution of the Borrower dated May 23, 2002, and that there are no other terms or conditions applicable to the Note except as set out in such documents

**Section 15. Negative Covenant of Borrower.** The Borrower hereby acknowledges and agrees that it shall not, without the prior written consent of TD (which consent may be arbitrarily withheld), amend, supplement, extend, modify, replace or vary the Junior Indebtedness or the terms and conditions applicable thereto including, but not limited to, increasing the indebtedness, the interest rate or the payment obligations of the Borrower thereunder or otherwise altering or affecting the obligations of the Borrower thereunder or in any manner altering or affecting the validity, enforceability or effectiveness of this agreement or the priorities and subordination and postponement provided for herein.

**Section 16. Waiver.**

(1) The rights and remedies of TD hereunder and in connection herewith shall not be capable of being waived or varied except by virtue of an express waiver or variation in writing signed by an officer of TD; and in particular any failure to exercise or any delay in exercising any of such rights and remedies shall not operate as a waiver or variation of that or any other such right or remedy; any defective or partial exercise of any of such rights shall not preclude any other or future exercise of that or any other such right or remedy; and no act or course of conduct or negotiation on the part of TD or on their behalf shall in any way preclude it from exercising any such right or remedy or constitute a suspension or variation of any such right or remedy.

(2) The rights and remedies of the City hereunder and in connection herewith shall not be capable of being waived or varied except by virtue of an express waiver or variation in writing signed by an officer of the City; and in particular any failure to exercise or any delay in exercising any of such rights and remedies shall not operate as a waiver or variation of that or any other such right or remedy; any defective or partial exercise of any of such rights shall not preclude any other or future exercise of that or any other such right or remedy; and no act or course of conduct or negotiation on the part of the City or any of them or on their behalf shall in any way preclude them from exercising any such right or remedy or constitute a suspension or variation of any such right or remedy.

**Section 17. Further Assurances.** The Borrower, its Subsidiaries, the City, TD and each of them will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents and things as another party hereto may reasonably request from time to time for the purpose of giving effect to this agreement.

**Section 18. Severability.** Any provision in this agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**Section 19. Headings.** The headings in this agreement are inserted for convenience of reference only and shall not affect the scope or interpretation of this agreement.

**Section 20. Enurement, etc.**

(1) This agreement shall be binding upon the Borrower and the City and each of them and upon their respective successors and permitted assigns.

(2) This agreement shall be binding upon and enure to the benefit of TD and its successors and assigns, and without limiting the generality of the foregoing, TD may assign, transfer or otherwise dispose all or any portion of the Senior Indebtedness, the Credit Agreement, or its respective rights, interests or obligations under the Credit Agreement and any agreement or instrument delivered in connection therewith or this agreement as provided for in the Credit Agreement. Notwithstanding any such assignment, transfer or disposal or any subsequent assignment, transfer or disposal thereof, the Senior Indebtedness shall be and remain Senior Indebtedness for the purposes of this agreement and every immediate and successive assignee or transferee of any of the Senior Indebtedness or any interest therein, as the case may be, shall, to the extent of the interest assigned, transferred or disposed to such assignee or transferee, be entitled to the benefits of and bound by the obligations of this agreement to the same extent as if such assignee or transferee were TD as at the date hereof.

**Section 21. Governing Law.** This agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein.

**Section 22. Attornment.** Each party irrevocably submits to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or related hereto. Each party irrevocably waives (i) any objection which it may have at any time to the laying of venue of any suit, action or proceeding arising out of or relating to this agreement

brought in any such court, (ii) any claim that such proceeding has been brought in an inconvenient forum, and (iii) the right to object with respect to such proceeding that such court does not have jurisdiction over such party.

**Section 23. Notice.** All notices, requests, demands, directions and communications hereunder shall be sent by telex, telecopy or similar means of recorded communication or hand delivery, and shall be effective when hand delivered or, in the case of telex, telecopy or similar means of recorded communication, when received. All notices shall be given to a party hereunder at their addresses set out on the signature pages hereof, or otherwise in accordance with any unrevoked written direction of such party as to a change of address, given in accordance with this section.

**Section 24. Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute one and the same instrument; any party may execute this agreement by signing any counterpart of it and may communicate such signing by telecopier or otherwise.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date first written above.

55 Patterson Road  
Barrie, Ontario  
L4M 4V8

Fax: (705) 722-6159

Attn: Treasurer

**BARRIE HYDRO DISTRIBUTION INC.**

Per: 

George Todd, President/CEO

Per: 

Duncan Newman, Treasurer/CFO

70 Collier Street  
P O Box 400  
Barrie, Ontario  
L4M 4T5

Tel: (705) 739-4228

Fax: (705) 739-4237

Attn: City Treasurer

**THE CORPORATION OF THE CITY OF  
BARRIE**

Per: 

Jim Ferri, Mayor

Per: 

John Sisson, City Clerk

Investment Banking Group  
8<sup>th</sup> Floor, TD Tower  
Toronto, Ontario  
M5K 1A2

Fax: (416) 944-5630

Attn: Vice-President, Corporate Credit,  
Utilities

**THE TORONTO-DOMINION BANK**

Per: 

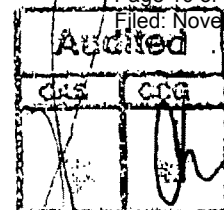
Adam Newman, Managing Director

Per: 

Mary-Kathryn Detzko, Associate

AUTHORIZED BY BY-LAW NO. ~~0002-KD~~ PASSED BY THE  
COUNCIL OF THE CORPORATION OF THE CITY OF BARRIE  
ON ~~24th~~ 25th 2012





NON-NEGOTIABLE COPY

**POSTPONEMENT AGREEMENT****TO: THE TORONTO-DOMINION BANK (the "Bank")**

In consideration of all obligations, indebtedness and liabilities, direct or indirect, present and future, of *Powerstream Inc.* (the "Company") to the Bank, including without restricting the generality of the foregoing, obligations to the Bank for advances by the Bank to the Company under fixed or revolving credits, liability to the Bank for letters of credit or guarantees issued or given by the Bank for the Company, (such obligations, indebtedness or liabilities hereinafter called "Bank Obligations") we, the undersigned, agree that the indebtedness of the Company arising under the Bank Obligations shall have priority over the indebtedness of the Company due to us under a promissory note, dated June 1st 2004 in the amount of \$67,866,202.00 (the "Postponed Indebtedness") and we hereby postpone and subordinate the Postponed Indebtedness together with any accrued and unpaid interest and any security we hold in connection therewith to the Bank in respect of any indebtedness to the Bank together with any accrued and unpaid interest to the Bank in respect of any indebtedness to the Bank arising from the Bank Obligations and any security held by the Bank arising from the Bank Obligations. It being the intention that the security held by the Bank shall have priority over any security over any of the assets of the Company held by the undersigned.

It is understood and agreed that until all indebtedness of the Company to The Bank arising from the Obligations described herein is fully paid, we will not, without the Bank's written consent, demand or accept payment of any kind from the Company of any part of the Postponed Indebtedness, nor assign in any way the same or any part thereof or extinguish the Postponed Indebtedness in any way. The Postponed Indebtedness may be assigned provided the Bank is given written notice of the assignment and the proposed assignee acknowledges in writing to the Bank that the Postponed Indebtedness and any related security has been postponed to the Bank and the proposed assignee agrees to become subject to the terms of this Agreement.

In the event of insolvency of the Company and a distribution of their assets irrespective of the date of registration, the security of the Bank in respect of the Bank Obligations shall have priority to the security granted to us and in any distribution made to secured creditors of the Company, payment will be made to the Bank to extent of their security and the outstanding Bank Obligations before payments is made to us on the Postponed Indebtedness.

Dated at Markham this 20<sup>th</sup> day of April, 2005.

*The Corporation of the Town of Markham*

By: [Signature]

Title: Treasurer

NON-NEGOTIABLE COPY

**POSTPONEMENT AGREEMENT****TO: THE TORONTO-DOMINION BANK (the "Bank")**

In consideration of all obligations, indebtedness and liabilities, direct or indirect, present and future, of *Powerstream Inc.* (the "Company") to the Bank, including without restricting the generality of the foregoing, obligations to the Bank for advances by the Bank to the Company under fixed or revolving credits, liability to the Bank for letters of credit or guarantees issued or given by the Bank for the Company, (such obligations, indebtedness or liabilities hereinafter called "Bank Obligations") we, the undersigned, agree that the indebtedness of the Company arising under the Bank Obligations shall have priority over the indebtedness of the Company due to us under a promissory note, dated JUNE 13 2004 in the amount of \$78,236,285.00 (the "Postponed Indebtedness") and we hereby postpone and subordinate the Postponed Indebtedness together with any accrued and unpaid interest and any security we hold in connection therewith to the Bank in respect of any indebtedness to the Bank together with any accrued and unpaid interest to the Bank in respect of any indebtedness to the Bank arising from the Bank Obligations and any security held by the Bank arising from the Bank Obligations. It being the intention that the security held by the Bank shall have priority over any security over any of the assets of the Company held by the undersigned.

It is understood and agreed that until all indebtedness of the Company to The Bank arising from the Obligations described herein is fully paid, we will not, without the Bank's written consent, demand or accept payment of any kind from the Company of any part of the Postponed Indebtedness, nor assign in any way the same or any part thereof or extinguish the Postponed Indebtedness in any way. The Postponed Indebtedness may be assigned provided the Bank is given written notice of the assignment and the proposed assignee acknowledges in writing to the Bank that the Postponed Indebtedness and any related security has been postponed to the Bank and the proposed assignee agrees to become subject to the terms of this Agreement.

In the event of insolvency of the Company and a distribution of their assets irrespective of the date of registration, the security of the Bank in respect of the Bank Obligations shall have priority to the security granted to us and in any distribution made to secured creditors of the Company, payment will be made to the Bank to extent of their security and the outstanding Bank Obligations before payments is made to us on the Postponed Indebtedness.

Dated at VAUGHAN this 27<sup>th</sup> day of MAY, 2005.

The Corporation of the City of Vaughan

By: [Signature]

Title: Commissioner of Finance  
Corporate Services