

**ONTARIO ENERGY BOARD (BOARD STAFF)**

**INTERROGATORY #1**

**References**

- (a) DWPI's Submissions dated November 15, 2013 /§ 22
- (b) Exhibit B/ Tab 1/ Schedule 1/ p.9/ Crossings and Roads
- (c) DWPI's Letter dated August 1, 2013 Re: Withdrawal of Application EB-2013-0102 by DWPI

**Preamble**

With respect to the appeals to the Environmental Review Tribunal regarding the Ministry of the Environment's granting of a Renewable Energy Approval ("REA") to DWPI, at reference (a), the applicant indicates that a decision on the REA appeals is expected by mid-December 2013.

At reference (b) DWPI states in part that:

The Board also acknowledged that DWPI will be relying upon its statutory rights in Section 41 of the *Electricity Act* in respect of a short 110 m segment of the Transmission Line route that runs along a municipal road right-of-way in the Township of Melancthon.

**Questions / Requests**

- (i) Please update the Board on the status of REA appeals. And if applicable, please indicate whether the appeals decision has any impact on the approved Leave to Construct or the relief sought in this proceeding.
- (ii) If applicable, please submit the revisions that are made to this application.
- (iii) Please confirm that the 110 m segment referenced at (b) was included in the EB-2013-0102 Section 41 application, and that this matter has been settled with the Township of Melancthon. Please submit appropriate evidence of settlement to the Board.

**Response**

- (i) The Environmental Review Tribunal dismissed all appeals of DWPI's REA on December 23, 2013. The decision with reasons has no impact on the approved Leave to Construct or the relief sought in this proceeding.

- (ii) Not applicable.
- (iii) The referenced 110 m segment consists of a short section of the transmission line that will run within the municipal road right-of-way along 4th Line near the southwest corner of the Atkinson Farms Ltd. property. This segment was not included in the application in EB-2013-0102 because subsection 41(10) of the *Electricity Act* provides that, where section 92 of the *Ontario Energy Board Act* applies (i.e. where transmission facilities are the subject of a leave to construct application), subsection 41(9) does not apply. As such, agreement with the municipality as to the location of the 110 m segment within the right-of-way was not required under subsection 41(9). Moreover, because the Board considered and ultimately approved the transmission line route (including the 110 m segment) under section 92 of the *Ontario Energy Board Act* in EB-2012-0365, the Board would not have been in a position to consider issues with respect to the location of this segment within the right-of-way under section 41(9). As the Applicant has statutory rights to construct, inspect, maintain, repair, alter, remove, replace and access structures along the 110 m segment of the transmission line without consent of the municipality pursuant to subsections 41(1)-(8), and as the location of the 110 m segment has been approved in EB-2012-0365, the Applicant does not require and has not sought authority to expropriate interests in lands in respect of this short segment of the transmission line.

**ONTARIO ENERGY BOARD (BOARD STAFF)**

**INTERROGATORY #2**

**References**

- (a) Appendix 'A' OEB Decision and Order – Section 92
- (b) James and Marian Blacks (the “Blacks”) Submissions dated November 22, 2013/ § 9, 10, 11 & 15
- (c) Appendix 'B' Approved Route and Location of Transmission Facility
- (d) Appendix 'C' Lands to be Expropriated
- (e) Appendix 'D' Draft Reference Plan of Study

**Preamble**

Condition 1(f) of Conditions of Approval at Reference (a) states that:

DWPI shall advise the Board's designated representative of any proposed material change in the Project, including but not limited to material changes in the proposed route, construction techniques, construction schedule, restoration procedures, or any other material impacts of construction. The Applicant shall not make a material change without prior approval of the Board or its designated representative. In the event of an emergency the Board shall be informed immediately after the fact.

With respect to site plans, the Blacks submitted that DWPI had two materially different site plans, one referred to as the Current Site Plans and the other denoted as the Alternative Site Plans. Reference (b) states in part that:

The statement in paragraph 4 of the Applicant's submissions: “The interests in land which the Applicant seeks to expropriate from the Blacks in the Application are in respect of these same two properties.” may not to be (sic) accurate if the Applicant chooses to pursue only its Alternative Site Plans.

**Questions / Requests**

- (i) In accordance with reference (a), please confirm that there have been no material changes to the Project. If not, please update the Board on any material change.

- (ii) Please confirm that the map at reference (c) is the Project's route as approved through the Renewable Energy Approval ("REA") process.
- (iii) Please confirm that the route approved through the REA process relates to all facilities, in particular distribution and transmission infrastructure that will be placed on or involves the Affected Lands.
- (iv) Please confirm that all land interests sought at reference (d) correspond to accurate site plans filed in this proceeding at reference (e). Otherwise, please submit the most recent up-to date drawings available. Please also indicate whether the filed maps are final or drafts at this stage.
- (v) Please clarify whether the "Current" vs. "Alternative" Site Plans have any incidence on the nature of any land taking sought in this proceeding.

#### **Response**

- (i) Confirmed. Please also see response to Board Staff IR #3(ii).
- (ii) The maps at reference (c) are the final set of maps that were approved for the transmission facilities in the leave to construct process in EB-2012-0365. The REA contemplated transmission facilities and a transmission line route that is consistent with that which was approved in EB-2012-0365.
- (iii) Confirmed. The Applicant assumes that Board staff's reference to "Affected Lands" means those lands in respect of which the Applicant has sought authority to expropriate interests as described in the Application.
- (iv) Confirmed. As indicated in the Application, Appendix 'D' consists of draft reference plans of study. It is anticipated that upon being granted authority to expropriate the requested interests, the Applicant would prepare final expropriation plans which will be substantially the same as that which has been filed but which will include language consisting of the Expropriation Certificate and the Certificate of Approval for execution by the Secretary of the Board. Once executed, the final executed plans would be registered on title.
- (v) The issue of "Current" vs. "Alternative" site plans referred to in Reference (b) has no impact on the nature of the interests for which authority to expropriate is sought in this proceeding. As explained in Exhibit B, Tab 1, Schedule 1 at pp. 8 - 9 and as further discussed in the Applicant's November 15, 2013 submissions on the motions for a stay, the Applicant currently holds leases on the Black properties pursuant to which the Applicant may place wind turbines, distribution/collector lines and ancillary equipment. There will be no transmission facilities on these properties. The Blacks have challenged the validity of the leases and the matter is currently before an arbitrator. If the validity of



the leases is upheld and/or if the parties otherwise resolve their dispute, this could be on the basis of either the “Current” or the “Alternative” site plan, but in either case the Applicant would not require authority to expropriate and this aspect of the present application would be withdrawn. If the leases are found to be invalid, the Applicant will continue to seek authority to expropriate the interests in the Black properties as described in the Application as filed. The interests for which authority to expropriate are sought include only those segments of the collector system that are necessary for the operation of the broader collection system for the Dufferin Wind Farm project. Interests in lands related to the specific collector lines serving turbines on the Black properties would not be expropriated because without a valid land agreement the Applicant would not be in a position to construct those turbines.

**ONTARIO ENERGY BOARD (BOARD STAFF)**

**INTERROGATORY #3**

**References**

- (a) Exhibit B/ Tab 1/ Schedule 1/ § D. Project Land Requirements
- (b) Appendix 'C' Lands to be Expropriated
- (c) Appendix 'D' Draft Reference Plan of Study
- (d) Appendix 'E' Ortho-Rectified Aerial Plans

**Preamble**

With respect to the size of the easements, at reference (a), DWPI states in part that:

Generally, the required widths for the interests in lands needed by the Applicant are as follows:

- Distribution easements for Distribution Facilities on privately owned lands will be 16 meters in width. This will typically include all land rights required by the Applicant for purposes of construction, maintenance and access. However, in certain locations additional lands may be necessary on a temporary basis to support construction activities.
- Transmission easements for Transmission Facilities along privately owned lands between the Project Substation and the Rail Corridor will range from 25 to 30 meters in width. This will include all land rights required by the Applicant for purposes of construction, maintenance and access, so additional access and maintenance easements will not be required.
- Transmission easements for Transmission Facilities along the Rail Corridor will be 10 meters in width, except in three particular locations where overhead to underground transition facilities will be installed. At each of these locations, the width of the transmission easements will be 11.5 meters for a length of approximately 40 meters.
- Access and maintenance easements will be required along the Rail Corridor for purposes of construction, access and maintenance of the Transmission Facilities within the Rail Corridor. The width of the lands for which access and

maintenance easements will be required along the Rail Corridor will generally be 15 meters (and 13.5 meters in width in each of the three locations where the adjacent transmission easement will be 11.5 m wide).

### Questions / Requests

- (i) With respect to all the lands as listed at reference (b), please complete the table below. Please indicate the type of infrastructure that will be placed on parcels subject to expropriation, the location and a general sense of location, expected functionality and state whether any of the facilities that will be placed on these lands, or the access required to these lands, are non-essential in building and/or operating the Dufferin Wind Farm.

Location (PIN) and Descriptor (eg. middle, edge of property)	Infrastructure Type, Description, and Dimension (eg. Transmission/ Tower/Base Footprint and Height)	Functionality and Degree of Necessity (essential, non-essential)	Required Interest

- (ii) Please provide a rationale and any supporting documentation, including technical constraints, for the proposed location of the transmission and distribution facilities on the Affected Lands.
- (iii) Please indicate what principles and /or standards DWPI is relying on to support that the proposed location of the transmission and distribution facilities on the Affected Lands is the one that minimizes, within the given technical constraints of the project, disturbance to the landowners.
- (iv) Please indicate what principles and/or standards DWPI is relying on to support that the size of the takings described at reference (a) are appropriate.
- (v) For questions iii. and iv., where possible please qualify the above cited principles and standards as compared to best practices prevalent in Ontario.

### Response

- (i) The completed table is as follows:

Location (PIN) and Descriptor (eg. middle, edge of property)	Infrastructure Type, Description, and Dimension (eg. Transmission/ Tower/Base Footprint and Height)	Functionality and Degree of Necessity (essential, non-essential)	Required Interest
34142-	Overhead transmission line, centered	Essential	Transmission

0039(LT)  Edge of Property	within the Transmission Easement, with clearance of at least 24 feet (7.3m) from ground to conductors; 5 wood poles being 78.5 feet in height above ground and having a ground-level diameter of approx. 2 feet; 1 steel pole being 85 feet in height above ground and having a foundation diameter of 8 feet.		Easement
34142-0040(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 24 feet (7.3m) feet from ground to conductors; 4 wood poles being 78.5 feet in height above ground and having a ground-level diameter of approx. 2 feet; 2 steel pole being 85 feet in height above ground and having a foundation diameter of 8 feet.	Essential	Transmission Easement
34142-0011(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 24 feet (7.3m) feet from ground to conductors; 7 wood poles being 78.5 to 92 feet in height above ground and having a ground-level diameter of approx. 2 feet; 1 steel pole being 80 feet in height above ground and having a foundation diameter of 8 feet.	Essential	Transmission Easement
34153-0111(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 18 wood poles being 74 to 88 feet in height above ground and having a ground-level diameter of approx. 2 feet; 1 steel pole being 85 feet in height above ground and having a foundation diameter of 8 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34153-	Overhead transmission line, centered	Essential	Transmission

0110(LT)  Edge of Property	within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 to 88 feet in height above ground and having a ground-level diameter of approx. 2 feet;		Easement and Access and Maintenance Easement
34153-0126(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 7 wood poles being 74 feet in height above ground and having a ground-level diameter of approx. 2 feet;	Essential	Transmission Easement and Access and Maintenance Easement
34153-0127(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 2 wood poles being 74 feet in height above ground and having a ground-level diameter of approx. 2 feet;	Essential	Transmission Easement and Access and Maintenance Easement
34153-0128(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 to 88 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34153-0080(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 2 wood poles being 74 to 88 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34153-0071(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 19 wood poles being 74 to 88 feet in	Essential	Transmission Easement and Access and Maintenance Easement

	height above ground and having a ground-level diameter of approx. 2 feet.		
34154-0086(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 2 wood poles being 78.5 to 88 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34154-0087(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 3 wood poles being 74 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34154-0072(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 2 wood poles being 74 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34154-0089(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34154-0090(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 2 wood poles being 74 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34154-0081(LT)	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet	Essential	Transmission Easement and Access and

Edge of Property	(9.3m) from ground to conductors; 2 wood poles being 74 feet in height above ground and having a ground-level diameter of approx. 2 feet.		Maintenance Easement
34154-0110(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 1 wood pole being 78.5 feet in height above ground and having a ground-level diameter of approx. 2 feet; 1 steel pole being 83 feet in height above ground and having a ground-level diameter of approx. 2.5 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34154-0091(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 2 steel poles being 83 feet in height above ground and having a ground-level diameter of approx. 2.5 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34154-0085(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 1 wood pole being 88 feet in height above ground and having a ground-level diameter of approx. 2 feet; 4 steel poles being 88 to 92 feet in height above ground and having a ground-level diameter of approx. 2.5 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34133-0431(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 2 wood poles being 78.5 to 88 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34133-0432(R)	Overhead transmission line, centered within the Transmission Easement,	Essential	Transmission Easement and

Edge of Property	with clearance of at least 30.5 feet (9.3m) from ground to conductors; 3 wood poles being 74 to 78.5 feet in height above ground and having a ground-level diameter of approx. 2 feet; 1 steel poles being 83 feet in height above ground and having a ground-level diameter of approx. 2.5 feet.		Access and Maintenance Easement
34133-0417(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 2 wood poles being 78.5 feet in height above ground and having a ground-level diameter of approx. 2 feet; 3 steel poles being 83 feet in height above ground and having a ground-level diameter of approx. 2.5 feet; 1 steel pole being 85 feet in height above ground and having a foundation diameter of 8 feet. overhead/underground transition station with perimeter fence of 111.5 feet (34m) by 31.2 feet (9.5m), 3 steel poles being 40.5 to 84.5 feet in height above ground and 3 lattice underground cable termination structures being 21 feet in height above ground.	Essential	Transmission Easement and Access and Maintenance Easement
34133-0433(R)  Edge of Property	Underground transmission line, centered within the Transmission Easement, at depth of approx. 4.2 feet;	Essential	Transmission Easement and Access and Maintenance Easement
34133-0418(LT)  Edge of Property	Underground transmission line, centered within the Transmission Easement, at depth of approx. 4.2 feet;	Essential	Transmission Easement and Access and Maintenance Easement
34133-	Underground transmission line, centered within the Transmission	Essential	Transmission Easement and



0630(LT)  Edge of Property	Easement, at depth of approx. 4.2 feet;		Access and Maintenance Easement
34132-0022(LT)  Edge of Property	Underground transmission line, centered within the Transmission Easement, at depth of approx. 4.2 feet;	Essential	Transmission Easement and Access and Maintenance Easement
34129-0133(LT)  Edge of Property	Underground transmission line, centered within the Transmission Easement, at depth of approx. 4.2 feet;	Essential	Transmission Easement and Access and Maintenance Easement
34053-0021(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 1 steel pole being 83 feet in height above ground and having a ground-level diameter of approx. 2.5 feet; 1 steel pole being 85 feet in height above ground and having a foundation diameter of 8 feet; overhead/underground transition station with perimeter fence of 111.5 feet (34m) by 31.2 feet (9.5m), 3 steel poles being 40.5 to 84.5 feet in height above ground and 3 lattice underground cable termination structures being 21 feet in height above ground.	Essential	Transmission Easement and Access and Maintenance Easement
34053-0020(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 2 wood poles being 78.5 to 83 feet in height above ground and having a ground-level diameter of approx. 2 feet; 1 steel pole being 83 feet in height above ground and having a	Essential	Transmission Easement and Access and Maintenance Easement

	ground-level diameter of approx. 2.5 feet.		
34053-0036(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 4 wood poles being 74 to 78.5 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34053-0018(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 9 wood poles being 74 to 78.5 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34053-0016(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 3 wood poles being 74 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34053-0017(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 10 wood poles being 74 to 83 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34052-0006(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 24 wood poles being 78.5 to 83 feet in height above ground and having a ground-level diameter of approx. 2 feet; 4 steel poles being 83 feet in height above ground and having a	Essential	Transmission Easement and Access and Maintenance Easement

	ground-level diameter of approx. 2.5 feet.		
34052-0007(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 5 wood poles being 78.5 to 87.5 feet in height above ground and having a ground-level diameter of approx. 3 feet; 3 steel poles being 83 to 87.5 feet in height above ground and having a ground-level diameter of approx. 2.5 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34047-0078(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 to 87.5 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34047-0077(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 to 78.5 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34047-0076(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 7 wood poles being 74 to 83 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34047-0085(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 to 87.5 feet in	Essential	Transmission Easement and Access and Maintenance Easement

	height above ground and having a ground-level diameter of approx. 2 feet.		
34047-0074(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 to 87.5 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34163-0061(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 to 87.5 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34163-0137(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34163-0052(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 to 83 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34163-0048(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 to 87.5 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement

34163-0040(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 4 wood poles being 78.5 to 87.5 feet in height above ground and having a ground-level diameter of approx. 2 feet; 3 steel poles being 83 to 101 feet in height above ground and having a ground-level diameter of approx. 3 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34046-0023(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 10 wood poles being 78.5 to 87.5 feet in height above ground and having a ground-level diameter of approx. 2 feet; 3 steel poles being 83 to 101 feet in height above ground and having a ground-level diameter of approx. 3 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34046-0019(R)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 feet in height above ground and having a ground-level diameter of approx. 2 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34046-0008(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 6 wood poles being 74 to 99.5 feet in height above ground and having a ground-level diameter of approx. 2.5 feet.	Essential	Transmission Easement and Access and Maintenance Easement
34038-0121(LT)  Edge of Property	Overhead transmission line, centered within the Transmission Easement, with clearance of at least 30.5 feet (9.3m) from ground to conductors; 9 wood poles being 78.5 to 99.5 feet in	Essential	Transmission Easement and Access and Maintenance Easement

	height above ground and having a ground-level diameter of approx. 2.5 feet; 3 steel poles being 83 feet in height above ground and having a ground-level diameter of approx. 2.5 feet; 1 steel pole being 85 feet in height above ground and having a foundation diameter of 8 feet; overhead/underground transition station with perimeter fence of 111.5 feet (34m) by 31.2 feet (9.5m), 3 steel poles being 40.5 to 84.5 feet in height above ground and 3 lattice underground cable termination structures being 21 feet in height above ground.		
34038-0007(LT)  Edge of Property and Across Property	Underground transmission line, centered within the Transmission Easement, at depth of approx. 4.2 feet running along Transmission Easement into Switching Station; Underground transmission line at depth of approx. 16.4 feet running across Transmission Easement from Switching Station to Orangeville TS; Overhead transmission line running across Transmission Easement from Switching Station to Orangeville TS with minimum clearance from ground to conductor of approx. 78 feet;	Essential	Two Transmission Easements (one of which is to be assigned to Hydro One) and two Access and Maintenance Easements (one of which is to be assigned to Hydro One)
34141-0029(LT)  Middle of Property	Underground distribution/collector line, centred within Distribution Easement, at depth of approx. 3.9 feet.	Essential	Distribution Easement and Temporary Construction Easement
34141-0046(LT)  Generally on Side of Property, Having	Underground distribution/collector line, centred within Distribution Easement, at depth of approx. 3.9 feet.	Essential	Distribution Easement and Temporary Construction Easement

Regard to Location of PIN 34141- 0047			
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- (ii) With respect to the portions of the transmission line located on the three affected private properties, as shown in Appendix ‘E’ (Maps 1-3) of the pre-filed evidence, in consultation with the affected landowners the Applicant has located the line as close to the edges of the properties as possible in an effort to minimize potential impacts on farming operations and the areas of the properties that can continue to be used for agriculture. The Applicant is currently in discussion with the owner of the Atkinson and Atkinson Farm properties in an effort to reach an amicable resolution. The Applicant acknowledges that if a resolution is reached which requires minor modifications to the route that was approved in the leave to construct proceeding, that notice or prior approval of such modifications, as applicable, would be required in accordance with the conditions of approval in EB-2012-0365.

With respect to the portions of the transmission line located on the former rail corridor, as described in Exhibit D, Tab 1, Schedule 1 of its application in EB-2012-0365, there has been some interest expressed in the community in the potential future redevelopment of a railway line along the former rail corridor. Although this interest was most recently shown in connection with a large quarry project that has since been withdrawn, the Applicant has nevertheless designed the transmission line in a manner that would not preclude the future redevelopment of an active railway line in the corridor. These accommodations include locating the transmission line as close to one side of the corridor as possible (having regard to applicable electrical clearances), as well as reduced pole spacing to ensue appropriate clearances between the transmission line and a future rail line. Dufferin Wind retained the firm of Hatch Mott MacDonald in late 2012 to review and confirm that the then transmission line design could accommodate future rail redevelopment. A copy of the resulting report is attached hereto as **Appendix ‘A’**. Notably, the same design parameters that allow for potential future rail redevelopment also support the continued use of the rail corridor for purposes of a recreational trail in the near term by preserving as much of the corridor for such uses while ensuring appropriate setbacks and clearances.

In response to consultations with the local community, the Applicant has also agreed to install a portion of the transmission line underground within the former rail corridor. One segment that will be installed underground runs through the most populated area along the route, through the Town of Shelburne. An additional segment at the southern end of the transmission line will run underground to minimize potential impacts on Hydro One’s existing transmission line (circuits B4V/B5V), as well as to minimize impacts on a

crossing of County Road 11 and to eliminate the need for multiple overhead/underground transition structures in this area.

With respect to the distribution easements on the Black properties, the locations have been determined based on the Applicant's plans for constructing turbines on these properties pursuant to the leases that have been entered into between the parties. Those turbine locations and the corresponding locations for collector lines and distribution easements were in turn considered in the REA process and are the subject of the REA issued by the Ministry of the Environment. For purposes of the present application, the Applicant seeks only to expropriate distribution easements for those specific sections of the collector system that would continue to be necessary for the project in the event the leases are found to be invalid and the turbines cannot be installed on the Black properties.

- (iii) With respect to the proposed location of transmission facilities on those Affected Lands that are privately owned, the Applicant's objectives have been to minimize impacts on farming operations and interference with usable farmland. The Applicant has also sought to minimize or avoid the need for removal of trees and structures. To achieve these objectives, the Applicant has endeavored to locate facilities as close to the edges of the properties as possible and/or along the edges of woodlots. The Applicant has sought to balance these property-specific objectives with its broader objective of keeping the overall length of the transmission line to a minimum by providing for a relatively direct route between the Project Substation and the point of entry into the former rail corridor.

With respect to the proposed location of transmission facilities on those Affected Lands consisting of the former rail corridor, as described in (ii) above the Applicant's objective has been to use as little of the corridor as necessary so as to preserve, to the extent possible (having regard for appropriate electrical clearances and public safety), the capacity for the corridor to be used for other purposes. As indicated, in the near term and for the foreseeable future, it is expected that the remainder of the corridor will primarily be used for purposes of a recreational trail and in the long term there is potential for using the remainder of the corridor for purposes of redeveloping an active rail line. It is for this reason that the Applicant has divided its land requirements along the corridor into two parts - a Transmission Easement area and an Access and Maintenance Easement area - rather than seeking a transmission easement for the entire width of the corridor.

With respect to the proposed location of distribution facilities on the Affected Lands, as described in (ii) the Applicant's objective has been to only seek authority to expropriate distribution easements for those specific sections of the collector system that would continue to be necessary for the project in the event the leases are found to be invalid and the turbines cannot be installed on the Black properties. The proposed locations of the distribution facilities on the properties have been determined based on the Applicant's plans to install turbines on these properties and by the approvals that are already in place based on those plans.



- (iv) The Applicant consulted with the engineering and construction contractors that have designed and that will be building the facilities in order to determine the minimum widths of the easements that are required to support the transmission and distribution facilities while maintaining all appropriate clearances for electrical and public safety purposes, as well as allowing sufficient area for construction and ongoing inspection and maintenance activities. The sizes of the takings are also consistent with the expectations of the relevant landowners based on land agreements they have signed previously or which, in the case of the County, have been the subject of ongoing negotiations.
- (v) For purposes of the 500 kV Bruce to Milton transmission line, Hydro One Networks Inc. required permanent easements ranging from 53 to 61 meters in width to accommodate overhead transmission line and supporting structures. It also sought temporary easements for the construction period (See EB-2010-0023, Application and Evidence, September 27, 2010). For purposes of a 115 kV overhead transmission line to the Woodstock Toyota plant in EB-2006-0352, Hydro One sought authority to expropriate permanent easements of 30 meters in width. For purposes of a 115 kV overhead transmission line in connection with a mine, Northgate sought leave to construct for a route/corridor of approximately 30 meters in width (EB-2010-0150). For purposes of a 230 kV transmission line to connect a wind farm, South Kent sought leave to construct for a route/corridor with a 90 ft (27 m) width, part of which was an active rail corridor and part of which was an abandoned rail corridor (EB-2011-0217). Based upon these examples, the easement widths sought by the Applicant in the present application are narrower or equivalent to those sought by other utilities in Ontario for similar facilities.

**ONTARIO ENERGY BOARD (BOARD STAFF)**

**INTERROGATORY #4**

**References**

- (a) Exhibit B/ Tab 1/ Schedule 1/ § D. Project Land Requirements
- (b) Appendix ‘A’ OEB Decision and Order – Section 92

**Preamble**

At reference (a), DWPI states in part that:

Generally, for the construction and ongoing operation and maintenance of the Transmission Facilities and Distribution Facilities, DWPI requires transmission or distribution easements of 45 years in duration, which is consistent with the Board’s finding in the LTC Decision that the 45-year term proposed by DWPI in its land agreement is appropriate. The Applicant also requires access and maintenance easements of 45 years in duration, for access, maintenance and operational purposes along certain portions of the transmission line route. In some locations, the Applicant also requires temporary easements to support distribution line construction activities.

Staff notes that there were six types of land agreements that the Board approved pursuant to section 97 in the Leave to Construct proceeding. However it is not clear that the 45-year term was sought in all of the types of land agreements.

As respects the 45-year term for the transmission line and transmission facilities, the Board made the following finding as noted at reference (b):

... the Board believes that it is reasonable for the term for a land easement agreement to match the physical life of the asset, as its future economic potential cannot be accurately forecast at this point in time. In this regard, the 45-year term proposed by DWPI in the land agreement to be submitted to the County with respect to the rail corridor lands is acceptable.

**Questions / Requests**

- (i) Please confirm that the Board’s finding in the Leave to Construct decision respecting the appropriateness of a 45-year term is applicable to the different land interests that DWPI seeks in this proceeding.

- (ii) Otherwise please clarify which land interests are not covered by the Board approved land agreement and term.
- (iii) Please file a copy of the Board approved land agreements of interest.
- (iv) What is the term that DWPI is seeking for the temporary easements that are needed to support distribution line activities?

**Response**

- (i) Confirmed. The Board stated in its decision in EB-2012-0365 that it “believes it is reasonable for the term for a land easement agreement to match the physical life of the asset, as its future economic potential cannot be accurately forecast at this point in time”. Although the Board considered this issue in response to argument raised by Dufferin County in respect of the rail corridor lands, the principle espoused by the Board is also relevant to the appropriate duration for transmission easements on private properties and for the distribution easements on the Black properties because the physical life of the assets on those properties will be similar.
- (ii) The Board’s decision in EB-2012-0365 did not apply to any distribution facilities and, as such, did not cover the land interests the Applicant seeks from the Blacks in the present Application. However, for the reasons described in (i), above, the Applicant believes that a 45 year term is reasonable.
- (iii) Copies of the following approved forms of agreement from EB-2012-0365 are attached hereto as **Appendix ‘B’**:
  - Agreement to Grant a Transmission Easement (Exhibit F, Tab 2, Schedule 1, Appendix 3 of EB-2012-0365);
  - Electrical Transmission Lease (Exhibit F, Tab 2, Schedule 1, Appendix 4 of EB-2012-0365);
  - Wind Turbine and Transmission Lease (Exhibit F, Tab 2, Schedule 1, Appendix 5 of EB-2012-0365); and
  - Agreement to Grant Easement (re Rail Corridor) (Exhibit F, Tab 2, Schedule 1, Appendix 6 of EB-2012-0365).
- (iv) The temporary construction easements needed to support distribution line activities are located on the Black properties. In particular, these lands are necessary to support directional drilling activities. It is estimated that this activity will require approximately 3-4 weeks to complete, depending on weather conditions. However, to allow for

flexibility in scheduling this work, the Applicant seeks an 18 month term for these temporary construction easements.

**ONTARIO ENERGY BOARD (BOARD STAFF) - INTERROGATORY #5**

**Interrogatory**

**References**

N/A

**Preamble**

N/A

**Questions / Requests**

- (i) Will DWPI provide landowners cited in this proceeding with advance written notification of access to their respective properties for the purposes of constructing, operating and maintaining the project's transmission and distribution facilities? Please provide detail of the communications protocol.
- (ii) What is DWPI's policy with respect to security? In particular:
  - On what basis will owners of land be assured that persons accessing portions of their property are in fact employees or representatives of DWPI?
  - What security measures will be implemented by DWPI to ensure that unauthorized access to the subject properties is not made during construction, operation and/or maintenance?
- (iii) With respect to the maintenance of the transmission and distribution facilities that are located on the Affected Lands, what is DWPI's policy with respect to the disclosure of material used, such as herbicides/pesticides?
- (iv) If standard company policies or draft of guidelines to be used in the Dufferin Wind Farm project with respect to communication, security and maintenance protocols affecting landowners are available, please submit copies to the Board.
- (v) If applicable please contrast DWPI's standard policies or draft guidelines cited at (iv) in comparison with those of other comparable Ontario utilities.

**Response**

- (i) The Applicant will provide landowners cited in this proceeding with advance written notification of access to their respective properties prior to the start of construction and regularly scheduled maintenance. Landowners will also be provided with contact

information for the construction site manager during construction and the wind farm operations center for the follow-on operations period. The project website will include construction updates and maintenance notices as well. The Applicant will coordinate with landowners prior to regularly scheduled maintenance in order to minimize impacts on landowners' schedules, properties and use of their properties.

- (ii) The Applicant's employees will have employee identification and written authorization in their possession to access the properties. Subcontractors will possess written authorization from the Applicant to access the properties as well.
- (iii) The Applicant does not intend to use herbicides or pesticides in the maintenance of the easement lands. However, in the event it does require the use of such materials, the Applicant will provide landowners with prior written notification.
- (iv) Policies or drafts of guidelines to be used in the Dufferin Wind Farm project with respect to communication, security and maintenance protocols affecting landowners are not available at this time. Prior to operations, these policies will be developed, posted on the project web site and made available at the wind farm operations center.
- (v) As noted in (iv), the Applicant will be developing the relevant policies and guidelines prior to operations. The Applicant is not aware of what policies other Ontario utilities apply with respect to communications, security and maintenance protocols in the context of interests in lands that have been expropriated. Efforts to locate such policies were not successful.

**ONTARIO ENERGY BOARD (BOARD STAFF) - INTERROGATORY #6**

**Interrogatory**

**References**

Exhibit B/ Tab 1/ Schedule 1/ p.7-8

**Preamble**

In particular, the Applicant requires two transmission easements and two access and maintenance easements for the same strip of lands across the Rail Corridor from the Switching Station to Hydro One's Orangeville TS property. It is the Applicant's intention that one of these transmission easements and one of these access and maintenance easements will be assigned to Hydro One in fulfillment of the Applicant's obligations under its Generator Connection and Cost Recovery Agreement with Hydro One. This will enable Hydro One to construct, access and maintain certain facilities that it will own and be responsible for, which are necessary to connect DWPI's facilities to Hydro One's facilities. The other transmission easement and access and maintenance agreement will be retained by DWPI to enable DWPI to construct, access and maintain certain other facilities that it will own and be responsible for, which will also be constructed across these lands to for purposes of connecting to Hydro One's system.

**Questions / Requests**

- (i) Please submit the relevant section of the Connection and Cost Recovery Agreement.
- (ii) If there are notable contractual implications related to the assumption of the easements by Hydro One for landowners involved, please highlight these implications.
- (iii) Please submit a copy of these 2 land agreements if materially different than copies submitted in response to Board staff interrogatory 4 (iii).

**Response**

- (i) Attached hereto as **Appendix 'C'** are the sections of the CCRA that are relevant to the Applicant's obligation to acquire and assign, or otherwise convey, land rights to Hydro One.
- (ii) The assignment of easements to Hydro One only relates to a small portion of the County-owned former rail corridor lands - specifically in the area located between the Applicant's Switching Station and Hydro One's Orangeville TS. Other than timing implications, whether or not the Applicant acquires the easements through a negotiated agreement or by way of expropriation does not have implications for the CCRA.

- (iii) In accordance with the CCRA, the Applicant is required to provide the relevant easements to Hydro One using the relevant forms of agreement attached as Schedules “F” and “H” to the CCRA. Copies of these Schedules are included in **Appendix ‘C’** attached hereto.



**APPENDIX 'A'**

**FINAL REPORT RE COMPATIBILITY WITH FUTURE RAILWAY**

**Board Staff #3(ii)**

**Review of Construction Effects of a 230kV  
Transmission Line on Railway Clearance  
Requirements Along the Former Toronto  
Grey and Bruce Rail Corridor  
Final Report**

October 2012

# **Review of Construction Effects of a 230kV Transmission Line on Railway Clearance Requirements Along the Former Toronto Grey and Bruce Rail Corridor**

## **Final Report**

October 2012

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# **Review of Construction Effects of a 230kV Transmission Line on Railway Clearance Requirements Along the Former Toronto Grey and Bruce Rail Corridor Final Report**

## **Issue and Revision Record**

<b>Rev</b>	<b>Date</b>	<b>Originator</b>	<b>Checker</b>	<b>Approver</b>	<b>Description</b>
A	24-OCT-2012	Andrew Nagy	Dave Grigg	Pat O'Connor	Issued for Client Review
0	29-OCT-2012	Andrew Nagy	Dave Grigg	Pat O'Connor	Approved for Use

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<b>List of Contents</b>	<b>Page</b>
1 Introduction .....	2
2 The Proposed Transmission Line .....	2
3 HMM's Scope of Work .....	2
4 Assumptions .....	3
5 Reference Documents, Codes and Regulations .....	3
6 Review Methodology .....	4
7 Special Considerations/Limitations .....	4
8 Conclusions .....	5

## **Appendices**

**Appendix A:** List of Dufferin Wind Power Inc's electronic files submitted describing the proposed transmission line

**Appendix B:** List of Conceptual Track Plan, Profiles and Clearance Cross-Section Drawings

**Appendix C:** CP Timetable No. 130, April 26, 1959, for the Orangeville and Owen Sound Subdivisions

**Appendix D:** Electromagnetic Interference (EMI) Review

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**Review of Construction Effects of a 230kV Transmission Line on Railway Clearance Requirements Along Former  
Toronto Grey and Bruce Rail Corridor**

## **Report**

# **Review of Construction Effects of a 230kV Transmission Line on Railway Clearance Requirements Along The Former Toronto Grey and Bruce Rail Corridor**

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**Review of Construction Effects of a 230kV Transmission Line on Railway Clearance Requirements Along Former Toronto Grey and Bruce Rail Corridor**

## Introduction

Dufferin Wind Power Inc. (DWP) is proposing to build a 230kV transmission line to interconnect its 100MW Dufferin Wind farm project in Melancthon, Ontario to Hydro One's Orangeville Transformer Station located in Amaranth, Ontario. A 31km section of the proposed 48km transmission line would run within and along the side of the former Toronto Grey and Bruce (TGB) rail right-of-way which was previously owned by Canadian Pacific Railway (CPR). The former 118km TGB rail line ran from Owen Sound to Orangeville and was decommissioned in 1995, including removal of the rails and ties. Following this, CPR donated the portion of the rail line running through Dufferin County to the County of Dufferin. The rail right-of-way is currently used as a recreational trail and the County of Dufferin wants to ensure that the proposed transmission line will not prevent future rail operations within the right-of-way if future opportunities for such rail operations arise.

Dufferin Wind Power Inc. retained the services of Hatch Mott MacDonald Ltd. (HMM) to review the proposed transmission line's alignment within the rail right-of-way and to confirm whether or not the transmission line can compatibly coexist and not interfere with the future rail operations. It is understood that HMM's assessment report will form part of Dufferin Wind Power Inc.'s submission to Dufferin County.

This report outlines HMM's scope of work, the background information and assumptions on which the review is based, and HMM's conclusions.

## The Proposed Transmission Line

The proposed transmission line is a 230kV, single-circuit, power line supported by timber and steel poles. The centerlines of the poles are located typically at 5.50 m offset from and within the right-of-way limit. The line is predominantly aerial, except in sections where it will be installed underground to avoid population centers, terrain features, or existing utilities.. Poles within the right-of-way are generally spaced an average of 100m apart with an average height above ground of 21.34m.

## HMM's Scope of Work

HMM's scope of work included a review of the following:

- Effects of the transmission line on the construction of a new rail line on the existing bed.
- Effects of the transmission line on the operation of a new rail line.
- Effects of the transmission line on the maintenance of a new rail line.

To effectively review the above effects, the interactive effects between the transmission line and a future rail line were identified and analyzed including:



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**Review of Construction Effects of a 230kV Transmission Line on Railway Clearance Requirements Along Former Toronto Grey and Bruce Rail Corridor**

- Establishing a feasible horizontal and vertical top-of-rail alignment for the future track. The alignment follows the abandoned CP track bed where possible with the intent of minimizing track embankment construction costs. The total length reviewed is approximately 32.0 km, extending from Station 0+000 to 31+545.74.
- Establishing the railway's operating and dynamic clearance envelope at all typical and critical clearance locations.
- Establishing typical clearance for the future railway requirements, including consideration for signals and communications facilities, at typical and special locations.
- Establishing basic requirements for maintenance access roads.
- Developing plan, profile and typical section drawings, showing the minimum railway clearance requirements compared to the minimum available clearances requirements of the transmission line as currently proposed.
- Reviewing that sight lines are not blocked by the transmission line at critical locations.
- Reviewing and advising on the potential Electro-Magnetic Interference (EMI) effects and requirements on future railway operations.

### Assumptions

1. A future single main track will be constructed without secondary track infrastructure within the former rail corridor.
2. The transmission line is constructed first, and there will be no overlap between the construction schedules of the transmission line and of any future railway.
3. No special operating requirements were assessed at this time.
4. The clearances established are considered a minimum, without contingency for movements caused by dead load, environmental factors, geotechnical effects, heat generated in the wires or wire breaks.
5. The transmission line construction will not alter current site drainage conditions.
6. The alignment of the future track will closely follow the abandoned track bed centreline alignment.
7. Maximum track operating speed will not exceed 45 mph.

### Reference Documents, Codes and Regulations

The review is based on the following documents:

1. Electronic files submitted to HMM by the Dufferin Wind Power Inc. , which describe the proposed transmission line. A list of the documents is attached (Appendix B).
2. AREMA (American Railway Engineering and Maintenance of Way Association) "*2012 Manual for Railway Engineering* ", latest edition.
3. CSA Canadian Standard Association, C22.3 No. 1-10, 2010, "*Overhead Systems*".
4. The Official Railway Equipment Register, "Plate F", attached in Appendix C, was used for the future railway's dynamic envelope., latest edition



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**Review of Construction Effects of a 230kV Transmission Line on Railway Clearance Requirements Along Former Toronto Grey and Bruce Rail Corridor**

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5. Transport Canada, Standards Respecting Railway Clearances, May 14, 1992 (TCE-05).
6. CP (Canadian Pacific Railway), "*Clearances and Wire Line Policy*", April 1, 2011.
7. CP Red Book of "*Signal & Communications Requirements*", Feb. 1, 2010.
8. CP Timetable No. 130, April 26, 1959, for the Orangeville and Owen Sound Subdivisions is attached in Appendix D.

### Review Methodology

Based on the transmission line CAD files that were received from Dufferin Wind Power Inc. , a feasible track horizontal and vertical top-of-rail design alignment and CAD drawings were developed at the same scale as the transmission line drawings. From the resulting track design alignment, cross-sections were prepared at typical and critical locations for reviewing potential interference between the minimum operating and dynamic clearance requirements of future railway and those minimum clearances provided for transmission line. Critical locations included: 1) areas where the curve of the track alignment approached the mid-span of transmission lines (i.e. at the maximum sag locations) between hydro towers; 2) fill areas where the track embankment was higher relative to surrounding ground and 3) corresponding tower locations and elevations.

The maximum railway operating and dynamic clearance envelope was applied to each cross-section in combination with the hydro tower and line sections as referenced to the existing right-of-way limit. The resulting railway clearance template was then compared to the transmission line maximum clearance requirements to determine if there was any conflict between the two.

The potential Electromagnetic Interference (EMI) effect of the hydro lines on the track and potential signals and communications (S&C) systems was also reviewed. A separate EMI assessment was prepared for this assessment report and is attached in Appendix E.

### Special Considerations/Limitations

1. Special clearance requirements, if any, of future rail operations were not available at the time of the review.
2. Occupational Health and Safety Regulations, requirements for "*Minimum Separation Distance to be Maintained from Energized High Voltage Electrical Equipment and Conductors*" during the future construction of the rail line will need to be discussed and will be further investigated at the time of the design and construction of a future rail line.
3. It was envisioned that the future alignment will be built on the existing, abandoned, track bed that is still in place. It was assumed that utilizing this old track embankment for a future rail line would result in savings. For this reason and in order to allow for local variations in the existing grade and making reasonable allowance for future track ballast lifts, the top of rail was set at 550 mm above the existing abandoned rail embankment.
4. The 342 m radius of the existing track bed between Stations 25+471 and 25+613 limits maximum freight speed to 42 mph based on CP track design standards. To increase this segment of track to 45

**Review of Construction Effects of a 230kV Transmission Line on Railway Clearance Requirements Along Former Toronto Grey and Bruce Rail Corridor**

mph, a minimum radius of 380m is required. The impact of the larger radius curve is that the curve will be somewhat longer and flatter, moving off the existing track bed, away from the transmission line as currently proposed. Therefore, the maximum clearance requirements of the revised track alignment to the transmission line in this segment can still be met.

## Conclusions

Based upon the conceptual track alignment that was developed for this review and the comparison between standard, maximum railway operating and dynamic clearances and those of the transmission line, conclusions are as follows:

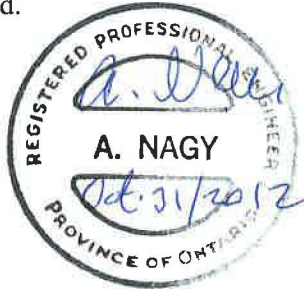
1. There is no interference between the maximum track clearance envelope and the proposed transmission line within the former railway right-of-way.
2. The track dynamic clearance envelope requirements fall outside the CSA C22.3 No. 1-10 maximum clearance requirements for a 230kV phase-to-phase live wire or conductors. These CSA clearance requirements include:
  - 9.30 m minimum vertical clearance at crossings;
  - 4.1 m minimum horizontal clearance from railway track;
  - 2.5 m from transmission support structure.
3. Daily Operations and Maintenance; O&M procedures will have to recognize the presence of high voltage infrastructure within the R-O-W.
4. Sight Lines: As a rule of thumb, level of protection is based on the cross product of cars/day x trains/day. Since we don't know the level of protection required in the future, we cannot comment now. However, the most restrictive sight line requirements would be for the simplest form of protection being cross bucks only. In that case a study would be required to ensure proper sight links are achieved and maintained. If not possible, automatic protection may be required.
5. Based on a review of Electromagnetic Interference (EMI) potential effects of the transmission line on the future railway operations, signaling and communications systems (see Appendix D), it is HMM's opinion that the two infrastructure facilities can coexist in the same railway corridor by mitigating the EMI effects as follows:
  - Maximize the distance between the transmission conductors and the proposed railway alignment as much as possible beyond that of the minimum electrical safety clearance, CSA Canadian Standard Association, C22.3 No. 1-10, 2010.
  - Prior to commencing design of the railway's S&C system, establish by quantitative measurement of the prevailing steady state electromagnetic environment to which the railway needs to be compatible and undertake computer modeling to establish inductive and capacitive coupling levels.
  - Appropriate technology selection and design mitigation will allow the railway to operate within an environment that is separated by the minimum electrical clearance from the transmission lines.

**Review of Construction Effects of a 230kV Transmission Line on Railway Clearance Requirements Along Former  
Toronto Grey and Bruce Rail Corridor**

- The future railway system design should consider personnel touch potential and equipment operation under both transmission line steady state and fault conditions.

Should you wish to discuss the results of this report or require further clarification, please contact the undersigned.

Sincerely,



Andrew Nagy, P.Eng.  
Senior Project Manager  
Hatch Mott MacDonald Ltd.

A handwritten signature in blue ink, appearing to read "Pat O'Connor", written over a horizontal line.

Pat O'Connor, P.Eng.  
Senior Associate Principle Project Manager  
Hatch Mott MacDonald Ltd.

## APPENDIX A

List of Dufferin Wind Power Inc's electronic files submitted describing the  
proposed transmission line.



## APPENDIX A

DUFFERIN WIND POWER  
PROJECT 230KV TRANSMISSION  
LINE

PDF NUMBER	REV	TITLE
1248-P002-S12-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 12
1248-P002-S13-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 13
1248-P002-S14-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 14
1248-P002-S15-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 15
1248-P002-S16-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 16
1248-P002-S17-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 17
1248-P002-S18-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 18
1248-P002-S19-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 19
1248-P002-S20-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 20
1248-P002-S21-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 21
1248-P002-S22-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 22
1248-P002-S23-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 23
1248-P002-S24-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 24
1248-P002-S25-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 25
1248-P002-S26-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 26
1248-P002-S27-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 27
1248-P002-S28-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 28
1248-P002-S29-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 29
1248-P002-S30-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 30
1248-P002-S31-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 31
1248-P002-S32-A1	A	PLAN & PROFILE DRAWING RAILROAD CORRIDOR SECTION SHEET 32
1248-P003-B	B	RAILROAD RIGHT OF WAY SECTION PROPOSED ALIGNMENT (5.5M OFFSET) TRIANGULAR TANGENT CONFIGURATION
1248-P004-B	B	RAILROAD RIGHT OF WAY SECTION PROPOSED ALIGNMENT (3.0M OFFSET) VERTICAL TANGENT CONFIGURATION
1248-P005-B	B	PRIVATE EASEMENT RIGHT OF WAY PROPOSED ALIGNMENT SECTION TRIANGULAR TANGENT CONFIGURATION
1248-P201-B	B	1CCT 230 kV TRANSMISSION LINE TANGENT (0-2") TRIANGULAR CONFIGURATION FRAMING
1248-P202-B	B	1CCT 230KV TRANSMISSION LINE LIGHT ANGLE (2-15') FRAMING GUYED WOOD POLE
1248-P203-B	B	1CCT 230KV TRANSMISSION LINE MEDIUM ANGLE (15-30') FRAMING GUYED WOOD POLE
1248-P204-B	B	1CCT 230KV TRANSMISSION LINE MEDIUM ANGLE (30-60') FRAMING GUYED WOOD POLE
1248-P205-B	B	1CCT 230KV TRANSMISSION LINE HEAVY ANGLE (60-90') FRAMING GUYED WOOD POLE
1248-P206-B	B	1CCT 230KV TRANSMISSION LINE DOUBLE DEADEND FRAMING GUYED WOOD POLE
1248-P301-B	B	1CCT 230KV TRANSMISSION LINE TANGENT (0-2') VERTICAL CONFIGURATION FRAMING
1248-P302-B	B	1CCT 230KV TRANSMISSION LINE LIGHT ANGLE (2-15') FRAMING SELF SUPPORTING STEEL POLE
1248-P303-B	B	1CCT 230KV TRANSMISSION LINE MEDIUM ANGLE (30-60') FRAMING SELF SUPPORTING STEEL POLE
1248-P304-B	B	1CCT 230KV TRANSMISSION LINE HEAVY ANGLE (60-90') FRAMING SELF SUPPORTING STEEL POLE
1248-P305-B	B	1CCT 230KV TRANSMISSION LINE DOUBLE DEADEND FRAMING SELF SUPPORTING STEEL POLE
1248-E401-B	B	230KV OVERHEAD TO UNDERGROUND TRANSITION STATION LAYOUT PLAN & SECTIONS RAILROAD RIGHT OF WAY

## APPENDIX A

1248-P003-C	RAILROAD RIGHT OF WAY SECTION PROPOSED ALIGNMENT (5.5M OFFSET) TRIANGULAR TANGET CONFIGURATION
1248-P004-C	RAILROAD RIGHT OF WAY SECTION PROPOSED ALIGNMENT (3.0M OFFSET) VERTICAL TANGENT CONFIGURATION
1248-P005-B	PRIVATE EASEMENT RIGHT OF WAY PROPOSED ALIGNMENT SECTION TRINGULAR TANGET CONFIGURATION
SURVEY OVERLAY (19 Sep 12)	N/A
230kV T-LINE TOPO (5 Sep 12)	N/A
1248-P002-E (OVERLAY)	N/A

## APPENDIX B

### List of Conceptual Track Plan, Profiles and Clearance Cross-Section Drawings

## APPENDIX B

DUFFERIN WIND POWER PROJECT 230kV TRANSMISSION LINE	
DRAWING NUMBER	TITLE
COVER SHEET	
315665-C-01	ENVELOPES ABBREVIATIONS AND GENERAL NOTES
315665-C-02	TABLE OF CONTENT
315665-C-12	PLAN AND PROFILE
315665-C-13	PLAN AND PROFILE
315665-C-14	PLAN AND PROFILE
315665-C-15	PLAN AND PROFILE
315665-C-16	PLAN AND PROFILE
315665-C-17	PLAN AND PROFILE
315665-C-18	PLAN AND PROFILE
315665-C-19	PLAN AND PROFILE
315665-C-20	PLAN AND PROFILE
315665-C-21	PLAN AND PROFILE
315665-C-22	PLAN AND PROFILE
315665-C-23	PLAN AND PROFILE
315665-C-24	PLAN AND PROFILE
315665-C-25	PLAN AND PROFILE
315665-C-26	PLAN AND PROFILE
315665-C-27	PLAN AND PROFILE
315665-C-28	PLAN AND PROFILE
315665-C-29	PLAN AND PROFILE



### APPENDIX C

CP Timetable No. 130, April 26, 1959, for the Orangeville and Owen Sound  
Subdivisions

<p>Northward passenger trains clearing Southward passenger trains at Orangeville will, unless otherwise directed, take siding at crossover switch leading to island platform immediately south of station. Southward trains will not foul the track until properly cleared.</p>			
<p>Switching movements over Nelson St., Brampton, except on main track, must be protected by flagman.</p>			
<p>Railway crossing at grade with C.N.R. at Mileage 7.8 Interlocked, Automatic.</p>			
<p>Railway crossing at grade with C.N.R. at Mileage 19.0 Not Interlocked. Northward home signal is located on west side of track and southward home signal and stop sign governing southward trains are located on east side of track.</p>			
<p><b>MAXIMUM SPEEDS UNLESS OTHERWISE RESTRICTED</b></p>			<p>Miles per Hour 70</p>
<p>Passenger Trains</p>			
<p><b>Permanent Slow Orders</b></p>			
Mileage	Location	Passenger Trains	Permissible Speed— Miles Per Hour Frt. and Mixed Trains
0.0 to 7.8	On Curves	45	
7.8	Queen Street, Brampton	10	10
7.8 to 19.0	On Curves	45	
19.0 to 25.8	On Curves	35	
25.8	Over bridge	25	25
25.8 to 28.6	On Curves	35	
28.6 to 34.6	On Curves	45	
<p>Diesel units must not exceed forty miles per hour between the following mileages:</p>			
<p>0.00 and 3.83</p>			
<p>9.23 and 16.28</p>			
<p>22.38 and 27.67</p>			
<p>N2, P1, R2-3 class engines must not exceed twenty miles per hour over bridge mileages 3.1, 7.1-2, G1-2-B class engines singleheaded only and D9-10 M3-4 class engines must not exceed twenty miles per hour over bridge mileage 23.8.</p>			
<p>G2 engines with 10,000 gallon tender must not be operated between mileages 7.5 and 24.8.</p>			
<p>Trains handling 200 ton and 350 ton cranes must not exceed ten miles per hour over bridges mileages 3.1, 23.8, and 18.00 miles per hour over bridge mileage 18.3.</p>			
<p>Sidings at the following stations are also used as business tracks: Cheltenham, Aiton.</p>			
<p><b>OWEN SOUND SUBDIVISION FOOTNOTES</b></p>			
<p>Northward passenger trains clearing Southward passenger trains at Orangeville will, unless otherwise directed, take siding at crossover switch leading to island platform immediately south of station. Southward trains will not foul the track until properly cleared.</p>			
<p>Northward trains may leave from without obtaining terminal clearance.</p>			
<p><b>MAXIMUM SPEEDS UNLESS OTHERWISE RESTRICTED</b></p>			<p>Miles per Hour 70</p>
<p>Passenger Trains</p>			
<p><b>Permanent Slow Orders</b></p>			
Mileage	Location	Passenger Trains	Permissible Speed— Miles per Hour Frt. and Mixed Trains
0.06	Town Line, Orangeville	10	10
0.06 to 3.0	On Curves, northward	30	30
3.0 to 7.5	On Curves	40	
7.5 to 27.6	On Curves	50	
27.6	Main Street, Dundalk	10	10
27.6 to 38.0	On Curves	50	
38.0 to 49.0	On Curves	40	
49.0 to 64.0	On Curves	60	
64.0 to 80.4	On Curves	40	
80.4 to 73.0	On Curves	50	
<p>Switching movements over Main St., Shelburne Mileage 16.95 must be protected by a flagman.</p>			
<p>Diesel units must not exceed forty miles per hour between the following mileages:</p>			
<p>5.1 and 11.71</p>			
<p>12.78 and 15.80</p>			
<p>55.20 and 60.24</p>			
<p>72.42 and 73.00</p>			
<p>Air Brake Rules 58, 101 to 105 inclusive apply on all freight and mixed trains, from mileage 3.4 to mileage 1.1.</p>			
<p>Sidings at the following stations are also used as business tracks: Crombie, Dundalk, Berkeley, Frazer.</p>			
<p>*No. 307 will stop at Corbetton Friday only.</p>			

## APPENDIX D

### Electromagnetic Interference (EMI) Review



Hatch Mott  
MacDonald

## Technical Memo

### Review of Construction Effects of a 230kV Transmission Line on Railway Clearance Requirements Along The Former Toronto Grey and Bruce Rail Corridor

TM315665.001

**To:** Andrew Nagy, P.Eng  
Hatch Mott MacDonald  
2800 Speakman Dr.  
Mississauga, ON L5K 2R7

**Copy To:** David Grigg, C.E.T.

**From:** Keith Adam, C.Eng.

**Approved:** Andrew Nagy, P.Eng.

**Date:** October 30 2012

**Subject** Electromagnetic Interference (EMI)

## SUMMARY

The proposed railway system is to be constructed in the future and therefore neither the intended design nor construction timing is known. The distance between the transmission conductors and the proposed railway alignment should be maximized, beyond that of the minimum electrical safety clearance, wherever possible. Prior to commencing design of the railway, establish by quantitative measurement the prevailing steady state electromagnetic environment to which the railway design needs to be compatible and undertake computer modeling to establish inductive and capacitive coupling levels. Appropriate technology selection and design mitigation would allow the railway to operate within an environment that was separated by the minimum electrical clearance from the transmission lines. The future railway system design should consider personnel touch potential and equipment operation under both transmission line steady state and fault conditions.





## **Electromagnetic Interference (EMI)**

The following provides a qualitative review of the impact and mitigations for likely electromagnetic interference from a 32km long, 230kV (phase-to-phase, 133 kV phase-to-ground) transmission line to a future a single-track freight railway construction and operation.

For measuring clearances and potential interferences, an envisioned preliminary alignment over the existing rail embankment has been created, which is feasible for a 45mph Diesel railway operation. The electrical safety clearance criteria have been established by following AREMA, CP and CSA requirements.

AC Power interference in railroad systems is a common problem and the 230kV transmission line will inevitably be the source of electromagnetic interference. The degree to which the interference will impose itself and its impact on the adjacent railway is primarily influenced by the distance from the transmission line conductors, the current flowing in the transmission line conductors and any mitigation in the railway system design.

## **Railway Interference & Mitigation**

The current carrying conductors of power transmission lines will be the source of the interference and the railway will be the victim or receptor of the interference. The interference coupling path will be inductive coupling or capacitive coupling for low impedance and high impedance circuits respectively. Identification of the source and path of ac interference must be known in order to develop appropriate mitigation.

In this instance the transmission line will be constructed first and the railway system designed and constructed at a later time. It is anticipated that by satisfying the minimum electrical clearances this will provide an acceptable operating electromagnetic environment which can be mitigated through design. Wherever possible the distance between the transmission line conductors and the railway should be maximized, this will help reduce the electromagnetic field levels and thus reduce the challenge of design mitigation.

Interference will exist under transmission line steady state (i.e. normal) and fault conditions. For transmission steady state conditions the railway must be designed to operate normally in the prevailing electromagnetic environment. Under fault conditions the railway design should allow for a momentary degraded operation and to minimize damage to its systems.



The railway will therefore have to be designed to be compatible with the prevailing electromagnetic environment of the transmission lines. The main railway receptors, the interference manifestation and possible mitigations are described below:-

- a) Track/rails – these will present the main inductive receptor for interference due to their relatively large cross sectional area and the distance in which they run parallel to the transmission line. The interference will typically manifest itself as induced 'rail to ground' and 'rail to rail' voltages which may compromise personnel safety and signaling system operation in the absence of any mitigation. Grounding of the rail system will eliminate or significantly reduce any induced voltage. In electrified railways this grounding would establish unwanted stray currents however the intended use of diesel locomotives will avoid this issue. Grounding of the rail however would then limit the options on the possible signaling technologies.
- b) Signalling System – it is assumed that a signaling system will be deployed. Induced voltage superimposed on the rail, both rail to rail and rail to ground, and any rail grounding mitigation will provide a challenge for the signaling system design. There are however many signaling technologies currently available which would eliminate the use of the rails in their entirety (Communication Based Train Control etc) or track circuit options that could be deployed but would require close co-ordination with the rail grounding mitigation activity. Any long haul signal cables should be implemented using fibre technology and will therefore be immune to electromagnetic interference. Interference of any local short haul copper cabling circuits could be mitigated by appropriate cable shielding techniques.
- c) Data Transmission – it is anticipated that all long haul communications, if any, will be implemented using fibre technology and will therefore be immune from electromagnetic interference. Interference of any local short haul copper cabling circuits could be mitigated by appropriate cable shielding techniques.
- d) Radio System – Typically, corona interference from transmission line conductors to a correctly designed radio system does not present a problem. Interference levels both in fair weather and in rain are extremely low at the right-of-way edge for 230 kV and lower transmission lines, and will usually meet or exceed reception guidelines.

Keith Adam, C.Eng.  
Associate, Principal Project Manager

**APPENDIX 'B'**

**APPROVED FORMS OF LAND AGREEMENTS**

**Board Staff #4(iii)**

## AGREEMENT TO GRANT A TRANSMISSION EASEMENT

THIS AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 2012

BETWEEN:

■

(the “**Transferor**”)

- and -

**DUFFERIN WIND POWER INC.**, a corporation incorporated under the laws of New Brunswick

(the “**Transferee**”)

### WHEREAS:

- A. The Transferor is the owner of the lands and premises described in Schedule “A” hereto (herein called the “**Lands**”); and
- B. The Transferor has agreed to grant to the Transferee an easement in perpetuity over a portion of the Lands on the terms and conditions set forth herein.

**WITNESSES** that in consideration of payment by the Transferee to the Transferor of the sum of \_\_\_\_\_ DOLLARS (\$■) (the “**Offer Consideration**”), and other good and valuable consideration (the sufficiency of which consideration is hereby acknowledged), the parties hereby grant, covenant and agree as follows:

#### 1. **Option**

The Transferor hereby grants to Transferee, its successors and assigns the exclusive right, irrevocable for a period of 14 months from the date hereof (the “**Option Period**”), to purchase upon the terms and conditions hereinafter set out the perpetual rights, easements and privileges set out in the form of Transmission Easement Agreement (the “**Transfer of Easement**”) annexed hereto as Schedule “B” in, through, under, over, across, along and upon a strip of the Lands 30 metres in perpendicular width shown on Schedule “C” hereto (the “**Easement Lands**”).

#### 2. **Purchase Price**

The purchase price (the “**Purchase Price**”) for the Transfer of Easement shall be the sum of \_\_\_\_\_ (\$■) Dollars of lawful money of Canada plus applicable HST. The Offer Consideration shall be credited against the Purchase Price and the balance shall be paid upon registration of the Transfer of Easement on the title to the Lands at the time of the Closing.



3. **Harmonized Sales Tax**

The Transferee hereby certifies that:

- (a) it is registered under Subdivision d of Division V of Part IX of the *Excise Tax Act* for the collection and remittance of the Harmonized Sales Tax (“**HST**”) and its registration number is 81289 1406 RT0001, and
- (b) it will comply with the self-assessment provisions of the ETA in connection with the Transfer of Easement.

The Transferee shall indemnify and save harmless the Transferor from and against any and all HST, penalties, costs and/or interest which may become payable by or assessed against the Transferor as a result of any failure by the Transferee to comply with the provisions of this section 3

4. **Exercising Option**

The Transferee may at any time during the Option Period notify the Transferor in writing (the “**Exercise Notice**”) that it will be completing the transaction in accordance with the provisions hereof and specifying the date of Closing for the transaction (the “**Closing Date**”) which shall not be less than 60 days nor more than 180 days after the giving the Exercise Notice.

5. **Closing**

The closing (the “**Closing**”) shall take place at 11:00 a.m. on the Closing Date or at such other time or date as the Transferor or Transferee or their respective counsel may agree in writing. Any documents or money payable hereunder may be tendered upon the parties hereto or their respective solicitors. Time shall in all respects be of the essence hereof.

6. **Co-operation/Registration**

The Transfer of Easement, any reference plan depicting the Easement Lands with greater certainty and all ancillary documents necessary to register same on title shall be prepared by and at the expense of the Transferee. The Transferor hereby covenants and agrees that the Transferee may, at its option, register this Agreement or notice thereof, and the Transfer of Easement on title to the Lands, and the Transferor hereby covenants and agrees to execute, at no further cost or condition to the Transferee, such other instruments, plans and documents as may reasonably be required by the Transferee to effect registration of this Agreement or notice thereof and the Transfer of Easement on or prior to Closing.

7. **Priority of Easement**

During the Option Period and, if an Exercise Notice is given, thereafter:

- (a) the Transferee shall not grant or transfer an easement or encumber its interest in the Easement Lands which will have priority over the registration of the Transfer of Easement; and

- (b) the Transferor will use commercially reasonable efforts, and the Transferee has permission to approach prior encumbrancers, to obtain all necessary consents, postponements or subordinations (in registrable form) from all current and future encumbrancers.

8. **Title**

Title to the Easement Lands shall at Closing be good and free from all registered restrictions, charges, liens, easements and encumbrances of any kind whatsoever except for those title matters disclosed in Schedule “D”.

9. **Right of Convey/Further Assurances**

Subject to those title matters disclosed in Schedule “D”, the Transferor covenants and agrees with Transferee that (i) it has the right to enter into this Agreement and the Transfer of Easement and to grant the rights hereunder and thereunder without restriction, (ii) the Transferee will quietly possess and enjoy such rights, and (iii) the Transferor will execute upon request such further assurances as may be requisite to give effect to the provisions of this Agreement and the Transfer of Easement.

10. **Temporary Rights**

The Transferor hereby grants to the Transferee the following temporary rights, easements, rights of way, covenants, agreements and privileges in, through, under, over, across, along and upon the Easement Lands and so much of the Lands as may be reasonably necessary:

- (a) to mark the location of any proposed transmission, distribution or communication lines or lines (the “**line**”) in, on or under the Easement Lands by suitable markers;
- (b) to conduct engineering and legal surveys in, on and over the Easement Lands; and
- (c) to conduct testing and investigations of any sort, including invasive testing, environmental, archaeological, geotechnical and hydrological assessments, taking soil samples, conducting soil compaction tests, and such other testing and assessments as the Transferee or any governmental authority may require, provided that upon completion of such testing and investigations the Transferee shall restore the surface of the lands to substantially the same state as it was prior to such testing or investigations.

11. **Access**

The Transferor consents to the Transferee, its respective officers, employees, agents, contractors, sub-contractors, workers and permittees or any of them entering on, exiting and passing in, on, over, along, upon, across, through and under the Easement Lands and so much of the Lands as may be reasonably necessary, at all reasonable times after the date of this Agreement, with or without vehicles, machinery, equipment, material and supplies, for all purposes necessary or convenient to the exercise and enjoyment of the rights granted hereunder.

12. **Approvals**

The Transferee, its contractors, consultants, agents and appointees, are hereby duly appointed as the Transferor's agent for the purposes of making application for Approvals, at the Transferee's expense, in relation to the Easement Lands and the rights granted hereunder and under the Transfer of Easement. The Transferor agrees to execute and deliver such further agreements, applications and confirmations, and do such further things, as the Transferee may reasonably require to obtain any Approvals, at the Transferee's sole cost and expense. In this section, the term "**Approvals**" includes any authorizations, licences, approvals, permits, subdivision consents, rezoning applications, site plan agreements, and any other permissions from any authorities having jurisdiction which may be necessary or advisable to develop, install, construct and operate the Works (as defined in the Transfer of Easement) and any related activities.

13. **No Interference**

The Transferor shall not:

- (a) interfere with the construction, installation, maintenance or operation of the Works (as defined in the Transfer of Easement), any development activities, or the undertaking of any other activities permitted hereunder.
- (b) undertake any action including, without limitation, hunting, blasting, excavation or construction, that may have the effect of constituting a danger to the Works or increasing the Transferor's construction, installation, maintenance or operating costs with respect to the Works, but the Transferor expressly reserves the right to use the Lands for agricultural purposes that do not and will not interfere with the Transferee's operations hereunder or enjoyment of the rights hereby granted. If any of the Transferor's activities negatively impacts on the construction, installation, maintenance or operation of the Works, the Transferor agrees to cease and desist such activities immediately upon notice from the Transferee.

14. **Planning Act**

This Agreement shall be conditional upon compliance with the subdivision provisions of the *Planning Act* (Ontario) to the extent applicable.

The Transferee hereby declares that this Agreement, the easements hereby granted and the Transfer of Easement are being acquired by the Transferee for the purpose of an electricity transmission line within the meaning of Part VI of the *Ontario Energy Board*

Act, 1998, and for the purpose of a renewable energy project within the meaning of the *Green Energy Act*, 2009.

15. **Notice**

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail postage prepaid, or by facsimile transmission, addressed to the recipient as follows:

To Transferee:

Dufferin Wind Power Inc.  
161 Bay Street, Suite 4550  
TD Canada Trust Tower  
Toronto, Ontario  
M5J 2S4

Facsimile No: (416) ■  
Phone: (416) 551-4856  
Attention: Jeff Hammond, Senior Vice President

To Transferor:

■

Facsimile No: ■  
Phone: (■) ■  
Attention: ■

or to such other address, facsimile number or individual as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given when actually received by the addressee or upon the second business day after the day of mailing.

16. **Successors in Title**

The Transferor covenants and agrees that if and before the Transferor sells, transfers, assigns, charges, leases, disposes or otherwise parts with possession, of all or part of the Lands to a third party (the “**Third Party**”) the Transferor shall ensure that the Third Party executes and delivers to and in favour of the Transferee a written agreement concurrent with such sale, transfer, assignment, charge, lease or disposition in which the Third Party assumes the burden and benefit of this Agreement, and agrees to be bound by it.

17. **Family Law Act Compliance**

The Transferor represents that no part of the Lands is a matrimonial home within the meaning of the *Family Law Act*, as amended, unless the Transferor has caused this Agreement and all related documents to be accepted and consented to in writing to the Transferor's spouse.

18. **Interpretation**

All covenants herein contained shall be construed to be several as well as joint, and wherever the singular and the masculine are used in this Agreement, the same shall be construed as meaning the plural or the feminine or neuter, where the context or the identity of the Transferor/Transferee so requires.

Captions and headings are for convenience of reference only and in no way define, limit, construe or describe the scope or intent of the relevant section or paragraph or in any way affect the interpretation of this Agreement.

19. **Entire Agreement**

This Agreement and the schedules attached hereto constitute the entire agreement between the parties pertaining to the subject matter hereof, and amends, replaces and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions between the parties whether oral or written. There are no representations, warranties, collateral agreements, conditions or other agreements between the parties in connection with the subject matter of this Agreement except as specifically set forth herein. No supplement, modification, waiver or termination of this Agreement shall be binding unless in writing and executed by the parties. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall such waiver constitute continuing waiver unless otherwise expressly provided herein.

20. **Run with the Land**

The burden and benefit of this Agreement shall continue on after the Closing and shall run with the Easement Lands and the works and undertaking of the Transferee and shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

21. **Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

22. **Counterparts**

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 instrument. This Agreement may be delivered by fax or electronic transmission.

23. **Independent Legal Advice**

The Transferor acknowledges and confirms to the Transferee that the Transferor has sought such independent legal advice as the Transferor considers appropriate prior to entering into this Agreement.

IN WITNESS WHEREOF the Transferor and Transferee have executed this Agreement as of the day and year first above written.

**EITHER**

**WITNESS**

)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
[Transferor]

**OR**

[TRANSFEROR]

Per: \_\_\_\_\_

Name: ■

Title: ■

I have authority to bind the corporation.

**DUFFERIN WIND POWER INC.**

Per: \_\_\_\_\_

Name: Wu Hao

Title: President

Per: \_\_\_\_\_

Name: Jeffrey Hammond

Title: Senior Vice-President

We have authority to bind the corporation.

■, the Transferor's spouse, hereby consents to the Transferor entering into this Agreement and the grant of the Transfer of Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
■

**SCHEDULE “A”**  
**LEGAL DESCRIPTION OF THE LANDS**

## SCHEDULE "B"

### TRANSMISSION EASEMENT AGREEMENT

■, (the "**Transferor**") is the owner in fee simple and in possession of the following lands (collectively, the "**Lands**"):

- (c) PIN: ■ (LT) - being ■;
- (d) PIN: ■ (LT) - being ■; and
- (e) PIN: ■ (LT) - being ■.

**DUFFERIN WIND POWER INC.** (the "**Transferee**") has erected, or is about to erect, certain Works [as more particularly described in paragraph 1(a) below] in, through, under, over, across, along and upon that part of the Lands described below as the Easement Lands.

1. The Transferor hereby grants and conveys to the Transferee, its successors and assigns the rights and easement, the following unobstructed and exclusive rights, easements, rights-of-way, covenants, agreements and privileges in perpetuity (the "**Rights**") in, through, under, over across, along and upon that portion of the Lands of the Transferor described as Parts ■, ■ and ■ on reference plan 7R -■ (the "**Easement Lands**") for the following purposes:
  - (a) To enter and lay down, install, construct, erect, maintain, open, inspect, add to, enlarge, alter, repair and keep in good condition, move, remove, replace, reinstall, reconstruct, relocate, supplement and operate and maintain at all times in, through, under, over, across, along and upon the Easement Lands, electrical transmission, distribution and telecommunications systems consisting of pole structures, steel towers, anchors, guys and braces and all such aboveground or underground lines, wires, cables, telecommunications cables, grounding electrodes, conductors, control systems, storage sheds, in-ground service manholes, surface-mounted transformers, apparatus, works, accessories, associated material and equipment, and appurtenances pertaining to or required by either such system (all or any of which are herein individually or collectively called the "**Works**") as in the opinion of the Transferee are necessary or convenient thereto for use as required by Transferee in its undertaking from time to time, or a related business venture.
  - (b) To enter on and selectively grub, cut or prune, and to clear and keep clear, and remove all trees, branches, bushes, shrubs and other obstructions and materials, over or upon the Easement Lands and, without limitation, to cut and remove all leaning or decayed trees or stumps located on the Lands whose proximity to the Works renders them liable to fall and come in contact with the Works or which may in any way interfere with the safe, efficient or serviceable operation of the Works or this easement by the Transferee.



- (c) To conduct all engineering, legal surveys, and make soil tests, soil compaction and environmental studies and audits in, under, on and over the Easement Lands as the Transferee in its discretion considers requisite.
- (d) To erect, install, construct, maintain, repair and keep in good condition, move, remove, replace and use bridges and such gates in all fences which are now or may hereafter be on the Easement Lands as the Transferee may from time to time consider necessary.
- (e) Except for fences, equipment and Installations permitted under paragraph 2(a), to clear the Easement Lands and keep it clear of all buildings, structures, erections, installations, or other obstructions of any nature (hereinafter collectively called the **“obstruction”**) whether above or below ground, including removal of any materials and equipment or plants and natural growth, which in the opinion of the Transferee, endanger its Works or their operation.
- (f) To enter on and exit by the Transferor’s access routes and to pass and repass at all times in, over, along, upon and across the Easement Lands and so much of the Lands as is reasonably required, for Transferee, its respective officers, employees, agents, servants, contractors, subcontractors, workmen and permittees with or without all plant machinery, material, supplies, vehicles and equipment for all purposes necessary or convenient to the exercise and enjoyment of this easement subject to compensation afterwards for any crop or other physical damage only to the Lands or permitted structures sustained by the Transferor caused by the exercise of this right of entry and passageway.

2. The Transferor agrees that:

- (a) It will not interfere with any Works established on or in the Easement Lands and shall not, without the Transferee’s consent in writing, erect or cause to be erected or permit in, under or upon the Easement Lands any obstruction or plant or permit any trees, bush, shrubs, plants or natural growth which does or may interfere with the Rights granted herein. The Transferor agrees it shall not, without the Transferee’s consent in writing, change or permit the existing configuration, grade or elevation of the Easement Lands to be changed, and the Transferor further agrees that no excavation or opening or work which may disturb or interfere with the existing surface of the Easement Lands shall be done or made unless consent therefor in writing has been obtained from Transferee, provided however, that the Transferor shall not be required to obtain such permission in case of emergency. Notwithstanding the foregoing, where there is no danger or likelihood of danger to the Works of the Transferee or to any persons or property and the safe or serviceable use and operation of this easement by the Transferee is not interfered with, the Transferor may at its expense construct and maintain in accordance with applicable law roads, lanes walks, drains, sewers, water pipes, oil and gas pipelines, fences (not to exceed 2 metres in height) and service cables on or under the Easement Lands (the **“Installation”**) or any portion thereof; provided that prior to commencing such Installation, the Transferor shall give to the Transferee

thirty (30) days' notice in writing thereof to enable the Transferee to have a representative present to inspect the proposed Installation during the performance of such work, and provided further that Transferor comply with all reasonable instructions given by such representative and that all such work shall be done to the reasonable satisfaction of such representative. In the event of any unauthorized interference aforesaid or contravention of this paragraph, or if any authorized interference, obstruction or Installation is not maintained in accordance with the Transferee's instructions or in the Transferee's reasonable opinion, may subsequently interfere with the Rights granted herein, the Transferee may at the Transferor's expense, forthwith remove, relocate, clear or correct the offending interference, obstruction, Installation or contravention complained of from the Easement Lands, without being liable for any damages cause thereby.

- (b) Notwithstanding any rule of law or equity, the Works installed by the Transferee shall at all times remain the property of the Transferee, notwithstanding that such Works are or may become annexed or affixed to the Easement Lands, and shall at any time and from time to time be removable in whole or in part by Transferee.
  - (c) No other easement or permission will be transferred or granted and no encumbrances will be created over or in respect to the Easement Lands, prior to the registration of a transfer of this grant of Rights.
  - (d) The Transferor will execute such further assurances of the Rights in respect of this grant of easement as may be requisite.
  - (e) The Rights hereby granted:
    - (i) shall be of the same force and effect to all intents and purposes as a covenant running with the Easement Lands; and
    - (ii) are declared hereby to be appurtenant to and for the benefit of the Works and undertaking of the Transferee described in paragraph 1(a).
3. The Transferee covenants and agrees to obtain at its sole cost and expense all necessary postponements and subordinations (in registrable form) from all current and future prior encumbrancers, postponing their respective rights, title and interest to the transfer of easement herein so as to place such Rights and easement in first priority on title to the Lands.
4. The Transferor represents and warrants that the Easement Lands have not been used for the storage of and do not contain any toxic, hazardous, dangerous, noxious or waste substances or contaminants (collectively the "**Hazardous Substances**"). The Transferee shall not bring any Hazardous Substances on the Easement Lands. In acquiring its interests in the Easement Lands pursuant to this Easement, the Transferee shall be deemed not to acquire the care or control of the Easement Lands or any component thereof.

5. The Transferee shall maintain the Easement Lands, other than any Installations, in accordance with applicable law and in accordance with paragraph 1(b), at its own cost and expense.
6. There are no representations, covenants agreements, warranties and conditions in any way relating to the subject matter of this grant of Rights whether expressed or implied, collateral or otherwise except those set forth herein.
7. No waiver of a breach or any of the covenants of this grant of Rights shall be construed to be a waiver of any succeeding breach of the same or any other covenant.
8. The burden and benefit of this transfer of Rights shall run with the Easement Lands; and the Works and undertaking of the Transferee and shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.
9. The Rights and the easements granted hereby shall be conditional upon compliance with the subdivision provisions of the *Planning Act* (Ontario) to the extent applicable. The Transferee hereby declares that this easement and the Rights are being acquired by the Transferee for the purpose of an electricity transmission line within the meaning of Part VI of the *Ontario Energy Board Act*, 1998, and for the purpose of a renewable energy project within the meaning of the *Green Energy Act*, 2009.

10. This easement agreement is governed by the laws of Ontario and the laws of Canada applicable therein.

IN WITNESS WHEREOF the Transferor and Transferee have executed this Agreement this \_\_\_\_ day of ■, 2011.

■

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

We have authority to bind the corporation.

**DUFFERIN WIND POWER INC.**

Per: \_\_\_\_\_

Name: Wu Hao

Title: President

Per: \_\_\_\_\_

Name: Jeffrey Hammond

Title: Senior Vice President

We have authority to bind the corporation.

**SCHEDULE “C”**  
**EASEMENT LANDS**

**SCHEDULE “D”**  
**PERMITTED ENCUMBRANCES**

**DUFFERIN WIND POWER INC.  
ELECTRICAL TRANSMISSION LEASE**

**LEASE**

**THIS LEASE** made as of ■ \_\_\_\_\_, 2012.

**BETWEEN :**

■  
Address: ■

(the “**Landlord**”)

– and –

**DUFFERIN WIND POWER INC.**  
a corporation incorporated under the laws of New Brunswick  
Address: 161 Bay Street, Suite 4550, Toronto, Ontario, M5K 1N2

(the “**Tenant**”)

**WHEREAS:**

- A. The Landlord is the registered and beneficial owner of an estate in fee simple title, subject however to such liens, mortgages and encumbrances existing as of the date of this Lease, of and in that certain parcel or tract of land situated, lying and being in the Province of Ontario and legally described as set out in Schedule “A” attached to this Lease (the “**Lands**”); and
- B. The Landlord has agreed to lease portions of the Lands as identified in Schedule “B” to this Lease to the Tenant for the purposes and upon the terms and conditions set forth in this Lease.

**WITNESSES** that in consideration of the covenants and agreements herein contained and the sum of TWO DOLLARS (\$2.00), the receipt and sufficiency of which are hereby acknowledged, the Landlord and the Tenant covenant and agree as follows:

**INTRODUCTION  
DEFINITIONS**

In this Lease:

“**Additional Rent**” has the meaning set out in Section 3.03 of this Lease;

“**Annual Rent**” has the meaning set out in Section 3.02 of this Lease;

Lease ■  
Landlord’s Name: ■

**“Annual Rent Commencement Date”** has the meaning set out in Section 3.02 of this Lease;

**“Assignment”** has the meaning set out in Section 9.01 of this Lease;

**“Business Days”** means Mondays through Fridays inclusive but excluding any statutory holidays in the Province of Ontario;

**“Construction Commencement Date”** means the date upon which the Tenant breaks ground for the purpose of installing the Electrical Supply Cables;

**“Electrical Supply Cables”** has the meaning set out in Section 1.01 of this Lease;

**“Farming”** has the meaning set out in Section 6.05 of this Lease;

**“HST”** has the meaning set out in Section 4.02 of this Lease;

**“Lands”** means the lands owned by the Landlord described in Schedule **“A”** of this Lease as more particularly referred to in Recital **A** on page **1** of this Lease;

**“Lease”** means this lease, as it may be amended, supplemented or restated from time to time in accordance with the terms hereof;

**“Lease Commencement Date”** has the meaning set out in Section 1.02 of this Lease;

**“Lease Year”** means the following: the first Lease Year shall commence on the Lease Commencement Date and shall end on the day immediately preceding the first anniversary of the Lease Commencement Date; thereafter each Lease Year shall consist of **twelve (12)** consecutive calendar months commencing on the anniversary of the Lease Commencement Date in a year and ending on the day immediately preceding the anniversary of the Lease Commencement Date in the next following year;

**“Leased Premises”** has the meaning set out in Section 2.01 of this Lease;

**“Mortgage”** has the meaning set out in Section 13.01 of this Lease;

**“Mortgagee”** has the meaning set out in Section 13.01 of this Lease;

**“Project”** means the wind energy conversion facility to be constructed and operated by the Tenant in the vicinity of the Leased Premises in the Township of Melancthon for the purpose of carrying on the business of harnessing of wind energy, and conversion of wind energy to electricity, the commercial distribution of harnessed wind electricity and such other purposes as are reasonably necessary or desirable for the conduct of such business;

**“Rent”** means Annual Rent and Additional Rent;

**“Staging Area”** means that part of the Leased Premises identified as such in Schedule **“B”** of this Lease and having dimensions of **twenty (20)** metres by **twenty (20)** metres;

**“Tax Payment”** has the meaning set out in Section 4.01 of this Lease;



“**Taxes**” means all real property taxes, capital taxes, rates, duties, assessments (including local improvement taxes), impost charges or levies, whether general or special, that are levied, rated, charged or assessed against the Lands, the Leased Premises, as the case may be depending on the context, or any part thereof from time to time by any lawful taxing authority, whether federal, provincial, municipal, school or otherwise, and any taxes or other amounts which are imposed in lieu of, in substitution for, or in addition to any such real property taxes whether of the foregoing character or not and whether in existence at the commencement of the Term of this Lease or not, and any such real property taxes levied or assessed against the Lands, the Leased Premises, as the case may be, but shall not include local improvement charges;

“**Tenant’s Mortgage**” has the meaning set out in Section 9.02 of this Lease;

“**Tenant’s Mortgagee**” has the meaning set out in Section 9.02 of this Lease;

“**Term**” has the meaning set out in Section 1.02 of this Lease;

## **ARTICLE I GRANT AND TERM**

### **1.01            Grant**

In consideration of the Rent, and the covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, kept, observed and performed, the Landlord hereby leases to the Tenant, and the Tenant leases from the Landlord, the Leased Premises to be held by the Tenant as tenant during the Term (or as the Term may be terminated earlier or extended as provided in this Lease) for the purposes of the collection, distribution and transmission of electric power to and from the Project including, without limitation, the right of the Tenant, its officers, agents, servants, employees, workers, contractors, subcontractors, permittees and licensees, with or without vehicles, supplies, machinery, plant, tools, equipment, apparatus and materials of whatsoever nature and kind to enter on and install, construct, reconstruct, directionally drill, erect, maintain, operate, repair, replace, relocate, upgrade, reconstruct and remove at any time and from time to time, one or more underground electrical collector, transmission or distribution lines and cables, underground optic cables, communication lines, underground water lines and other utilities which may also include electric transformers, energy storage facilities, telecommunications equipment, utility meters and associated facilities, material and equipment (all or any of which works are herein called the “**Electrical Supply Cables**”).

### **1.02            Term**

This Lease shall be for a term (the “**Term**”) expiring **twenty (20)** years after the Annual Rent Commencement Date, and commencing on October 1, 2012 or on such earlier date as the Tenant may notify the Landlord by giving the Landlord not less than **ten (10)** days’ prior written notice (the “**Lease Commencement Date**”), but in no event shall the Lease Commencement Date be later than the Construction Commencement Date.

### **1.03            Extension**

If the Tenant is not then in default in respect of any of the covenants and conditions contained in this Lease at the end of the Term, then the Tenant shall have the right to extend the Term for additional terms totalling up to **twenty-nine (29)** years where the first and second extension terms shall both be **ten (10)** years and the final extension term shall be up to **nine (9)** years, but in no event shall the term of this Lease, including any renewals or extensions, exceed **50** years from the date hereof. Each extension term shall be on the same terms and conditions of this Lease. The Tenant's right to extend the Term shall be exercisable by written notice by the Tenant to the Landlord given not less than **thirty (30)** days prior to the end of the Term, or each additional extension term.

The Tenant hereby declares that the Leased Premises will be used for the purpose of a renewable energy project as defined by the *Green Energy Act*, 2009 (S.O. 2009, Ch. 12 Schedule A) to construct and operate a renewable energy generation facility as defined by the *Electricity Act*, 1998 (S.O. 1998, Ch. 15 Schedule A).

### **1.04            Early Termination by Tenant**

The Landlord agrees that the Tenant shall have the right at any time, upon **six (6)** months' notice to that effect to the Landlord, to terminate this Lease upon the occurrence of any of the following:

- (a) the Tenant is unable for any reason whatsoever to obtain any permits, licences or approvals as may be necessary for the construction, installation, operation or maintenance of the Project, the Electrical Supply Cables or otherwise to permit the Tenant to occupy the Leased Premises and conduct its activities thereon, as required by applicable laws;
- (b) the Tenant in its sole discretion, deems the Project to be economically unfeasible; or
- (c) the construction, installation, operation or maintenance of the Project or the Electrical Supply Cables is prevented or significantly impeded for any reason whatsoever, including not limited to, legal or regulatory requirements,

and, in such event, this Lease shall terminate on the next succeeding anniversary date thereof.

Upon the Tenant so electing to terminate this Lease the Tenant, at its sole cost and expense, shall remove and discharge any instrument or encumbrance registered against title to the Lands and related to its interest therein arising under this Lease.

## **ARTICLE II LEASED PREMISES**

### **2.01            Leased Premises**

The "**Leased Premises**" is the Staging Area and that part of the Lands having a perpendicular width of **ten (10)** metres and identified as Option A or Option B in Schedule "B" to this Lease,

as selected by the Tenant in its sole discretion by written notice given to the Landlord on or before the Construction Commencement Date.

## **2.02            General Rights of the Tenant**

In addition to the Tenant's rights under Section 1.01, the Landlord grants to the Tenant, its agents, employees, contractors and licensees, and their vehicles, tools, equipment, apparatus and materials of whatsoever nature and kind, the full, free and uninterrupted exclusive right to (i) load, unload and temporarily store material, apparatus and equipment (including, but not limited to, heavy equipment) upon the Staging Area (ii) temporarily fence off all or a portion of the Staging Area, (iii) remove, cut or trim any trees, roots, shrubs and other obstructions within the Leased Premises which, in the reasonable opinion of the Tenant (which determination will be made with prior consultation with the Landlord) may constitute a hazard or interfere with the Electrical Supply Cables, provided that if the Tenant must remove trees, it will replant similar trees in the vicinity on the Leased Premises, and (iv) remove other obstructions which, in the reasonable opinion of the Tenant (which determination will be made with prior consultation with the Landlord), may endanger the operation of the Electrical Supply Cables.

## **2.03            Conduct of Operations**

The Tenant shall conduct all operations on the Leased Premises in a diligent, careful and workmanlike manner, and in compliance with the provisions of any statutes, regulations, orders or directives of any government or governmental agency applicable to such operations, and where such provisions conflict with the terms of this Lease, such provisions shall prevail.

# **ARTICLE III RENT**

## **3.01            Covenant to Pay**

The Tenant hereby covenants with the Landlord to pay Rent, including Annual Rent and Additional Rent, as herein provided.

## **3.02            Annual Rent**

The Annual Rent shall be ■ (\$■) **Dollars per annum** for the **ten (10)** year period starting on the Annual Rent Commencement Date and ending on the **tenth (10th)** anniversary of such date. For the period starting immediately following the **tenth (10th)** anniversary of the Annual Rent Commencement Date and until the end of the Term such Annual Rent shall be ■ (\$■) **Dollars per annum**.

For the purpose of this Lease "**Annual Rent Commencement Date**" means the earlier of the second anniversary of the Lease Commencement Date and the date that any wind turbine unit has been installed by the Tenant on the Project in the Township of Melancthon and is delivering power for sale in compliance with applicable Ontario law.

### **3.03            Additional Rent**

All amounts payable hereunder by the Tenant except Annual Rent shall be payable as additional rent (“**Additional Rent**”). The Tenant shall pay Additional Rent to the persons, at the times and in the manner hereinafter set forth, and if the time and manner of payment of any Additional Rent is not set out expressly in this Lease, such Additional Rent shall be payable by the Tenant to the Landlord forthwith on demand. Where the calculation of any Additional Rent is not made until after the termination of this Lease, the obligation of the Tenant to pay such Additional Rent shall survive the termination of this Lease.

### **3.04            Place of Payment**

The Tenant shall make all payments of Annual Rent and any payments of Additional Rent required by this Lease to be paid to the Landlord by way of cheque payable to the Landlord (or to such other person as the Landlord may hereafter designate by notice in writing to the Tenant) and all such payments shall be delivered or sent to the address set out on page 1 of this Lease or to such other person or address as the Landlord may hereafter designate by notice in writing to the Tenant.

### **3.05            Accrual and Prorating**

Rent shall be considered as accruing from day to day hereunder and where it becomes necessary for any reason to calculate Annual Rent or Additional Rent for an irregular period of less than **one (1)** Lease Year, an appropriate apportionment and adjustment shall be made.

### **3.06            Net Lease**

The Tenant acknowledges, covenants and agrees that, except as otherwise expressly set out in this Lease, this Lease shall be a completely carefree net Lease for the Landlord and that the Tenant shall pay all costs, expenses, charges or outlays of any kind arising from, relating to or affecting the Leased Premises (except any payments of principal and interest to be made under any mortgage placed or assumed by the Landlord; the payment of the Landlord’s income taxes or corporation taxes, unless such income or corporation taxes have been imposed in lieu of or substitution for Taxes; and the payment of any costs incurred by the Landlord in connection with the activities of the Landlord on the Leased Premises).

## **ARTICLE IV TAXES**

### **4.01            Realty Taxes**

Except as hereinafter set out, the Tenant shall pay all Taxes attributable to the Leased Premises and the Electrical Supply Cables to the taxing authorities when the same become due and payable. At the request of the Landlord, the Tenant shall provide evidence to the Landlord of payment of Taxes. If any bills, assessments, notices or other communications for or in respect of Taxes are received by the Tenant from the taxing authorities, the Tenant shall promptly deliver to the Landlord copies of same.

If a separate tax bill is not issued to the Tenant with respect to the Leased Premises and/or the Electrical Supply Cables, the Tenant shall pay to the Landlord, as Additional Rent, the Tenant's share of the Taxes with respect to the Lands (the "**Tax Payment**") as follows:

- (a) If there is a separate assessment of the Leased Premises and/or the Electrical Supply Cables, the amount of the Tax Payment shall include the amount of the Taxes attributable thereto determined in accordance with such assessment.
- (b) If there is no separate assessment of either the Leased Premises or the Electrical Supply Cables, the amount of the Tax Payment shall include a portion of the Taxes levied against the Lands determined by allocating to the Leased Premises or the Electrical Supply Cables, as the case may be, such proportion of the total assessment of the Lands as is reasonably attributable to them in accordance with assessment principles then used in the municipality in which the Lands are located.
- (c) A Tax Payment will become due **one (1)** month after the Landlord has furnished to the Tenant official receipts of the appropriate taxing Authority, or other proof satisfactory to the Tenant evidencing the payment of the Taxes payable by the Landlord with respect to the Lands. At the option of the Landlord, the Landlord may direct that the Tenant pay the Tax Payment directly to the taxing authority, in which case the Tenant shall pay such Tax Payment to the taxing authority on or before the date when the Taxes to which such Tax Payment relates are due.

For clarity, it is the intention of the parties that the Tenant shall pay **one hundred (100%)** percent of any increase in the Taxes which are levied against the Lands as a result of the Project and which would not have been levied but for the Electrical Supply Cables, together with the Taxes levied against the Leased Premises based on their unimproved land value as agricultural land and the actual area of the Leased Premises occupied by the Tenant in comparison to the total area of the Lands.

Notwithstanding anything to the contrary in this Lease, the Tenant shall not be required to pay any Taxes which are levied against the Lands as a result of (i) any improvements to the Lands made by the Landlord, or (ii) an increase in the value of the Landlord's property, or (iii) any change of use of the Lands from its current use for farming and residential purposes.

#### **4.02            HST**

Subject to any applicable legislation, (i) the Tenant shall pay to the Landlord an amount equal to any and all goods and services taxes, sales taxes, value added taxes, business transfer taxes, or any other taxes imposed on the Landlord or the Tenant with respect to Rent payable by the Tenant under this Lease, whether characterized as goods and services tax, sales tax, harmonized sales tax, value added tax, business transfer tax or otherwise (collectively "**HST**"), it being the intention of the parties that the Landlord shall be fully reimbursed by the Tenant with respect to any and all HST. The amount of such HST so payable by the Tenant shall be calculated by the Landlord in accordance with the applicable legislation and shall be paid to the Landlord at the same time as the amounts to which such HST applies are payable to the Landlord under the terms of this Lease or upon demand or at such other time or times as the Landlord from time to

time determines; and (ii) the amount of such HST so payable by the Tenant shall be deemed not to be Rent, but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for recovery of Rent under this Lease.

## **ARTICLE V UTILITIES**

### **5.01        Utilities**

The Tenant shall be solely responsible for and shall pay as same become due all charges for any public or private utilities or services supplied to or used or consumed by the Tenant at the Leased Premises and for equipment, fittings, machines, apparatus, meters or other things leased or purchased in respect thereof, including installation costs, and for all work performed by any corporation or commission in connection with any such utilities or services.

## **ARTICLE VI CONDUCT OF BUSINESS BY TENANT USE BY LANDLORD**

### **6.01        Tenant's Electrical Supply Cables**

The Tenant may use the Leased Premises for the construction, operation, maintenance and repair of all Electrical Supply Cables considered by the Tenant in its sole and unfettered discretion to be necessary or desirable for the operation of the Project subject to and on the terms and conditions set out in this Lease. The Electrical Supply Cables will be buried to a depth of not less than **one (1)** metre below the surface of the Leased Premises.

### **6.02        Electrical Supply Cables - Construction, Access and Maintenance**

The Tenant, at its sole cost and expense, may construct, remove, relocate, reconstruct, replace, upgrade, operate, maintain and repair the Electrical Supply Cables and all necessary appurtenances in a location or locations to be designated by the Tenant in its sole and unfettered discretion under the Leased Premises for the purpose of the Project. The Tenant may mark the location of the Electrical Supply Cables under the Leased Premises by suitable markers, but said markers when set in the ground shall be placed in locations which will not interfere with any reasonable use the Landlord may make of the Leased Premises.

### **6.03        Construction and Materials Used**

The Landlord and Tenant covenant and agree with each other that:

- (a) The Tenant shall decide in its sole and unfettered discretion whether it will proceed with the construction of the Project and, if the Project will be constructed, the date of commencement of construction;
- (b) Subject to this Lease, the Tenant in its sole and unfettered discretion may determine the materials, specifications and all other matters in connection with the installation,

construction, operation, maintenance and repair of all matters relating to the Project, including but not limited to any Electrical Supply Cables;

- (c) The Tenant in its sole and unfettered discretion may determine the location under the Leased Premises of all Electrical Supply Cables; and
- (d) Subject to the Tenant's right to temporarily fence off all or a portion of the Staging Area as described in Section 2.02, the Tenant agrees that it will not otherwise install any fences along the boundaries of the Leased Premises.

#### **6.04            Testing**

At any time and from time to time during the Term, the Tenant, and any person authorized by the Tenant, may enter onto the Leased Premises for the purpose of conducting any manner of test, survey or inspection which is deemed necessary or desirable in the Tenant's sole and unfettered discretion in connection with the Project. In connection with such testing, the Tenant may construct and leave on the Leased Premises testing equipment, and the Tenant shall have access to the Leased Premises from time to time for the purpose of maintaining and repairing such equipment and monitoring the results there from. All costs of any such inspections are to be paid by the Tenant. Any damage to the Leased Premises resulting from such inspections shall be repaired promptly by the Tenant at its cost.

#### **6.05            Use of Leased Premises by Landlord**

The Landlord, with the prior written consent of the Tenant (which consent shall not be unreasonably withheld or delayed), may plant and harvest crops, graze livestock and conduct other farming or agricultural activities ("**Farming**") on all parts of the Leased Premises, if such Farming does not or will not interfere with or create a risk of damage or injury to the Electrical Supply Cables and subject to the Tenant's right to thereafter elect on no less than **nine (9)** months prior written notice to terminate such consent.

The Landlord agrees that it shall not hold the Tenant, or any other person directly or indirectly authorized by Tenant to enter onto the Leased Premises, responsible for any costs, damages, expenses or liabilities incurred by the Landlord, however caused, and resulting in damage to crops, plants, livestock, machinery or any other farming commodity or material owned by the Landlord located on the Leased Premises.

#### **6.06            Interference with the Project**

The Landlord shall not:

- (a) engage in, or authorize or permit any other party to engage in, any activity on or about the Lands that would directly or indirectly impede or decrease the output or efficiency of wind energy from the Project in any material respect provided that this restriction shall not prevent the Landlord from constructing a two-storey residence or barn on the Lands (other than the Leased Premises);

- (b) without the express written permission of the Tenant, enter or authorize any other party to enter any part of the Staging Area enclosed by a fence; or
- (c) damage, alter or interfere with the Electrical Supply Cables.

#### **6.07 Compliance With Laws**

The Tenant, at its own expense, shall comply with all applicable federal, provincial and municipal statutes, regulations, ordinances and orders which relate to or affect the Project, or the use, occupation, operation or maintenance of the Project or any Electrical Supply Cables from time to time in connection with the Project, or the making of any repairs, replacements, alterations, additions or improvements of or to the Electrical Supply Cables, and the Tenant shall make any repairs, replacements, alterations, additions, improvements or deletions necessary to effect such compliance. The Tenant shall at its own risk and expense obtain any and all necessary governmental licences, permits and approvals necessary for such use and shall pay all levies, fees, taxes and imposts with respect to such use of the Leased Premises. The Landlord shall promptly sign all consents, authorizations or other documents which are required by the Tenant to obtain any such licences, permits and approvals, and the Tenant shall pay any cost incurred by the Landlord in that regard.

The Tenant shall have the right to contest by appropriate legal proceedings, without cost or expense to the Landlord, the validity of any statute, regulation, ordinance, order or requirement of the nature hereinbefore in this Section referred to, and if, by the terms of any such statute, regulation, ordinance, order or requirement, compliance therewith may legally be held in abeyance without subjecting the Landlord to any liability, fine or penalty of whatsoever nature for failure to comply therewith, the Tenant may postpone compliance therewith until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with due diligence and dispatch and the Tenant agrees to indemnify and save harmless the Landlord from and against any liability or damages in respect of any such contestation.

#### **6.08 Waste and Nuisance**

The Tenant shall not commit or suffer to be committed any waste or injury to the Leased Premises, and shall not do or omit to do or suffer to be done or omitted anything upon or in respect of the Leased Premises which shall be or result in a nuisance or menace to the Landlord or to the owners or occupiers of neighbouring lands and premises, provided that it is acknowledged and agreed that the Project does not constitute a nuisance for the purposes of this Lease.

The Landlord shall not do or omit to do or suffer to be done or omitted anything upon the Lands which shall be or result in a nuisance or menace to the Tenant or to the Project. The Tenant acknowledges that Farming does not constitute a nuisance.

#### **6.09 Replacement and Repair of Fences**

The Tenant, in the enjoyment of its rights and privileges pursuant to this Lease hereby granted to it, shall replace all fences which it may have removed for its purposes and repair all fences which it may have damaged upon written notice from the Landlord, and if and when so required by the



Landlord, will provide proper livestock guards at any point of entry upon the Leased Premises used by it and, upon the use thereof, close all gates.

#### **6.10            Compensation to Landlord for Damages**

If the Tenant's use of the Leased Premises results in damage to crops, plants, or any other farming commodity, machinery or material of the Landlord located on the Leased Premises, the Tenant agrees that it shall be responsible for any and all costs, damages, expenses or liabilities incurred by the Landlord as a result of such use, but the Tenant shall not have any liability for consequential damages.

In valuing damage to crops the Landlord and Tenant shall average the farm gate value of the damaged crop for the then current growing season and the value of such a same sized crop for the immediately previous **two (2)** growing seasons, the intention being that the Tenant shall reimburse the Landlord for the farm gate value of the current crop based upon the average of its current value and the value of a same sized crop for the previous **two (2)** growing seasons.

Damages to fences, buildings and other improvements owned by the Landlord and situate on the Leased Premises shall be valued at their then current replacement cost.

The Tenant agrees that it will provide not less than ninety (90) days prior written notice to the Landlord of the start of the installation of any right of way and not less than ninety (90) days prior written notice for the layout of any Electrical Supply Cables and their footprint on the Leased Premises, the intention being that such advance written notice by the Tenant to the Landlord will enable the Landlord to determine the timing for the Landlord's planting, growing and harvesting requirements so as to minimize, and if possible, eliminate damage to any crops.

#### **6.11            Hazardous or Toxic Materials or Substances**

If any hazardous or toxic materials or substances are determined to exist on any part of the Leased Premises during the Term and any extension thereof due to the negligent or intentional acts or omissions of the Tenant, or those for whom at law it is responsible, the Tenant, for its own account, shall defend, indemnify and hold harmless the Landlord with respect thereto. The Tenant shall also assume all responsibility and expense in connection with, and shall promptly take such action as required by applicable law, to remediate or remove any such hazardous or toxic materials or substances.

### **ARTICLE VII MAINTENANCE, REPAIR AND ALTERATIONS**

#### **7.01            Tenant's Repair**

The Tenant covenants that, throughout the Term and any extension thereof, at its sole cost and expense, it shall keep the Electrical Supply Cables in good repair, reasonable wear and tear excepted, and shall make all necessary repairs to the extent required to keep the Electrical Supply Cables in good condition, and repair, reasonable wear and tear excepted, commensurate with their age.

## **7.02            General Maintenance and Operation**

The Tenant covenants that, throughout the Term and any extension thereof, at its sole cost and expense, it shall keep and maintain the Leased Premises in a clean and orderly condition and shall repair any damage to the Leased Premises caused by the operations of the Tenant.

Without limiting the generality of the foregoing, the Tenant shall throughout the Term and any extension thereof, at its sole cost and expense, maintain the Leased Premises in a state of repair that does not adversely impact upon the Landlord's use of the Lands (other than the Leased Premises) for Farming.

The Tenant shall allow the Landlord access to the Leased Premises in order to remove weeds, rodents and other pests such as insects from the Leased Premises, which removal is the sole responsibility of the Landlord at its sole cost and expense.

Any damage or repairs necessary to be effected with respect to the drainage from the Leased Premises caused as a direct result of the Tenant's actions shall be completed at the Tenant's expense.

## **7.03            Alterations**

The Tenant may from time to time make such alterations or additions to the Electrical Supply Cables as the Tenant may at its cost, in its sole and unfettered discretion, may determine. All such alterations or additions shall be made in a good and workmanlike manner.

## **7.04            No Obligation on Landlord to Repair**

The Landlord shall not have any obligation to effect any maintenance or to make any repairs or replacements to the Electrical Supply Cables, subject only to the exception that the Landlord shall repair at its cost any damage of any kind to the Leased Premises or the Electrical Supply Cables caused by the Landlord, its livestock, or those for whom the Landlord is in law responsible but excluding the Tenant or any other person directly or indirectly authorized by the Tenant to enter onto the Leased Premises. If the Landlord does not make any such repairs within **one (1)** month after the Tenant's written request, the Tenant shall have the right, at its sole option, to make such repairs and deduct the cost of such repairs from the next Rent due to the Landlord.

## **7.05            Construction Liens**

If any construction lien or other lien or order for the payment of money shall be filed against the Lands by reason of, or arising out of, any work, labour, services or materials furnished or claimed to have been furnished to the Tenant or to anyone claiming through the Tenant, the Tenant, within a reasonable period of time after written notice to the Tenant of the filing, shall cause the same to be discharged by bond, deposit, payment, court order or in any other manner required or permitted by law. The Tenant, at its own expense, shall defend all suits to enforce any such lien or order whether against the Tenant and/or the Landlord. The Tenant shall indemnify and keep indemnified the Landlord from and against payment of all loss, costs, charges and expenses occasioned by or arising from any such lien or order.

## **ARTICLE VIII TRADE FIXTURES, IMPROVEMENTS AND SURRENDER**

### **8.01            Ownership of Electrical Supply Cables**

The Electrical Supply Cables and all of the property and equipment placed or operated on the Leased Premises by or on behalf of the Tenant, shall at all times remain the property of the Tenant notwithstanding that they may be annexed or affixed to the freehold and notwithstanding any rule of law or equity to the contrary, and they shall at the written request of the Landlord, at any time and from time to time, be removable in whole or in part by the Tenant without the consent of the Landlord.

### **8.02            Trade Fixtures**

The Tenant shall have the right at all times and from time to time to install and remove its trade fixtures. All trade fixtures shall be owned by and be the property of the Tenant, shall remain the property of the Tenant and the Tenant may from time to time remove any or all of its trade fixtures from the Leased Premises either during or at the expiration or other termination of the Term or any extension thereof, provided that the Tenant shall promptly repair any damage to the Leased Premises caused by the installation and/or removal of such trade fixtures in a good and workmanlike manner.

### **8.03            Surrender of Leased Premises**

Upon the termination of this Lease for any reason whatsoever, the Tenant may, at its option, leave on the Leased Premises any of the Electrical Supply Cables which are buried to a sufficient depth (and in any event a minimum of **one (1)** metre below original grade) so as not to interfere materially with the Landlord's Farming.

Except as otherwise set out in this Lease, upon the expiration of the Term or other earlier termination of this Lease, the Tenant shall peaceably surrender and yield up unto the Landlord the Leased Premises in as good order, condition and repair as the Tenant is required to maintain the Leased Premises under the terms of this Lease.

Incidental to such obligation, the Tenant shall provide a Phase I environmental assessment report to the Landlord of an independent environmental consultant confirming that there are no hazardous substances (as such term has meaning under the *Environmental Protection Act* (Ontario)) remaining on the Leased Premises as a result of the Tenant's operations.

## **ARTICLE IX ASSIGNMENT, SUBLETTING AND FINANCING**

### **9.01            Assignment of Tenant's Rights**

The Landlord agrees that the Tenant, without consent from the Landlord, may transfer, convey, assign, sublet, license, grant concessions in, or otherwise part with or share possession of the Leased Premises and any or all of the Tenant's rights, interests, benefits and obligations under this Lease in whole or in part to any person, firm or corporation (an "**Assignment**"). Upon any

Assignment, but provided that the assignee executes and delivers to the Landlord an Assumption Agreement, from and after the date of the Assignment, the term "Tenant" as used in this Lease, in so far as covenants or obligations on the part of the Tenant are concerned, shall be limited to mean and include only the lessee of the Leased Premises after completion of such Assignment, and, in the event of an Assignment, the Tenant herein named (and in case of any subsequent Assignment, then the assignor) shall to the extent of the Assignment be automatically freed and relieved from and after the date of such Assignment of all personal liability with respect to the performance of any covenant or obligation on the part of the Tenant contained in this Lease thereafter to be performed, provided that, at the time of the Assignment all amounts owing by the Tenant to the Landlord under any provision of this Lease are current as of the date of the Assignment, it being intended hereby that the covenants and obligations contained in this Lease on the part of the Tenant shall, subject as aforesaid, be binding on the Tenant only during and in respect of its period as a lessee of the Property. In this section 9.01, "**Assumption Agreement**" means an agreement executed by the assignee in form satisfactory to the Landlord acting reasonably, wherein the assignee shall covenant and agree directly with the Landlord with effect from and after the date of Assignment to be bound by all of the provisions in this Lease to be observed and performed or otherwise complied with by the Tenant as if the assignee had originally executed this Lease as Tenant. The Assumption Agreement shall be prepared by and at the sole cost and expense of the Tenant and the Tenant shall pay to the Landlord, as Additional Rent, on demand, all reasonable legal costs with respect thereto incurred by the Landlord.

## **9.02            Tenant's Financing**

The Landlord agrees that the Tenant, without consent from the Landlord, may assign, sublet or charge this Lease by way of any bona fide mortgage or security interest of the Tenant's leasehold interest in the Lease, Leased Premises or any part thereof and the Electrical Supply Cables as security for any loan or financing including without limitation any form of trust indenture, debenture or bond (a "**Tenant's Mortgage**"). The Landlord hereby grants to any holder of a Tenant's Mortgage (a "**Tenant's Mortgagee**") the rights and remedies set forth in Schedule "C" hereto. In addition, the Landlord will, from time to time, at the request of the Tenant's Mortgagee, promptly execute and deliver in favour of any Tenant's Mortgagee such consents and acknowledgements granting and confirming Tenant's Mortgagee's right and remedies hereunder and in Schedule "C" hereto. The Landlord shall also agree to any reasonable modification to the Lease, and shall enter into any other reasonable agreements with the Tenant's Mortgagee, as may reasonably be required by the Tenant in order to obtain financing from the Tenant's Mortgagee. If the Landlord receives notice of the existence of a Tenant's Mortgage, then the Landlord (i) shall agree not to amend, terminate or accept a surrender of this Lease without the prior consent in writing of the Tenant's Mortgagee, and (ii) shall deliver to the Tenant's Mortgagee a copy of any notice of default given to the Tenant under this Lease, and shall afford to the Tenant's Mortgagee the opportunity to remedy any defaults of the Tenant under this Lease as provided in Schedule "C" hereto.

## **ARTICLE X INSURANCE AND INDEMNITY**

### **10.01      Tenant's Insurance**

The Tenant shall during the Term or any extension thereof and during such other time as the Tenant occupies the Leased Premises or any part thereof, at its sole cost and expense, take out and keep in full force and effect the following insurance:

- (a) "all risks" insurance not less broad than the standard commercial property floater policy with the exclusions such as, without limitation, those relating to sprinkler leakages (where applicable), earthquake, flood and collapse removed therefrom upon the Electrical Supply Cables contained therein in an amount not less than the full replacement cost thereof; and
- (b) comprehensive general liability insurance including but not limited to property damage, public liability, and personal injury liability, all on an occurrence basis, with respect to any use, occupancy, activities or things, in on or about the Leased Premises and with respect to the use and occupancy of any part of the Leased Premises by the Tenant or any of its servants, agents, contractors or persons for whom the Tenant is in law responsible, including, without limitation, the activities, operations and work conducted or performed by the Tenant, by any other person on behalf of the Tenant, by those for whom the Tenant is in law responsible and by any other person on the Leased Premises at the request of the Tenant, with coverage for any one occurrence or claim of not less than ■ **Dollars.**

Each of the foregoing policies of insurance shall name the Landlord and its mortgagee(s), if any, and anyone designated in writing by the Landlord as additional named insured as their interests may appear.

### **10.02      Failure to Insure**

If the Tenant fails to take out or to keep in force any of the policies of insurance referred to in Section 10.01 hereof, and should the Tenant not rectify such default within **forty-eight (48)** hours after written notice thereof, the Landlord may, but shall not be obligated to, effect such insurance and the Tenant shall pay to the Landlord, as Additional Rent, forthwith on demand all premiums, costs, charges and expenses incurred by the Landlord in effecting such insurance.

### **10.03      Loss or Damage**

The Landlord shall not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the Leased Premises, or damage to property of the Tenant or of others located on the Leased Premises, except to the extent caused by the negligence of the Landlord, its agents, servants or employees or other persons for whom it may in law be responsible.

Subject as expressly set out in this Lease, the Tenant shall not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the Leased Premises, or any damage to property of the Landlord or of others located on the Leased Premises, except to the

extent caused by the negligence of the Tenant, its agents, servants, or employees or other persons for whom it may in law be responsible.

#### **10.04      Indemnification of Landlord**

Subject as expressly set out in this Lease, the Tenant shall indemnify the Landlord and save it harmless from and against any and all loss (including loss of Rent payable by the Tenant pursuant to this Lease), claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Lease, or any occurrence in, upon or at the Leased Premises, or the occupancy or use by the Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Leased Premises by the Tenant, except to the extent caused by the negligence of the Landlord, its agents, servants or employees or other persons for whom the Landlord may in law be responsible. If the Landlord shall, without fault on its part, be made a party to any litigation commenced by or against the Tenant, then the Tenant shall protect, indemnify and hold the Landlord harmless from and against, and shall pay as Additional Rent, all costs, expenses and reasonable legal fees incurred or paid by the Landlord in connection with such litigation.

#### **10.05      Landlord's and Tenant's Employees**

Every indemnity, exclusion and release of liability herein contained for the benefit of the Landlord or the Tenant, and every waiver of subrogation contained in any insurance policy maintained by one party hereto, shall survive the expiration or earlier termination of the Term and any extension thereof and shall extend to and benefit all of the Landlord, the Tenant or the other party, as the case may be, the owner(s) of the Leased Premises (if different from the Landlord) and all of their respective directors, officers, shareholders, servants, agents and employees and those for whom any of them is in law responsible. Solely for such purpose, and to the extent any such party expressly chooses to enforce the benefits of this Section for any or all of such persons, it is agreed that such party is the agent or trustee for such persons.

### **ARTICLE XI DAMAGE AND DESTRUCTION**

#### **11.01      Damage and Destruction**

The Landlord and Tenant agree that if and whenever during the Term hereby demised or any renewal or extension thereof the Electrical Supply Cables shall be destroyed or damaged in whole or in part then, and in every such event if the destruction or damage is such that in the opinion of the Tenant, in its sole and unfettered discretion, the Project is no longer economically viable, then the Tenant may at its option within **sixty (60)** days following the date of such damage or destruction terminate this Lease by giving to the Landlord notice in writing of such termination, in which event this Lease and the Term hereby demised shall cease and be at an end as of the date of such destruction or damage and the Rent and all other payments for which the Tenant is liable under the terms of this Lease shall be apportioned and paid in full to the date of such destruction or damage. In the event that the Tenant does not so terminate this Lease, then the Tenant shall repair the Electrical Supply Cables with all reasonable speed.

## **ARTICLE XII DEFAULT OF TENANT**

### **12.01      Right to Re-Enter**

If and whenever:

- (a) the Tenant fails to pay Rent or other sums due hereunder or any part thereof on the day appointed for the payment thereof whether lawfully demanded or not and such failure shall continue for **thirty (30)** days after notice thereof has been given to the Tenant; or
- (b) the Tenant fails to keep, observe or perform any other of the terms, conditions, covenants and agreements herein contained on the part of the Tenant to be kept, observed or performed for **sixty (60)** days after notice in writing of such failure has been given to the Tenant and such failure has not been cured within such **sixty (60)** day period, or, where such failure is incapable of being cured within **sixty (60)** days, the Tenant has not commenced to cure such failure and is not proceeding diligently to cure such failure; or
- (c) the Leased Premises are vacated or left vacant or unoccupied for a period of **six (6)** consecutive months unless due to damage or destruction, or the Tenant abandons or attempts to abandon the Leased Premises; or
- (d) re-entry is permitted under any other terms of this Lease;

then and in any of such cases, the Tenant shall be in default under this Lease and, at the option of the Landlord, the Landlord shall have, in addition to any other rights or remedies of the Landlord pursuant to this Lease or at law or in equity, the immediate right to re-enter into and upon and take possession of the Leased Premises or any part thereof in the name of the whole and have again, re-possess and enjoy the Leased Premises in its former estate, and to expel all persons from the Leased Premises.

### **12.02      Right to Re-let**

If and whenever the Landlord shall be entitled to re-enter, the Landlord may from time to time without terminating this Lease enter the Leased Premises as the agent of the Tenant either by force or otherwise, without being liable for any prosecution therefore, and make such alterations and repairs as are necessary in order to re-let the Leased Premises or any part thereof for such term or terms (which may extend beyond the Term or extension period) and at such rent and upon such other terms, covenants and conditions as the Landlord in its sole and unfettered discretion considers advisable. Upon each such re-letting all rent received by the Landlord from such re-letting shall be applied, firstly to the payment of any indebtedness other than Annual Rent or Additional Rent due hereunder from the Tenant to the Landlord, secondly, to the payment of any costs and expenses of such re-letting including brokerage fees and solicitors' fees and the cost of alterations and repairs, thirdly, to the payment of Annual Rent and Additional Rent due hereunder, and the residue, if any, shall be held by the Landlord and applied in payment of future Annual Rent and Additional Rent as the same become due and payable hereunder and the Landlord shall not be accountable for any monies except those actually received notwithstanding any act, neglect, omission or default of the Landlord. No such entry of

the Leased Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of termination is given to the Tenant. Notwithstanding any such re-letting without termination, the Landlord may at any time thereafter terminate this Lease for such previous breach by written notice of termination given to the Tenant.

#### **12.03      Landlord May Cure Default**

If the Tenant is in default of any obligation or covenant under this Lease after the expiry of any applicable notice periods, the Landlord shall have the right at all times to remedy or attempt to remedy any such default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Leased Premises to do any work or other things therein, and in each such event all expenses of the Landlord in remedying or attempting to remedy such default shall be payable as Additional Rent by the Tenant to the Landlord forthwith upon demand, and the Landlord shall not be liable for any loss or damage to the Tenant's property or business caused by acts of the Landlord in remedying or attempting to remedy any such default, and the Tenant agrees that any such entry by the Landlord is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease.

#### **12.04      No Waiver of Breach**

No condoning, excusing or overlooking by the Landlord or the Tenant of any default, breach or non-observance by the other party at any time or times in respect of any covenant, proviso or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant save only an express waiver in writing.

### **ARTICLE XIII MORTGAGE BY LANDLORD**

#### **13.01      Attornment and Non-disturbance**

The Tenant shall promptly, on request, attorn to the holder of any mortgage or charge of the Leased Premises or any modification, renewal or extension thereof (a "**Mortgage**" and the holder thereof called a "**Mortgagee**") or to the purchaser of the Leased Premises on any foreclosure or sale proceedings taken under any Mortgage, and shall recognize such Mortgagee or purchaser as the Landlord under this Lease. No attornment aforesaid by the Tenant shall have the effect of subordinating or postponing this Lease to the Mortgage or disturbing the Tenant's occupation and possession of the Leased Premises in accordance with the provisions of this Lease so long as the Tenant is not in default hereunder beyond any applicable cure periods.

#### **13.02      No Obligation to Subordinate**

The Tenant shall not be obligated to subordinate or postpone this Lease to any Mortgage. The Landlord shall use its diligent best efforts to either have any Mortgage registered in priority to this Lease subordinated and postponed to this Lease, or obtain from any such Mortgagee a non-disturbance agreement by which the Mortgagee agrees with the Tenant that the Mortgagee shall



be bound by this Lease and that the Tenant shall have undisturbed possession of the Leased Premises on the terms and conditions of this Lease so long as the Tenant is not in default hereunder beyond any applicable cure periods, and the Mortgagee acknowledges the rights of any Tenant Mortgagee hereunder.

## **ARTICLE XIV LANDLORD'S COVENANTS**

### **14.01        Landlord's Covenants**

The Landlord covenants with the Tenant:

- (a) for quiet enjoyment, subject to and on the terms of this Lease; and
- (b) that if the Landlord leases, licences or grants a right to another person to occupy, use, farm, or plant or harvest crops on the Lands, the Landlord shall notify that person of the Tenant's rights and interest hereunder and the Landlord shall indemnify and save the Tenant harmless from and against any claims asserted against the Tenant by that person or those claiming through that person and from and against any losses damages or costs that the Tenant may suffer arising from that person's rights.

### **14.02        Landlord's Warranties**

The Landlord covenants, represents and warrants to the Tenant that:

- (a) The Landlord is the registered and beneficial owner of the Lands; and
- (b) The Landlord has good right, full power and lawful authority to execute and deliver this Lease and to perform all of the obligations of the Landlord hereunder.

### **14.03        Approvals**

The Landlord covenants and agrees to execute and to not object to, all applications, consents, permissions, postponements, and any other documents and assurances which the Tenant may require in connection with obtaining any rezoning, governmental approvals, consents, permits or variances (collectively, "**Approvals**") and in connection with entering into by the Tenant of any agreement with such governmental and public authorities as may be necessary to give full force and effect to and in furtherance of the Tenant's applications, and the Landlord shall produce all other documents and information which may be required in connection with such applications. All applications for Approvals shall be made by the Tenant at its sole cost and expense and any third party costs to the Landlord associated with such Approvals shall be borne by the Tenant. The Tenant agrees that the obligation of the Landlord pursuant to this Section shall be restricted to execution of documents and production of documents and information and shall not impose upon the Landlord any financial obligation whatsoever.

#### **14.04        Exclusive Right**

The Landlord agrees that the Tenant shall have the exclusive right to collect, convert and transmit all the wind resources on the Lands, and the Landlord agrees that it will not interfere with the Tenant's operations hereunder or the enjoyment of the rights hereby granted. The Landlord covenants and agrees that during the Term and any extensions thereof that no other corporation, partnership, joint venture or person will be permitted to use or occupy the Lands, or any part thereof, for the purposes of wind energy conversion and transmission of electric power and related activities. The Landlord acknowledges and agrees that the duration and area within which the restrictions set forth herein shall apply have been considered by the Landlord and the restraints and restrictions of and on the future activities of the Landlord are reasonable in the circumstances. All defences to the strict enforcement thereof by the Tenant are hereby waived by the Landlord. If the Landlord breaches the foregoing obligations, it is understood and agreed that the Tenant will suffer immediate and irreparable harm and damage.

#### **14.05        Non-Disturbance**

The Landlord shall not, concurrently and prospectively, interfere with the construction, installation, maintenance or operation of the Project or the Electrical Supply Cables; any development activities; or the undertaking of any other activities permitted hereunder. Further, the Landlord agrees that it shall not undertake any action including, without limitation, hunting, blasting, excavation or construction, that may have the effect of constituting a danger to the Electrical Supply Cables or increasing the Tenant's maintenance costs with respect to the Electrical Supply Cables. Without limiting the generality of the foregoing, the Landlord shall not interfere with the wind speed or wind direction over the Lands or the Leased Premises, whether by placing wind turbines, planting trees or constructing buildings or other structures, or by engaging in any other activity on the Lands or elsewhere that might cause a decrease in the output or efficiency of wind energy from the Project in any material respect, provided that this restriction shall not prevent the Landlord from constructing a two-storey residence or barn on the Lands (other than the Leased Premises). If any of the Landlord's activities negatively impacts on the construction, installation, maintenance or operation of the Electrical Supply Cables, the Landlord agrees to cease and desist such activities immediately upon notice from the Tenant.

#### **14.06        Salvage**

The Landlord shall permit the Tenant to enter upon the Leased Premises for a period of six (6) months after the termination or expiry of this Lease for the purposes of dismantling and salvaging the Tenant's property including, without limitation, the Electrical Supply Cables.

#### **14.07        Non-Impairment**

The Landlord shall not pursue, participate, invest in, develop, acquire, or provide consulting or other services (and the Landlord shall also prevent any affiliates and any of its or its affiliates' respective owners, directors, officers, managers, employees and any individuals or entities acting on its behalf and any entity in which the Landlord has an interest, whether direct, indirect or otherwise from pursuing, participating in, investing in, developing, acquiring, or providing consulting or other services) in relation to any existing or proposed wind energy project or any

other activity that adversely affects (i) the quality or quantity of the wind resources of the Project, or (ii) access to the Project for construction, servicing or otherwise, in each case within a two kilometre radius of any wind turbine unit sited at the Project.

## **ARTICLE XV MISCELLANEOUS**

### **15.01      Force Majeure**

If and to the extent that any party hereto is bona fide delayed or hindered in or prevented from the performance of any provision of this Lease by causes beyond its reasonable control (but not including any lack of funds or other financial cause of delay), then the performance of such provision of this Lease so delayed, hindered or prevented shall be excused for the period during which such performance is rendered impossible and the time for such performance shall be extended accordingly.

### **15.02      Registration**

The Landlord agrees that the Tenant shall be entitled, at its cost and expense, to register this Lease, or a Notice in respect thereof, and any required reference plans, in the Land Registry Office where title to the Lands is recorded on behalf of both the Tenant and the Landlord. The Landlord agrees to execute and deliver to the Tenant, if requested in writing to do so and, at no cost to the Tenant, all necessary instruments, plans and documentation for that purpose. The Landlord and Tenant also hereby authorize Shibley Righton LLP and/or the Tenant's lawyers that will complete any such registrations to certify that such registration is on behalf of and with the Landlord's approval and consent.

### **15.03      Notices**

Any notice required or contemplated by any provision of this Lease shall be given in writing and shall be delivered in person or, if there is no actual or apprehended disruption in the Canadian Postal Service, sent by registered mail postage prepaid, to the address for the respective party shown on the first page of this Lease.

Every such notice shall be deemed to have been given and received when personally delivered or, if mailed as aforesaid, upon the third Business Day after the date on which it was so mailed. Either party may at any time give notice in writing to the other of any change of address within the Province of Ontario of the party giving such notice and from and after the date of such notice, the address therein specified is deemed to be the address of such party for the giving of notices hereunder.

### **15.04      Planning Act**

It is an express condition of this Lease that the subdivision control provisions of the *Planning Act*, (Ontario) and amendments thereto be complied with if they apply. The Tenant shall obtain any necessary consent under the *Planning Act*, (Ontario) at the cost of the Tenant. The Landlord shall co-operate and assist the Tenant in its application and shall promptly sign any necessary application for consent.

### **15.05      Status Certificate**

Whenever requested by the Landlord or the Tenant, the other party shall promptly (and in any event within **ten (10)** days) execute and deliver a certificate in form reasonably satisfactory to the party requesting it, addressed to the party requesting it or as it directs, certifying as to the status and validity of this Lease and the state of the rental account hereunder and such other information as may reasonably be required by the party requesting it, all with the intent that any such certificate may be conclusively relied upon by the party or person to whom it is required to be addressed.

### **15.06      Further Assurances**

Each Party, if so requested by the other Party, shall execute such further documents of title and any other required assurances in respect of the Leased Premises as may be required to perfect the Tenant's leasehold interest in the Leased Premises. The Landlord further agree to execute and deliver, or cause to be executed and delivered by the Tenant, any further legal instruments, including, without limitation, any required consents, and perform any acts which are or may become necessary to effectuate the purposes of this Lease. Any third party costs associated with the Landlord requirements under this Section shall be borne by the Tenant.

### **15.07      Arbitration**

Whenever there is an unresolved dispute between the Landlord and the Tenant involving any of the terms of this Lease then such dispute shall be resolved by arbitration referred to a single arbitrator, if the Landlord and Tenant agree upon one; otherwise such dispute shall be referred to **three (3)** arbitrators for resolution, one to be appointed by the Landlord, one to be appointed by the Tenant, and a third arbitrator to be appointed by the first **two (2)** arbitrators as appointed by the Landlord and Tenant respectively within **thirty (30)** days after the first of the first **two (2)** arbitrators have been appointed, (and failing such appointment of the third arbitrator, as aforesaid, the third arbitrator shall be appointed upon the application of either the Landlord or the Tenant by a Judge of the High Court of Ontario, or such person as that Judge may designate). If either the Landlord or the Tenant shall refuse or neglect to appoint an arbitrator within **thirty (30)** days after the other party has appointed an arbitrator and shall have served a written notice upon the party so refusing or neglecting to appoint an arbitrator, requiring such party to make such appointment, then the arbitrator first appointed shall, at the request of the party appointing him, proceed to hear and determine the matters in dispute as if he were a single arbitrator appointed by both the Landlord and the Tenant for this purpose. The award or determination which shall be made by the arbitrator or the majority of them, or by the single arbitrator, as the case may be, both as to the matters in dispute and as to the costs of the arbitration, shall be final and binding upon the Landlord and the Tenant and there shall be no appeal therefrom. Except as otherwise hereinbefore set forth, the provisions of the *Arbitration Act*, 1991 S.O. 1991 c.17, from time to time in effect or any legislation in substitution therefore, shall apply to any arbitration pursuant to the provisions of this Lease, provided that any limitation on the remuneration of the arbitrators imposed by such legislation shall not be applicable.

#### **15.08            Confidentiality**

The Landlord covenants that any information to which it has access relating to the Tenant's operations shall be considered as confidential and shall be held in the strictest confidence by the Landlord, and that the Landlord shall not communicate the same orally or in writing to others in any manner whatsoever except as may be required by law and shall use its best efforts to prevent those within its employ and control from communicating to others such information.

#### **15.09            Construction**

Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

The captions or headings introducing articles or sections of this Lease are for convenience of reference only and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Lease or in any way affect the interpretation of this Lease.

The words "herein", "hereof", "hereby", "hereunder", "hereto", "hereinafter" and similar expressions refer to this Lease and not to any particular article, section, paragraph or other portion thereof, unless there is something in the subject matter or context inconsistent therewith.

If any term, provision, covenant or condition of this Lease or its application to any person or circumstance is held to be or rendered invalid, unenforceable or illegal, then such term, provision, covenant or condition shall be considered separate and severable from the remainder of this Lease; shall not affect, impair or invalidate the remainder of this Lease; and to the fullest extent permitted by law shall continue to be applicable to and enforceable against any person or in any circumstance other than those as to which such term, provision, covenant or condition has been held or rendered invalid, unenforceable or illegal.

Wherever the singular number or a gender is used in this Lease the same shall be construed as including the plural and the masculine, feminine and neuter respectively where the fact or context so requires.

This Lease shall be construed in accordance with and governed by the laws of the Province of Ontario.

Time is of the essence of this Lease and of every part hereof.

#### **15.10            Entire Agreement**

This Lease and the Schedules attached hereto constitute the entire Lease between the Parties pertaining to the subject matter hereof, and amends, replaces and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions between the parties whether oral or written.

There are no representations, warranties, collateral agreements, conditions or other agreements between the Parties in connection with the subject matter of this Lease except as specifically set forth herein. No supplement, modification, waiver or termination of this Lease shall be binding

unless in writing and executed by the Parties. No waiver of any provision of this Lease shall constitute a waiver of any other provision nor shall such waiver constitute continuing waiver unless otherwise expressly provided herein.

The Landlord acknowledges that the Tenant is acting in a representative capacity as bare trustee and agent for one or more beneficial owners.

**15.11            Independent Legal Advice**

With respect to this Lease and all matters related thereto, the parties acknowledge that Shibley Righton LLP has acted as lawyers for the Landlord and Torys LLP has acted as lawyers for the Tenant.

The Landlord confirms to the Tenant that the Landlord has reviewed this Lease with the Landlord's independent legal counsel and fully understands the Landlord's rights and obligations under this Lease. The Tenant confirms to the Landlord that the Tenant has reviewed this Lease with the Tenant's independent legal counsel and fully understands the Tenant's rights and obligations under this Lease.

**15.12            Binding Effect**

This Lease shall be binding upon and shall enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns, as the case may be.

**IN WITNESS WHEREOF** the parties hereto have executed this Lease under seal.

	) Landlord:	
	)	
	)	
	)	
_____	)	_____
Witness	) ■	

Tenant:  
**DUFFERIN WIND POWER INC.**

By: \_\_\_\_\_  
Name:  
Title:

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

Name:  
Title:

I/We have authority to bind the Corporation.

I, ■, the spouse of ■ the Landlord described above, hereby consent to the transaction set out in this Lease.

Spouse of Landlord:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
■

**SCHEDULE “A”**  
**LEGAL DESCRIPTION OF LANDS**

PIN ■  
■

Lease ■  
Landlord's Name: ■



**SCHEDULE “B”**

**PART 1 – DESCRIPTION OF LEASED PREMISES INCLUDING STAGING AREA**

The Leased Premises and Staging Area means the areas of the Lands depicted on the attached sketch.

**SCHEDULE “C”**  
**RIGHTS AND REMEDIES ACCORDED TO TENANT’S MORTGAGEES**

1. The Landlord will from time to time execute and deliver such consents and acknowledgements reasonably requested by the Tenant’s Mortgagee.
2. The Landlord agrees that, upon the Tenant’s Mortgagee giving the Landlord written notice of a Tenant’s Mortgage, the Tenant’s Mortgagee will, without any further action being required, have the benefit of the following provisions until such time as the Tenant’s Mortgagee advises the Landlord in writing that its Tenant’s Mortgage is no longer in effect (and, if the Tenant’s Mortgagee so requests, the Landlord will (i) acknowledge in writing that the Tenant’s Mortgagee so benefits from these provisions, or (ii) enter into a written agreement with the Tenant’s Mortgagee substantially in accordance with these provisions):
  - (a) the Landlord will give prompt written notice to the Tenant’s Mortgagee of any breach or default by the Tenant of its obligations under the Lease in respect of which the Landlord proposes to exercise any of its remedies;
  - (b) the Landlord will give the Tenant’s Mortgagee the right to cure any breach or default by the Tenant under the Lease, within a period of **90 days** commencing on the later of (i) the expiry of the cure period afforded the Tenant under the Lease, and (ii) the date on which the Landlord gives the Tenant’s Mortgagee notice of such breach or default pursuant to Section 2(a), or such longer period of time as the Tenant’s Mortgagee may reasonably require to cure such breach or default; and no exercise by the Landlord of any of its rights or remedies against the Tenant will be effective against the Tenant or the Tenant’s Mortgagee unless the Landlord has the Tenant’s Mortgagee such notice and opportunity to cure;
  - (c) if the Tenant’s Mortgagee is not capable of curing any breach or default of the Tenant under the Lease (such as a breach or default relating to the bankruptcy or insolvency of the Tenant), the Tenant’s Mortgagee will have the right to cure all defaults that are curable within the time period specified in Section 2(b) and the Landlord agrees that it will not terminate the Lease (or exercise any other rights or remedies against the Tenant’s Mortgagee) if all curable defaults are cured by the Tenant’s Mortgagee within such time period;
  - (d) the Landlord agrees that if there exists any breach or default of the Tenant under the Lease at any time when any receivership, insolvency, bankruptcy or similar proceedings or events relating to the Tenant are proceeding or when the Tenant’s Mortgagee is enforcing the security of the Tenant’s Mortgage, (i) the Landlord will not terminate the Lease as a result thereof, and (ii) if the Lease is actually terminated or disclaimed in connection with or as a result of any such proceedings or enforcement, the Tenant’s Mortgagee or its nominee or appointee will have the right to enter into a new Lease upon the same terms and conditions (including any options to renew or to purchase) as the terminated Lease (the “**New Lease**”), provided that:

- (A) the Tenant's Mortgagee has notified the Landlord in writing of its intention to enter into the New Lease within **90 days** from the date the Tenant's Mortgagee receives written notice from the Landlord that the Lease has been terminated or disclaimed; and
- (B) the Tenant's Mortgagee pays to the Landlord such amounts as may then be owing by the Tenant to the Landlord under the terminated Lease and cures or commences diligently to cure any breach or default by the Tenant under the terminated Lease that is capable of being cured by the Tenant's Mortgagee;

and if the Tenant's Mortgagee notifies the Landlord of its intention to enter into a New Lease, then the Landlord will forthwith execute and deliver to the Tenant's Mortgagee a New Lease;

- (e) if the Tenant's Mortgagee takes enforcement proceedings under the Tenant's Mortgage and advises the Landlord of its intention in writing to maintain the Lease (the "**Secured Creditor Notice**"), the Tenant's Mortgagee: (i) will be entitled to all of the rights of the Tenant under the Lease as though it were an original party thereto, and (ii) will only be liable for: (A) the payment of any arrears that the Landlord gives the Tenant's Mortgagee written notice of within **ten (10)** days of the Tenant's Mortgagee Notice being given to the Landlord, and (B) the performance of Tenant's covenants and obligations arising under the Lease for the period starting on the date enforcement proceedings were commenced and ending on the date such enforcement proceedings are terminated or the Tenant's Mortgagee assigns, transfers, surrenders or terminates the Lease in accordance with its terms;
- (f) the Landlord and the Tenant will not amend, terminate or surrender the Lease without the Tenant's Mortgagee's prior written consent;
- (g) the Landlord will, at any time and from time to time, upon not less than **ten (10)** days' prior request by the Tenant or the Tenant's Mortgagee or proposed the Tenant's Mortgagee, deliver to the Tenant's Mortgagee a statement in writing certifying that: (i) the Lease is in full force and full effect unamended (or setting out any such amendments), (ii) all amounts owing and payable under the Lease have been paid (or setting out any unpaid amounts), and (iii) to the Landlord's knowledge, the Tenant is not in default of its obligations under the Lease in any material respect (or setting out particulars of any such defaults);
- (h) in addition to its obligations under Section 2(g), the Landlord will, at any time and from time to time, upon not less than **ten (10)** days' prior request by the Tenant or the Tenant's Mortgagee or proposed the Tenant's Mortgagee, execute any agreements, certificates or acknowledgements that the Tenant or the Tenant's Mortgagee may reasonably request with respect to this Lease; and

- (i) all notices to the Tenant's Mortgagee from the Landlord will be in writing and will be sent by personal delivery, registered mail, email or by fax to the address, email address or facsimile number of the Tenant's Mortgagee set out in any notice that the Tenant's Mortgagee delivers to the Landlord.
- 3. The provisions of Section 2 will enure to the benefit of the Tenant's Mortgagee and its successors and assigns, and any rights conferred on the Tenant's Mortgagee by the terms of this Schedule C to the Lease or limiting its liability under the Lease will benefit each receiver or receiver-manager appointed by the Tenant's Mortgagee or by a court of competent jurisdiction; and
- 4. The Landlord will give any purchaser or any other person acquiring an interest in the Premises notice of the Lease (including the terms of this Schedule C) and any notice received from the Tenant's Mortgagee.
- 5. The Landlord hereby acknowledges that Lessee may grant a Tenant's Mortgage or other security to a trustee or collateral agent acting on behalf of one or more lenders (a "**Collateral Agent**"), and the Landlord hereby acknowledges and agrees that upon its receipt of notice that such a Tenant's Mortgage or other security was granted, the Collateral Agent will be entitled to all of the rights of the Tenant's Mortgagee set forth in this Schedule C to the Lease and such notice will constitute notice of the existence of the Collateral Agent as the Tenant's Mortgagee.

## INDEX TO LEASE FORM

	Page
ARTICLE I GRANT AND TERM.....	3
1.01 Grant .....	3
1.02 Term .....	3
1.03 Extension.....	4
1.04 Early Termination by Tenant .....	4
ARTICLE II LEASED PREMISES.....	4
2.01 Leased Premises.....	4
2.02 General Rights of the Tenant .....	5
2.03 Conduct of Operations .....	5
ARTICLE III RENT .....	5
3.01 Covenant to Pay .....	5
3.02 Annual Rent .....	5
3.03 Additional Rent .....	6
3.04 Place of Payment.....	6
3.05 Accrual and Prorating .....	6
3.06 Net Lease .....	6
ARTICLE IV TAXES.....	6
4.01 Realty Taxes.....	6
4.02 HST .....	7
ARTICLE V UTILITIES .....	8
5.01 Utilities.....	8
ARTICLE VI CONDUCT OF BUSINESS BY TENANT USE BY LANDLORD .....	8
6.01 Tenant's Electrical Supply Cables .....	8
6.02 Electrical Supply Cables - Construction, Access and Maintenance .....	8
6.03 Construction and Materials Used.....	8
6.04 Testing.....	9
6.05 Use of Leased Premises by Landlord.....	9
6.06 Interference with the Project.....	9
6.07 Compliance With Laws.....	10
6.08 Waste and Nuisance .....	10

## INDEX TO LEASE FORM

(continued)

	Page
6.09 Replacement and Repair of Fences .....	10
6.10 Compensation to Landlord for Damages .....	11
6.11 Hazardous or Toxic Materials or Substances.....	11
ARTICLE VII MAINTENANCE, REPAIR AND ALTERATIONS .....	11
7.01 Tenant's Repair .....	11
7.02 General Maintenance and Operation .....	12
7.03 Alterations .....	12
7.04 No Obligation on Landlord to Repair .....	12
7.05 Construction Liens .....	12
ARTICLE VIII TRADE FIXTURES, IMPROVEMENTS AND SURRENDER .....	13
8.01 Ownership of Electrical Supply Cables .....	13
8.02 Trade Fixtures .....	13
8.03 Surrender of Leased Premises.....	13
ARTICLE IX ASSIGNMENT, SUBLETTING AND FINANCING .....	13
9.01 Assignment of Tenant's Rights.....	13
9.02 Tenant's Financing.....	14
ARTICLE X INSURANCE AND INDEMNITY.....	15
10.01 Tenant's Insurance .....	15
10.02 Failure to Insure .....	15
10.03 Loss or Damage .....	15
10.04 Indemnification of Landlord .....	16
10.05 Landlord's and Tenant's Employees .....	16
ARTICLE XI DAMAGE AND DESTRUCTION .....	16
11.01 Damage and Destruction.....	16
ARTICLE XII DEFAULT OF TENANT.....	17
12.01 Right to Re-Enter .....	17
12.02 Right to Re-let.....	17
12.03 Landlord May Cure Default.....	18
12.04 No Waiver of Breach .....	18
ARTICLE XIII MORTGAGE BY LANDLORD.....	18

**INDEX TO LEASE FORM**  
(continued)

	<b>Page</b>
13.01 Attornment and Non-disturbance.....	18
13.02 No Obligation to Subordinate .....	18
ARTICLE XIV LANDLORD’S COVENANTS .....	19
14.01 Landlord’s Covenants .....	19
14.02 Landlord’s Warranties .....	19
14.03 Approvals .....	19
14.04 Exclusive Right .....	20
14.05 Non-Disturbance .....	20
14.06 Salvage .....	20
14.07 Non-Impairment .....	20
ARTICLE XV MISCELLANEOUS .....	21
15.01 Force Majeure .....	21
15.02 Registration .....	21
15.03 Notices .....	21
15.04 Planning Act .....	21
15.05 Status Certificate .....	22
15.06 Further Assurances .....	22
15.07 Arbitration .....	22
15.08 Confidentiality .....	23
15.09 Construction .....	23
15.10 Entire Agreement .....	23
15.11 Independent Legal Advice .....	24
15.12 Binding Effect .....	24

**SCHEDULE “A” – LEGAL DESCRIPTION OF LANDS**

**SCHEDULE “B” – PART 1 – DESCRIPTION OF LEASED PREMISES INCLUDING STAGING AREA**

**SCHEDULE “C” – RIGHTS AND REMEDIES ACCORDED TO TENANT’S MORTGAGEES**

## AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE is made as of and with effect from [REDACTED]

BETWEEN:

[REDACTED]  
[REDACTED]  
[REDACTED]  
(the "Landlord")

- and -

[REDACTED]  
a corporation incorporated under the laws of Canada  
Address: [REDACTED]  
[REDACTED]  
(the "Tenant")

WHEREAS:

- A. The Landlord is the registered and beneficial owner of an estate in fee simple title, subject however to such liens, mortgages and encumbrances existing as of the date of this Lease, of and in that certain parcel or tract of land situated, lying and being in the Province of Ontario and legally described as set out in Schedule "A" attached to this Lease (the "Lands");
- B. The Landlord has agreed to lease portions of the Lands to the Tenant for the purposes and upon the terms and conditions set forth in this Lease;
- C. The Landlord and the Tenant entered into:
  - (i) a lease dated [REDACTED], notice of which was registered in the Land Registry Office for the Land Titles Division of Dufferin (No. 7) on [REDACTED] as Instrument No. [REDACTED]; and
  - (ii) a lease amending agreement dated [REDACTED], notice of which was registered in the Land Registry Office for the Land Titles Division of Dufferin (No. 7) on [REDACTED] as Instrument No. [REDACTED],(collectively, the "Original Lease"); and
- D. The Landlord and Tenant desire to amend and restate the Original Lease with effect from [REDACTED].



WITNESSES that in consideration of the covenants and agreements herein contained and the sum of [REDACTED], the receipt and sufficiency of which are hereby acknowledged, the Landlord and the Tenant covenant and agree as follows:

## INTRODUCTION DEFINITIONS

In this Lease:

"**Additional Rent**" has the meaning set out in Section 3.03 of this Lease;

"**Adjoining Property**" means that part of the Lands which does not include the Leased Premises;

"**Annual Rent**" has the meaning set out in Section 3.02 of this Lease;

"**Annual Rent Commencement Date**" has the meaning set out in Section 3.02 of this Lease;

"**Assignment**" has the meaning set out in Section 9.01 of this Lease;

"**Business Days**" means Mondays through Fridays inclusive but excluding any statutory holidays;

"**Construction Commencement Date**" has the meaning set out in Schedule "C" to this Lease;

"**Designated Area**" means the part of the Lands identified as such in Part 2 of Schedule "B" of this Lease;

"**Electrical Supply Cables**" means cables, wires, pipes, meters, conduits, tubes and all necessary appurtenances, to be installed on, over, along or under the Adjoining Property and the Leased Premises for the purpose of transporting the electric power generated at the Project to the distribution facilities of prospective purchasers of said electric power;

"**Facilities**" means collectively all buildings, structures, improvements, fixtures, installations, equipment or chattels installed or brought on to the Leased Premises or the Adjoining Property by or at the request of the Tenant for the purpose of the Project, and includes without limitation the Wind Turbines Units, the Electrical Supply Cables, the Perimeter Fences, the Tenant's signage, and all appurtenances thereto and an anemometer;

"**Farming**" has the meaning set out in Section 6.08 of this Lease;

"**Foundation**" has the meaning set out in Section 6.02(c) of this Lease;

"**HST**" has the meaning set out in Section 4.02 of this Lease;

"**Lands**" means the lands owned by the Landlord described in Schedule "A" of this Lease as more particularly referred to in Recital A on page 1 of this Lease;

"**Lease**" means this amended and restated lease, as it may be amended, supplemented or restated from time to time in accordance with the terms hereof;

[REDACTED]

"**Taxes**" means all real property taxes, capital taxes, rates, duties, assessments (including local improvement taxes), impost charges or levies, whether general or special, that are levied, rated, charged or assessed against the Lands, the Leased Premises or the Facilities, as the case may be depending on the context, or any part thereof from time to time by any lawful taxing authority, whether federal, provincial, municipal, school or otherwise, and any taxes or other amounts which are imposed in lieu of, in substitution for, or in addition to any such real property taxes whether of the foregoing character or not and whether in existence at the commencement of the Term of this Lease or not, and any such real property taxes levied or assessed against the Lands,

the Leased Premises or the Facilities, as the case may be, but shall not include local improvement charges;

"**Tenant's Mortgage**" has the meaning set out in Section 9.02 of this Lease;

"**Tenant's Mortgagee**" has the meaning set out in Section 9.02 of this Lease;

"**Term**" has the meaning set out in Section 1.02 of this Lease; and

"**Wind Turbine Unit**" means a wind electricity generating tower to be installed on the Leased Premises for the purpose of harnessing wind for the production of electricity including its Foundation and all suspension cables connected to the Foundation from such generating tower.

## **ARTICLE I GRANT AND TERM**

### **1.01    Grant**

In consideration of the Rent, and the covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, kept, observed and performed, the Landlord hereby leases to the Tenant and the Tenant leases from the Landlord portions of the Lands identified in Part 1 of Schedule "B" attached to this Lease (the "**Leased Premises**").

### **1.02    Term**

This Lease shall be for a term (the "**Term**") expiring **twenty (20)** years after the Annual Rent Commencement Date, and commencing on [REDACTED] or on such earlier date as the Tenant may notify the Landlord by giving the Landlord not less than **ten (10)** days' prior written notice (the "**Lease Commencement Date**"), but in no event shall the Lease Commencement Date be later than the Construction Commencement Date.

### **1.03    Extension**

If the Tenant is not then in default in respect of any of the covenants and conditions contained in this Lease at the end of the Term, then the Tenant shall have the right to extend the Term for additional terms totalling up to **twenty-nine (29)** years where the first and second extension terms shall both be **ten (10)** years and the final extension term shall be up to **nine (9)** years, but in no event shall the term of this Lease, including any renewals or extensions, exceed **fifty (50)** years from the date hereof. Each extension term shall be on the same terms and conditions of this Lease save that the Landlord shall have the right to choose as the Annual Rent either the amount stipulated in subparagraph (a) of Section 3.02 or the amount stipulated in subparagraph (b) of Section 3.02. The Tenant's right to extend the Term shall be exercisable by written notice by the Tenant to the Landlord given not less than **thirty (30)** days prior to the end of the Term, or each additional extension term. The Landlord's right to stipulate the basis of the Annual Rent for an extension term shall be exercisable by written notice by the Landlord to the Tenant given within **fifteen (15)** days of the Landlord receiving the Tenant's extension notice. Failure by the Landlord to give such written notice shall be treated as the Landlord's election to choose to

[REDACTED]

continue the method previously selected by the Landlord for the payment of Annual Rent by the Tenant.

*The Tenant hereby declares that the Leased Premises will be used for the purpose of a renewable energy project as defined by the Green Energy Act, 2009 (S.O. 2009, Ch. 12 Schedule A) to construct and operate a renewable energy generation facility as defined by the Electricity Act, 1998 (S.O. 1998, Ch. 15 Schedule A).*

#### **1.04 Early Termination by Tenant**

The Landlord agrees that the Tenant shall have the right at any time, upon six (6) months' notice to that effect to the Landlord, to terminate this Lease upon the occurrence of any of the following:

- (a) the Tenant is unable for any reason whatsoever to obtain any permits, licences or approvals as may be necessary for the construction, installation, operation or maintenance of the Facilities or otherwise to permit the Tenant to occupy the Leased Premises and conduct its activities thereon, as required by applicable laws;
- (b) the Tenant in its sole discretion, deems the Facilities to be economically unfeasible; or
- (c) the construction, installation, operation or maintenance of the Facilities is prevented or significantly impeded for any reason whatsoever, including not limited to, legal or regulatory requirements,

and, in such event, this Lease shall terminate on the next succeeding anniversary date thereof.

Upon the Tenant so electing to terminate this Lease the Tenant, at its sole cost and expense, shall remove and discharge any instrument or encumbrance registered against title to the Lands and related to its interest therein arising under this Lease.

#### **1.05 Early Termination by Landlord**

If the Tenant has not commenced the construction and installation of the Facilities on or before **January 30, 2014**, the Tenant agrees that the Landlord shall have the right to terminate this Lease at any time, prior to the Tenant commencing construction and installation of Facilities on the Leased Premises by giving written notice to that effect to the Tenant, and this Lease shall terminate on the next succeeding anniversary date thereof unless the Tenant has completed construction and installation of the Facilities by that date.

## **ARTICLE II LEASED PREMISES**

#### **2.01 Leased Premises**


The Leased Premises shall comprise, from time to time, such part or parts of the Designated Area as the Tenant, in its sole and unfettered discretion, may designate in accordance with this Article. At the Lease Commencement Date, the Leased Premises shall comprise the Leased Premises

described in Schedule "B" of this Lease. Thereafter, the Tenant may from time to time add to the Leased Premises any part or parts of the Lands forming part of the Designated Area by delivery of written notice to the Landlord to that effect specifying the description of the new Leased Premises, and specifying the date on which such new Leased Premises shall become part of the Leased Premises. The Tenant may also from time to time delete lands from the Leased Premises by delivery of written notice to that effect to the Landlord specifying that portion of the Lands to be deleted from the Leased Premises and the date when they shall become deleted from the Leased Premises; in the case of any such deletion of Lands from the Leased Premises the Tenant shall comply with the provisions of Section 8.03 with respect to the removal of the Tenant's Facilities from such deleted Leased Premises as if this Lease had been terminated on the designated date. On the occurrence of any change in the Leased Premises hereunder, the obligation under Section 4.01 with respect to Taxes levied against the added or deleted Leased Premises shall be prorated and adjusted as the date of the respective change in the Leased Premises.

As a result of the exercise of the Tenant's rights under this Article, the Leased Premises may consist of one or more non-contiguous parcels of land in the Designated Area. Each such non-contiguous area (a "Site") shall have an area of at least **one hundred and twenty-five (125)** square meters. Each Site, at the option of the Tenant, in its sole and unfettered discretion, may be enclosed by a Perimeter Fence.

## **2.02 General Rights of the Tenant**

The Landlord grants to the Tenant, its agents, employees, contractors and licensees, and their vehicles, tools, equipment, apparatus and materials of whatsoever nature and kind, the full, free and uninterrupted exclusive right of way and easement over, along and upon the Adjoining Property to enter for temporary periods of time upon the Adjoining Property for all purposes connected with, or incidental to, the rights and privileges herein granted to the Tenant with respect to the Leased Premises including, without limitation the right to erect, install, reinstall, construct, reconstruct, operate, repair and maintain its Facilities on the Leased Premises and, incidental thereto, the right to (i) load, unload and store material, apparatus and equipment, (including, but not limited to, heavy equipment), upon the Adjoining Property (ii) remove or trim any trees on the Adjoining Property immediately adjacent to the Leased Premises which, in the reasonable opinion of the Tenant, (which determination will be made with prior consultation with the Landlord), may constitute a hazard to the Facilities and, (iii) remove other obstructions which in the reasonable opinion of the Tenant (which determination will be made with prior consultation with the Landlord), may endanger the operation of the Facilities. Where, in the reasonable opinion of the Tenant, the Tenant considers it necessary by reason of the nature or condition of the Leased Premises or the circumstances then existing, the Tenant shall have the right in the nature of an easement throughout the Term to go on, across and exit from all or any part of the Adjoining Property whether by the Landlord's access routes or otherwise for the purposes of gaining access to the Leased Premises and for the purpose of constructing, reconstructing, repairing, replacing, relocating or protecting the Facilities; provided however, in exercising such rights, the Tenant shall abide by all reasonable safety precautions.



### 2.03 Conduct of Operations

The Tenant shall conduct all operations on the Leased Premises in a diligent, careful and workmanlike manner, and in compliance with the provisions of any statutes, regulations, orders or directives of any government or governmental agency applicable to such operations, and where such provisions conflict with the terms of this Lease, such provisions shall prevail.

## ARTICLE III RENT

### 3.01 Covenant to Pay

The Tenant hereby covenants with the Landlord to pay Rent, including Annual Rent and Additional Rent, as herein provided.

### 3.02 Annual Rent

If, and only if, the Tenant installs **one (1)** or more Wind Turbine Units on the Leased Premises the Tenant shall pay to the Landlord, in lawful money of Canada, without any prior demand therefor, for and during each year of the Term, and any extension thereof, an annual rent (the "**Annual Rent**") of either:

- (a) the amount stipulated as the Annual Rent in Schedule "C" to this Lease; OR
- (b) as Annual Rent:
  - (i) for the **ten (10)** year period starting on the Annual Rent Commencement Date and ending on the **tenth (10th)** anniversary of such date, [REDACTED] per Wind Turbine Unit per year on the Leased Premises; and
  - (ii) for the period starting on the **tenth (10th)** anniversary of the Annual Rent Commencement Date until the end of Term, [REDACTED] per Wind Turbine Unit per year on the Leased Premises.

The Landlord shall be required to make the Landlord's election as to which payment the Landlord will receive by written notice to the Tenant given no later than the Annual Rent Commencement Date.

Annual Rent shall be payable quarterly in arrears starting on the last day of the first calendar Quarter following the Annual Rent Commencement Date and on the last day of each Quarter thereafter in accordance with Schedule "C" to this Lease.

If no Wind Turbine Units are or will be installed on the Leased Premises the Annual Rent shall be [REDACTED] **Dollars per annum** for the **ten (10)** year period starting on the Annual Rent Commencement Date and ending on the **tenth (10th)** anniversary of such date. For the period starting immediately following the **tenth (10th)** anniversary of the Annual Rent

[REDACTED]

Commencement Date and until the end of the Term such Annual Rent shall be [REDACTED]  
[REDACTED] Dollars per annum.

For the purpose of this Lease "Annual Rent Commencement Date" means:

- (c) if one (1) or more Wind Turbine Units are installed on the Leased Premises the first day of the second calendar month following the calendar month that a Wind Turbine Unit has been installed by the Tenant on the Leased Premises and delivering power for sale in compliance with applicable Ontario law; and
- (d) where no Wind Turbine Unit is or will be installed on the Leased Premises the earlier of the second anniversary of the Lease Commencement Date and the date that any Wind Turbine Unit has been installed by the Tenant on any Site in the Township of Melancthon and is delivering power for sale in compliance with applicable Ontario law.

### **3.03 Additional Rent**

All amounts payable hereunder by the Tenant except Annual Rent shall be payable as additional rent ("Additional Rent"). The Tenant shall pay Additional Rent to the persons, at the times and in the manner hereinafter set forth, and if the time and manner of payment of any Additional Rent is not set out expressly in this Lease, such Additional Rent shall be payable by the Tenant to the Landlord forthwith on demand. Where the calculation of any Additional Rent is not made until after the termination of this Lease, the obligation of the Tenant to pay such Additional Rent shall survive the termination of this Lease.

### **3.04 Bonus Payment**

The Tenant shall pay to the Landlord for each Wind Turbine Unit then installed on the Leased Premises on the Annual Rent Commencement Date an additional bonus payment in the amount of [REDACTED] Dollars.

The Landlord acknowledges that the payment provided for by this paragraph by the Landlord to the Tenant is to be received in full satisfaction of all compensation for inconvenience, loss of income and matters of such nature as a result of the installation of the Facilities on the Leased Premises subject however, to the Tenant's obligations arising under in Section 6.16.

### **3.05 Place of Payment**

The Tenant shall make all payments of Annual Rent and any payments of Additional Rent required by this Lease to be paid to the Landlord by way of cheque payable to the Landlord (or to such other person as the Landlord may hereafter designate by notice in writing to the Tenant) and all such payments shall be delivered or sent to the address set out on page 1 of this Lease or to such other person or address as the Landlord may hereafter designate by notice in writing to the Tenant.

[REDACTED]

### **3.06 Accrual and Prorating**

Rent shall be considered as accruing from day to day hereunder and where it becomes necessary for any reason to calculate Annual Rent or Additional Rent for an irregular period of less than one (1) Lease Year, an appropriate apportionment and adjustment shall be made.

### **3.07 Net Lease**

The Tenant acknowledges, covenants and agrees that, except as otherwise expressly set out in this Lease, this Lease shall be a completely carefree net Lease for the Landlord and that the Tenant shall pay all costs, expenses, charges or outlays of any kind arising from, relating to or affecting the Leased Premises (except any payments of principal and interest to be made under any mortgage placed or assumed by the Landlord; the payment of the Landlord's income taxes or corporation taxes, unless such income or corporation taxes have been imposed in lieu of or substitution for Taxes; and the payment of any costs incurred by the Landlord in connection with the activities of the Landlord on the Leased Premises).

## **ARTICLE IV TAXES**

### **4.01 Realty Taxes**

Except as hereinafter set out, the Tenant shall pay all Taxes attributable to the Leased Premises and the Facilities to the taxing authorities when the same become due and payable. At the request of the Landlord, the Tenant shall provide evidence to the Landlord of payment of Taxes. If any bills, assessments, notices or other communications for or in respect of Taxes are received by the Tenant from the taxing authorities, the Tenant shall promptly deliver to the Landlord copies of same.

If a separate tax bill is not issued to the Tenant with respect to the Leased Premises and/or the Facilities, the Tenant shall pay to the Landlord, as Additional Rent, the Tenant's share of the Taxes with respect to the Lands (the "Tax Payment") as follows:

- (a) If there is a separate assessment of the Leased Premises and/or the Facilities, the amount of the Tax Payment shall include the amount of the Taxes attributable thereto determined in accordance with such assessment.
- (b) If there is no separate assessment of either the Leased Premises or the Facilities, the amount of the Tax Payment shall include a portion of the Taxes levied against the Lands determined by allocating to the Leased Premises or the Facilities, as the case may be, such proportion of the total assessment of the Lands as is reasonably attributable to them in accordance with assessment principles then used in the municipality in which the Lands are located.
- (c) A Tax Payment will become due one (1) month after the Landlord has furnished to the Tenant official receipts of the appropriate taxing Authority, or other proof satisfactory to the Tenant evidencing the payment of the Taxes payable by the Landlord with respect to the Lands. At the option of the Landlord, the Landlord may direct that the Tenant pay the



Tax Payment directly to the taxing authority, in which case the Tenant shall pay such Tax Payment to the taxing authority on or before the date when the Taxes to which such Tax Payment relates are due.

For clarity, it is the intention of the parties that the Tenant shall pay **one hundred (100%)** percent of any increase in the Taxes which are levied against the Lands as a result of the Project and which would not have been levied but for the Project, together with the Taxes levied against the Leased Premises based on their unimproved land value as agricultural land and the actual area of the Leased Premises occupied by the Tenant in comparison to the total area of the Lands.

Notwithstanding anything to the contrary in this Lease, the Tenant shall not be required to pay any Taxes which are levied against the Lands as a result of (i) any improvements to the Lands made by the Landlord, or (ii) an increase in the value of the Landlord's property, or (iii) any change of use of the Adjoining Property from its current use for farming.

#### 4.02 HST

Subject to any applicable legislation, (i) the Tenant shall pay to the Landlord an amount equal to any and all goods and services taxes, sales taxes, value added taxes, business transfer taxes, or any other taxes imposed on the Landlord or the Tenant with respect to Rent payable by the Tenant under this Lease, whether characterized as goods and services tax, sales tax, harmonized sales tax, value added tax, business transfer tax or otherwise (collectively "HST"), it being the intention of the parties that the Landlord shall be fully reimbursed by the Tenant with respect to any and all HST. The amount of such HST so payable by the Tenant shall be calculated by the Landlord in accordance with the applicable legislation and shall be paid to the Landlord at the same time as the amounts to which such HST applies are payable to the Landlord under the terms of this Lease or upon demand or at such other time or times as the Landlord from time to time determines; and (ii) the amount of such HST so payable by the Tenant shall be deemed not to be Rent, but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for recovery of Rent under this Lease.

## ARTICLE V UTILITIES

## 5.01 Utilities

The Tenant shall be solely responsible for and shall pay as same become due all charges for any public or private utilities or services supplied to or used or consumed by the Tenant at the Leased Premises and for equipment, fittings, machines, apparatus, meters or other things leased or purchased in respect thereof, including installation costs, and for all work performed by any corporation or commission in connection with any such utilities or services.

## 5.02 Shared Connection

The Tenant, at its option, may connect its electrical utility supply connection to the electrical utility connection of the Landlord, in which case the Tenant shall pay all costs incurred in making such connection and shall pay its share, based on actual consumption, of all charges for



## 6.01 Tenant's Facilities

## 6.02 Facilities - Construction, Access and Maintenance

The Tenant, in its sole and unfettered discretion, shall determine:

- (a) the manufacturer, model number, and all related specifications of each Wind Turbine Unit, including but not limited to its design, height, width, diameter, electrical output, and sound emission; and
- (b) the number of Facilities to be installed on the Leased Premises.

- (c) concrete pads, footings and any other device or structure reasonably necessary to support and affix the Wind Turbine Unit to the ground of the Leased Premises (a "**Foundation**");
- (d) guy wires, support fixtures, anchors, suspension cables and any other device or structure reasonably necessary to support and affix the Wind Turbine Unit to the ground of the Leased Premises;
- (e) **one (1)** or more Perimeter Fences; and
- (f) buildings or any other form of structure or shelter necessary or desirable for the Project.



### **6.03 Roadway - Construction, Access and Maintenance**

In connection with the Project, the Tenant may construct, operate, maintain and repair, at its sole cost and expense, a roadway over the Leased Premises and the Adjoining Property (the "Roadway") which shall connect the Leased Premises to a public highway, for the purpose of obtaining access to the Leased Premises for the construction, operation, maintenance and repair of the Project. The Roadway shall be:

- (a) accessible from a public highway;
- (b) constructed of a grade and standard sufficient to accommodate the Tenant's construction and maintenance vehicles;
- (c) available for use by the Landlord provided that such use does not materially interfere with the Project; and
- (d) in a location to be designated by the Tenant in its sole and unfettered discretion, provided that the Tenant will consult on site with the Landlord with respect to the appropriate location of the Roadway prior to the Tenant making its final location designation.

The Landlord shall not be responsible for maintenance and repair of the Roadway. The Tenant shall determine in its sole and unfettered discretion what maintenance and repair, if any, it performs on the Roadway. The Tenant shall not have any liability to the Landlord or anyone else for any death, injury or damage to property arising out of use of or access to the Roadway by any person or persons including, without limitation, users of the Roadway, without the express permission of the Tenant.

### **6.04 Electrical Supply Cables - Construction, Access Maintenance**

In connection with the Project, the Tenant, at its sole cost and expense, may construct, operate, maintain and repair the Electrical Supply Cables over, along or under the Adjoining Property and the Leased Premises, which shall connect the Facilities to the facilities of the purchaser of the electric power generated by the Project.

### **6.05 Construction and Materials Used**

The Landlord and Tenant covenant and agree with each other that:

- (a) The Tenant shall decide in its sole and unfettered discretion whether it will proceed with the construction of the Project or any Wind Turbine Unit and, if the Project or any particular Wind Turbine Unit will be constructed, the date of commencement of construction;
- (b) Subject to this Lease, the Tenant shall have the sole and unfettered discretion to determine the materials, specifications and all other matters in connection with the installation, construction, operation, maintenance and repair of all matters relating to the Project, including but not limited to any Wind Turbine Unit, Foundation, Roadway and Electrical Supply Cables;

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- (c) The Tenant in its sole and unfettered discretion may determine the location on, over, along or under the Leased Premises of all Facilities relating to the Project, including but not limited to any Wind Turbine Unit, Roadway and Electrical Supply Cables. The Tenant shall determine the location on, over, along or under the Adjoining Property of all permitted Facilities relating to the Project, including but not limited to the Roadway and Electrical Supply Cables, with the consent of the Landlord, acting reasonably and without delay; and
- (d) The Tenant shall have the right to cut and remove, clear and keep clear, and trim all trees or shrubs within the Designated Area.

#### **6.06 Right of Access over Roadway and Adjoining Property**

For the duration of the Term, the Landlord hereby grants to the Tenant and any party authorized by the Tenant, the exclusive right of way for pedestrian and vehicular access, ingress and egress in, to, and over:

- (a) the part of the Roadway which is not located on the Leased Premises; and
- (b) the Designated Area

for any and all matters related to the Project, including but not limited to the construction, operation, maintenance and repair of the Foundations, Roadway, Facilities and Electrical Supply Cables (the "**Right of Access**").

#### **6.07 Testing**

At any time and from time to time during the Term, the Tenant, and any person authorized by the Tenant, may enter onto the Designated Area for the purpose of conducting any manner of test, survey or inspection which is deemed necessary or desirable in the Tenant's sole and unfettered discretion in connection with the Project, including but not limited to the taking of soil samples, geotechnical testing, the release of weather balloons, and other testing for the purpose of determining the effectiveness of any existing or contemplated Facilities. In connection with such testing, the Tenant may construct and leave on the Designated Area testing equipment, and the Tenant shall have access to the Designated Area from time to time for the purpose of maintaining and repairing such equipment and monitoring the results there from. All costs of any such inspections are to be paid by the Tenant. Any damage to the Designated Area resulting from such inspections shall be repaired by the Tenant at its cost.

#### **6.08 Use of Leased Premises by Landlord**

The Landlord with the prior written consent of the Tenant (which consent shall not be unreasonably withheld or delayed), may plant and harvest crops, graze livestock and conduct other farming or agricultural activities ("**Farming**") on all parts of the Leased Premises which have not been enclosed by a Perimeter Fence, if such Farming does not or will not interfere with or create a risk of damage or injury to the Project and subject to the Tenant's right to thereafter elect on no less than **nine (9)** months prior written notice to terminate such consent.

████████████████████

The Landlord agrees that it shall not hold the Tenant, or any other person directly or indirectly authorized by Tenant to enter onto the Leased Premises, responsible for any costs, damages, expenses or liabilities incurred by the Landlord, however caused, and resulting in damage to crops, plants, livestock, machinery or any other farming commodity or material owned by the Landlord located on the Leased Premises.

#### **6.09 Interference with the Project**

The Landlord shall not:

- (a) engage in, or authorize or permit any other party to engage in, any activity on or about the Lands that would directly or indirectly impede or decrease the output or efficiency of wind energy at the Project;
- (b) engage in, or authorize any other party to engage in, any activity on or about the Lands that would directly or indirectly interfere with the speed or direction of the blades or any similar device on any Wind Turbine Unit, or with the quantity or direction of wind energy available to any Wind Turbine Unit;
- (c) without the express written permission of the Tenant, enter or authorize any other party to enter any part of the Leased Premises or Roadway enclosed by a Perimeter Fence; or
- (d) enter, damage, alter or interfere with any structure or other improvement forming part of the Facilities.

#### **6.10 Compliance With Laws**

The Tenant, at its own expense, shall comply with all applicable federal, provincial and municipal statutes, regulations, ordinances and orders which relate to or affect the Project, or the use, occupation, operation or maintenance of the Project or any Facilities from time to time in connection with the Project, or the making of any repairs, replacements, alterations, additions or improvements of or to the Facilities, and the Tenant shall make any repairs, replacements, alterations, additions, improvements or deletions necessary to effect such compliance. The Tenant shall at its own risk and expense obtain any and all necessary governmental licences, permits and approvals necessary for such use and shall pay all levies, fees, taxes and imposts with respect to such use of the Leased Premises. The Landlord shall promptly sign all consents, authorizations or other documents which are required by the Tenant to obtain any such licences, permits and approvals, and the Tenant shall pay any cost incurred by the Landlord in that regard.

The Tenant shall have the right to contest by appropriate legal proceedings, without cost or expense to the Landlord, the validity of any statute, regulation, ordinance, order or requirement of the nature hereinbefore in this Section referred to, and if, by the terms of any such statute, regulation, ordinance, order or requirement, compliance therewith may legally be held in abeyance without subjecting the Landlord to any liability, fine or penalty of whatsoever nature for failure to comply therewith, the Tenant may postpone compliance therewith until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with due diligence and dispatch and the Tenant agrees to indemnify and save harmless the Landlord from and against any liability or damages in respect of any such contestation.

#### **6.11 Waste and Nuisance**

The Tenant shall not commit or suffer to be committed any waste or injury to the Leased Premises, and shall not do or omit to do or suffer to be done or omitted anything upon or in respect of the Leased Premises which shall be or result in a nuisance or menace to the Landlord or to the owners or occupiers of neighbouring lands and premises, provided that it is acknowledged and agreed that the Project does not constitute a nuisance for the purposes of this Lease.

The Landlord shall not do or omit to do or suffer to be done or omitted anything upon the Lands which shall be or result in a nuisance or menace to the Tenant or to the Project. The Tenant acknowledges that Farming does not constitute a nuisance.

#### **6.12 Advertising upon the Facilities**

Neither the Landlord nor the Tenant shall be permitted to post any advertising, notice, poster, message or other publication of any kind whatsoever, using any medium either directly upon the Facilities or as an attachment or addition to the Facilities at any time during the Term without first obtaining the written consent of the other which consent shall not be unreasonably withheld or delayed. Notwithstanding this general prohibition, any manufacturer or retailer advertising associated directly with the Facilities, which appears upon the Facilities at the time such Facilities are purchased by the Tenant shall be permitted to remain at the sole and unfettered discretion of the Tenant. Further, the Tenant shall be permitted to maintain or update such advertising in accordance with any requirements in any agreement between the Tenant and the vendor, supplier or manufacturer of the Facilities.

#### **6.13 Assignment in Connection with Transmission Lines**

The Tenant, in connection with the exercise of its rights pursuant to this Lease, the Tenant, acting reasonably and in consultation with the Landlord, shall have the right for itself or may grant any utility the right to construct, operate and maintain electrical transmissions interconnections and switching facilities on the Leased Premises pursuant to any standard form of easement, leasehold, or any other agreement used for or proposed by the utility consistent with the Tenant's rights under this Lease.

#### **6.14 Replacement and Repair of Fences**

The Tenant in the enjoyment of its rights and privileges pursuant to this Lease hereby granted to it, shall replace all fences which it may have removed for its purposes and repair all fences which it may have damaged upon written notice from the Landlord, and if and when so required by the Landlord, will provide proper livestock guards at any point of entry upon the Leased Premises used by it and, upon the use thereof, close all gates.

#### **6.15 Ditches, Roadways, etc.**

Roadways which are constructed by the Tenant shall have ditches where required, or if necessary, an adequate number of approaches so that the Landlord can cross the Roadway with

farm machinery in moving from one field on the Lands to another field which lies across the Roadway.

Ditches and roadways shall also be constructed by the Tenant so as not to impede the natural precipitation run-off. Where necessary, culverts shall be constructed by the Tenant so as to ensure natural run-off and not create a disturbance in the run-off pattern that would negatively impact the Landlord's use of the Adjoining Property.

## 6.16 Compensation to Landlord for Damages

If the Tenant's use of the Right of Access results in damage to crops, plants, or any other farming commodity, machinery or material of the Landlord located on the Adjoining Property, the Tenant agrees that it shall be responsible for any and all costs, damages, expenses or liabilities incurred by the Landlord as a result of the Tenant's exercise of such Right of Access, providing that such costs, damages, expenses or liabilities are reasonably attributable to the Tenant's exercise of the Right of Access, and the Tenant shall not have any liability for consequential damages.

In valuing damage to crops the Landlord and Tenant shall average the farm gate value of the damaged crop for the then current growing season and the value of such a same sized crop for the immediately previous **two (2)** growing seasons, the intention being that the Tenant shall reimburse the Landlord for the farm gate value of the current crop based upon the average of its current value and the value of a same sized crop for the previous **two (2)** growing seasons.

Damages to fences, buildings and other improvements owned by the Landlord and situate on the Adjoining Property shall be valued at their then current replacement cost.

The Tenant agrees that it will provide not less than **one hundred and eighty (180)** days prior written notice to the Landlord of the start of the installation of any Roadway/right of way and not less than **one hundred and eighty (180)** days prior written notice for the layout of any Wind Turbine Units and Electrical Supply Cables and their footprint on the Leased Premises, the intention being that such advance written notice by the Tenant to the Landlord will enable the Landlord to determine the timing for the Landlord's planting, growing and harvesting requirements so as to minimize, and if possible, eliminate damage to any crops.

### 6.17 Hazardous or Toxic Materials or Substances

If any hazardous or toxic materials or substances are determined to exist on any part of the Leased Premises during the Term and any extension thereof due to the negligent or intentional acts or omissions of the Tenant, or those for whom at law it is responsible, the Tenant, for its own account, shall defend, indemnify and hold harmless the Landlord with respect thereto. The Tenant shall also assume all responsibility and expense in connection with, and shall promptly take such action as required by applicable law, to remediate or remove any such hazardous or toxic materials or substances.

## ARTICLE VII MAINTENANCE, REPAIR AND ALTERATIONS

### 7.01 Tenant's Repair

The Tenant covenants that, throughout the Term and any extension thereof, at its sole cost and expense, it shall keep the Facilities in good repair, reasonable wear and tear excepted, and shall make all necessary repairs to the extent required to keep the Facilities in good condition, and repair, reasonable wear and tear excepted, commensurate with their age.

Without limiting the generality of the foregoing, the Tenant will conduct inspections of the Facilities on a semi-annual basis and complete any maintenance which the Tenant, in its reasonable opinion, determines is required in order to ensure that the Facilities, maintain a clean and uncluttered appearance and are, at all times, operating in a safe manner.

### 7.02 General Maintenance and Operation

The Tenant covenants that, throughout the Term and any extension thereof, at its sole cost and expense, it shall keep and maintain the Leased Premises in a clean and orderly condition and shall repair any damage to the Leased Premises caused by the operations of the Tenant.

Without limiting the generality of the foregoing, the Tenant shall throughout the Term and any extension thereof, at its sole cost and expense, maintain the Leased Premises in a state of repair that does not adversely impact upon the Landlord's use of the Adjoining Property for Farming.

The Tenant shall allow the Landlord access to the Leased Premises in order to remove weeds, rodents and other pests such as insects from the Leased Premises, which removal is the sole responsibility of the Landlord at its sole cost and expense.

Any damage or repairs necessary to be effected with respect to the drainage from the Leased Premises and Adjoining Property caused as a direct result of the Tenant's actions shall be completed at the Tenant's expense.

### 7.03 Alterations

The Tenant may from time to time make such alterations or additions to the Facilities as the Tenant, in its sole and unfettered discretion, may determine. All such alterations or additions shall be made in a good and workmanlike manner.

### 7.04 No Obligation on Landlord to Repair

The Landlord shall not have any obligation to effect any maintenance or to make any repairs or replacements to the Facilities or the Roadway, subject only to the exception that the Landlord shall repair at its cost any damage of any kind to the Leased Premises, the Facilities or the Roadway caused by the Landlord, its livestock, or those for whom the Landlord is in law responsible. If the Landlord does not make any such repairs within **one (1)** month after the Tenant's written request, the Tenant shall have the right, at its sole option, to make such repairs and deduct the cost of such repairs from the next Rent due to the Landlord.



#### **7.05 Construction Liens**

If any construction lien or other lien or order for the payment of money shall be filed against the Lands by reason of, or arising out of, any work, labour, services or materials furnished or claimed to have been furnished to the Tenant or to anyone claiming through the Tenant, the Tenant, within a reasonable period of time after written notice to the Tenant of the filing, shall cause the same to be discharged by bond, deposit, payment, court order or in any other manner required or permitted by law. The Tenant, at its own expense, shall defend all suits to enforce any such lien or order whether against the Tenant and/or the Landlord. The Tenant shall indemnify and keep indemnified the Landlord from and against payment of all loss, costs, charges and expenses occasioned by or arising from any such lien or order.

### **ARTICLE VIII TRADE FIXTURES, IMPROVEMENTS AND SURRENDER**

#### **8.01 Ownership of Facilities**


The Facilities and all of the property and equipment placed or operated on the Leased Premises by or on behalf of the Tenant, shall at all times remain the property of the Tenant notwithstanding that they may be annexed or affixed to the freehold and notwithstanding any rule of law or equity to the contrary, and they shall at the written request of the Landlord, at any time and from time to time, be removable in whole or in part by the Tenant without the consent of the Landlord.

#### **8.02 Trade Fixtures**

The Tenant shall have the right at all times and from time to time to install and remove its trade fixtures. All trade fixtures shall be owned by and be the property of the Tenant, shall remain the property of the Tenant and the Tenant may from time to time remove any or all of its trade fixtures from the Leased Premises either during or at the expiration or other termination of the Term or any extension thereof, provided that the Tenant shall promptly repair any damage to the Leased Premises caused by the installation and/or removal of such trade fixtures in a good and workmanlike manner.

#### **8.03 Surrender of Leased Premises**

Upon the termination of this Lease for any reason whatsoever, the Tenant, at its sole cost and expense and in compliance with the then applicable environmental laws, shall remove or cause the removal of the Facilities, including without limitation, any Wind Turbine Unit, Electrical Supply Cables, and all other improvements, equipment, apparatus, and other chattel assets of the Tenant located on the Leased Premises, the Adjoining Property and the Roadway, and the Tenant shall promptly repair any damage to the Leased Premises caused by such removal. Provided, however, that the Tenant may, at its option, leave on the Leased Premises or Adjoining Property any of the Facilities which are buried to a sufficient depth (and in any event a minimum of one (1) metre below original grade) so as not to interfere materially with the Landlord's Farming, and provided further that the Tenant shall have no obligation to remove the Roadway.



Except as otherwise set out in this Lease, upon the expiration of the Term or other earlier termination of this Lease, the Tenant shall peaceably surrender and yield up unto the Landlord the Leased Premises in as good order, condition and repair as the Tenant is required to maintain the Leased Premises under the terms of this Lease.

Incidental to such obligation, the Tenant shall provide a Phase I environmental assessment report to the Landlord of an independent environmental consultant confirming that there are no hazardous substances (as such term has meaning under the *Environmental Protection Act* (Ontario)) remaining on the Leased Premises as a result of the Tenant's operations.

## ARTICLE IX ASSIGNMENT, SUBLETTING AND FINANCING

### 9.01 Assignment of Tenant's Rights

The Landlord agrees that the Tenant, without consent from the Landlord, may transfer, convey, assign, sublet, license, grant concessions in, or otherwise part with or share possession of the Leased Premises and any or all of the Tenant's rights, interests, benefits and obligations under this Lease in whole or in part to any person, firm or corporation (an "Assignment"). Upon any Assignment, but provided that the assignee executes and delivers to the Landlord an Assumption Agreement, from and after the date of the Assignment, the term "Tenant" as used in this Lease, in so far as covenants or obligations on the part of the Tenant are concerned, shall be limited to mean and include only the lessee of the Leased Premises after completion of such Assignment, and, in the event of an Assignment, the Tenant herein named (and in case of any subsequent Assignment, then the assignor) shall to the extent of the Assignment be automatically freed and relieved from and after the date of such Assignment of all personal liability with respect to the performance of any covenant or obligation on the part of the Tenant contained in this Lease thereafter to be performed, provided that, at the time of the Assignment all amounts owing by the Tenant to the Landlord under any provision of this Lease are current as of the date of the Assignment, it being intended hereby that the covenants and obligations contained in this Lease on the part of the Tenant shall, subject as aforesaid, be binding on the Tenant only during and in respect of its period as a lessee of the Property. In this section 9.01, "Assumption Agreement" means an agreement executed by the assignee in form satisfactory to the Landlord acting reasonably, wherein the assignee shall covenant and agree directly with the Landlord with effect from and after the date of Assignment to be bound by all of the provisions in this Lease to be observed and performed or otherwise complied with by the Tenant as if the assignee had originally executed this Lease as Tenant. The Assumption Agreement shall be prepared by and at the sole cost and expense of the Tenant and the Tenant shall pay to the Landlord, as Additional Rent, on demand, all reasonable legal costs with respect thereto incurred by the Landlord.

### 9.02 Tenant's Financing

The Landlord agrees that the Tenant, without consent from the Landlord, may assign, sublet or charge this Lease by way of any bona fide mortgage or security interest of the Tenant's leasehold interest in the Lease and Leased Premises or any part thereof and the Facilities as security for any loan or financing including without limitation any form of trust indenture, debenture or bond (a "Tenant's Mortgage"). The Landlord hereby grants to any holder of a Tenant's Mortgage (a

"Tenant's Mortgagee") the rights and remedies set forth in Schedule "D" hereto. In addition, the Landlord will, from time to time, at the request of the Tenant's Mortgagee, promptly execute and deliver in favour of any Tenant's Mortgagee such consents and acknowledgements granting and confirming Tenant's Mortgagee's right and remedies hereunder and in Schedule "D" hereto. The Landlord shall also agree to any reasonable modification to the Lease, and shall enter into any other reasonable agreements with the Tenant's Mortgagee, as may reasonably be required by the Tenant in order to obtain financing from the Tenant's Mortgagee. If the Landlord receives notice of the existence of a Tenant's Mortgage, then the Landlord (i) shall agree not to amend, terminate or accept a surrender of this Lease without the prior consent in writing of the Tenant's Mortgagee, and (ii) shall deliver to the Tenant's Mortgagee a copy of any notice of default given to the Tenant under this Lease, and shall afford to the Tenant's Mortgagee the opportunity to remedy any defaults of the Tenant under this Lease as provided in Schedule "D" hereto.

## ARTICLE X INSURANCE AND INDEMNITY

### 10.01 Tenant's Insurance

The Tenant shall during the Term or any extension thereof and during such other time as the Tenant occupies the Leased Premises or any part thereof, at its sole cost and expense, take out and keep in full force and effect the following insurance:

- (a) "all risks" insurance not less broad than the standard commercial property floater policy with the exclusions such as, without limitation, those relating to sprinkler leakages (where applicable), earthquake, flood and collapse removed therefrom upon the Facilities contained therein in an amount not less than the full replacement cost thereof; and
- (b) comprehensive general liability insurance including but not limited to property damage, public liability, and personal injury liability, all on an occurrence basis, with respect to any use, occupancy, activities or things, in on or about the Leased Premises and with respect to the use and occupancy of any part of the Leased Premises by the Tenant or any of its servants, agents, contractors or persons for whom the Tenant is in law responsible, including, without limitation, the activities, operations and work conducted or performed by the Tenant, by any other person on behalf of the Tenant, by those for whom the Tenant is in law responsible and by any other person on the Leased Premises at the request of the Tenant, with coverage for any one occurrence or claim of not less than [REDACTED] Dollars.

Each of the foregoing policies of insurance shall name the Landlord and its mortgagee(s), if any, and anyone designated in writing by the Landlord as additional named insured as their interests may appear.

### 10.02 Failure to Insure

If the Tenant fails to take out or to keep in force any of the policies of insurance referred to in Section 10.01 hereof, and should the Tenant not rectify such default within **forty-eight (48)** hours after written notice thereof, the Landlord may, but shall not be obligated to, effect such

[REDACTED]

insurance and the Tenant shall pay to the Landlord, as Additional Rent, forthwith on demand all premiums, costs, charges and expenses incurred by the Landlord in effecting such insurance.

#### **10.03 Loss or Damage**

The Landlord shall not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the Leased Premises, or damage to property of the Tenant or of others located on the Leased Premises, except to the extent caused by the negligence of the Landlord, its agents, servants or employees or other persons for whom it may in law be responsible.


Subject as expressly set out in this Lease, the Tenant shall not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the Adjoining Property, or any damage to property of the Landlord or of others located on the Adjoining Property, except to the extent caused by the negligence of the Tenant, its agents, servants, or employees or other persons for whom it may in law be responsible.

#### **10.04 Indemnification of Landlord**

Subject as expressly set out in this Lease, the Tenant shall indemnify the Landlord and save it harmless from and against any and all loss (including loss of Rent payable by the Tenant pursuant to this Lease), claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Lease, or any occurrence in, upon or at the Leased Premises, or the occupancy or use by the Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Leased Premises by the Tenant, except to the extent caused by the negligence of the Landlord, its agents, servants or employees or other persons for whom the Landlord may in law be responsible. If the Landlord shall, without fault on its part, be made a party to any litigation commenced by or against the Tenant, then the Tenant shall protect, indemnify and hold the Landlord harmless from and against, and shall pay as Additional Rent, all costs, expenses and reasonable legal fees incurred or paid by the Landlord in connection with such litigation.

#### **10.05 Landlord's and Tenant's Employees**

Every indemnity, exclusion and release of liability herein contained for the benefit of the Landlord or the Tenant, and every waiver of subrogation contained in any insurance policy maintained by one party hereto, shall survive the expiration or earlier termination of the Term and any extension thereof and shall extend to and benefit all of the Landlord, the Tenant or the other party, as the case may be, the owner(s) of the Leased Premises (if different from the Landlord) and all of their respective directors, officers, shareholders, servants, agents and employees and those for whom any of them is in law responsible. Solely for such purpose, and to the extent any such party expressly chooses to enforce the benefits of this Section for any or all of such persons, it is agreed that such party is the agent or trustee for such persons.



## ARTICLE XI DAMAGE AND DESTRUCTION

### 11.01 Damage and Destruction

The Landlord and Tenant agree that if and whenever during the Term hereby demised or any renewal or extension thereof the Facilities shall be destroyed or damaged in whole or in part then, and in every such event if the destruction or damage is such that the in the opinion of the Tenant, in its sole and unfettered discretion, the Project is no longer economically viable, then the Tenant may at its option within sixty (60) days following the date of such damage or destruction terminate this Lease by giving to the Landlord notice in writing of such termination, in which event this Lease and the Term hereby demised shall cease and be at an end as of the date of such destruction or damage and the Rent and all other payments for which the Tenant is liable under the terms of this Lease shall be apportioned and paid in full to the date of such destruction or damage. In the event that the Tenant does not so terminate this Lease, then the Tenant shall repair the Facilities with all reasonable speed.

## ARTICLE XII DEFAULT OF TENANT

### 12.01 Right to Re-Enter

If and whenever:

- (a) the Tenant fails to pay Rent or other sums due hereunder or any part thereof on the day appointed for the payment thereof whether lawfully demanded or not and such failure shall continue for thirty (30) days after notice thereof has been given to the Tenant; or
- (b) the Tenant fails to keep, observe or perform any other of the terms, conditions, covenants and agreements herein contained on the part of the Tenant to be kept, observed or performed for sixty (60) days after notice in writing of such failure has been given to the Tenant and such failure has not been cured within such sixty (60) day period, or, where such failure is incapable of being cured within sixty (60) days, the Tenant has not commenced to cure such failure and is not proceeding diligently to cure such failure; or
- (c) the Leased Premises are vacated or left vacant or unoccupied for a period of six (6) consecutive months unless due to damage or destruction, or the Tenant abandons or attempts to abandon the Leased Premises; or
- (d) re-entry is permitted under any other terms of this Lease;

then and in any of such cases, the Tenant shall be in default under this Lease and, at the option of the Landlord, the Landlord shall have, in addition to any other rights or remedies of the Landlord pursuant to this Lease or at law or in equity, the immediate right to re-enter into and upon and take possession of the Leased Premises or any part thereof in the name of the whole and have again, re-possess and enjoy the Leased Premises in its former estate, and to expel all persons from the Leased Premises.

#### **12.02 Right to Re-let**


If and whenever the Landlord shall be entitled to re-enter, the Landlord may from time to time without terminating this Lease enter the Leased Premises as the agent of the Tenant either by force or otherwise, without being liable for any prosecution therefore, and make such alterations and repairs as are necessary in order to re-let the Leased Premises or any part thereof for such term or terms (which may extend beyond the Term or extension period) and at such rent and upon such other terms, covenants and conditions as the Landlord in its sole and unfettered discretion considers advisable. Upon each such re-letting all rent received by the Landlord from such re-letting shall be applied, firstly to the payment of any indebtedness other than Annual Rent or Additional Rent due hereunder from the Tenant to the Landlord, secondly, to the payment of any costs and expenses of such re-letting including brokerage fees and solicitors' fees and the cost of alterations and repairs, thirdly, to the payment of Annual Rent and Additional Rent due hereunder, and the residue, if any, shall be held by the Landlord and applied in payment of future Annual Rent and Additional Rent as the same become due and payable hereunder and the Landlord shall not be accountable for any monies except those actually received notwithstanding any act, neglect, omission or default of the Landlord. No such entry of the Leased Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of termination is given to the Tenant. Notwithstanding any such re-letting without termination, the Landlord may at any time thereafter terminate this Lease for such previous breach by written notice of termination given to the Tenant.

#### **12.03 Landlord May Cure Default**

If the Tenant is in default of any obligation or covenant under this Lease after the expiry of any applicable notice periods, the Landlord shall have the right at all times to remedy or attempt to remedy any such default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Leased Premises to do any work or other things therein, and in each such event all expenses of the Landlord in remedying or attempting to remedy such default shall be payable as Additional Rent by the Tenant to the Landlord forthwith upon demand, and the Landlord shall not be liable for any loss or damage to the Tenant's property or business caused by acts of the Landlord in remedying or attempting to remedy any such default, and the Tenant agrees that any such entry by the Landlord is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease.

#### **12.04 No Waiver of Breach**

No condoning, excusing or overlooking by the Landlord or the Tenant of any default, breach or non-observance by the other party at any time or times in respect of any covenant, proviso or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant save only an express waiver in writing.





- (b) The Landlord has good right, full power and lawful authority to execute and deliver this Lease and to perform all of the obligations of the Landlord hereunder.

#### **14.03 Approvals**


The Landlord covenants and agrees to execute and to not object to, all applications, consents, permissions, postponements, and any other documents and assurances which the Tenant may require in connection with obtaining any rezoning, governmental approvals, consents, permits or variances (collectively, "Approvals") and in connection with entering into by the Tenant of any agreement with such governmental and public authorities as may be necessary to give full force and effect to and in furtherance of the Tenant's applications, and the Landlord shall produce all other documents and information which may be required in connection with such applications. All applications for Approvals shall be made by the Tenant at its sole cost and expense and any third party costs to the Landlord associated with such Approvals shall be borne by the Tenant. The Tenant agrees that the obligation of the Landlord pursuant to this Section shall be restricted to execution of documents and production of documents and information and shall not impose upon the Landlord any financial obligation whatsoever.

#### **14.04 Exclusive Right**

The Landlord agrees that the Tenant shall have the exclusive right to collect, convert and transmit all the wind resources on the Lands, and the Landlord agrees that it will not interfere with the Tenant's operations hereunder or the enjoyment of the rights hereby granted. The Landlord covenants and agrees that during the Term and any extensions thereof that no other corporation, partnership, joint venture or person will be permitted to use or occupy the Lands, or any part thereof, for the purposes of wind energy conversion and transmission of electric power and related activities. The Landlord acknowledges and agrees that the duration and area within which the restrictions set forth herein shall apply have been considered by the Landlord and the restraints and restrictions of and on the future activities of the Landlord are reasonable in the circumstances. All defences to the strict enforcement thereof by the Tenant are hereby waived by the Landlord. If the Landlord breaches the foregoing obligations, it is understood and agreed that the Tenant will suffer immediate and irreparable harm and damage.

#### **14.05 Non-Disturbance**

The Landlord shall not, concurrently and prospectively, interfere with the construction, installation, maintenance or operation of the Facilities; any development activities; or the undertaking of any other activities permitted hereunder. Further, the Lessor agrees that it shall not undertake any action including, without limitation, hunting, blasting, excavation or construction, that may have the effect of constituting a danger to the Facilities or increasing the Tenant's maintenance costs with respect to the Facilities. Without limiting the generality of the foregoing, the Landlord shall not interfere with the wind speed or wind direction over the Lands or the Leased Premises, whether by placing wind turbines, planting trees or constructing buildings or other structures, or by engaging in any other activity on the Lands or elsewhere that might cause a decrease in the output or efficiency of the Facilities. The Landlord expressly reserves the right to use the Lands (other than the Leased Premises) for agricultural purposes that do not and will not interfere with the Tenant's operations hereunder or enjoyment of the rights





hereby granted. If any of the Landlord's activities negatively impacts on the construction, installation, maintenance or operation of the Facilities, the Landlord agrees to cease and desist such activities immediately upon notice from the Tenant.

#### **14.06 Salvage**

The Landlord shall permit the Tenant to enter upon the Lands for a period of six (6) months after the termination or expiry of this Lease for the purposes of dismantling and salvaging the Tenant's property including, without limitation, the Facilities, situated on the Leased Premises.

#### **14.07 Non-Impairment**

If a Wind Turbine Unit is constructed on the Lands or the Lands are located within two (2) kilometres of a Wind Turbine Unit, the Landlord shall not pursue, participate, invest in, develop, acquire, or provide consulting or other services (and the Landlord shall also prevent any affiliates and any of its or its affiliates' respective owners, directors, officers, managers, employees and any individuals or entities acting on its behalf and any entity in which the Landlord has an interest, whether direct, indirect or otherwise from pursuing, participating in, investing in, developing, acquiring, or providing consulting or other services) in relation to any existing or proposed wind energy project or any other activity that adversely affects (i) the quality or quantity of the wind resources of the Project, or (ii) access to the Project for construction, servicing or otherwise, in each case within a two kilometre radius of any Wind Turbine Unit sited at the Project.


### **ARTICLE XV MISCELLANEOUS**

#### **15.01 Force Majeure**

If and to the extent that any party hereto is bona fide delayed or hindered in or prevented from the performance of any provision of this Lease by causes beyond its reasonable control (but not including any lack of funds or other financial cause of delay), then the performance of such provision of this Lease so delayed, hindered or prevented shall be excused for the period during which such performance is rendered impossible and the time for such performance shall be extended accordingly.

#### **15.02 Registration**

The Landlord agrees that the Tenant shall be entitled, at its cost and expense, to register this Lease, or a Notice in respect thereof, and any required reference plans, in the Land Registry Office where title to the Lands is recorded on behalf of both the Tenant and the Landlord. The Landlord agrees to execute and deliver to the Tenant, if requested in writing to do so and, at no cost to the Tenant, all necessary instruments, plans and documentation for that purpose. The Landlord and Tenant also hereby authorize Shibley Righton LLP and/or the Tenant's lawyers that will complete any such registrations to certify that such registration is on behalf of and with the Landlord's approval and consent. Such authorization by the Landlord and Tenant includes the authority to delete from registered title to the Lands, notice of the registration of the Original



Lease and notice of the registration of any lease amending agreement amending the Original Lease.

#### **15.03 Notices**

Any notice required or contemplated by any provision of this Lease shall be given in writing and shall be delivered in person or, if there is no actual or apprehended disruption in the Canadian Postal Service, sent by registered mail postage prepaid, to the address for the respective party shown on the first page of this Lease.

Every such notice shall be deemed to have been given and received when personally delivered or, if mailed as aforesaid, upon the third Business Day after the date on which it was so mailed. Either party may at any time give notice in writing to the other of any change of address within the Province of Ontario of the party giving such notice and from and after the date of such notice, the address therein specified is deemed to be the address of such party for the giving of notices hereunder.

#### **15.04 Planning Act**

It is an express condition of this Lease that the subdivision control provisions of the *Planning Act*, (Ontario) and amendments thereto be complied with if they apply. The Tenant shall obtain any necessary consent under the *Planning Act*, (Ontario) at the cost of the Tenant. The Landlord shall co-operate and assist the Tenant in its application and shall promptly sign any necessary application for consent.

#### **15.05 Status Certificate**

Whenever requested by the Landlord or the Tenant, the other party shall promptly (and in any event within ten (10) days) execute and deliver a certificate in form reasonably satisfactory to the party requesting it, addressed to the party requesting it or as it directs, certifying as to the status and validity of this Lease and the state of the rental account hereunder and such other information as may reasonably be required by the party requesting it, all with the intent that any such certificate may be conclusively relied upon by the party or person to whom it is required to be addressed.

#### **15.06 Further Assurances**

Each Party, if so requested by the other Party, shall execute such further documents of title and any other required assurances in respect of the Leased Premises and the Adjoining Property as may be required to perfect the Tenant's leasehold interest in the Leased Premises and easement rights in the Adjoining Property. The Landlord further agree to execute and deliver, or cause to be executed and delivered by the Tenant, any further legal instruments, including, without limitation, any required consents, and perform any acts which are or may become necessary to effectuate the purposes of this Lease. Any third party costs associated with the Landlord requirements under this Section shall be borne by the Tenant.

### **15.07 Arbitration**

Whenever there is an unresolved dispute between the Landlord and the Tenant involving any of the terms of this Lease then such dispute shall be resolved by arbitration referred to a single arbitrator, if the Landlord and Tenant agree upon one; otherwise such dispute shall be referred to **three (3)** arbitrators for resolution, one to be appointed by the Landlord, one to be appointed by the Tenant, and a third arbitrator to be appointed by the first **two (2)** arbitrators as appointed by the Landlord and Tenant respectively within **thirty (30)** days after the first of the first **two (2)** arbitrators have been appointed, (and failing such appointment of the third arbitrator, as aforesaid, the third arbitrator shall be appointed upon the application of either the Landlord or the Tenant by a Judge of the High Court of Ontario, or such person as that Judge may designate). If either the Landlord or the Tenant shall refuse or neglect to appoint an arbitrator within **thirty (30)** days after the other party has appointed an arbitrator and shall have served a written notice upon the party so refusing or neglecting to appoint an arbitrator, requiring such party to make such appointment, then the arbitrator first appointed shall, at the request of the party appointing him, proceed to hear and determine the matters in dispute as if he were a single arbitrator appointed by both the Landlord and the Tenant for this purpose. The award or determination which shall be made by the arbitrator or the majority of them, or by the single arbitrator, as the case may be, both as to the matters in dispute and as to the costs of the arbitration, shall be final and binding upon the Landlord and the Tenant and there shall be no appeal therefrom. Except as otherwise hereinbefore set forth, the provisions of the *Arbitration Act*, 1991 S.O. 1991 c.17, from time to time in effect or any legislation in substitution therefore, shall apply to any arbitration pursuant to the provisions of this Lease, provided that any limitation on the remuneration of the arbitrators imposed by such legislation shall not be applicable.

### **15.08 Confidentiality**

The Landlord covenants that any information to which it has access relating to the Tenant's operations shall be considered as confidential and shall be held in the strictest confidence by the Landlord, and that the Landlord shall not communicate the same orally or in writing to others in any manner whatsoever except as may be required by law and shall use its best efforts to prevent those within its employ and control from communicating to others such information.

### **15.09 Construction**

Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

The captions or headings introducing articles or sections of this Lease are for convenience of reference only and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Lease or in any way affect the interpretation of this Lease.

The words "herein", "hereof", "hereby", "hereunder", "hereto", "hereinafter" and similar expressions refer to this Lease and not to any particular article, section, paragraph or other portion thereof, unless there is something in the subject matter or context inconsistent therewith.

If any term, provision, covenant or condition of this Lease or its application to any person or circumstance is held to be or rendered invalid, unenforceable or illegal, then such term,

████████████████████

provision, covenant or condition shall be considered separate and severable from the remainder of this Lease; shall not affect, impair or invalidate the remainder of this Lease; and to the fullest extent permitted by law shall continue to be applicable to and enforceable against any person or in any circumstance other than those as to which such term, provision, covenant or condition has been held or rendered invalid, unenforceable or illegal.

Wherever the singular number or a gender is used in this Lease the same shall be construed as including the plural and the masculine, feminine and neuter respectively where the fact or context so requires.

This Lease shall be construed in accordance with and governed by the laws of the Province of Ontario.

Time is of the essence of this Lease and of every part hereof.

#### **15.10 Entire Agreement**

This Lease and the Schedules attached hereto constitute the entire Lease between the Parties pertaining to the subject matter hereof, and amends, replaces and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions between the parties whether oral or written, including the Original Lease.

There are no representations, warranties, collateral agreements, conditions or other agreements between the Parties in connection with the subject matter of this Lease except as specifically set forth herein. No supplement, modification, waiver or termination of this Lease shall be binding unless in writing and executed by the Parties. No waiver of any provision of this Lease shall constitute a waiver of any other provision nor shall such waiver constitute continuing waiver unless otherwise expressly provided herein.

The Landlord acknowledges that the Tenant is acting in a representative capacity as bare trustee and agent for one or more beneficial owners.

#### **15.11 Independent Legal Advice**

Each of the Parties acknowledges that this Lease has been prepared by the Landlord's lawyers, [REDACTED]. With respect to this Lease and all matters related thereto [REDACTED] has acted for the Landlord and is not acting as lawyers for the Tenant. The Tenant hereby acknowledges that the Tenant has had the opportunity and has been advised by the Landlord and its lawyers to review this Lease and all matters related thereto with independent legal counsel of the Tenant's own choice prior to the Tenant's execution of this Lease.

The Tenant confirms to the Landlord that the Tenant has reviewed this Lease with the Tenant's independent legal counsel and fully understands the Tenant's rights and obligations under this Lease.

[REDACTED]

**15.12 Binding Effect**

This Lease shall be binding upon and shall enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns, as the case may be.

**15.13 Good Standing**

Each of the Landlord and Tenant hereby certify and declare, with the intent that it will be relied upon by any Mortgagee or Tenant's Mortgagee, that:

(a) as of [REDACTED] the Original Lease, and now this Lease, were in good standing;

*[the balance of the page left intentionally blank]*

[REDACTED]

- (b) all Rent due hereunder has been paid in full to [REDACTED];
- (c) this Lease is in full force and effect, unamended; and
- (d) this Lease is intended to retain the priority of the Original Lease.

The Landlord confirms she is not a spouse.

IN WITNESS WHEREOF the parties hereto have executed this Lease under seal.

Tenant:

[REDACTED]

[REDACTED]

By:

[REDACTED]

Title: President

I have authority to bind the Corporation

[REDACTED]

**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF PROPERTY**

[REDACTED]

[REDACTED]

[REDACTED]

## SCHEDULE "B"

## PART 1 – DESCRIPTION OF LEASED PREMISES

The Leased Premises means up to **fifty (50)** contiguous or non-contiguous blocks, each measuring no more than **sixteen (16)** metres by **sixteen (16)** metres square in the Designated Area to be selected by the Tenant from time to time during the Term in its sole and unfettered discretion, subject to reasonable objections of the Landlord if the selection of any block would cause material detriment (over and above the loss of available Land) to the Landlord's farming operations.

## PART 2 – DESCRIPTION OF DESIGNATED AREA

The Designated Area means the Lands except that part of the Lands:

- (a) on which any house, barn, out building or other existing permanent structure is located (including that part of the Lands on which they are situate) together with that part of the Lands located within a distance less than **thirty (30)** metres from where such structures have been sited; and
- (b) lying within a distance of **ten (10)** metres from any private road, feed station or similar improvement on the Lands.



**SCHEDULE "C"**  
**ANNUAL RENT**

Project: MELANCTHON

In this Schedule and in the Lease to which it is annexed:

"Annual Rent" means the sum of A and B, where A and B are:

A. [REDACTED] DOLLARS (the "Basic Rent").

B. [REDACTED] percent of the Tenant's annual gross revenues from electricity sales attributable to all of the Wind Turbine Units installed upon the Leased Premises less the total costs incurred to operate them during any calendar year occurring after the Construction Commencement Date calculated as follows:

$$B = \frac{TGR - C}{TT} \times GT \times [REDACTED]$$

Where:

TGR represents the total annual gross revenue from the Tenant's electricity sales for all Wind Turbine Units operating as part of the Wind Farm;

C represents the total costs incurred from operating all Wind Turbine Units that form part of the Wind Farm during the applicable year;

TT represents the total number of Wind Turbine Units operating as part of the Wind Farm during the applicable year; and

GT represents the total number of Wind Turbine Units installed upon the Leased Premises during the applicable year.

"CPI" or "Consumer Price Index" means the Consumer Price Index (All items for Regional Cities, base year 1992 = 100) for the City of Windsor, Ontario published by Statistics Canada (or by a successor or other governmental agency, including a provincial agency), or if the CPI is no longer published, an index published in substitution for the CPI or any replacement index designated by the Tenant with the consent of the Landlord. If a substitution is required, the Tenant will make the necessary conversions. If the base year for the CPI (or the substituted or replacement index) is changed by Statistics Canada (or by its successor or other governmental agency) the Tenant will make the necessary conversions.

"Compensation Calculation Date" means the last day of each Quarter.

"Construction Commencement Date" means the date upon which the Tenant breaks ground for the purpose of constructing any Roadway on the site where the Leased Premises are sited or for the installation of the Wind Turbine Units on the Leased Premises, whichever is earlier.

[REDACTED]

"Final Quarter" means October 1 to December 31 of each calendar year.

"Quarter" means, as applicable, January 1 to March 31; April 1 to June 30; July 1 to September 30 and October 1 to December 31 of each calendar year.

"Quarterly Default Compensation" means [REDACTED] Dollars representing the quarterly allocation of the Basic Rent as set forth in A of the Annual Rent.

"Wind Farm" means all Wind Turbine Units that are erected by the Tenant in the Township of Melancthon, Province of Ontario.

2. Payment

- (a) On each Compensation Calculation Date during the Term or any extension thereof and on the date of expiration or termination of the Term or any extension thereof the Tenant shall pay to the Landlord, the Quarterly Default Compensation.
- (b) Within **thirty (30)** days following the Final Quarter of each calendar year occurring after the Construction Commencement Date, the Tenant shall pay to the Landlord any positive amount obtained in calculating B in the Annual Rent.

3. CPI Adjustment

On January 1 of each calendar year during the Term and any extension thereof, the Basic Rent or the Quarterly Default Compensation, as applicable, shall be automatically increased by the amount obtained by multiplying the Basic Rent or the Quarterly Default Compensation, as applicable, for the previous calendar year of the Term, or any extension thereof, by the percentage increase in the CPI from January 1 of the previous year to January 1 of the then current year of the Term or any extension thereof, provided that the new Basic Rent or the new Quarterly Default Compensation, as applicable, shall not be greater than the amount that would be obtained by increasing the original Basic Rent or the original Quarterly Default Compensation, as the case may be, by **three (3%) percent** compounded annually from January 1 of the calendar year in which the Construction Commencement Date occurs to January 1 of the then-current year of the Term or any extension thereof.

4. Fixed Annual Rate Election during Extension Term

If the Landlord chooses to receive as Annual Rent during the initial **twenty (20)** years of the Term the fixed Annual Rent stipulated in subparagraphs (b)(i) and (ii) of Section 3.02 but thereafter, pursuant to Section 1.03, chooses to have the Annual Rent in this Schedule and in the Lease to which it is annexed apply for an extension term then the Basic Rent for the **first (1st)** year of the applicable extension term, as the case may be, shall be determined on the basis that the Landlord had chosen to have the Annual Rent calculated and paid during the initial **twenty (20)** years of the Term and subsequent extension(s) thereof in accordance with this Schedule C.

[REDACTED]

**SCHEDULE "D"**  
**RIGHTS AND REMEDIES ACCORDED TO TENANT'S MORTGAGEES**

1. The Landlord will from time to time execute and deliver such consents and acknowledgements reasonably requested by the Tenant's Mortgagee.
2. The Landlord agrees that, upon the Tenant's Mortgagee giving the Landlord written notice of a Tenant's Mortgage, the Tenant's Mortgagee will, without any further action being required, have the benefit of the following provisions until such time as the Tenant's Mortgagee advises the Landlord in writing that its Tenant's Mortgage is no longer in effect (and, if the Tenant's Mortgagee so requests, the Landlord will (i) acknowledge in writing that the Tenant's Mortgagee so benefits from these provisions, or (ii) enter into a written agreement with the Tenant's Mortgagee substantially in accordance with these provisions):
  - (a) the Landlord will give prompt written notice to the Tenant's Mortgagee of any breach or default by the Tenant of its obligations under the Lease in respect of which the Landlord proposes to exercise any of its remedies;
  - (b) the Landlord will give the Tenant's Mortgagee the right to cure any breach or default by the Tenant under the Lease, within a period of **ninety (90)** days commencing on the later of (i) the expiry of the cure period afforded the Tenant under the Lease, and (ii) the date on which the Landlord gives the Tenant's Mortgagee notice of such breach or default pursuant to Section B.2(a), or such longer period of time as the Tenant's Mortgagee may reasonably require to cure such breach or default; and no exercise by the Landlord of any of its rights or remedies against the Tenant will be effective against the Tenant or the Tenant's Mortgagee unless the Landlord has the Tenant's Mortgagee such notice and opportunity to cure;
  - (c) if the Tenant's Mortgagee is not capable of curing any breach or default of the Tenant under the Lease (such as a breach or default relating to the bankruptcy or insolvency of the Tenant), the Tenant's Mortgagee will have the right to cure all defaults that are curable within the time period specified in Section B.2(b) and the Landlord agrees that it will not terminate the Lease (or exercise any other rights or remedies against the Tenant's Mortgagee) if all curable defaults are cured by the Tenant's Mortgagee within such time period;
  - (d) the Landlord agrees that if there exists any breach or default of the Tenant under the Lease at any time when any receivership, insolvency, bankruptcy or similar proceedings or events relating to the Tenant are proceeding or when the Tenant's Mortgagee is enforcing the security of the Tenant's Mortgage, (i) the Landlord will not terminate the Lease as a result thereof, and (ii) if the Lease is actually terminated or disclaimed in connection with or as a result of any such proceedings or enforcement, the Tenant's Mortgagee or its nominee or appointee will have the right to enter into a new Lease upon the same terms and conditions (including any options to renew or to purchase) as the terminated Lease (the "New Lease"), provided that:

- (A) the Tenant's Mortgagee has notified the Landlord in writing of its intention to enter into the New Lease within **ninety (90)** days from the date the Tenant's Mortgagee receives written notice from the Landlord that the Lease has been terminated or disclaimed; and
- (B) the Tenant's Mortgagee pays to the Landlord such amounts as may then be owing by the Tenant to the Landlord under the terminated Lease and cures or commences diligently to cure any breach or default by the Tenant under the terminated Lease that is capable of being cured by the Tenant's Mortgagee;

and if the Tenant's Mortgagee notifies the Landlord of its intention to enter into a New Lease, then the Landlord will forthwith execute and deliver to the Tenant's Mortgagee a New Lease;

- (e) if the Tenant's Mortgagee takes enforcement proceedings under the Tenant's Mortgage and advises the Landlord of its intention in writing to maintain the Lease (the "**Secured Creditor Notice**"), the Tenant's Mortgagee: (i) will be entitled to all of the rights of the Tenant under the Lease as though it were an original party thereto, and (ii) will only be liable for (A) the payment of any arrears that the Landlord gives the Tenant's Mortgagee written notice of within **ten (10)** days of the Tenant's Mortgagee Notice being given to the Landlord, and (B) the performance of Tenant's covenants and obligations arising under the Lease for the period starting on the date enforcement proceedings were commenced and ending on the date such enforcement proceedings are terminated or the Tenant's Mortgagee assigns, transfers, surrenders or terminates the Lease in accordance with its terms;
- (f) the Landlord and the Tenant will not amend, terminate or surrender the Lease without the Tenant's Mortgagee's prior written consent;
- (g) the Landlord will, at any time and from time to time, upon not less than **ten (10)** days' prior request by the Tenant or the Tenant's Mortgagee or proposed the Tenant's Mortgagee, deliver to the Tenant's Mortgagee a statement in writing certifying that: (i) the Lease is in full force and full effect unamended (or setting out any such amendments), (ii) all amounts owing and payable under the Lease have been paid (or setting out any unpaid amounts), and (iii) to the Landlord's knowledge, the Tenant is not in default of its obligations under the Lease in any material respect (or setting out particulars of any such defaults);
- (h) in addition to its obligations under Section B.2(g), the Landlord will, at any time and from time to time, upon not less than **ten (10)** days' prior request by the Tenant or the Tenant's Mortgagee or proposed the Tenant's Mortgagee, execute any agreements, certificates or acknowledgements that the Tenant or the Tenant's Mortgagee may reasonably request with respect to this Lease; and
- (i) all notices to the Tenant's Mortgagee from the Landlord will be in writing and will be sent by personal delivery, registered mail, email or by fax to the address, email address or

[REDACTED]

facsimile number of the Tenant's Mortgagee set out in any notice that the Tenant's Mortgagee delivers to the Landlord.

3. The provisions of Section B.2 will enure to the benefit of the Tenant's Mortgagee and its successors and assigns, and any rights conferred on the Tenant's Mortgagee by the terms of this Schedule "D" to the Lease or limiting its liability under the Lease will benefit each receiver or receiver-manager appointed by the Tenant's Mortgagee or by a court of competent jurisdiction; and
4. The Landlord will give any purchaser or any other person acquiring an interest in the Premises notice of the Lease (including the terms of this Schedule "D") and any notice received from the Tenant's Mortgagee.
5. The Landlord hereby acknowledges that Lessee may grant a Tenant's Mortgage or other security to a trustee or collateral agent acting on behalf of one or more lenders (a "Collateral Agent"), and the Landlord hereby acknowledges and agrees that upon its receipt of notice that such a Tenant's Mortgage or other security was granted, the Collateral Agent will be entitled to all of the rights of the Tenant's Mortgagee set forth in this Schedule "D" to the Lease and such notice will constitute notice of the existence of the Collateral Agent as the Tenant's Mortgagee.

## AGREEMENT TO GRANT EASEMENT

THIS AGREEMENT dated the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BETWEEN:

**CORPORATION OF THE COUNTY OF DUFFERIN**  
(hereinafter called the “**County**”)

OF THE FIRST PART

- and -

**DUFFERIN WIND POWER INC.**  
(hereinafter called “**DWPI**”)

OF THE SECOND PART

**WHEREAS** the County is, or will become, the registered owner in fee simple in possession, of that parcel or tract of land and premises legally described on Schedule “A” attached hereto (the “**County Lands**”);

**AND WHEREAS** DWPI is the registered tenant and/or owner in fee simple, of the lands and premises located in Melancthon Township shown on the plan attached as Schedule “B” attached hereto as the same may be modified from time to time with the approval of the Ontario Power Authority or any successor thereto (the “**OPA**”) (the “**DWPI Lands**”);

**AND WHEREAS** the Council of the County considered a report entitled “<\*>” on <\*>, 2012 and enacted By-law No. <\*> authorizing the County to grant to DWPI a right in the nature of an easement or right-of-way over a part of the County Lands comprising an area of [approximately 32 kilometers in length and 10 metres in width, with the exception of five locations (each being approximately 40 metres in length) that will have overhead to underground/underground to overhead structures, which locations will be approximately 11.5 metres in width] as shown on the sketch attached hereto as Schedule “C” (the “**Easement Lands**”), to accommodate an electrical transmission line in accordance with the terms and conditions set out below;

**WITNESSETH** that in consideration of the sum of Ten Dollars (\$10.00) of lawful money of Canada now paid by each of DWPI and the County to the other party, the receipt whereof is hereby acknowledged, the parties agree as follows:

1. Subject to the terms of this Agreement, the County does hereby agree to grant and convey to DWPI for a period of forty-five (45) years commencing on the date hereof (the “**Term**”), a right in the nature of a non-exclusive easement or right of way (the “**Easement**”) in, over, upon, and through the Easement Lands solely for the purpose of surveying, constructing, operating, using, inspecting, repairing and maintaining on such Easement Lands an electrical transmission line and appurtenant infrastructure and systems (hereinafter collectively referred to as “**Works**”) as necessary for the transmission of electricity generated from the operation of a wind power electrical generation facility on the DWPI Lands from the DWPI Lands to the Orangeville Hydro One 230 kV Transformer Station and, during the construction of the Works and when inspecting, maintaining and repairing the Works to access the Easement Lands with vehicles and equipment and to laydown materials and equipment on and over the County Lands (the “**Purposes**”).
2. Prior to the commencement of the Term, DWPI agrees to pay the County the sum of <\*>, plus Harmonized Sales Tax (the “**Fee**”) as consideration for the grant contemplated herein. The initial installment of \$<\*> of the Fee shall be paid on execution and delivery of a fully executed copy of this Agreement and the balance of the Fee shall be paid upon delivery and registration of the Transfer of Easement (as defined in Section 22 below)

and the issue by the County of all permits required for construction of the Project and the Works, whichever is later.

3. Upon payment of the initial installment of the Fee, DWPI, its servants and agents, shall be entitled to access the County Lands to permit DWPI to conduct geotechnical investigations, take soil samples, environmental assessments and conduct other site assessments. Forthwith upon commencement of the Term and the payment of the Fee, DWPI, its servants and agents shall be entitled to enter upon the Easement Lands for the Purposes.
4. DWPI acknowledges and agrees that the Easement shall be encumbered by, and subject to present and future, pedestrian and motorized vehicle trail(s), rail line(s), easement and crossing agreements with adjacent owners, registered and unregistered easements, and structures and improvements now existing or which may at any time or times from time to time be constructed or located on the Easement Lands (the "**Encroachments**") and the County's continued unimpeded use of such Encroachments. DWPI agrees to accept the Easement herein granted subject to the Encroachments and agrees that it will not seek the removal or alteration of the Encroachments in the future, provided that any such Encroachments which may hereafter be granted, constructed or located on the Easement Lands shall not materially impair the use by DWPI of the Easement for the Purposes and the Encroachments comply with applicable laws and setbacks required by governmental authorities including the Ontario Energy Board and the Electrical Safety Authority and their respective successors. The County shall obtain from any person to whom it grants a right or permit to use Encroachments and/or the County Lands a written acknowledgement in favour of DWPI acknowledging DWPI's right to use the Easement Lands for the Purposes.
5. DWPI covenants and agrees that:
  - (a) DWPI shall use the Easement Lands only for the Purposes and, without limiting the generality of the foregoing, shall not use or permit the Easement Lands to be used for any other purpose.
  - (b) The County shall have the right to designate a contractor or agent to supervise DWPI's construction of the Works on the Easement Lands, and DWPI agrees to reimburse the County for all fees and other amounts reasonably charged by such contractor or agent for such supervision.
  - (c) DWPI shall (within a reasonable period of receipt by DWPI) provide the County with copies of all testing results and studies obtained by DWPI in connection with the Works and/or the Easement Lands.
  - (d) Prior to commencing construction of the Works, DWPI shall provide appropriate public notice including, without limitation, signage.
  - (e) It shall, upon request, provide the County with copies of any input received from any public consultation process conducted by or on DWPI's behalf in respect of DWPI's generation project and/or the use of the County Lands as a transmission corridor.
6. Except to the extent approved or ordered by the Ontario Energy Board or any successor thereto or as may be required by law, DWPI agrees that it shall not construct or modify in any material respect the Works without the prior written approval of the County and all authorities having jurisdiction including, without limitation, the location and siting of the Works on the Easement Lands. DWPI, at its sole cost and expense, shall obtain all permits necessary to utilize the Easements and the Works for the Purposes including, without limitation, all permissions to construct renewable energy approvals or similar permits. Such construction and modifications, if approved by the County, shall be conducted by DWPI at its sole cost and expense and in compliance with all applicable laws and regulations and the requirements of every authority having jurisdiction and in accordance with good utility practice. All materials and utility line design utilized in connection with such construction and modification shall comply with the standards set by the Ontario Energy Board, the Canadian Standards Association and good utility practices and shall be subject to the County's inspection and approval.
7. Upon expiry or earlier termination of the Term, DWPI shall, at its sole cost and expense, decommission and/or remove such of the Works as the County shall require to be decommissioned and/or removed, such decommission and/or removal to be completed

on or before the end of the Term. DWPI shall, at its sole cost and expense, repair any damage caused to the Easement Lands or the County Lands by the installation, decommission or removal of such Works and shall restore the impacted lands to their former state. DWPI's obligations pursuant to this Section shall be secured by the letter of credit or other security provided to the County pursuant to Section 26 hereof.

8. DWPI covenants and agrees that except to the extent contemplated by this Agreement its use of the Easement Lands is not intended to in any material way adversely affect or prohibit:
  - (a) the County's operations on the County Lands;
  - (b) the County's use of the Encroachments; and
  - (c) the use of the County Lands by others entitled thereto including, without limitation, users pursuant to specific agreements with the County.
9. DWPI shall, at its own risk and expense, during the Term of this Agreement, maintain the Easement Lands, including without limitation the Works, in accordance with good utility practices for tree trimming and clearing transmission line corridors in the Province of Ontario and shall provide all materials and perform all maintenance thereof, to the satisfaction of the County and all authorities having jurisdiction. DWPI covenants and agrees that all maintenance activities will be conducted in a manner to minimize any interference with the use of the Easement Lands by the County or any other party entitled to use the Easement Lands.
10. The County grants DWPI, its servants and agents, the right to use of the County Lands to permit DWPI to maintain and repair the Works. DWPI will notify the County in writing at least ten (10) days prior to the date of such anticipated use, except in the case of emergencies in which case DWPI shall give as much notice, if any, as is practicable.
11. DWPI shall, at its own expense, comply with, in all material respects, all applicable laws, by-laws, ordinances, regulations and directives relating to DWPI's use and occupation of the Easement Lands including, without limitation the Ontario Energy Board, the Electrical Safety Authority and all utility companies and/or public authorities having jurisdiction over DWPI's use and occupation of the Easement Lands, and DWPI shall, at its own expense, construct, maintain and repair of the Works in accordance with good utility practice, including, without limitation, all federal and provincial requirements, including, without limitation, the Electrical Safety Code.
12. DWPI acknowledges and agrees that should it fail to comply with its requirements under Sections 9 and 11 of this Agreement, that the County shall have the right and entitlement to enter upon the Easement Lands and undertake such actions and carry out such matters or things as may be required to remedy or rectify DWPI's default and recover the costs or expenses of doing so by presenting evidence of same to DWPI which DWPI undertakes to pay within thirty (30) days. DWPI's obligations pursuant to this Section shall be secured by the letter of credit or other security provided to the County pursuant to Section 26 hereof.
13. For the purposes of this Agreement:
  - (a) **"Environmental Laws"** means any domestic and foreign federal, provincial, municipal or local laws, statutes, regulations, ordinances, guidelines, guidance notes, policies, judge made laws or common laws and any orders of a court or governmental authority, relating in any way to the natural or human environment (including land, surface water, groundwater, and real, personal, moveable and immoveable property), public or occupational health and safety, and the manufacture, importation, handling, use, reuse, recycling, transportation, storage, disposal, elimination and treatment of a substance, hazardous or otherwise; and
  - (b) **"Pollutants"** means any substance which is regulated by or which would be considered a contaminant, pollutant, waste or deleterious or hazardous substance under Environmental Laws, or which is or may be hazardous to persons or property or detrimentally affect property value and includes, without limiting in any way the generality of the foregoing:
    - (i) radioactive materials;



- (ii) explosives;
  - (iii) any substance that, if added to any air, land and/or water, would degrade or alter or form part of a process of degradation or alteration of the quality of that air, land and/or water, to the extent that it is detrimental to its use by human beings or by any animal or plant;
  - (iv) any solid, liquid, gas, microorganism, mould, sound, vibration, ray, heat, radiation, odour or combinations of any of them that is likely to alter the quality of the environment (including air, land and water) in any way or the presence of which in the environment is prohibited by regulation or is likely to affect the life, health, safety, welfare or comfort of human beings or animals or to cause damage to or otherwise impair the quality of soil, vegetation, wildlife or property;
  - (v) toxic substances;
  - (vi) substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental or municipal authority having jurisdiction over the County, DWPI, the Easement Lands, or the County Lands of which the Easement Lands form a part;
  - (vii) any substance, the use or transportation of which or the release of which into the environment is prohibited, regulated, controlled or licensed under Environmental Laws; and
  - (viii) anything contaminated by any Pollutants.
14. DWPI shall not bring into or allow to be brought onto the Easement Lands or the County Lands any Pollutants, except such as are disclosed in Schedule "D" attached hereto or existed in or on the County Lands at the date of this Agreement. If DWPI or its employees or those for whom it is in law responsible shall bring, create, discharge or release upon, in or from the County Lands, including the Easement Lands, any Pollutants, whether or not disclosed in Schedule "D" and whether during the Term of this Agreement, then such Pollutants shall be and remain the sole property of DWPI and DWPI shall promptly remove same at its sole cost at the expiration or sooner termination of the Term or sooner if required by the County.
15. If, during the Term or any renewal or extension of this Agreement or at any time thereafter, any governmental authority shall require the clean-up of any Pollutants:
- (a) held in, discharged in or from, released from, abandoned in, or placed upon the Easement Lands or the County Lands by DWPI or its employees or those for whom it is in law responsible; or
  - (b) released or disposed of by DWPI or its employees or those for whom it is in law responsible;
- whether during DWPI's occupancy of the Easement Lands or any other portion of the County Lands pursuant to this Agreement, then DWPI shall, at its own expense, carry out all required work, including preparing all necessary studies, plans and approvals and providing all bonds and other security required by any governmental authority or required by the County and shall provide full information with respect to all such work to the County; provided that the County may, at its option, perform any such work at DWPI's sole cost and expense, payable on demand.
16. In addition to and without restricting any other obligations or covenants herein, DWPI covenants that it will:
- (a) comply in all material respects with all Environmental Laws relating to the Easement Lands or the use of the Easement Lands;
  - (b) promptly notify the County in writing of any notice by any governmental authority alleging a possible violation of or with respect to any other matter involving any Environmental Laws relating to operations in the Easement Lands or relating to any Person for whom it is in law responsible or any notice from any other party concerning any release or alleged release of any Pollutants; and

- (c) permit the County to:
    - (i) enter and inspect the Easement Lands and the operations conducted therein,
    - (ii) conduct tests and environmental assessments or appraisals,
    - (iii) remove samples from the Easement Lands, and
    - (iv) examine and make copies of any documents or records relating to the Easement Lands and interview DWPI's employees as necessary; and
  - (d) promptly notify the County of the existence of any Pollutants on the County Lands, beyond those reasonably anticipated to be located on the County Lands as a result of their prior use as a rail corridor.
17. DWPI shall, during the Term and at all times thereafter, indemnify and hold the County, its elected officials and employees, harmless at all times from and against any and all losses, damages, penalties, fines, costs, fees and expenses (including legal fees on a solicitor and client or substantial indemnity basis and consultants' fees and expenses) resulting from:
- (a) any breach of or non-compliance with the environmental obligations and covenants of DWPI as set out in this Agreement; and
  - (b) any legal or administrative action commenced by, or claim made or notice from, any third party, including, without limitation, any governmental authority, to or against the County and pursuant to or under any Environmental Laws or concerning a release or alleged release of Pollutants at or on the Easement Lands into the environment and related to or as a result of the operations of DWPI or those acting under its authority or control on the Easement Lands or any other portion of the County Lands, and any and all costs associated with air quality issues, if any, relating to DWPI's use of the Easement Lands, and whether during the Term of this Agreement or any other agreement between DWPI and the County with respect to the Easement Lands or any other portion of the County Lands
18. DWPI shall obtain and provide the County with a pre-construction survey of the Easement Lands and adjacent lands to identify all wells located within 120 metres of the Easement Lands.
19. DWPI shall, at its own risk and expense, keep the Easement Lands free of combustible matter and, as required to ensure good and safe operation, to keep the Easement Lands clear of materials and obstructions in accordance with good utility practices.
20. DWPI covenants and agrees that:
- (a) it shall, at its expense, maintain throughout the Term and during any period thereafter when it may be permitted or required to have access to the Easement Lands, the insurance (the "Insurance") described below. Such Insurance shall: (1) be primary, non-contributing with and not in excess of other insurance available to the County; and (2) contain a prohibition against cancellation or material change that reduces or restricts the Insurance (except on thirty (30) days prior notice to the County). Prior to its initial access to or occupancy of the Easement Lands by DWPI, and thereafter at any time upon request from the County or upon renewal, amendment or extension of all or any part of the Insurance, DWPI shall immediately deliver to the County evidence of the Insurance satisfactory to the County. The Insurance is as follows:
    - (i) all risks property insurance, on the Works and on all chattels, equipment and other personal property owned or operated by DWPI or by others (other than the County) on behalf of DWPI in or upon the Easement Lands, insurance for all property owned by DWPI or for which DWPI is legally liable located within or near the County Lands. The Insurance shall (1) name the County, the County's property manager and the County's mortgagee(s) as additional insureds, and (2) contain a waiver of any subrogation rights that the insurers may have against the County and against those for whom the County is responsible in law,

- (ii) ■ Dollars (\$■) inclusive limits comprehensive general liability insurance. This insurance shall: (1) name the County as an additional insured; (2) contain a provision that precludes invalidation as respects the interest of the County by reason of any breach or violation of warranties, representations, declarations, or conditions; (3) shall protect and indemnify the County in respect of all Claims, including Claims by DWPI, as if the County was separately insured; and (4) such insurance shall include cross liability and severability of interest clauses, and
    - (iii) any other form of insurance that the County, acting reasonably requires, in amounts and for insurance risks against which a prudent user would insure;
  - (b) if it fails to take out or keep any such Insurance, the County has the right, without assuming any obligation in connection therewith and without prejudice to any other rights and remedies of the County under this Agreement, to effect the Insurance at the sole cost of DWPI, and all costs incurred by the County to effect such Insurance shall be paid by DWPI to the County on demand; and
  - (c) it hereby waives its right of recovery against the County, its employees and those for whom the County is in law responsible with respect to all Claims required to be insured against by DWPI hereunder. Any and all deductibles in DWPI's insurance policies shall be borne solely by DWPI and shall not be recovered or attempted to be recovered from the County. In addition, all such policies shall be non-contributing with, and will apply only as primary and not excess to, any insurance proceeds available to the County.
21. The County, its elected officials, agents, officers, employees, contractors and others for whom the County is legally responsible shall not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the County Lands, or damage to the Works, the property of DWPI or of others located on the Easement Lands or elsewhere on the County Lands, nor shall it or they be responsible for any loss of or damage to any property of the County, DWPI or others from any cause whatsoever, other than any such death, injury, loss or damage which results from the willful misconduct or gross negligence of the County, its officers, employees, and others for whom the County is legally responsible.
22. To the fullest extent permitted by law, DWPI, and its successors and assigns, hereby release and agree to indemnify, defend and hold harmless the County, its elected officials and employees and its affiliates and the respective employees, officers, directors, shareholders, partners and members of each of the foregoing entities (the **"County Indemnified Party"**) from and against any claim, liability, loss, damage, demand, lawsuit, cause of action, strict liability, penalty, fine, administrative law, action and order, expense including but limited to reasonable legal fees and expenses, and/or cost of every kind and character (collectively a **"Claim"**) whether or not involving a Claim by, or of, a County Indemnified Party arising out of or in any way incident to: (a) the construction, erection, installation, operation, inspection, repair, replacement or maintenance of any Works associated with the use of the Easement Lands or any other matters related thereto being initiated, provided or performed by DWPI or its contractors, agents, employees or sub-contractors, or any of their respective employees or agents under this Agreement, including without limitation, on account of defective work, breach of agreement, failure of equipment, failure of methods employed, violation of law, personal injuries, death, damage to property, damage to the environment, or infringement of any patent, trademark, copyright or other property right, regardless of whether such harm is to DWPI its employees or officers, the County or any other person or entity; (b) damages and injuries occurring in or upon the Easement Lands or any portion of the County Lands outside the Easement Lands that relates to DWPI's operations, (c) any intentional act, or negligence of DWPI or DWPI's agents, employees, or contractors, (d) any breach or default in the performance of any obligations of DWPI to be performed under this Agreement. This indemnity shall survive the expiration or termination of this Agreement. Notwithstanding the foregoing, DWPI shall not be required to indemnify a County Indemnified Party if such Claim arises from an event caused solely by the gross negligence or wilful misconduct of the County.
23. The County shall, forthwith upon the request of DWPI, execute and deliver a registerable grant or transfer of easement in favour of DWPI, incorporating the terms herein and in a form acceptable to both parties, each acting reasonably (the **"Transfer of Easement"**). Any reference plan, survey or legal description required for the purposes of description

of the County Lands, the DWPI Lands or the Easement Lands shall be prepared or obtained by DWPI at its expense, and shall be subject to approval by the County. The County and DWPI will cause their respective legal counsel to register the Transfer of Easement on title at DWPI's cost (including applicable land transfer tax). The County covenants that at the time of registration of the Transfer of Easement, title to the Easement Lands will be free and clear of all encumbrances other than non-financial encumbrances which will not prevent or restrict DWPI's use of the Easement Lands for the Purposes. Upon expiry of the Term, DWPI agrees that it will, at its sole expense, discharge and delete from title the Transfer of Easement. If such registration is not discharged and withdrawn, the County shall have the right and is hereby appointed by DWPI as its agent to prepare, execute and register such documentation as is required to discharge and delete such registration.

24. This Agreement shall be conditional upon compliance with the provisions of the *Planning Act* (Ontario).
25. This Agreement shall be of the same force and effect as a covenant running with the County Lands and the rights hereunder shall be appurtenant to each and every part of the DWPI Lands. DWPI shall not enter into, consent to, or permit any Transfer (as such term is defined below) without the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned or unduly delayed. With respect to such Transfer:
  - (a) if there is a permitted Transfer, the County may collect the Fee and, any other amounts due hereunder, from the transferee and apply the amount collected to the Fee payable under this Agreement but no acceptance by the County of any payments by a transferee shall be deemed to be a waiver of DWPI's covenants or any release of DWPI from the further performance by DWPI of its obligations under this Agreement. Any consent by the County shall be subject to DWPI and the transferee executing, prior to the Transfer being made, an agreement with the County agreeing that the transferee will be bound by all of the terms of this Agreement and that the transferee will be so bound as if it had originally executed this Agreement;
  - (b) notwithstanding any Transfer permitted or consented to by the County, DWPI shall remain liable under this Agreement and shall not be released from performing any of the terms of this Agreement;
  - (c) if the Transfer in respect of which consent has been given is not completed within one hundred and twenty (120) days of the date of such consent, or if DWPI is in default under this Agreement, then such consent shall, at the County's option, become void; and
  - (d) the agreements referred to in this Section 25 and any document evidencing the County's consent to any Transfer shall, at the County's option, be prepared by the County or its solicitors at DWPI's cost.

For the purposes of this Agreement "**Transfer**" means: (i) an assignment of this Agreement in whole or in part including an assignment by operation of law, (ii) a parting with or sharing of possession of all or part of the Easement Lands, (iii) any transaction by which any right of use or occupancy of all or any part of the Easement Lands is conferred upon anyone, (iv) any mortgage, charge or encumbrance of this Agreement or the Easement Lands or any part thereof, or other arrangement under which either this Agreement or the Easement Lands becomes security for any indebtedness or other obligations; and (v) any transaction or occurrence whatsoever which has changed or might change the identity of the person or persons having lawful use or occupancy of any part of the Easement Lands.

Notwithstanding the foregoing, DWPI shall be permitted to assign or charge its interest in this Agreement to: (i) an affiliate within the meaning of the *Ontario Business Corporations Act* or a partnership controlled by DWPI or an affiliate; and (ii) a *bona fide* lender providing financing to DWPI for construction of the proposed wind powered electrical generation, distribution and transmission facility on the DWPI Lands (the "**Project**") provided that such lender agrees to be bound by all of the terms and provisions of this Agreement if such lender enters into possession of the DWPI Lands. The County hereby agrees to execute and deliver an acknowledgement and consent agreement in favour of any of DWPI lenders substantially in the form attached hereto as Schedule "E".

26. In order to secure its obligations under Section 7 (decommissioning) and Section 12 (cost recovery) of this Agreement, DWPI shall file with the County, upon delivery and registration of the Transfer of Easement, an irrevocable letter of credit or other security satisfactory to the County acting reasonably, DWPI covenants and agrees that the letter of credit shall be kept in full force and effect and that it will pay all premiums as the letter of credit becomes due or until such time as the County returns the letter of credit. DWPI expressly agrees and authorizes the County to draw upon the letter of credit in whole or in part in case of default under this Agreement.
27. An “**Event of Default**” will be considered to have occurred when any one or more of the following happens:
- (a) DWPI fails to pay any monetary payment when it is due and the failure continues for ten (10) business days after written notice from the County to DWPI of specifying the failure;
  - (b) DWPI fails to observe or perform any other of the terms, covenants, conditions or agreements contained in this Agreement and DWPI fails to diligently commence to remedy the failure or default within 45 business days after written notice from the County to DWPI specifying the failure;
  - (c) the Term, the Works or any of the goods, chattels, or fixtures of DWPI on the Easement Lands or the DWPI Lands are seized or taken or exigible in execution or in attachment or if a writ of execution or enforcement is issued against DWPI, which is not satisfied, lifted or stayed within 45 business days of written notice from the County to DPWI specifying the failure;
  - (d) DWPI becomes insolvent or commits an act of bankruptcy or becomes bankrupt or takes the benefit of any statute that may be in force for bankrupt or insolvent debtors or becomes involved in voluntary or involuntary dissolution, winding up or liquidation proceedings or if a receiver is appointed for all or part of the business, property, affairs or revenues of DWPI, or if DWPI makes a proposal, arrangement or compromise with creditors which is not set aside or stayed within 45 business days of such event occurring;
  - (e) DWPI ceases or fails to commence the use of the Works on the Easement Lands on or prior to the date which is 60 months following the execution of this Agreement; or
  - (f) DWPI effects a Transfer that is not permitted by this Agreement.

Upon an occurrence of an Event of Default the County shall have the right to terminate this Agreement and the Easement and to pursue any other remedies available at law or in equity.

28. Upon expiry or earlier termination of the Term, DWPI, at its sole cost and expense, shall execute any and all documents required by the County to transfer, release and abandon the Easement and to register same on title to the County Lands.
29. Whenever, and to the extent that, either party is unable to fulfil or is delayed or restricted in the fulfillment of any obligation under any provision of this Agreement by reason of strikes, lock-outs, war or acts of military authority, rebellion or civil commotion, material or labour shortage not within their control, fire or explosion, flood, wind, water, earthquake or other casualty, any event or matter not wholly or mainly within their control (other than lack of funds or any financial condition of the parties hereto) or acts of God (in each case, a “**Force Majeure**”) not caused by the default or act of or omission by such party and not avoidable by the exercise or reasonable effort or foresight by it, then, so long as any such impediment exists, such party will be relieved from the fulfillment of such obligation and the other party will not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned. Such party will be required and is entitled to perform such obligation within a period of time immediately following the discontinuance of such impediment that is equal to the period of time that such impediment existed. Such party shall promptly notify the other party of the occurrence of any Force Majeure, which might prevent or delay the doing or performance of acts or things required to be done or performed by such party. The parties will use reasonable efforts to remedy the occurrence and abridge the period of Force Majeure.

30. The parties hereby acknowledge and agree that the purpose of this Agreement and the Rights granted herein is for the transmission of electricity within the meaning of the *Electricity Act*, 1998. Nothing contained in this Agreement shall abrogate or prejudice any statutory rights under any applicable laws including the *Ontario Energy Board Act*, 1998, and the *Electricity Act*, 1998.
31. The parties acknowledge that the County Lands are comprised of lands previously used by CP Rail as a rail corridor. As of the date of this Agreement, registered title to three portions of the CP Rail corridor to be used by DWPI (as more particularly as PINS 34154-0072(LT), 34154-0082(LT) and 34053-0036(LT)) are registered in the names of parties other than the County (the "**Remaining Parcels**"). DWPI agrees to contact the respective owners of each of the Remaining Parcels to make financial offers to each of the said owners to incent their consent to the Notices of Application filed by CP Rail pursuant to which CP Rail is seeking to obtain registered title to the portions of the Remaining Parcels which comprise part of the prior CP Rail corridor.
32. If any notice is required to be provided by DWPI or the County under this Agreement to the other, such notice may be delivered by postage prepaid mail (which shall be deemed to be delivered five (5) days from the date of mailing), by personal delivery, by facsimile transmission or via e-mail as follows:
- (a) to DWPI:
- Dufferin Wind Power Inc.
- 161 Bay Street, Suite 4550  
TD Canada Trust Tower  
Toronto, Ontario, M5J 2S1
- Attention: President  
Fax: (416) 551-3617  
E-mail: <\*>
- (b) to the County:
- County of Dufferin  
55 Zina Street  
Orangeville, ON L9W 1E5
- Attention: County Clerk  
Fax: 519-941-4565  
E-mail: clerk@dufferincounty.on.ca
33. Notwithstanding any other provision in this Agreement, DWPI agrees and acknowledges that this Agreement is not intended to operate, nor shall it have the effect of operating in any way to fetter the County Council or any of its successor councils in the exercise of any of Council's discretionary or legislative powers, duties or authorities.
34. The County and DWPI agree as follows:
- (a) all numbers, headings, subheadings and sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (b) this Agreement shall be construed with all changes in number and gender as may be required by the context;
- (c) every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires, including the payment of any applicable taxes (including HST);
- (d) references herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto;
- (e) all obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants;

- (f) whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference; and
  - (g) that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
35. This Agreement shall extend to, be binding upon and enure to the benefit of the respective heirs, executors, administrators, successors and permitted assigns of the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

**THE CORPORATION OF THE COUNTY OF  
DUFFERIN**

Per: \_\_\_\_\_  
Name: Walter Kolodziechuk  
Title: Warden

Per: \_\_\_\_\_  
Name: Pam Hillock  
Title: Clerk  
I/We have authority to bind the Corporation.

**DUFFERIN WIND POWER INC.**

Per: \_\_\_\_\_  
Name: Wu Hao  
Title: President

Per: \_\_\_\_\_  
Name: Jeff Hammond  
Title: Senior Vice-President  
I/We have authority to bind the Corporation.

**SCHEDULE “A”**  
**THE COUNTY LANDS**

	<b>PIN</b>	<b>Legal Description</b>
1.	34153-0111(LT)	PT LT 262, CON 1 SWTS AS IN MEL3218; PT LT 263, CON 1 SWTS AS IN MEL546; PT LTS 264 & 265, CON 1 SWTS AS IN MEL410; PT LT 266, CON 1 SWTS AS IN MEL517; PT LTS 267 & 268, CON 1 SWTS AS IN MEL409; PT LT 269, CON 1 SWTS AS IN MEL547; PT LT 270, CON 1 SWTS AS IN MEL385 ; MELANCTHON designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-626]
2.	34153-0110(LT)	PT LT 271, CON 1 SWTS AS IN MF85357; PT LT 272 & 273, CON 1 SWTS AS IN MEL392; MELANCTHON designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-691]
3.	34153-0126(LT)	PT LT 274-276 CON 1 SWTS MELANCTHON AS IN MF230831; MELANCTHON designated as Parts 3 & 4 on Plan 7R_____ [Plan No. P-691]
4.	34153-0127(LT)	PT LT 277, CON 1 SWTS AS IN MEL526 ; MELANCTHON designated as Parts 5 & 6 on Plan 7R_____ [ Plan No. P-691]
5.	34153-0128(LT)	PT LT 278-280 CON 1 SWTS MELANCTHON AS IN MF230831; MELANCTHON designated as Parts 7 & 8 on Plan 7R_____ [Plan No. P-691]
6.	34153-0080(LT)	PT LT 281, CON 1 SWTS AS IN MEL386 ; MELANCTHON designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-690]
7.	34153-0071(R)	PT LTS 282 TO 290, CON 1 SWTS; MELANCTHON designated as Parts 3 & 4 on Plan 7R_____ [Plan No. P-690]
8.	34154-0086(R)	PT LT 291, CON 1 SWTS; MELANCTHON designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-692]
9.	34154-0087(R)	PT LT 292, CON 1 SWTS; MELANCTHON designated as Parts 3 & 4 on Plan 7R_____ [Plan No. P-692]
10.	34154-0072(LT)*	PT LT 293, CON 1 SWTS AS IN MF207807 ; MELANCTHON designated as Parts 5 & 6 on Plan 7R_____ [Plan No. P-692]
11.	34154-0089(LT)	PT LTS 294 TO 296, CON 1 SWTS AS IN MEL363, MEL362 & MEL550; MELANCTHON designated as Parts 7 & 8 on Plan 7R_____ [Plan No. P-692]
12.	34154-0090(R)	PT LT 297, CON 1 SWTS; MELANCTHON designated as Parts 9 & 10 on Plan 7R_____ [Plan No. P-692]
13.	34154-0081(LT)	PT LT 298, CON 1 SWTS AS IN *LTD26201; MELANCTHON designated as Parts 11 & 12 on Plan 7R_____ [Plan No. P-692]
14.	34154-0110(LT)	PT LT 299 CON 1 SWTS PTS 1, 2 & 3, 7R6170; SUBJECT TO AN EASEMENT IN GROSS AS IN DC136264; TOWNSHIP OF MELANCTHON designated as Parts 13, 14, 15, 16, 17 & 18 on Plan



	PIN	Legal Description
		7R_____ [Plan No. P-692]
15.	34154-0091(LT)	PT LT 300, CON 1 SWTS AS IN MEL548; MELANCTHON designated as Parts 19 & 20 on Plan 7R_____ [Plan No. P-692]
16.	34154-0085(R)	PT LT 301, CON 2 SWTS; MELANCTHON designated as Parts 21 & 22 on Plan 7R_____ [Plan No. P-692]
17.	34133-0431(LT)	PT LT 5, CON 4 OS, PT 6, 7R567 ; MELANCTHON designated as Parts 5 & 6 on Plan 7R_____ [Plan No. P-698]
18.	34133-0432(R)	PT LT 4, CON 4 OS; MELANCTHON designated as Parts 3 & 4 on Plan 7R_____ [Plan No. P-698]
19.	34133-0417(LT)	PT LTS 3 & 4 CON 4 OS, AS IN MEL397 & MEL398 ; SHELBURNE designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-698]
20.	34133-0433(R)	PT LT 3, CON 3, OS; MELANCTHON designated as Parts 5 & 6 on Plan 7R_____ [Plan No. P-627]
21.	34133-0418(LT)	PT LTS 1 & 2, CON 3 OS, AS IN MEL396, MEL340, MEL364 ; SHELBURNE designated as Parts 3 & 4 on Plan 7R_____ [Plan No. P-627]
22.	34133-0630(LT)	PT LT 1 CON 3 OS MELANCTHON AS IN MF230830; MELANCTHON designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-627]
23.	34132-0022(LT)	PT LTS 31 & 32 CON 3 AS IN AM696 & AM752 ; SHELBURNE designated as Parts 7 & 8 on Plan 7R_____ [Plan No. E-531]
24.	34129-0133(LT)	PT LT 31, CON 2 AS IN AM692 & AM693 ; SHELBURNE; S/T EASEMENT IN GROSS OVER PT 2, 7R5737 AS IN DC92752; designated as Parts 1, 2, 3, 4, 5 & 6 on Plan 7R_____ [Plan No. E-531]
25.	34053-0021(R)	PT LT 30, CON 2; AMARANTH designated as Parts 11 & 12 on Plan 7R_____ [Plan No. P-687]
26.	34053-0020(LT)	PT LT 30, CON 2 AS IN AM694 ; AMARANTH designated as Parts 9 & 11 on Plan 7R_____ [Plan No. P-687]
27.	34053-0036(LT)*	N1/2 OF W1/2 LT 29 CON 2 ; AMARANTH designated as Parts 7 & 8 on Plan 7R_____ [Plan No. P-687]
28.	34053-0018(LT)	PT LTS 28 AND 29, CON 2 AS IN AM837 & AM691 ; AMARANTH designated as Parts 5 & 6 on Plan 7R_____ [Plan No. P-687]
29.	34053-0016(R)	PT LT 27, CON 2; AMARANTH designated as Parts 3 & 4 on Plan 7R_____ [ Plan No. P-687]
30.	34053-0017(LT)	PT LTS 26 AND 27, CON 2 AS IN AM695 ; AMARANTH designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-687]
31.	34052-0006(LT)	PT LT 25 CON 2 AS IN AM690; PT LT 24 CON 2 AS IN AM754; PT LT 23 CON 2 AS IN AM702 AND AM689; PT LTS 21 AND 22 CON 2 AS IN AM832; ; AMARANTH designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-686]

	<b>PIN</b>	<b>Legal Description</b>
32.	34052-0007(LT)	PT LT 21 CON 3 AS IN AM709 ; AMARANTH designated as Parts 3 & 4 on Plan 7R_____ [Plan No. P-685]
33.	34047-0078(R)	PT LT 20, CON 3; AMARANTH designated as Parts 7 & 8 on Plan 7R_____ [Plan No. P-685]
34.	34047-0077(LT)	PT LT 19, CON 3 AS IN AM697 & AM701 ; AMARANTH designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-685]
35.	34047-0076(R)	PT LT 18, CON 3; AMARANTH designated as Parts 5 & 6 on Plan 7R_____ [Plan No. P-685]
36.	34047-0085(LT)	PT LT 17 CON 3 AMARANTH PT 1, 7R4816; AMARANTH designated as Parts 3 & 4 on Plan 7R_____ [Plan No. DDD-2640]
37.	34047-0074(R)	PT LT 16, CON 3; AMARANTH designated as Parts 1 & 2 on Plan 7R_____ [Plan No. DDD-2640]
38.	34163-0061(LT)	PT LT 15, CON 3 AS IN AM704 ; AMARANTH designated as Parts 3 & 4 on Plan 7R_____ [Plan No. DDD-2639]
39.	34163-0137(LT)	PT E 1/2 LOT 14, CON 3 DES AS PT 1, 7R4815; AMARANTH ; COUNTY OF DUFFERIN designated as Parts 1 & 2 on Plan 7R_____ [Plan No. DDD-2639]
40.	34163-0052(LT)	PT LT 13, CON 3 AS IN AM887 ; AMARANTH designated as Parts 3 & 4 on Plan 7R_____ [Plan No. P-684]
41.	34163-0048(R)	PT LT 12, CON 3; AMARANTH designated as Parts 5 & 6 on Plan 7R_____ [Plan No. P-684]
42.	34163-0040(LT)	PT LT 11, CON 3 AS IN AM703 ; AMARANTH designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-684]
43.	34046-0023(LT)	PT LTS 9 & 10, CON 3 AS IN AM700, AM4344, AM10688, AM12905 & AM12906 ; AMARANTH designated as Parts 3 & 4 on Plan 7R_____ [Plan No. P-683]
44.	34046-0019(R)	PT LT 8, CON 3; AMARANTH designated as Parts 5 & 6 on Plan 7R_____ [Plan No. P-683]
45.	34046-0008(LT)	PT LTS 6 & 7, CON 3 AS IN AM822 & AM977 ; AMARANTH designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-683]
46.	34038-0121(LT)	PT LT 2, CON 3 AS IN AM633, AM9311, AM698, AM5294, AM9874, PT LT 3 CON3 AS IN AM722, PT LT 4 CON 3 AS IN AM699, PT LT 5 CON 3 AS IN AM755, AM756 EXCEPT PT 1, 7R4644; AMARANTH designated as Parts 1 & 2 on Plan 7R_____ [Plan No. P-682]
47.	34038-0007(LT)	PT LT 2 CON 2 AS IN AM543 AND AM559; PT LT 1 CON 2 AS IN AM542; ; AMARANTH designated as Parts 1, 2, 8 & 9 on Plan 7R_____ [Plan No. DDD-2636]

## **SCHEDULE “B”**

### **DWPI LANDS**

See attached  
Dufferin Wind Farm  
Preliminary Site Plan  
General Project Map  
Dufferin Wind  
prepared by Dillon Consulting

**SCHEDULE “C”**

**SKETCH OF EASEMENT LANDS**

See attached  
Dufferin Wind Farm  
Preliminary Site Plan  
230 kV Transmission Line Map  
prepared by Dillon Consulting

**SCHEDULE “D”**

**LIST OF POLLUTANTS**

**[ to come]**

SCHEDULE "E"

Acknowledgement and Consent Agreement

to an Agreement dated .....

between

THE CORPORATION OF THE COUNTY OF DUFFERIN

and



ACKNOWLEDGEMENT AND CONSENT AGREEMENT

This Owner's Acknowledgement and Consent Agreement ("**Acknowledgement**") made as of the • day of •, 2012 by and between THE CORPORATION OF THE COUNTY OF DUFFERIN (the "**Owner**") and •, as agent (the "**Agent**") pursuant to a credit agreement dated •, 2011 (as amended, supplemented, restated, extended, renewed or replaced from time to time, the "**Credit Agreement**") between, Dufferin Wind Power Inc. ("**Dufferin Wind**"), *inter alia*, \_\_\_\_\_ the Agent, • and the other financial institutions from time to time party thereto, as lenders (collectively, the "**Lenders**") and •, in its capacity as collateral agent, under the Agreement made as of •, 2012 (as amended, supplemented, restated, extended, renewed or replaced from time to time, the "**Collateral Agency Agreement**") between Dufferin Wind, the persons who are, and from time to time become, parties thereto as guarantors (including •) and • (the "**Collateral Agent**"), as agent for the Secured Creditors (as defined therein).

WHEREAS:

- A. Dufferin Wind entered into an Agreement to Grant Easement dated •, 2012 and the Transfer of Easement referred to therein which was registered against title to the lands described therein as the Easement Lands (the "**Lands**") on • as Instrument No. • (the Agreement to Grant Easement and the Transfer of Easement are hereinafter collectively called the "**Agreement**"), pursuant to which the Owner has granted to Dufferin Wind, *inter alia*, certain rights in the nature of an easement or right of way to accommodate an electrical transmission line (the "**Rights**") on the terms and conditions set out in the Agreement.
- B. Pursuant to, respectively, the Credit Agreement and the Collateral Agency Agreement (and documentation delivered in connection therewith), the Agent and Collateral Agent, respectively, have been granted charges, mortgages, assignments and security interests (collectively, the "**Security Interests**") in all of the property, undertaking, assets, interests, rights and benefits of Dufferin Wind, including without limitation, all of Dufferin Wind's right title, estate, interest and equity in the Lands, the Agreement, the Easement, all rights, privileges, benefits, agreements and interests therein, and all improvements, equipment, structures, chattels, personal property and appurtenance thereto in, on, under or appurtenant to the Lands (collectively, the "**Collateral**").
- C. The Owner has agreed to execute and deliver this Acknowledgement to the Agent and the Collateral Agent pursuant to the provisions of the Agreement.

**NOW THEREFORE** in consideration of the sum of Two Dollars (\$2) paid by each of the Agent and the Collateral Agent to the Owner and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner hereby acknowledges, covenants and confirms to each of the Agent and the Collateral Agent, as follows:

1. The Owner consents to the creation of the Security Interests and the registration thereof on the title to the Lands in the applicable land registry office(s).
2. The Owner acknowledges that, following an event of default by Dufferin Wind under the Credit Agreement or an event of default as defined in the Collateral Agency Agreement (each, and “**Event of Default**”), the Collateral Agent, the Lenders, the Agent or the Secured Creditors or any nominee or designee thereof or any receiver or receiver-manager (individual and collectively, an “**Agent Party**”) shall have the right to enforce the Security Interests, including, without limitation, the right to enjoy and enforce the rights of Dufferin Wind under the Agreement and, in the course of the enforcement of such rights, shall be entitled to sell, assign, transfer, negotiate or otherwise dispose of the Agreement provided that the Agent Party obtains the consent of the Owner which consent shall not be unreasonably withheld, delayed or unreasonably conditioned, provided that in exercising such rights the Agent Party shall assume all of the liabilities and obligations of Dufferin Wind
3. The Owner agrees:
  - (a) to give the Collateral Agent written notice (at the address below) of any default by Dufferin Wind under the Agreement, concurrent with the delivery of such notice to Dufferin Wind. The Owner shall not be in breach of its obligation under this Agreement if it fails to give notice to the Agent but the Owner shall not be entitled to terminate the Agreement without giving to the Agent in accordance with the same requirements as giving notice to Dufferin Wind pursuant to the Agreement;
  - (b) that, if Dufferin Wind fails to cure the breach or default identified in such notice, the Collateral Agent may, but shall be obliged to, cure such default and the Owner shall not terminate the Agreement or exercise any other remedy under the Agreement if the Collateral Agent, within 30 days of giving date of giving written notice referred to in section 3(a) above, is proceeding to cure such breach or default;
  - (c) that, if any default by Dufferin Wind under the Agreement is not of a curable nature, it shall not exercise any right to terminate if the Collateral Agent or its nominee (provided the Owner consents to such nominee which consent shall not be unreasonably or arbitrarily withheld or delayed) agrees to assume the rights and obligations of Dufferin Wind under the Agreement;
  - (d) that, if the Agreement is terminated or surrendered for any reason prior to the expiry of the term thereof, whether as a result of a default by Dufferin Wind thereunder or otherwise, the Owner shall offer to enter into a new or replacement agreement (the “**Replacement Agreement**”) with the Collateral Agent, or its nominee (provided the Owner consents to such nominee which consent shall not be unreasonably or arbitrarily withheld or delayed) which Replacement Agreement shall be upon the same terms and conditions as the Agreement; and
  - (e) that, if within 10 business days of the date of the notice referred to in section 3(d) above, the Collateral Agent requests a Replacement Agreement, the Owner shall enter into such Replacement Agreement with Collateral Agent. Notwithstanding any of the foregoing, the Collateral Agent confirms and acknowledges that the Owner shall not be liable to the Collateral Agent or its nominee for non-delivery of any notice pursuant to section 3(a) above.
  - (f) that the Owner and Dufferin Wind may modify the Agreement from time to time between themselves without the Collateral Agent’s prior written consent; and
  - (g) that the Owner will, at any time and from time to time, upon not less than five (5) business days’ prior request by the Collateral Agent, deliver to the Collateral Agent a statement in writing certifying that: (i) the Agreement is in full force and full effect unamended (or setting out any such amendments), (ii) all amounts owing and payable under the Agreement have been paid (or setting out any unpaid amounts), and (iii) to the Owner’s knowledge, Dufferin Wind is not in

default of its obligations under the Agreement in any material respect (or setting out any such defaults).

4. The Agent covenants and agrees with the Owner that during any period the Agent exercises its Security Interests and takes possession of Dufferin Wind's interest in the Lands (either directly or indirectly through an Agent Party) or takes control of or manages Dufferin Wind's interest in the Lands or the Collateral or any part thereof, or forecloses upon the Agreement, or succeeds to the interest of Dufferin Wind under the Agreement, it will assume all of the obligations of Dufferin Wind under or in connection with the Agreement during such period to the extent that they may be performed by the Collateral Agent, and thereafter observe and perform all of Dufferin Wind's obligations under the Agreement to the extent that they may be performed by the Collateral Agent.
5. The Collateral Agent covenants and agrees with the Owner that during any period the Collateral Agent exercises its Security Interests and takes possession of Dufferin Wind's interest in the Lands (either directly or indirectly through an Agent Party) or takes control of or manages Dufferin Wind's interest in the Lands or the Collateral or any part thereof, or forecloses upon the Agreement, or succeeds to the interest of Dufferin Wind under the Agreement, it will assume all of the obligations of Dufferin Wind under or in connection with the Agreement during such period to the extent that they may be performed by the Collateral Agent, and thereafter observe and perform all of Dufferin Wind's obligations under the Agreement.
6. The Owner confirms and acknowledges that in the event that the Collateral Agent or any other Agent Party assigns, transfers or otherwise disposes of its interest in the Agreement pursuant to its Security Interests (a "**Transfer**"), it will not unreasonably withhold, delay or unreasonably condition its consent to the Transfer, and, upon such assignee or transferee covenanting and agreeing in writing with the Owner to assume and perform all of the covenants and obligations of Dufferin Wind pursuant to the Agreement, each of the Collateral Agent and the other Agent Party shall, thereupon and without further agreement, be freed and relieved of all liability with respect to the Agreement from and after the effective date of such Transfer.
7. All notices hereunder shall be in writing, sent by registered mail, return receipt requested or by telecopy, to the respective parties and the addresses set forth on the signature page or at such other address as the receiving party shall designate in writing.
8. This Acknowledgement may be executed in any number of counterparts, shall be governed by the laws of the Province of Ontario and binds and enures to the benefit of the Agent Parties, and its successors and assigns and shall be binding upon the heirs, personal representatives, successors and assigns of the Owner.
9. Each of the parties hereto agrees to do, make and execute all such further documents, agreements, assurances, acts, matters and things and take such further action as may be reasonably required by any other party hereto in order to more effectively carry out the true intent of this Acknowledgement.
10. The provisions of this Acknowledgement shall continue in effect until the Owner shall have received the written certification of the Collateral Agent that all amounts advanced, and obligations arising, under the Credit Agreement and all Obligations (as defined in the Collateral Agency Agreement) have been paid and performed in full.

**IN WITNESS WHEREOF**, this Acknowledgement is executed by the parties.

**ADDRESS FOR NOTICE**

County of Dufferin  
55 Zina Street  
Orangeville, Ontario, L9W 1E5  
Attention: Clerk  
Fax: 1-519-941-4565  
E-mail: clerk@dufferincounty.ca

**THE CORPORATION OF THE COUNTY OF  
DUFFERIN**

By: \_\_\_\_\_  
Walter Kolodziechuk, Warden

By: \_\_\_\_\_  
Pam Hillock, Clerk



ADDRESS FOR NOTICE

■

[■]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title

*We have authority to bind the corporation.*

12575431.1

**APPENDIX 'C'**

**RELEVANT SECTIONS FROM CCRA**

**Board Staff #6(i) and (iii)**

# Generation Facility Connection and Cost Recovery Agreement

between

***Dufferin Wind Power Inc.***

and

***Hydro One Networks Inc.***



for

**CONNECTION OF 99.1 MW GENERATION FACILITY**

- (ii) have that part of the Hydro One Work required to be constructed, installed, commissioned and energized in order for the Generator Customer to synchronize the Generator Customer's Facilities to Hydro One's transmission system (the "Synchronization Work") completed four (4) weeks after the Backfeed Date (the "Ready for Service Date").

III B. Any one or more of the following occurrences may delay the Hydro One Work; and if the Hydro One Work is thereby delayed, the Generator Customer acknowledges and agrees that the Backfeed Date and/or the Ready for Service Date specified in Subsection IIIA above may be postponed by Hydro One, and that Hydro One shall not be responsible for any losses or damages suffered as a result of any delays associated with any of the foregoing to the extent that the said occurrences delay the Hydro One Work;

- (a) the Generator Customer does not fully complete all of the Generator Customer Connection Work (including, but not limited to the Generator Customer's Facilities being fully constructed) in accordance with the terms and conditions of this Agreement and is not ready for commissioning by November 1, 2013;
- (b) the Generator Customer not being in compliance with all of its obligations under this Agreement;
- (c) Hydro One not being able to obtain outages from the IESO required for any portion of the Hydro One Work when required, after making commercially reasonable efforts to obtain same;
- (d) the IESO making any changes to any portion of the Hydro One Work or the scheduling of all or any portion of the Hydro One Work;
- (e) Hydro One having to perform a full Class Environmental Assessment via the EA Screen-out process, full class Environmental Assessment or an individual Environmental Assessment in respect of all or any portion of the Hydro One Work;
- (f) Hydro One not receiving or obtaining prior to the dates upon which Hydro One requires any or one or more of the following under any Applicable Laws, which it will make commercially reasonable efforts to obtain:
  - (i) environmental approvals, permits or certificates;
  - (ii) land use permits from the Crown; and
  - (iii) building permits and site plan approvals;
- (g) Hydro One having to use its employees, agents and contractors performing the Hydro One Work elsewhere on its transmission system or distribution system due to an Emergency (as that term is defined in the Transmission System Code) or an Event of Force Majeure;
- (h) Hydro One not being able to obtain materials or equipment required from suppliers in time to meet the project schedule for any portion of the Hydro One Work after making commercially reasonable efforts to obtain same;
- (i) the Generator Customer not obtaining, on Hydro One's behalf, all of the easement and other land rights that Hydro One requires the Generator Customer to obtain on Hydro One's behalf in accordance with the terms of this Agreement as identified in Schedule "D" by the dates specified in Schedule "D";
- (j) where applicable, Hydro One not receiving Leave to Construct by the Approval Date specified in Schedule "D" of the Agreement;
- (k) the Generator Customer not authorizing the expenditure of Premium Costs if Hydro One seeks authorization under Section 14 of the T&C; and
- (l) the Generator Customer not obtaining its REA by July 15, 2013 which date is 20 Business Days prior to the date that Hydro One needs to perform alterations or construction at the proposed site(s) of the Hydro One Work in order for Hydro One to meet the Backfeed Date and the Ready for Service Date specified above;
- (m) intentionally deleted;
- (n) intentionally deleted;
- (o) intentionally deleted;
- (p) intentionally deleted; and
- (q) intentionally deleted.

- Provide teleprotection interface at the site of the Generation Facility for communication to and from Orangeville TS;
- Design teleprotection system based on dual communication channels (main and alternate channels) to Orangeville TS from Generator Customer's Facilities for the transmission of both the "A" and "B" protection group commands using two Generator Customer provided fibre circuits;
- Design, install and program two New 'A' and 'B' teleprotection terminals (such as SEL 2595) at the Generator Customer's Facilities to facilitate transfer trip and generator end open (GEO) between Orangeville TS and the Generation Facility. This scheme uses Generator Customer provided fibre circuits between Orangeville TS and the site of the Generation Facility; and
- design, install and commission teleprotection equipment at the Generator Customer's Switching Station to accommodate transfer trip and other teleprotection requirements as per Hydro One standards and requirements.

#### **Part 4: SCADA RTU**

The Generator Customer shall:

- Provide SCADA RTU functionality to meet Hydro One configuration and communications protocol and to comply with IESO technical and performance requirements.
- Provide a port and a modem to transmit to Hydro One the required telemetry quantities. The modem and protocol details will be to Hydro One's requirements.

#### **Part 5: Telecommunications**

The Generator Customer shall:

- Provide communications cable entrance facility and cable protection at the Generator Customer's Switching Station.
- Be responsible for all monthly leasing costs and the yearly leasing charge (per pair) for Hydro One's neutralizing transformer capacity.
- Provide circuit routing.

- Provide "Main" telecommunication path via one 48F single mode fibre cable (overhead OPGW) from customer SS splicebox (demarcation point) at first Hydro One structure outside Orangeville TS;
- Provide "Alternate" telecommunication path via one underground 48F single mode fibre cable from the customer SS to pull box (demarcation point) outside Orangeville TS station fence.

#### **Part 6: Revenue Metering**

The Generator Customer shall:

- Provide a revenue metering system in accordance with the Market Rules.

#### **Part 7: Requirements – Environmental, First Nations and Archaeological Studies, Provincial and Federal Agency Feedback, Notifications and Consultation Records**

Intentionally deleted.

#### **Part 8: Real Estate**

The Generator Customer shall obtain the land rights described in Section 3.8 of Schedule "D" on Hydro One's behalf in accordance with the requirements of this Agreement, including, but not limited to Section 17 of the T&C.

The Generator Customer shall advise Hydro One whether or not there are any pipeline easements affecting the Project and shall obtain all approvals as required by Hydro One.

#### **Part 9: Documentation**

The Generator Customer shall provide Hydro One with the following documents (the "Connection Interface Documents") for review by Hydro One when requested:

##### **Group A:**

- IESO application-for information only.
- Single-line drawings showing ratings of all electrical equipment, such as disconnect

### 3.4 Hydro One's Assets:<sup>1</sup>

All equipment and facilities installed by Hydro One as part of the Hydro One Work in, under, on, over, along, upon, through and crossing Hydro One's Property(ies) or procured by the Generator Customer on behalf of Hydro One under the terms of this Agreement to be installed by Hydro One between Generator Customer's Facilities and Orangeville TS.

### 3.5 Documentation Required:<sup>2</sup>

Documentation describing the as-built electrical characteristics of the Generator Customer's Facilities and the Generation Facility shall include, but is not limited to, a detailed single line drawing showing electrical parameters and characteristics of the Generator Customer's Facilities and the Generation Facility and step up transformer(s), AC and DC protection elementary diagrams, and relay types and setting sheets.

### 3.6 Miscellaneous:

Approval Date (III(i) of Agreement): N/A

Exceptional Circumstances - Network Construction or Modifications:<sup>3</sup> None

Capital Contribution Includes Cost of Capacity Not Required by Generator Customer:<sup>4</sup> No

Event of Default:<sup>5</sup>

### 3.7 Security Requirements<sup>6</sup>

Security Requirements: Nil

Security Date: N/A

### 3.8 Easements and Other Land Rights<sup>7</sup>

*Easement(s) in Gross Required:* Yes

**Easement in Gross Lands:** Firstly being legally described as PT LT 2 CON 2 AS IN AM543 AND AM559; PT LT 1 CON 2 AS IN AM542; ; AMARANTH being PIN 340380007 and Secondly being legally described as LT 5, PL 131; S/T AM16994 & MF38062 PARTIALLY RELEASED BY MF38063; S/T MF142091 ; AMARANTH being PIN 340380073

**Easement in Gross Term:** 2 terms of 21 years less 1 day.

**Easement in Gross Date:** October 1, 2013.

*Access Easement(s) Required:* Yes

**Access Easement Lands:** LT 5, PL 131; S/T AM16994 & MF38062 PARTIALLY RELEASED BY MF38063; S/T MF142091; AMARANTH being PIN 340380073.

**Access Easement Term:** 2 terms of 21 years less 1 day

**Access Easement Date:** October 1, 2013.

*Easement Required for an Access Road for a Term Beyond 21 Years:* Yes

*Early Access Agreement(s) Required:* Yes

**Early Access Lands:** Firstly being legally described as PT LT 2 CON 2 AS IN AM543 AND AM559; PT LT 1 CON 2 AS IN AM542; ; AMARANTH being PIN 340380007 and Secondly being legally described as LT 5, PL 131; S/T AM16994 & MF38062 PARTIALLY RELEASED BY MF38063; S/T MF142091 ; AMARANTH being PIN 340380073.

**Early Access Execution Date:** September 16, 2013.

*Title to Lands Required:* No

**Lands to be Acquired for Hydro One:** N/A

**Closing Date:** N/A

*Work Chargeable to Customer on Crown (MNR) Lands:* No

<sup>1</sup> Cross-reference Section 8 of T&C

<sup>2</sup> Cross-reference Sub-section 11(d) of T&C

<sup>3</sup> Cross-reference Section 12.3 of T&C

<sup>4</sup> Cross-reference Section 12.4 of T&C

<sup>5</sup> Cross-reference Section 18 of T&C

<sup>6</sup> Cross-reference Section 16 of T&C

<sup>7</sup> Cross-reference Section 17 of T&C

**Schedule "F" – Form of Grant of Easement in Gross**

**GRANT OF EASEMENT IN GROSS**

A. [NOTE – INSERT FULL LEGAL NAME OF TRANSFEROR] (the "Transferor") is the owner in fee simple and in possession of • (the "Lands").

B. Hydro One Networks Inc. (the "Transferee") has erected, or is about to erect, certain Works (as more particularly described in paragraph 1(a) in, through, under, over, across, and along and upon the Lands.

**IN CONSIDERATION** of the payment of • DOLLARS (\$•.) paid by the Transferee to the Transferor, mutual covenants hereinafter set forth and other good and valuable consideration, the Transferor and Transferee hereto agree as follows:

1 The Transferor hereby grants and conveys to the Transferee, its successors and assigns the rights and easement, free from all encumbrances and restrictions, the following unobstructed and exclusive rights, easements, rights-of-way, covenants, agreements and privileges for a term of twenty-one (21) years less one (1) day from and including the date of registration of this Grant of Easement (the "Term") (the "Rights") in, through, under, over across, along and upon that portion of the Lands of the Transferor being Part of Lot • Concession • shown as Parts • & • on Reference Plan • R • • • • (the "Strip") for the following purposes:

- (a) To enter and lay down, install, construct, erect, maintain, open, inspect, add to, enlarge, alter, repair and keep in good condition, move, remove, replace, reinstall, reconstruct, relocate, supplement and operate and maintain at all times in, through, under, over, across, along and upon the Strip and electrical transmission system and telecommunications system consisting in both instances of pole structures, steel towers, anchors, guys and braces and all such aboveground or underground lines, wires, cables, telecommunications cables, grounding electrodes, conductors, apparatus, works, accessories, associated material and equipment, and appurtenances pertaining to or required by either such system (all or any of which are herein individually or collectively called the ("Works") as in the opinion of the Transferee are necessary or convenient thereto for use as required by Transferee in its undertaking from time to time, or a related business venture.
- (b) To enter on and selectively cut or prune, and to clear and keep clear, and remove all trees (subject to compensation to Owners for merchantable wood values), branches, bush and shrubs and other obstructions and materials, over or upon the Strip, and without limitation, to cut and remove all leaning or decayed trees located on the Lands whose proximity to the Works renders them liable to fall and come in contact with the Works or which may in any way interfere with the safe, efficient or serviceable operation of the Works or this easement by the Transferee.
- (c) To conduct all engineering, legal surveys, and make soil tests, soil compaction and environmental studies and audits in, under, on and over the Strip as the Transferee in its discretion considers requisite.
- (d) To erect, install, construct, maintain, repair and keep in good condition, move, remove, replace and use bridges and such gates in all fences which are now or may hereafter be on the Strip as the Transferee may from time to time consider necessary.
- (e) Except for fences and permitted paragraph 2(a) installations, to clear the Strip and keep it clear of all buildings, structures, erections, installations, or other obstructions of any nature (hereinafter collectively called the "obstruction" whether above or below ground, including removal of any materials and equipment or plants and natural growth, which in the opinion of the Transferee, endanger

its Works or any person or property or which may be likely to become a hazard to any Works of the Transferee or to any person or property or which do or may in any way interfere with the safe, efficient or serviceable operation of the Works or this easement by the Transferee.

- (f) To enter on and exit by the Transferor's access routes and to pass and repass at all times in, over, along, upon and across the Strip and so much of the Lands as is reasonably required, for Transferee, its respective officers, employees, agents, servants, contractors, subcontractors, workmen and permittees with or without all plant machinery, material, supplies, vehicles and equipment for all purposes necessary or convenient to the exercise and enjoyment of this easement subject to compensation afterwards for any crop or other physical damage only to the Lands or permitted structures sustained by the Transferor caused by the exercise of this right of entry and passageway.
- (g) To remove, relocate and reconstruct the line on or under the Strip.

2 The Transferor agrees that:

- (a) It will not interfere with any Works established on or in the Strip and shall not, without the Transferee's consent in writing erect or cause to be erected or permit in, under or upon the strip any obstruction or plant or permit any trees, bush, shrubs, plants or natural growth which does or may interfere with the Rights granted herein. The Transferor agrees it shall not, without the Transferee's consent in writing, change or permit the existing configuration, grade or elevation of the Strip to be changed and the Transferor further agrees that no excavation or opening or work which may disturb or interfere with the existing surface of the Strip shall be done or made unless consent therefore in writing has been obtained from Transferee, provided however, that the Transferor shall not be required to obtain such permission in case of emergency. Notwithstanding the foregoing, in cases where in the reasonable discretion of the Transferee, there is no danger or likelihood of danger to the Works of the Transferee or to any persons or property and the safe or serviceable operation of this easement by the Transferee is not interfered with, the Transferor may at its expense and with the prior written approval of the Transferee, construct and maintain roads, lanes walks, drains, sewers water pipes, oil and gas pipelines, fences (not to exceed 2 metres in height) and service cables on or under the Strip (the "**Installation**") or any portion thereof; provided that prior to commencing such Installation, the transferor shall give to the Transferee thirty (30) days notice in writing thereof to enable the Transferee to have a representative present to inspect the proposed Installation during the performance of such work, and provided further that Transferor comply with all instructions given by such representative and that all such work shall be done to the reasonable satisfaction of such representative. In the event of any unauthorised interference aforesaid or contravention of this paragraph, or if any authorised interference, obstruction or Installation is not maintained in accordance with the Transferee's instructions or in the Transferee's reasonable opinion, may subsequently interfere with the Rights granted herein, the Transferee may at the Transferor's expense, forthwith remove, relocate, clear or correct the offending interference, obstruction, Installation or contravention complained of from the Strip, without being liable for any damages cause thereby.
- (b) Notwithstanding any rule of law or equity, the Works installed by the Transferee shall at all times remain the property of the Transferee, notwithstanding that such Works are or may become annexed or affixed to the Strip and shall at anytime and from time to time be removable in whole or in part by Transferee.
- (c) No other easement or permission will be transferred or granted and no encumbrances will be created over or in respect to the Strip, prior to the registration of a Transfer of this grant of Rights.



- (d) The Transferor will execute such further assurances of the Rights in respect of this grant of easement as may be requisite.
- (e) The Rights hereby granted:
  - (i) shall be of the same force and effect to all intents and purposes as a covenant running with the Strip; and
  - (ii) is declared hereby to be appurtenant to and for the benefit of the Works and undertaking of the Transferee described in paragraph 1(a).
- 3. The Transferee covenants and agrees to obtain at its sole cost and expense all necessary postponements and subordinations (in registrable form) from all current and future prior encumbrancers, postponing their respective rights, title and interest to the transfer of Easement herein so as to place such Rights and easement in first priority on title to the Lands.
- 4. Unless the Transferee advises the Transferor upon 60 days' prior written notice, the Term shall be automatically renewed for an additional term of twenty-one (21) years less one (1) day upon the same terms and conditions save for the right of renewal.
- 5. There are no representations, covenants agreements, warranties and conditions in any way relating to the subject matter of this grant of Rights whether expressed or implied, collateral or otherwise except those set forth herein.
- 6. No waiver of a breach or any of the covenants of this grant of Rights shall be construed to be a waiver of any succeeding breach of the same or any other covenant.
- 7. The burden and benefit of this transfer of Rights shall run with the Strip and the Works and undertaking of the Transferee and shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.
- 8. The Transferee declares, pursuant to Section 50(3)(d) of the *Planning Act*, R.S.O. 1990 c. P.13 that the Rights are being acquired, for the purpose of an electricity distribution line or an electricity transmission line within the meaning of Part VI of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B.

[NOTE – IF TRANSFEROR ARE INDIVIDUALS ADD THE FOLLOWING CLAUSE AS #9

- 9. The Transferor represents that, except to the extent such consent has been obtained, spousal consent to this transaction is not necessary and upon registration of this Grant of Easement will not be necessary under the provisions of the *Family Law Act*, R.S.O. 1990 c.F.3

IN WITNESS WHEREOF the parties hereto have executed this Grant of Easement.

Signed by the Transferee this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**HYDRO ONE NETWORKS INC.**

Per: \_\_\_\_\_

Name:

Position:

I have authority to bind the Corporation.

Signed by the Transferor this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**[NOTE – INSERT FULL LEGAL NAME OF  
TRANSFEROR]**

Per: \_\_\_\_\_

Name:

Position:

Per: \_\_\_\_\_

Name:

Position:

We/I have authority to bind the Corporation

**[OR IF TRANSFEROR IS INDIVIDUAL]**

**SIGNED, SEALED AND DELIVERED**

In the presence of )

\_\_\_\_\_  
Signature of Witness )

\_\_\_\_\_  
Signature of Witness )

\_\_\_\_\_  
Transferor's Signature

(seal)

\_\_\_\_\_  
Transferor's Signature

(seal)

SIGNED, SEALED AND DELIVERED  
In the presence of

)  
)  
)  
)

Consent Signature & Release of  
Transferor's Spouse, if non-owner.

\_\_\_\_\_  
Signature of Witness  
CHARGEES

\_\_\_\_\_(seal)

THE CHARGEES of land described in a Charge/Mortgage of Land dated \_\_\_\_\_

Between \_\_\_\_\_ and \_\_\_\_\_

and registered as Instrument Number \_\_\_\_\_ on \_\_\_\_\_ does

hereby consent to this Easement and releases and discharges the rights and easement herein from the said  
Charge/Mortgage of Land.

Name:

Signature(s)

Date of Signatures

Y M D

Per: \_\_\_\_\_

Per: \_\_\_\_\_

I/We have authority to bind the Corporation



hereinafter contained and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree as follows:

1. HONI agrees that it will enter into, with the Owner (i) an easement agreement with respect to the Access Road and (ii) an easement with respect to the Transmission Facilities (collectively the "Easements") with respect to the portion of the Lands referenced in Schedule "A" and Schedule "C". Such Easements shall be substantially in the form of HONI's standard form easement documents.
2. The Owner hereby grants to HONI, as of the date this Agreement, (i) the right to commence construction of the Transmission Facilities, the Access Road, and Transmission Station on the Lands, as shown in Schedules "A" "B" & "C" attached hereto; and (ii) the right to enter upon and exit from, and to pass and repass at any and all times in, over, along, upon, across, through and under the Lands as may be reasonably necessary, at all reasonable times, for HONI and its respective officers, employees, workers, permittees, servants, agents, contractors and subcontractors, with or without vehicles, supplies, machinery, plant, material and equipment for the purpose of commencing construction of the Transmission Facilities, Access Road and Transmission Station,
3. HONI agrees that it shall take all reasonable care in its construction practices.
4. All agents, representatives, officers, directors, employees and contractors and property of HONI located at any time on the Lands shall be at the sole risk of HONI and the Owner shall not be liable for any loss or damage or injury (including loss of life) to them or it however occurring except and to the extent to which such loss, damage or injury is caused by the negligence or willful misconduct of the Owner.
5. HONI agrees that it shall indemnify and save harmless the Owner from and against all claims, demands, costs, damages, expenses and liabilities (collectively the "Costs") whatsoever arising out of HONI's presence on the Lands or of its activities on or in connection with the Lands arising out of the permission granted herein except to the extent any of such Costs arise out of the negligence or willful misconduct of the Owner.
6. This Agreement and the permission granted herein shall automatically terminate upon the closing of the transactions contemplated by the Easements.
7. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein. The parties hereto submit themselves to the exclusive jurisdiction of the Courts of the Province of Ontario.
8. Any amendments, modification or supplement to this Agreement or any part thereof shall not be valid or binding unless set out in writing and executed by the parties with same degree of formality as the execution of this Agreement.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement by the hands of their duly authorized signing officers in that regard.

**WITNESS:**

**INSERT NAME(S) OR COMPANY**

Signature:

\_\_\_\_\_  
Print Name of Witness

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the Corporation

**WITNESS:**

**INSERT NAME(S) OR COMPANY**

Signature:

\_\_\_\_\_  
Print Name of Witness

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the Corporation

**HYDRO ONE NETWORKS INC.**

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the Corporation

**Schedule "A"**

**INSERT SKETCH OR PLAN**

**Schedule "B"**

**INSERT SKETCH OR PLAN**

**Schedule "C"**

**INSERT SKETCH OR PLAN**

**Schedule "H": Form of Early Access Agreement**

**FORM 2 – USED FOR ACCESS EASEMENT LANDS + CONNECTION TAP EASEMENT LANDS**

THIS AGREEMENT made in duplicate                      day of                      20XX  
the

BETWEEN:

**HYDRO ONE NETWORKS**                      (hereinafter called the  
**INC**                      "HONI") OF THE FIRST  
PART

and

**INSERT NAME**                      (hereinafter called the  
"Owner") OF THE SECOND  
PART

WHEREAS:

1. The Owner is the registered owner of lands legally described as  
(the "Lands").
2. HONI will be constructing new Electrical Transmission Facilities on a portion of the Lands shown highlighted in red on Schedule "A" & "B" attached hereto.
3. The Owner is agreeable in allowing HONI to enter onto the Lands to construct its facilities in accordance with the Drawing subject to the terms and conditions contained herein.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the lump sum of FIVE Dollars (\$5.00) now paid by each party to the other and the respective covenants and agreements of the parties hereinafter contained (the receipt and sufficiency of which are hereby acknowledged by the parties hereto), the parties hereto agree as follows:

1. HONI agrees that it will enter into, with the Owner, (i) an easement agreement, on HONI's standard form, with respect to the Works located on the portion of the Lands as shown hatched and highlighted in red on the attached Schedule "A" and Schedule "B" Drawings (the "Easement"); and (ii) an access easement for HONI to access the Works over a portion of the Lands shown cross-hatched and highlighted in green on the attached Schedule "A" and Schedule "B" Drawings ("Access Easement") within a reasonable period of time following execution by the parties of this Agreement.
2. The Owner hereby grants to HONI the right to enter upon the Lands for the purpose of commencing construction of the works, as of the date this Agreement is executed by both parties.
3. HONI agrees that it shall take all reasonable care in its construction practices.
4. All agents, representatives, officers, directors, employees and contractors and property of HONI located at any time on the Lands shall be at the sole risk of HONI and the Owner shall not be liable for any loss

or damage or injury (including loss of life) to them or it however occurring except and to the extent to which such loss, damage or injury is caused by the negligence or willful misconduct of the Owner.

5. HONI agrees that it shall indemnify and save harmless the Owner from and against all claims, demands, costs, damages, expenses and liabilities (collectively the "Costs") whatsoever arising out of HONI's presence on the Lands or of its activities on or in connection with the Lands arising out of the permission granted herein except to the extent any of such Costs arise out of the negligence or willful misconduct of the Owner.

6. This Agreement and the permission granted herein shall automatically terminate upon the registration of the Easement.

7. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein. The parties hereto submit themselves to the exclusive jurisdiction of the Courts of the Province of Ontario.

8. Any amendments, modification or supplement to this Agreement or any part thereof shall not be valid or binding unless set out in writing and executed by the parties with same degree of formality as the execution of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by the hands of their duly authorized signing officers in that regard.

Dated this                      Day of                      , 20XX



Generator Customer Connection and Cost Recovery Agreement CPA V2013-2

**WITNESS:**

Per: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

I have authority to bind the Company

**WITNESS:**

Per: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

I have authority to bind the Company

**HYDRO ONE NETWORKS INC.**

Per: \_\_\_\_\_

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

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

I have authority to bind the Company

**Schedule "A"**

**INSERT SKETCH**

**Schedule "B"**

**INSERT SKETCH**

**Schedule "H": Form of Early Access Agreement**

**FORM 3 – USED FOR CONNECTION TAP EASEMENT LANDS**

THIS AGREEMENT made in duplicate                      day of                      20XX  
the

BETWEEN:

**HYDRO ONE NETWORKS**                      (hereinafter called the  
**INC**                      "HONI") OF THE FIRST  
PART

and

**INSERT NAME**                      (hereinafter called the  
"Owner") OF THE SECOND  
PART

WHEREAS:

1. The Owner is the registered owner of lands legally described as  
(the "Lands").
2. HONI will be constructing new Electrical Transmission Facilities on a portion of the Lands shown highlighted in red on Schedule "A" attached hereto.
3. The Owner is agreeable in allowing HONI to enter onto the Lands to construct its facilities in accordance with the Drawing subject to the terms and conditions contained herein.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the lump sum of FIVE Dollars (\$5.00) now paid by each party to the other and the respective covenants and agreements of the parties hereinafter contained (the receipt and sufficiency of which are hereby acknowledged by the parties hereto), the parties hereto agree as follows:

1. HONI agrees that it will enter into, with the Owner, (i) an easement agreement, on HONI's standard form, with respect to the Works located on the portion of the Lands as shown hatched and highlighted in red on the attached Schedule "A" (the "Easement") within a reasonable period of time following execution by the parties of this Agreement.
2. The Owner hereby grants to HONI the right to enter upon the Lands for the purpose of commencing construction of the works, as of the date this Agreement is executed by both parties.
3. HONI agrees that it shall take all reasonable care in its construction practices.
4. All agents, representatives, officers, directors, employees and contractors and property of HONI located at any time on the Lands shall be at the sole risk of HONI and the Owner shall not be liable for any loss or

damage or injury (including loss of life) to them or it however occurring except and to the extent to which such loss, damage or injury is caused by the negligence or willful misconduct of the Owner.

5. HONI agrees that it shall indemnify and save harmless the Owner from and against all claims, demands, costs, damages, expenses and liabilities (collectively the "Costs") whatsoever arising out of HONI's presence on the Lands or of its activities on or in connection with the Lands arising out of the permission granted herein except to the extent any of such Costs arise out of the negligence or willful misconduct of the Owner.

6. This Agreement and the permission granted herein shall automatically terminate upon the registration of the Easement.

7. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein. The parties hereto submit themselves to the exclusive jurisdiction of the Courts of the Province of Ontario.

8. Any amendments, modification or supplement to this Agreement or any part thereof shall not be valid or binding unless set out in writing and executed by the parties with same degree of formality as the execution of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by the hands of their duly authorized signing officers in that regard.

Dated this                      Day of                      , 20XX

**WITNESS:**

Per: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

I have authority to bind the Company

**WITNESS:**

Per: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

I have authority to bind the Company

**HYDRO ONE NETWORKS INC.**

Per: \_\_\_\_\_

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

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

I have authority to bind the Company

**Schedule "A"**

**INSERT SKETCH**

**Standard Terms and Conditions  
Generator Customer Connection and Cost Recovery Agreement**

V2012-2

furnish such security in the amount specified in Schedule "D" of the Agreement. Hydro One shall return the security deposit to the Generator Customer as follows:

- (i) security deposits in the form of cash shall be returned to the Generator Customer, together with interest, less the amount of any Capital Contribution owed by the Generator Customer once the Generator Customer's Facilities are connected to Hydro One's new or modified Connection Facilities; and
- (ii) security deposits in any other form shall be returned to the Generator Customer once the Generator Customer's Facilities are connected to Hydro One's new or modified Connection Facilities and any Capital Contribution has been paid.

Notwithstanding the foregoing, Hydro One may keep all or a part of the security deposit: (a) where the Generator Customer fails to pay any amount due under the Agreement within the time stipulated for payment or (b) in the circumstances described in the OEB-Approved Connection Procedures.

**Easements and Other Land Rights**

17. The Generator Customer shall secure all required real estate rights/land agreements, and/or approvals for Hydro One related thereto (e.g. municipal consents for access and access or entry permits) at the Generator Customer's expense. With respect to the acquisition of land rights, including, the addition of lands to Hydro One's Provincial Master Land Use Permit, the cost of same includes, but is not limited to, the purchase (price), easements/lease/licence costs along with any associated costs such as the cost of performing appraisals, surveys, submitting applications, licence and review fees, legal and land disbursement closing costs and the cost of any special studies that might arise in the calculation of compensation in respect of the land rights (i.e. aggregate). Any compensation paid by the Generator Customer to third parties for land purchases, easements and other land rights described in this Agreement to be secured by the Generator Customer on Hydro One's behalf shall be on commercially reasonable terms that are consistent with Hydro One's land acquisition policies.

If specified in Section 3.8 of Schedule "D" of the Agreement that:

- (i) a grant(s) of easement in gross is required, the Generator Customer shall cause the registered owner(s) of the lands described as the Easement in Gross Lands in Section 3.8 of Schedule "D" to grant an easement in gross to Hydro One for nominal consideration substantially in the form of the grant of easement in gross attached hereto as Schedule "F" for the Easement in Gross Lands for the Easement in Gross Term specified in Section 3.8 of Schedule

"D" by no later than the date specified in the Agreement as the Easement in Gross Date;

- (ii) an access easement(s) is required, the Generator Customer shall cause the registered owner(s) of the lands described as the Access Lands in Section 3.8 of Schedule "D" to grant an access easement to Hydro One for nominal consideration substantially in the form of the Access Easement attached hereto as Schedule "G" for Access Easement Lands for the Access Easement Term specified in Section 3.8 of Schedule "D" by no later than the date specified in the Agreement as the Access Easement Date. The Generator Customer shall also secure all municipal consent and approvals for any access road easements required by Hydro One for all or any part of the Hydro One Work by the Access Easement Date;

- (iii) an easement is required for an access road for a term beyond 21 years, as an access road easement for a term beyond 21 years may be viewed as not being exempt use by a utility with specific reference to s. 50(3) of the Planning Act (the "Act") as the Act mentions a distribution line, transmission line etc. but with no reference to an access road and some municipalities however have viewed this differently and consider an access as ancillary and part of what's described in s. 50(3) of the Act and therefore is exempt from the municipal consent process, the Generator Customer shall be responsible to either: (a) secure municipal consent for the access road or (b) provide a letter from the municipality addressed to Hydro One stating that the access easement, beyond 21 years is for Hydro One and that the municipality considers access as part of the works described in the Act and therefore is not subject to the consent process;

- (iv) early access agreement is required, the Generator Customer shall cause the registered owner(s) of the lands described as the "Early Access Land(s)" in Section 3.8 of Schedule "D" to enter into an Early Access Agreement with Hydro One for nominal consideration substantially in the form of the Early Access Agreement attached hereto as Schedule "H" by no later than the date specified in Section 3.8 of Schedule "D" as the "Early Access Execution Date";

- (v) title to lands is required, the Generator Customer shall:

- (a) where the Generator Customer does not own the lands described as the "Lands to be Acquired

**Standard Terms and Conditions  
Generator Customer Connection and Cost Recovery Agreement**

V2012-2

for Hydro One" in Section 3.8 of Schedule "D", purchase the said lands from the registered owner(s) of same; and

(b) once the Generator Customer has title to the lands described as the "Lands to be Acquired for Hydro One" in Section 3.8 of Schedule "D", enter into an Agreement of Purchase and Sale with Hydro One substantially in the form of the Agreement of Purchase and Sale attached hereto as Schedule "I" to transfer the said lands to Hydro One:

- (i) for nominal consideration if the lands are required for Work Chargeable to Customer; or
- (ii) for consideration that is consistent with Hydro One's land acquisition policies where the lands are required for Work Not Chargeable to Customer; and

with a closing date that is not to be later than the date specified in Schedule "D" as the "Closing Date";

- (vi) where all or any part of the Work Chargeable to Customer is to be located on Crown (MNR), the Generator Customer shall obtain a Work Permit/Letter of Authority from the Ministry of Natural Resources (MNR) by no later than the date specified in Section 3.8 of Schedule "D" as the "Date Work Permit/Letter of Consent Required" to allow Hydro One to construct the Work Chargeable to Customer located on the Crown land and add same to Hydro One's Provincial Master Land Use Permit at the Generator's expense;
- (vii) approvals from pipelines and/or railway companies are required, the Generator Customer will be responsible for securing such approvals from the pipeline companies and/or railway companies listed in Section 3.8 of Schedule "D" as the "Affected Pipeline/Railway Companies" (including, but not limited to performing any necessary studies to obtain same) on Hydro One's behalf at its own expense by the Railway/Pipeline Approval Date specified in Section 3.8 of Schedule "D";
- (viii) consultations with third party encumbrancers are required, the Generator Customer shall consult with such third party encumbrancers on Hydro One's behalf at its own expense to ensure that no project delays are experienced by Hydro One. Any costs incurred by Hydro One or third party encumbrancer for any facility relocation shall be performed at the Generator Customer's expense;
- (ix) confirmation of Hydro One's rights to use an existing (Unopened) road allowance is required, the Generator Customer shall ensure and provide

written confirmation that Hydro One will have all necessary rights and permission from the municipality to construct and to access the transmission line being built by Hydro One along the unopened road allowance described as the Unopened Road Allowance Lands in Section 3.8 of Schedule "D". Any costs associated with same, including, but not limited to, maintenance, repair, insurance and liability for Hydro One's use of the unopened road allowance will be paid for by the Generator Customer.

**Events of Default**

18. Each of the following events shall constitute an "Event of Default" under the Agreement:

- (a) failure by the Generator Customer to pay any amount due under the Agreement within the time stipulated for payment;
- (b) breach by the Generator Customer or Hydro One of any term, condition or covenant of the Agreement;
- (c) the making of an order or resolution for the winding up of the Generator Customer or of its operations or the occurrence of any other dissolution, liquidation, bankruptcy or reorganization proceeding instituted by or against the Generator Customer or by or against Hydro One; and
- (d) any other Events of Default specified in Schedule "D" of the Agreement.

For greater certainty, a Dispute (as that term is defined in Section 25 hereof) will not be considered an Event of Default under the Agreement. However, a Party's failure to comply with the terms of a settlement or resolution of a dispute by the OEB will be considered an Event of Default under the Agreement.

19. In the Event of Default by the Generator Customer (other than the Event of Default specified in Subsection 18(c) of the Terms and Conditions, for which no notice is required to be given by Hydro One), Hydro One shall give the Generator Customer written notice of the Event of Default and allow the Generator Customer 30 days from the date of receipt of the notice to rectify the Event of Default, at the Generator Customer's sole expense. If such Event of Default is not cured to Hydro One's reasonable satisfaction within the 30-day period, Hydro One may, in its sole discretion, exercise the following remedy in addition to any remedies that may be available to Hydro One under the terms of the Agreement, at common law or in equity: deem the Agreement to be repudiated and, after giving the Generator Customer at least 10 days' prior written notice thereof, recover, as liquidated damages and not as a penalty, the amounts payable by the Generator