

APPENDIX 1-16: HORIZON HOLDINGS INC. SHAREHOLDERS AGREEMENT

SHAREHOLDERS AGREEMENT

Dated as of November 1, 2006

HAMILTON UTILITIES CORPORATION

- and -

ST. CATHARINES HYDRO INC.

- and -

HORIZON HOLDINGS INC.

- and -

**SUCH OTHER PERSONS AS MAY
BECOME SHAREHOLDERS IN HORIZON HOLDINGS INC.**

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Scotia Plaza, 40 King Street West
Toronto, Ontario
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SHAREHOLDERS AGREEMENT

THIS AGREEMENT made as of the 1st day of November, 2006,

BETWEEN:

HAMILTON UTILITIES CORPORATION, a corporation duly incorporated under the *Business Corporations Act* (Ontario) (hereinafter referred to as "**HUC**")

- and -

ST. CATHARINES HYDRO INC., a corporation duly incorporated under the *Business Corporations Act* (Ontario) (hereinafter referred to as "**SCHI**")

- and -

HORIZON HOLDINGS INC., a corporation duly incorporated under the *Business Corporations Act* (Ontario) (hereinafter referred to as the "**Corporation**" or "**Holdco**")

- and -

SUCH OTHER PERSONS AS MAY FROM TIME TO TIME BECOME SHAREHOLDERS IN THE CORPORATION AND PARTIES HERETO

RECITALS:

- (a) HUC and SCHI are the Shareholders of Horizon Utilities Corporation ("**Horizon**"), the electricity distribution company created pursuant to the amalgamation of Hamilton Hydro Inc. and St. Catharines Hydro Utility Services Inc. effective March 1, 2005 and HUC, SCHI and Horizon have entered into a Shareholders Agreement dated March 1, 2005 in respect of Horizon (the "**Horizon Shareholders Agreement**");
- (b) With the approval of their respective shareholders and boards of directors, HUC and SCHI intend to undertake a corporate restructuring (the "**Restructuring**") that involves: (i) incorporation of the Corporation that would be jointly owned by HUC and SCHI and which would become a holding company owning certain subsidiary companies including Affco (defined below) and, ultimately, Horizon; (ii) incorporation by the Corporation of a new entity to be named Horizon Energy Solutions Inc. ("**Affco**" or "**Horizon Energy**") which would conduct various business activities including the meter service provider business ("**MSP Business**") currently conducted by Horizon; and (iii) the transfer of shares of Horizon currently owned by HUC and SCHI to the Corporation (the "**Horizon Transfer**") which shall only be implemented when it is determined that the

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Horizon Transfer can be completed without liability for Transfer Tax, and, furthermore, subject to the approval of the OEB;

- (c) Upon the successful resolution of any Transfer Tax issues and the approval of the OEB, the Horizon Transfer will be completed, thereby making Horizon a subsidiary of the Corporation at which time it is the intention of HUC and SCHI that the Horizon Shareholders Agreement shall terminate and this Agreement shall become applicable to Horizon as a subsidiary of the Corporation.
- (d) The authorized capital of the Corporation consists of an unlimited number of Class 1 Common Shares of which 789 are issued and outstanding and an unlimited number of Class A Common Shares of which 211 are issued and outstanding;
- (e) At the date hereof all of the issued and outstanding shares of the Corporation are registered and beneficially owned as follows:

Shareholder

Holdco Shares

HUC	789 Class 1 Common Shares
SCHI	211 Class A Common Shares

- (f) At the completion of the Horizon Transfer it is expected that the issued and outstanding shares of the Corporation will be registered and beneficially owned as follows:

Shareholder

Holdco Shares

HUC	7,890 Class 1 Common Shares
SCHI	2,110 Class A Common Shares

- (g) The parties have agreed to set out in this Agreement their respective rights and obligations with respect to the management and operation of the Corporation and its Subsidiaries and the ownership of shares in the Corporation and with respect to their relationship towards each other; and
- (h) The operation and management of the Corporation and its Subsidiaries shall be based upon the general objectives and business principles set out in Section 2.1 of this Agreement.

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING AND OF THE MUTUAL COVENANTS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE 1 - INTERPRETATION

- 1.1 **Definitions:** Whenever used in this agreement unless there is something in the subject matter or context inconsistent therewith, the following terms shall have these respective meanings:

“**Acquisition Opportunity**” has the meaning given to such term in Section 11.2.

“**Additional Shareholders**” means such Persons, other than HUC or SCHI, as may from time to time become shareholders of the Corporation and Parties to this Agreement.

“**Affco Board**” means the board of directors of Horizon Energy Solutions Inc., as elected by the Shareholders from time to time in accordance with the provisions of this Agreement.

“**Affiliate Relationships Code**” means the Affiliate Relationships Code for Electricity Distributors and Transmitters issued by the OEB, as amended from time to time and any replacement code or directive.

“**Affiliated Body Corporate**” or “**Affiliate**” has the meaning set forth in the OBCA.

“**Agreement**” means this Shareholders Agreement, and includes any agreement which is supplementary to or an amendment or confirmation of this agreement (and which is entered into in accordance with this Agreement) and any schedules hereto or thereto.

“**Applicable Law**” means, collectively, all applicable federal, provincial and municipal laws, statutes, ordinances, decrees, rules, regulations, by-laws, legally enforceable policies, codes, or guidelines, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, directives, rulings or awards, and conditions of any grant of approval, permission, certification, consent, registration, authority or licence by any statutory body, self-regulatory authority or other Governmental Authority.

“**Arms’ Length**” means the same as the term “arms’ length” as used in the *Income Tax Act* (Canada), as amended from time to time.

“**Articles**” means the articles of amalgamation of the Corporation in effect on the date hereof.

“**Board**” means the board of directors of the Corporation, or of a Subsidiary of the Corporation.

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“Business Day” means any day except Saturday, Sunday or any day which is a statutory holiday in the Province of Ontario.

“Chair” means the director who is appointed chair of the Board from time to time as provided in this Agreement.

“Control” shall have the meaning set forth in the OBCA and the words **“Controlled by”**, **“Controlling”** and similar words have corresponding meanings; provided that an individual, company or corporation (the **“first-mentioned Person”**) who Controls a company or corporation (the **“second-mentioned Person”**) shall be deemed to Control a company or corporation which is Controlled by the second-mentioned Person and so on.

“Controlling Shareholder” means a Person who Controls a Shareholder if that Shareholder is a company or corporation. If a Controlling Shareholder of a Shareholder is itself a company or corporation, **“Controlling Shareholder”** shall mean the Person(s) who ultimately Control such Shareholder.

“Council” means the municipal Council at such time of Hamilton or St. Catharines or of any other municipality which may become a direct or indirect shareholder of the Corporation from time to time.

“Dividend Policy” has the meaning set forth in Section 6.6(c).

“Electricity Act” means the *Electricity Act, 1998* (Ontario), as amended from time to time and any replacement or successor legislation.

“Governmental Authority” means any government or political subdivision (including without limitation, any municipality or federal or provincial ministry) or quasi-governmental or regulatory agency, authority, board, commission, department or instrumentality of any government or political subdivision, or any court or tribunal including the IESO, OEB and OPA.

“Hamilton” means the City of Hamilton.

“Hamilton Council” means the municipal council for the City of Hamilton.

“Holdco Board” means the board of directors of the Corporation, as elected by the Shareholders, from time to time in accordance with the provisions of this Agreement.

“Horizon Board” means the board of directors of Horizon, as elected by the Shareholders, from time to time in accordance with the provisions of this Agreement.

“Horizon Shareholders Agreement” has the meaning set forth in the Recitals;

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“**IESO**” means the Ontario Independent Electricity System Operator and any successor.

“**includes**” means “includes, without limitation” and “including” means “including, without limitation”.

“**Information**” has the meaning set forth in Section 10.4.

“**Initial Business Plan**” has the meaning set forth in Section 6.6(a).

“**LDC**” means an electricity distribution corporation created pursuant to Section 142 of the Electricity Act and licensed to distribute electricity pursuant to the OEB Act.

“**Non-Selling Shareholder**” has the meaning set forth in Section 10.5(b).

“**OBCA**” means the *Business Corporations Act* (Ontario), as amended from time to time.

“**OEB**” means the Ontario Energy Board and any successor.

“**OEB Act**” means the *Ontario Energy Board Act, 1998*, as amended from time to time and any replacement or successor or legislation.

“**Offered Shares**” has the meaning set forth in Section 8.1(a).

“**OPA**” means the Ontario Power Authority and any successor.

“**Ordinary Course of Business**” means, for Holdco or any Subsidiary, the conduct of the business of Holdco or the applicable Subsidiary in the ordinary and usual course and in a manner consistent with the manner in which the business is carried on as of the date hereof, if applicable, or as may be permitted pursuant to Section 2.3 hereof as to the nature and scope of the business and shall include the acquisition of the shares, assets or business of LDC’s and related businesses and the amalgamation of Horizon with other LDCs.

“**Parties**” means the Shareholders and the Corporation and “**Party**” means any one of them.

“**Permitted Transferee**” has the meaning set forth in Section 7.3(a).

“**Person**” means any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, Governmental Authority and any other form of entity or organization.

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“Pro Rata” means in the same proportion that the number of Shares owned by a Shareholder is to all of the then issued and outstanding Shares of all classes of the Corporation.

“Prospective Purchaser” has the meaning set forth in Section 8.3.

“Purchase Notice” has the meaning set forth in Section 8.2.

“Purchase Price” has the meaning set forth in Section 8.1(a).

“Right of First Refusal Period” has the meaning set forth in Section 8.2.

“Remaining Shareholders” has the meaning set forth term in Section 8.1(b).

“Sale Notice” has the meaning set forth in Section 8.1(a).

“Selling Shareholder” has the meaning set forth in Section 8.1(a).

“Shareholder” means individually any, and **“Shareholders”** means collectively all, of HUC and SCHI and any Person to whom any Shares are transferred, or issued, in accordance with the terms of this Agreement, at any time subsequent to the date of this Agreement.

“Shares” means any authorized class of shares, voting or non-voting, of the Corporation.

“Share Purchase Price” has the meaning set forth in Section 8.3(a).

“Standstill Period” means the period from the date hereof to and including February 28, 2007.

“St. Catharines” means The Corporation of the City of St. Catharines.

“St. Catharines Council” means the municipal council for The City of St. Catharines.

“Subsidiaries” means the subsidiary corporations (as defined in the OBCA) of the Corporation and **“Subsidiary”** means any one of such Subsidiaries, and for greater certainty, as of the date hereof includes Affco and will include Horizon after completion of the Horizon Transfer.

“Subsidiary Board” means the board of directors of a Subsidiary of the Corporation, as elected by the Shareholders, from time to time in accordance with the provisions of this Agreement.

“Transfer Tax” means the tax payable pursuant to Section 94 of the *Electricity Act, 1998* (Ontario) or any similar tax or replacement or substitution thereof.

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“**Withdrawal Date**” has the meaning set forth in Section 8.4.

“**Withdrawing Shareholder**” has the meaning set forth in Section 8.2.

- 1.2 **Interpretation Not Affected by Headings:** The division of this Agreement into Articles, Sections, Subsections, Paragraphs, Subparagraphs and Clauses and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “herein”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section, Subsection, Paragraph, Subparagraph or Clause or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.
- 1.3 **Number and Gender:** Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa.
- 1.4 **Accounting Principles:** Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles.
- 1.5 **Effect of this Agreement:** To the extent that this Agreement specifies that any matters relating to the Corporation or its Subsidiaries may only be or shall be dealt with or approved by, or shall require action by the Shareholders, Hamilton Council or St. Catharines Council, the discretion and powers of the directors of the Corporation or a Subsidiary to manage and to supervise the management of the business and affairs of the Corporation or a Subsidiary with respect to such matters are correspondingly restricted. For greater certainty, the Parties agree that Sections 6.1 and 6.4 of this Agreement are intended to operate as a unanimous shareholders agreement with respect to the Corporation and its Subsidiaries, within the provisions of Section 108(2) of the OBCA.
- 1.6 **Statutes and Amendments:** Any reference in this Agreement to an agreement, or to a statute, regulation or rule promulgated under a statute or to any provision of an agreement, a statute, regulation or rule shall be a reference to the agreement, statute, regulation, rule or provision, as amended, restated, re-enacted or replaced from time to time.
- 1.7 **Schedules:** The following schedule is incorporated herein and forms part of this Agreement:

Schedule A	Valuation Method
Schedule B	Holdco Dividend Policy

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ARTICLE 2 - OBJECTIVES, GUIDING PRINCIPLES AND PERMITTED BUSINESS ACTIVITIES

2.1. **Guiding Principles and Objectives:** The Parties acknowledge and recognize the following guiding principles and objectives of the Corporation and its Subsidiaries and the intention of the Shareholders that the Corporation and its Subsidiaries be managed in a manner consistent with these guiding principles and objectives:

- (a) the addition of potential future shareholders is to be encouraged by the Corporation;
- (b) shareholder value is to be enhanced;
- (c) the Corporation and the Subsidiaries shall be governed by a board of directors with proportional representation of the Shareholders;
- (d) policies shall be established to maintain standards and sustain infrastructure through adequate investments, and in the case of Horizon, as allowed by electricity distribution rates;
- (e) service reliability levels are to be maintained at the standards of Horizon in effect immediately prior to the Horizon Transfer;
- (f) cost savings shall be obtained through economies of scale;
- (g) customer service levels of Horizon are to be maintained or improved as allowed by electricity distribution rates;
- (h) policies and programs shall be adopted that ensure the fair and equitable treatment of all employees;
- (i) union successor rights and collective agreement are to be recognized in accordance with Applicable Law; and
- (j) whenever possible, best practices of the industry are to be adopted.

2.2 **Financial Policies, Risk Management and Strategic Plan:** The Shareholders expect that the Holdco Board and any Subsidiary Board will establish policies to:

- (a) **Capital Structure** - develop and maintain a prudent financial and capitalization structure consistent with industry norms and sound financial principles;
- (b) **Returns** - enhance Shareholder value by generating a reasonable return consistent with a prudent financial and capitalization structure and, in the case of Horizon, maintaining just and reasonable electricity distribution rates;
- (c) **Risk Management** - manage all risks related to the business conducted by the Corporation or Subsidiary through the adoption of appropriate risk

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management strategies and internal controls consistent with industry norms;
and

- (d) Strategic Plan - develop a long range strategic plan for the Corporation and Subsidiaries which is consistent with the maintenance of a viable, competitive business and preserves the value of the business for the Shareholders.

2.3 Permitted Business Activities:

- (a) Except as restricted in Section 2.3(c), the Corporation and its Subsidiaries, other than Horizon, may engage in the business activities which are permitted by Applicable Law applicable to the Corporation and the Subsidiaries from time to time. In so doing, the Corporation and its Subsidiaries shall conform to all requirements of all applicable Governmental Authorities.
- (b) Except as restricted in Section 2.3(c), Horizon may engage in the business activities which are permitted by Applicable Law applicable to Horizon from time to time, including the Electricity Act and OEB Act and as the Horizon board of directors may authorize. In so doing, Horizon shall conform to all requirements of the OEB, the IESO, the OPA, and all other applicable Governmental Authorities.
- (c) Except with the unanimous consent of Shareholders given in accordance with Section 6.4, the Corporation and its Subsidiaries, including Horizon, shall not engage in the generation of electricity, telecommunication services or the ownership, leasing or operation of water or wastewater facilities.

ARTICLE 3 - IMPLEMENTATION OF THIS AGREEMENT

3.1 Carrying out of the Agreement:

- (a) The Shareholders shall at all times act and vote their Shares to carry out and cause the Corporation to carry out the provisions of this Agreement.
- (b) To the extent that each Shareholder is permitted by Applicable Law to bind its nominees to do so, the nominee directors of the Shareholder will act and vote as directors in order that the purpose, intent, and provisions of this Agreement shall be carried out.
- (c) The Corporation confirms its knowledge of this Agreement and will carry out and be bound by the provisions of this Agreement to the full extent that it has the capacity and power at law to do so.

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- 3.2 **Endorsement on Share Certificates:** Share Certificates of the Corporation and its Subsidiaries shall bear the following language either as an endorsement or on the face thereof:

“The shares represented by this certificate are subject to all the terms and conditions of an agreement made as of ● ●, 200●, a copy of which is on file at the registered office of the Corporation.”

ARTICLE 4 - DIRECTORS OF THE CORPORATION AND SUBSIDIARIES

4.1 Number and Identity of Directors:

- (a) Each Shareholder shall be entitled to nominate and elect that number of directors to the Holdco Board and any Subsidiary Board (rounding up or down to the nearest whole number) which is in the same proportion to the total number of directors of the Corporation as the number of Shares owned by that Shareholder is to the total number of Shares issued and outstanding from time to time.
- (b) The Articles of the Corporation shall provide for the Holdco Board to consist of a minimum of two (2) directors and a maximum of five (5) directors.
- (c) The initial Holdco Board shall consist of five (5) directors. In accordance with Section 4.1(a), HUC shall be entitled to nominate four (4) directors and SCHI shall be entitled to nominate one (1) director. Directors shall hold office until such time as their successors are elected by the Shareholders.
- (d) It is anticipated that the initial Holdco Board shall be chosen by the Shareholders from the existing members of the Horizon Board.
- (e) In the event that, at any time, the number of directors of the Corporation is fixed at a number less than five (5) directors with the result that the number of directors nominated by HUC to the Holdco Board is less than the total number HUC would be entitled to nominate in accordance with Section 4.1(a), then,
 - (i) HUC may at any time notify each other Shareholder that HUC wishes to fix the number of directors at five (5) directors; and
 - (ii) each other Shareholder shall, within five (5) Business Days of receipt of notice from HUC pursuant to Section 4.1(e)(i) hereof, either by resolution in writing or at a meeting of Shareholders, pass a special resolution to fix the number of directors at five (5) directors and do all acts, and things necessary to give effect to such special resolution and to elect additional nominees of HUC to the Holdco Board in order to give effect to Section 4.1(a) hereof.

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- 4.2 **Election of Directors:** The Shareholders shall elect the members of the Holdco Board and any Subsidiary Board. The Shareholders shall at all times act and vote their Shares to elect as directors of the Corporation or a Subsidiary the individuals nominated as directors, and, if required by a Shareholder, to remove such director(s).
- 4.3 **Initial Directors of the Corporation:** The initial Holdco Board shall consist of five (5) directors, all of whom shall be chosen by the Shareholders from the Horizon Board existing prior to the Horizon Transfer. These initial Directors shall hold office until such time as their successors are elected by the Shareholders.
- 4.4 **Qualification of Directors:** The Holdco Board and any Subsidiary Board should reflect a cross-section of skills and experience. In addition to sound judgment and personal integrity, the qualifications of candidates for the Holdco Board and any Subsidiary Board may include:
- (a) industry knowledge concerning electricity distribution specifically and regulated industries generally;
 - (b) business experience with businesses comparable to the Corporation or the Subsidiary, as applicable;
 - (c) financial, legal, accounting and/or marketing experience;
 - (d) experience on boards of public companies or major corporations;
 - (e) awareness of public policy issues related to the Corporation or the Subsidiary, as applicable, and the electricity distribution business generally; and
 - (f) knowledge and experience with corporate governance principles and/or risk management strategies.
- 4.5 **Chief Executive Officer as Director:** The Chief Executive Officer or, if there is no Chief Executive Officer, the President of the Corporation may be appointed as a director of the Corporation with the unanimous consent of the Shareholders given in accordance with Section 6.4.
- 4.6 **Chair:** The Chair shall be selected by the Board from among the directors and shall preside at each meeting of the Board. In the absence of the Chair, the chairman of the meeting shall be selected by the directors in attendance at such meeting.
- 4.7 **Term of Directors:**
- (a) Directors of a Board shall each be appointed for a term which may be from one (1) to three (3) years as provided in the by-laws of Corporation or the applicable Subsidiary.
 - (b) A director may be appointed for successive terms at the discretion of the Shareholder appointing such director.

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- 4.8 **Removal of Directors:** Subject to the provisions of the OBCA, each Shareholder shall be entitled in its discretion to cause any of the directors nominated by it to any Board to be removed and to nominate and have an individual elected a successor or successors, as required, by providing a direction in writing to the Corporation or the applicable Subsidiary and to the other Shareholders who shall elect such replacement director or directors. Upon the resignation or removal of a director from a Board, the Shareholder that nominated such director shall use reasonable efforts to obtain and deliver to the Corporation or the applicable Subsidiary a resignation and a release from such director in a form satisfactory to the Corporation or the applicable Subsidiary.
- 4.9 **Voting:** All matters to be determined by a Board shall be determined by a majority vote of directors at a duly convened meeting of that Board and, in case of an equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote.
- 4.10 **Meeting of Directors:**
- (a) The Board shall meet at least once each financial quarter at a time and place to be determined by the Chair. Additional meetings of the Board may be called by the Chair or any other director by notice in writing to every other director of the time, place and purpose of the meeting of the Board and the matters to be considered.
 - (b) All meetings of the Board shall, unless held by telephone or video conference, be held within the Province of Ontario.
 - (c) Any one or more of the directors may participate in a meeting of the Board by any telephonic or video device which permits all participants in the meeting to communicate with each other simultaneously and instantaneously, and such participation shall be deemed to constitute attendance at the meeting of the Board for the purpose of this Section 4.10. The Chair may determine that any meeting of the Board may be held by telephone or video conference.
 - (d) At least ten (10) Business Days prior to each meeting, each director shall be notified in writing of the time, place and purpose of the meeting of the Board and the matters to be considered.
 - (e) A director may waive notice of any meeting of the Board by an instrument in writing delivered to the Secretary of the Corporation or the applicable Subsidiary.
 - (f) Notwithstanding Section 4.9, in lieu of a meeting of the directors, the consent of the directors with respect to any matter may be evidenced by a resolution in writing (which may be in counterparts) signed by all of the directors.
- 4.11 **Quorum – Meetings of Directors**

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- (a) A quorum for a meeting of the Board shall consist of at least two-thirds ($\frac{2}{3}$) of the total number of elected directors, (rounded up to the next whole number) (provided that, so long as HUC and SCHI are the only Shareholders of the Corporation, at least one (1) director who is a nominee of HUC and at least one (1) director who is a nominee of SCHI must be present at all meetings of the Board of the Corporation or any Subsidiary).
 - (b) If a quorum of directors is not present within thirty (30) minutes after the time appointed for a meeting of the Board, the meeting shall be adjourned to a date not less than five (5) and not more than fifteen (15) Business Days subsequent to the date originally set for the meeting, as the directors present at the meeting may determine.
 - (c) At least two (2) Business Days prior written notice shall be provided to all of the directors of the date for the meeting adjourned pursuant to Section 4.11(b).
 - (d) If a quorum is not present at such adjourned meeting, the Secretary of the Corporation or of the applicable Subsidiary, as the case may be, shall forthwith call a further adjourned meeting of the Board, to be held not later than five (5) Business Days after the previously adjourned meeting was to be held and shall provide at least two (2) Business Days prior written notice thereof to the Shareholders. The Shareholders shall cause their respective nominee directors to attend, (or shall remove their nominee directors and nominate directors to be elected as replacement directors in accordance with Section 4.8 and cause such replacement directors to attend), the further adjourned meeting.
- 4.12 **Vacancies:** In the event of any vacancy occurring on a Board by reason of the death, disqualification, inability to act or resignation of any director (the “**Former Director**”), the Shareholder entitled to nominate the Former Director shall nominate another individual to replace the Former Director in order to fill such vacancy as soon as reasonably possible, and the Shareholders shall vote their Shares to elect such nominee accordingly.
- 4.13 **Insurance:** The Corporation or applicable Subsidiary shall acquire and maintain insurance coverage for the directors and officers of the Corporation as the Board may determine from time to time. In the event that such insurance coverage ceases to be available to the directors for any reason, each Shareholder shall be responsible for insuring its own nominees.
- 4.14 **Auditor:** KPMG shall be appointed as the initial auditor of the Corporation and shall hold office until such time as the Shareholders select a replacement.
- 4.15 **Corporate Governance Matters:** The Board shall supervise the management of the business and affairs of the Corporation or applicable Subsidiary and, in so doing, shall act honestly and in good faith with a view to the best interests of the Corporation or Subsidiary and each director shall exercise the same degree of care, diligence and

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skill that a reasonably prudent person would exercise in comparable circumstances. In addition, the Shareholders expect the Board to observe substantially the same standards of corporate governance as may be established from time to time by the Toronto Stock Exchange or securities regulators in Canada for publicly traded corporations with such modifications as may be necessary to reflect the fact that the Corporation or Subsidiary is not a publicly traded corporation.

4.16 **Board Committees:** The Holdco Board and Subsidiary Board may establish committees at its discretion. The Shareholders anticipate that the Horizon Board will establish at least the following committees:

- (a) Audit and Finance Committee to review financial results and establish risk management policies;
- (b) Human Resources and Governance Committee to determine and review human resources policies and corporate governance matters including senior management compensation; and
- (c) Nominating Committee to identify, evaluate and recommend potential candidates for the Horizon Board to the Holdco Board.

4.17 **Role of Nominating Committees:** The Shareholders shall consider candidates for the Holdco Board and any Subsidiary Board nominated by the nominating committee of a Board if applicable (the “**Nominating Committees**”), and approved by the Holdco Board, but shall not be obliged to select such candidates. It is expected that the Nominating Committee of any Board will develop a process to identify and evaluate potential Board candidates in order to recommend a slate of qualified candidates for that Board.

ARTICLE 5 - DIRECTORS OF HORIZON AND HORIZON ENERGY

5.1 **Number of Directors of Horizon:**

- (a) The Articles of Horizon shall provide for the Horizon Board to consist of a minimum of two (2) directors and a maximum of ten (10) directors.
- (b) After the completion of the Horizon Transfer, the Horizon Board shall consist of ten (10) directors. In accordance with Section 4.1(a), HUC shall be entitled to nominate eight (8) directors and SCHI shall be entitled to nominate two (2) directors. Directors shall hold office until such time as their successors are elected by the Shareholders.
- (c) In the event that, at any time, the number of directors is fixed at a number less than ten (10) directors with the result that the number of directors nominated by HUC to the Horizon Board is less than the total number HUC would be entitled to nominate in accordance with Section 4.1(a), then,

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- (i) HUC may at any time notify each other Shareholder that HUC wishes to fix the number of directors at ten (10) directors; and
- (ii) each other Shareholder shall, within five (5) Business Days of receipt of notice from HUC pursuant to Section 5.1(c)(i) hereof, either by resolution in writing or at a meeting of Shareholders, pass a special resolution to fix the number of directors at ten (10) directors and do all acts, and things necessary to give effect to such special resolution and to elect additional nominees of HUC to the Horizon Board in order to give effect to Section 4.1(a) hereof.

5.2 **Affiliate Relationships Code:** The composition of the Horizon Board shall comply with the provisions of the Affiliate Relationships Code unless an exemption from compliance applicable to Horizon has been provided by the OEB and is in effect.

5.3 **Number of Directors of Horizon Energy :**

- (a) The Articles of Affco shall provide for the Affco Board to consist of a minimum of two (2) directors and a maximum of five (5) directors.
- (b) The initial Affco Board shall consist of five (5) directors. In accordance with Section 4.1(a), HUC shall be entitled to nominate four (4) directors and SCHI shall be entitled to nominate one (1) director. Directors shall hold office until such time as their successors are elected by the Shareholders.
- (c) It is anticipated that the initial Affco Board shall be chosen by the Shareholders from the existing members of the Horizon Board.

ARTICLE 6 - APPROVAL OF CERTAIN CORPORATE ACTIONS

6.1 **Unanimous Approval by Councils:** Subject to Section 6.2, unless first approved by the respective Council for each of Hamilton and St. Catharines, no action shall be taken by the Corporation or any Subsidiary with respect to any of the following matters:

- (a) changing the name of the Corporation or any Subsidiary unless such change results in a name that is non-geographic or otherwise begins with the word "Horizon"; changing or removing any restriction on the business of the Corporation or any Subsidiary; creating new classes of shares of the Corporation or any Subsidiary other than for the purposes of an internal reorganization where the shares are issued to an Affiliate of the Corporation; or in any other manner to amend the Articles or make, amend or repeal any by-law of the Corporation or any Subsidiary;
- (b) amalgamating the Corporation or any Subsidiary with any other corporation(s) other than amalgamations which may, under the OBCA, be approved by a resolution of directors;

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- (c) the institution of proceedings for any winding up, arrangement or dissolution of the Corporation or any Subsidiary;
- (d) an application to continue the Corporation or any Subsidiary as a corporation under the laws of another jurisdiction;
- (e) issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class, of the Corporation or any Subsidiary other than for the purposes of an internal reorganization where the shares are issued to an Affiliate of the Corporation;
- (f) redeem or purchase any outstanding Shares of the Corporation or any Subsidiary other than for the purposes of an internal reorganization of the share capital of the Corporation or its Affiliates;
- (g) acquire any electricity distribution business outside of the municipal boundaries of Hamilton or St. Catharines;
- (h) dispose, lease or sell any part of the business of the Corporation or a Subsidiary which would have a financial impact greater than 25% of the book value of the Corporation and its Subsidiaries on a consolidated basis as at the last completed financial year end;
- (i) any change in the Dividend Policy of the Corporation approved by the Shareholders pursuant to Section 6.6 of this Agreement;
- (j) any amendment to the provisions of Article 4 or 5 of this Agreement regarding proportional representation of the Shareholders on any Board or the rights of Shareholders to nominate members of any Board; and
- (k) any sale, transfer or other disposition by the Corporation of any of the shares of any Subsidiary other than for the purposes of an internal reorganization where the shares are transferred to an Affiliate of the Corporation.

6.2 **Additional Municipally-Owned Shareholders:** In the event that municipalities in addition to Hamilton and St. Catharines become direct or indirect Shareholders of the Corporation, the matters listed in Section 6.1 shall require approval of the Councils applicable to the Shareholders in a manner to be determined by the Parties consistent with the guiding principles of the Corporation as described in Section 2.1 of this Agreement.

6.3 **Approval by Affected Council:** The sale of any of the Shares of the Corporation owned by HUC or SCHI must first be approved by Hamilton Council in the case of a sale by HUC or by St. Catharines Council in the case of a sale by SCHI and a copy of such approval shall be provided by HUC or SCHI, as applicable, to the Secretary of the Corporation.

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- 6.4 **Approval by Shareholders:** Subject to Section 6.5, unless first approved by an unanimous resolution of Shareholders, either adopted at a special meeting of the Shareholders called for that purpose or evidenced by a resolution in writing signed by all of the Shareholders, no action shall be taken by the Corporation or any Subsidiary with respect to any of the following matters:
- (a) dispose, lease or sell any part of the business of the Corporation or any Subsidiary which would have a financial impact greater than 15% of the book value of the Corporation and its Subsidiaries on a consolidated basis as at the last completed financial year end;
 - (b) entering into any partnership, joint venture or other business venture that would involve the expenditure or investments of funds by the Corporation or any Subsidiary outside of the Ordinary Course of Business or that would change the status of the Corporation or any subsidiary for taxation purposes, under the Electricity Act or the *Income Tax Act* (Canada), *Corporations Tax Act* (Ontario) or other Applicable Law;
 - (c) any change in the nature of the business of the Corporation or any Subsidiary, including Horizon, that would involve directly or indirectly the generation of electricity, telecommunications services, or the ownership, leasing or operation of water or wastewater facilities or any business activity that is not specifically authorized by the OEB Act or other Applicable Law;
 - (d) the borrowing of funds outside of the Ordinary Course of Business; and
 - (e) any capital expenditure outside of the Ordinary Course of Business exceeding the amount of \$100,000 in any financial year of the Corporation or applicable Subsidiary.
- 6.5 **Additional Shareholders:** In the event that Persons become Shareholders of the Corporation in addition to HUC and SCHI, the matters listed in Section 6.3 shall require approval of the Shareholders in a manner to be determined by the Parties consistent with the guiding principles of the Corporation as described in Section 2.1 of this Agreement.

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6.6 Initial Business Plan and Dividend Policy:

- (a) As at the date of the Horizon Shareholders Agreement, the Shareholders have approved the first business plan for Horizon (the “**Initial Business Plan**”) which is a three (3) year business plan and includes capitalization and financing policies for Horizon. Should the Horizon Transfer occur during any of the years that are the subject of the Initial Business Plan, then the Corporation shall provide to the Shareholders, at the end of each financial year that is the subject of the Initial Business Plan, a written report that compares Horizon’s actual results for such year to the Initial Business Plan for that year.
- (b) The Corporation shall, in each financial year following the Horizon Transfer, present an updated business plan for Horizon to the Shareholders for the information of the Shareholders. For greater certainty, subsequent business plans shall not require the approval of the Shareholders.
- (c) As at the date of this Agreement, the Shareholders have approved a policy (a copy of which is attached as Schedule B to this Agreement) (the “**Dividend Policy**”) concerning the declaration and payment of dividends by the Corporation on its issued and outstanding Shares from time to time.

ARTICLE 7 - RESTRICTIONS ON SHARE TRANSFERS

7.1 Standstill Period - Restricted Sales of Shares:

- (a) No Shareholder may sell all or any portion of its Shares without the prior written consent of all of the other Shareholders during the Standstill Period. After the Standstill Period has expired, a Shareholder may only sell, transfer, assign or otherwise dispose of the whole or any part of its Shares in accordance with this Agreement.
- (b) If the Horizon Transfer is completed prior to the expiry of the Standstill Period then Holdco may not sell all or any portion of its shares of Horizon without the prior written consent of all of the other Shareholders during the Standstill Period. After the Standstill Period has expired, Holdco may only sell, transfer, assign or otherwise dispose of the whole or any part of its Horizon shares in accordance with this Agreement

- 7.2 **Agreement Binding on Transferees:** No Shares of the Corporation or any Subsidiary shall be effectively issued, sold, assigned, transferred, disposed of, or conveyed by a Shareholder to any Person except in accordance with this Agreement and until the proposed transferee or purchaser executes and delivers to the Parties hereto an agreement to the same effect as this Agreement and any further agreement with respect to the Corporation or Subsidiary to which the Shareholders are then, or are then required to be, a party. Upon the proposed transferee or purchaser so doing,

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such agreements shall enure to the benefit of and be binding upon all of the Parties to them as if all had executed and delivered the same agreements at the same time.

7.3 Permitted Transferees:

- (a) Subject to the restrictions on transfer or sale in Section 10.5 hereof, a Shareholder may, without the consent of the other Shareholders, transfer any or all of the Shares owned by it to any Person (hereinafter in this Section 7.3 referred to as a “**Permitted Transferee**”) provided that the Permitted Transferee is wholly-owned by such Shareholder or, if such Shareholder is a corporation, the Permitted Transferee is wholly-owned by the Controlling Shareholder of such Shareholder and provided that prior to any such transfer:
 - (i) the Permitted Transferee shall undertake in writing, by signing a counterpart of this Agreement, to be bound by the terms and conditions of this Agreement; and
 - (ii) the Controlling Shareholder of such Permitted Transferee represents, warrants, and undertakes in writing that it shall wholly own such Permitted Transferee for as long as such Permitted Transferee holds Shares of the Corporation.
- (b) In the event that the transferee of the Shares ceases to be a Permitted Transferee for the purposes of this Section 7.3 then the Shares shall be promptly transferred back to the Shareholder.

ARTICLE 8 - RIGHT OF FIRST REFUSAL

8.1 First Right of Refusal:

- (a) Any Shareholder (hereinafter in this Article 8 referred to as the “**Selling Shareholder**”) who desires to transfer or sell all or any portion of its Shares (hereinafter in this Article 8 referred to as the “**Offered Shares**”) other than to a Permitted Transferee, shall give notice of such proposed sale (hereinafter in this Article 8 referred to as the “**Sale Notice**”) to the Corporation and to the other Shareholders and shall set out in the Sale Notice the terms upon which and the price at which it desires to sell the Offered Shares (such price being hereinafter in this Article 8 referred to as the “**Purchase Price**”). A Shareholder selling Shares under this Section 8.1 must sell all, and not less than all, of its Offered Shares, unless the other Shareholders otherwise agree.
- (b) Upon the Notice being given, the other Shareholders (hereinafter in this Article 8 referred to as the “**Remaining Shareholders**”) shall have the right to purchase all, but not less than all, of the Offered Shares for the Purchase Price on a Pro Rata basis.

- 8.2 **Exercise of Right of First Refusal:** The Remaining Shareholders shall have the option, exercisable by giving written notice of the exercise of such option (hereinafter

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in this Article 8 referred to as the “**Purchase Notice**”) to the Selling Shareholder and the Corporation within thirty (30) days (hereinafter in this Article 8 referred to as the “**Right of First Refusal Period**”) subsequent to the date of deemed receipt, pursuant to Section 12.1 hereof, by the Remaining Shareholders of the Sale Notice, to purchase all but not less than all of the Offered Shares, on a Pro Rata basis, determined on the basis of the ratio of the number of Shares owned by each Remaining Shareholder to the number of Shares owned by all Remaining Shareholders at the Purchase Price and the terms set forth in the Sale Notice. If all the Offered Shares have not been purchased by the Remaining Shareholders then the remaining Offered Shares shall be offered to those Remaining Shareholders which have purchased Offered Shares on a Pro Rata basis until all of the Offered Shares have been purchased. The closing of the sale of the Offered Shares shall occur on the first Business Day following the expiry of the sixty (60) day period following the date of deemed receipt, pursuant to Section 12.1 hereof, by the Remaining Shareholders and the Corporation of the Purchase Notice or, if the completion of such sale requires the prior approval of or notice to a third Person or Governmental Authority under Applicable Law or any instrument or agreement, within thirty (30) Business Days after receipt of such approval or required period of notice or on such later date as may be agreed by the Parties.

8.3 **Sale of Shares:** In the event that the Remaining Shareholders do not exercise their right of first refusal pursuant to Section 8.2, the rights of the Remaining Shareholders, subject as hereinafter provided, to purchase the Offered Shares shall forthwith terminate and the Selling Shareholder, subject to the restrictions on transfer or sale specified in Section 10.5 hereof, may sell the Offered Shares to any Person (the “**Prospective Purchaser**”) within ninety (90) days after the termination of the Right of First Refusal Period, for a price not less than the Purchase Price and on other terms no more favourable to the Prospective Purchaser than those set forth in the Sale Notice, provided that the Prospective Purchaser agrees prior to such transaction to be bound by this Agreement and to become a party hereto in place of the Selling Shareholder with respect to the Offered Shares. If the Offered Shares are not sold within such ninety (90) day period, or, if the completion of such sale requires the prior approval of or notice to a third Person or Governmental Authority under Applicable Law or any instrument or agreement, within thirty (30) Business Days after receipt of such approval or any required period of notice, on such terms, the rights of the Remaining Shareholders pursuant to Sections 8.1 and 8.2 shall again take effect and so on from time to time.

8.4 **Moratorium on Sales While Purchase Offer Outstanding:** Once a Shareholder gives a Sale Notice pursuant to Section 8.1 hereof, no other Shareholder shall be entitled to give a Sale Notice with respect to Shares until such time as the Offered Shares are either sold to the Remaining Shareholders, or a Prospective Purchaser, as the case may be, in accordance with the terms of this Article 8 or the sale of such Shares to the Prospective Purchaser does not occur within the time limits prescribed in Section 8.3. No Shareholder may proceed with any sale of any of the Shares owned by it without complying with the relevant provisions of this Agreement.

ARTICLE 9 - PURCHASE OF SHARES ON DEEMED WITHDRAWAL

9.1 Deemed Withdrawal from the Corporation:

- (a) Subject to 9.1(b), for the purposes of this Article 9, a Shareholder shall be deemed to withdraw from the Corporation on that date when such Shareholder,
 - (i) or its Controlling Shareholder: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar Applicable Law for the protection of creditors, including, the *Bankruptcy and Insolvency Act* (Canada) and the *Companies Creditors Arrangement Act* (Canada), the *Municipal Affairs Act* (Ontario) or other statute applicable to insolvent municipalities or has such petition filed against it and such petition is not withdrawn or dismissed for sixty (60) days after such filing; (ii) otherwise becomes bankrupt or insolvent (however evidenced); or (iii) is unable to pay its debts as they fall due;
 - (ii) fails, refuses or neglects to conform to any of the terms and conditions of this Agreement, and fails to remedy any such default within thirty (30) days of the deemed receipt, pursuant to Section 12.1 hereof, of a written notice from any other Shareholder giving details of such default; or
 - (iii) has all or any portion of its Shares of the Corporation realized upon by an encumbrancer.
- (b) The Shareholders may unanimously agree to waive the provisions of this Article 9 with respect to any Shareholder that would otherwise have been deemed to withdraw from the Corporation pursuant to Section 9.1(a).

- 9.2 Purchase of Shares on a Shareholder's Withdrawal from the Corporation:** In the event that a Shareholder is deemed to have withdrawn from the Corporation pursuant to the provisions of Section 9.1(a) hereof and the Shareholders have not agreed to waive the application of this Article 9 in accordance with Section 9.1(b), the Corporation irrevocably agrees to purchase, on the expiry of the one hundred and fifty (150) day period following the occurrence of such event, all and not less than all of the Shares of the Shareholder which is deemed to have withdrawn from the Corporation (hereinafter in this Section 9.2 referred to as the "**Withdrawing Shareholder**") at the Share Purchase Price. The closing of the sale of the Shares of the Withdrawing Shareholder to the Corporation shall take place at the offices of the Corporation at the address designated in Section 12.1 hereof at 10:00 in the morning (Toronto time) on the first Business Day following the expiry of the aforesaid one hundred and fifty (150) day period. The Share Purchase Price, determined pursuant

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to Section 9.4 hereof, shall be paid at such closing in Canadian dollars. In the event that the Corporation is not, at the time of such purchase of Shares, capable of fulfilling its obligations to pay for such Shares, either because it cannot do so in compliance with the OBCA, or other Applicable Law to the same effect, the sale of such Shares to the Corporation shall be completed with the balance of the Share Purchase Price for such Shares to be paid by the Corporation as soon as it is lawfully able to do so.

9.3 Sale of Shares on Deemed Withdrawal from the Corporation:

- (a) Upon a Shareholder being deemed to have withdrawn from the Corporation pursuant to the provisions of Section 9.1(a) hereof, such Shareholder hereby irrevocably offers to sell all of its Shares to the Corporation at a price per Share (hereinafter in this Article 9 the “**Share Purchase Price**”) determined in the manner provided in Section 9.4 hereof and Schedule A hereto.
- (b) In all of the circumstances provided in Section 9.1(a), the remaining Shareholders shall have the right to require that the Corporation assign to them the right or obligation of the Corporation to purchase any or all of the Shares of a Shareholder deemed to have withdrawn from the Corporation as aforesaid and, pursuant to such assignment, the remaining Shareholders shall have the right to purchase such Shares, provided that in the opinion of tax counsel to the Corporation, the Withdrawing Shareholder will suffer no significant prejudice from an income tax perspective as a result of such Shares being purchased by the remaining Shareholders rather than by the Corporation.
- (c) In the event that the remaining Shareholders purchase such Shares, they shall be entitled to purchase them on a Pro Rata basis in proportion to their respective holdings of Shares or in any other proportion as they may choose, and the provisions of Section 8.2 of this Agreement shall apply *mutatis mutandis* provided however, that no Shareholder shall be obliged to purchase any such Shares.

9.4 **Share Purchase Price Determination:** The Share Purchase Price for the purposes of this Article 9 shall mean the fair market value of each Share as at the financial year end of the Corporation immediately preceding the date (hereinafter in this Article 9 (the “**Withdrawal Date**”) on which a Shareholder is deemed to withdraw from the Corporation as provided in Section 9.1(a). Such Share Purchase Price shall be determined in the manner provided in Schedule A hereto within the one hundred and twenty (120) days immediately following the Withdrawal Date.

9.5 **Cancellation of Shares:** Upon the acquisition of any Shares by the Corporation pursuant to this Article 9 of this Agreement, such Shares shall be cancelled and shall not be reissued.

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**ARTICLE 10 - PROVISIONS APPLICABLE TO SALES OF SHARES PURSUANT
TO THIS AGREEMENT**

- 10.1 **Application to All Sales:** Except as, or in addition to what, may otherwise be provided in this Agreement, this Article 10 shall apply to any sale of Shares effected pursuant to the provisions of this Agreement.
- 10.2 **Closing:** The closing of all sales of Shares effected pursuant to this Agreement shall take place at the offices of the Corporation at the address designated in Section 12.1 hereof, at 10:00 in the morning (Toronto time) on the date stipulated, either pursuant to the provisions hereof or pursuant to any agreement executed in connection with any such sale, as the date on which such closing is to occur.
- 10.3 **Cancellation of Share Certificates:** The President of the Corporation, or such other officer as may be designated by resolution of the directors of the Corporation shall attend all closings of any such sale of Shares and shall deliver to the Corporation for cancellation share certificates evidencing Shares which are to be sold and shall take custody of new share certificates, if any, issued in replacement of such cancelled share certificates so that at all times the Corporation shall have custody of share certificates representing all of the Shares.
- 10.4 **Resignation of Seller's Nominees:** At the closing of any sale of Shares, the Shareholder selling its Shares shall cause to be delivered to the Corporation signed resignations of its nominees as directors of the Corporation and any Subsidiary, and shall assign and transfer to the purchaser of such Shares, all of its right, title and interest in such Shares.
- 10.5 **Transfer Taxes and Other Tax Impacts of a Proposed Sale:**
- (a) A Shareholder selling Shares to any Person agrees that, if permitted by the Electricity Act and any other Applicable Law to claim any credit against transfer tax payable by it pursuant to Subsection 94(1) of the Electricity Act, such Shareholder will claim only such proportion of the credits available in respect of any taxation year of the Corporation pursuant to Subsection 94(4) that is pro rata to: (i) the number of Shares it holds at such time in the Corporation to all outstanding Shares of the Corporation; and (ii) the number of days in such taxation year in which it holds such Shares.
 - (b) In the event that any proposed sale or transfer of Shares would result or results in tax or an amount in respect of payments in lieu of tax being exigible from the Corporation or any Shareholder other than the Shareholder selling its Shares (the "**Non-Selling Shareholder(s)**"), whether transfer tax, income tax, capital tax or other tax (and including any taxes or related expenses resulting from the Corporation no longer being tax exempt pursuant to Section 149(1)(d.6) of the *Income Tax Act* (Canada)), all such tax and expenses shall be an expense to the selling Shareholder which shall indemnify the Corporation with respect thereto, and notwithstanding any other provision

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of this Agreement to the contrary, the proposed sale or transfer shall not be completed unless all such tax and expenses of the Corporation or any Non-Selling Shareholder are first paid in full by the Shareholder which wishes to sell its Shares.

- (c) A Shareholder selling Shares to any Person shall, as required by the Electricity Act or any other Applicable Law, pay all transfer taxes payable under the Electricity Act in respect of such sale such that the sale shall not be void.

10.6 Additional Provisions: Loans, Guarantees: In conjunction with any sale of all Shares:

- (a) if the Shareholder selling all of its Shares is indebted to the Corporation, the Corporation may, at its option, require such Shareholder to repay in full all indebtedness which it owes to the Corporation on or before the closing of such sale of Shares;
- (b) if the Corporation is indebted to the Shareholder selling all of its Shares, the Shareholder selling Shares may, at its option, require the Corporation to repay in full all indebtedness which it owes to such Shareholder on or before the closing of such sale of Shares; and
- (c) if the Shareholder selling all of its Shares has provided a guarantee, letter of credit, security or other financial assistance to the Corporation, the Corporation shall use its commercially reasonable efforts to replace or release such guarantee, letter of credit, security or other financial assistance within ninety (90) days after the closing of such sale of Shares.

ARTICLE 11 - NON-COMPETITION AND CONFIDENTIALITY

11.1 Non-Competition: During the period commencing as of the date of this Agreement and terminating on the expiry of the twelve (12) months following the date on which a Shareholder:

- (a) is deemed to withdraw from the Corporation, pursuant to Section 9.1(a) of this Agreement; or
- (b) sells all of its Shares in accordance with this Agreement,

such Shareholder shall not, and shall use its commercially reasonable efforts to ensure that its Controlling Shareholder does not, individually or in partnership or in conjunction with any Person, as principal, agent, shareholder, consultant or otherwise, directly or indirectly, carry on or be engaged in, or advise, acquire an interest in, or permit its name or any part thereof to be used or employed by an association, syndicate or corporation engaged in or concerned with or interested in, the business of distributing electricity as regulated by the OEB unless: (i) the consent of the other Shareholders has first been obtained, which consent will not be unreasonably

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withheld, conditioned or delayed; or (ii) the interest of such Shareholder represents a portfolio investment of less than a five percent (5%) equity interest.

- 11.2 **Acquisition of Other LDCs:** In the event that the Corporation has the opportunity to acquire (the “**Acquisition Opportunity**”) another LDC or its assets or all or a part of the electricity distribution business or assets of Hydro One Networks Inc. or any of its Affiliated Bodies Corporate or of any other Person and the Corporation has declined to pursue such opportunity, as evidenced by a specific resolution of the Board to such effect, then any Shareholder shall thereafter be free to pursue such Acquisition Opportunity and, in so doing, shall not be considered to be in breach of Section 11.1 hereof.
- 11.3 **Necessary Covenants:** Each Shareholder hereby confirms that all restrictions in this Article 11 are reasonable and valid, that they are necessary for the protection of the Corporation’s legitimate interests and that they do not unduly affect their earning capacity, and waive all defences to the strict enforcement thereof.
- 11.4 **Confidential Information:** The Shareholders hereby acknowledge that they have had and will have access to confidential information and trade secrets concerning the business of the Corporation and the Corporation’s Affiliated Bodies Corporate, if any, and their customers and suppliers (hereinafter in this Article 11 referred to as the “**Information**”) and they each undertake and agree that they shall not, and their Controlling Shareholder shall not, directly or indirectly, use, disclose or divulge to any Person or other entity any of the Information otherwise than in the ordinary course of business of the Corporation, and its Affiliated Bodies Corporate and as may be required by Applicable Law or order of any Governmental Authority.
- 11.5 **Survival of Obligations:** The obligations and covenants in this Article 11 shall survive the termination of this Agreement.

ARTICLE 12 - NOTICES

- 12.1 **Notices:** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by facsimile or other means of electronic communication or by hand-delivery as provided below. Any such notice or other communication, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand, shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this Section 12.1. Notices and other communications shall be addressed as follows:

- (a) in the case of SCHI:

St. Catharines Hydro Inc.
P.O. Box 3083, 340 Vansickle Road

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St. Catharines, Ontario
L2R 6R8

Attention: President
Fax No.: (905) 684-2874

- (b) in the case of HUC:

Hamilton Utilities Corporation
55 John Street North
Hamilton, Ontario
L8R 3M8

Attention: Corporate Secretary
Fax No.: (905) 522-0119

- (c) in the case of the Corporation:

Horizon Holdings Inc.
55 John Street North
Hamilton, Ontario
L8R 3M8

Attention: Corporate Secretary
Fax No.: (905) 522-0119

Notwithstanding the foregoing, any notice or other communication required or permitted to be given by any party pursuant to or in connection with any arbitration procedures contained in this Agreement or in any Schedule to this Agreement may only be delivered by hand.

ARTICLE 13 - DISPUTE RESOLUTION

- 13.1 **Disputes:** Each Shareholder shall appoint one or more representatives who shall be responsible for administering this Agreement on its behalf and for representing its respective interests in disputes relating to this Agreement. Any dispute between Shareholders relating to this Agreement that is not resolved between such representatives within ten (10) Business Days of a date that a Party notifies the other Party of such dispute shall be referred by the Parties' representatives in writing to the senior management of each Shareholder for resolution. Such senior management shall use good faith efforts to resolve the dispute for a period of up to ten (10) Business Days.
- 13.2 **Arbitration:** If agreed to by all parties to a dispute that is not resolved by the procedure set forth in Section 13.1 above, such dispute may be referred to and resolved by arbitration by a single arbitrator in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), subject to the following modifications and additions:

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- (a) The arbitration shall take place in the Province of Ontario, and shall be conducted in English;
- (b) The arbitration shall be conducted by a single arbitrator having no financial, business or personal interest in the outcome of the arbitration. The arbitrator shall be appointed jointly by agreement of the parties to such dispute. In the event the parties to such dispute are unable to agree on the appointment of the arbitrator within ten (10) days after notice of a demand for arbitration is given by a party and agreed to by the other parties to such dispute, then the arbitrator shall be selected pursuant to the provisions of the *Arbitration Act, 1991* (Ontario).
- (c) The arbitrator shall have the authority to award any remedy or relief that a court could order or grant in accordance with this Agreement including, without limitation, specific performance of any obligation, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process.
- (d) The arbitral award shall be in writing, stating the reasons for the award and be final and binding on the parties to such dispute with no rights of appeal.

ARTICLE 14 - MISCELLANEOUS

- 14.1 **Termination:** This Agreement shall terminate upon (a) the written agreement of all the Parties hereto to this effect, (b) the bankruptcy, receivership, or dissolution of the Corporation, or (c) the ownership of all the Shares of the Corporation, excluding any Subsidiary, by one Shareholder.
- 14.2 **Successors and Assigns:** This Agreement shall be binding upon, and enure to the benefit of, the Parties hereto and their respective successors and permitted assigns.
- 14.3 **Assignment:** Except as specifically provided in this Agreement, none of the Parties hereto may assign its rights or obligations under this Agreement without the prior written consent of all of the other Parties hereto.
- 14.4 **Time is of the Essence:** Time shall be the essence of this Agreement in all respects.
- 14.5 **Further Assurances:** Each Party hereto shall promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and matters in connection with this Agreement that the other Parties may reasonably require, for the purposes of giving effect to this Agreement.
- 14.6 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or telecopied form and the Parties shall accept any signatures received by a receiving telecopy machine as original signatures of the Parties; provided, however, that any Party providing its signature in such manner shall

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promptly forward to the other Parties an original of the signed copy of this Agreement which was so telecopied.

14.7 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable herein.

14.8 **Amendments and Waivers:**

- (a) Subject to Section 14.8(b), no amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all of the Parties hereto.
- (b) In the event that Persons other than or in addition to HUC and SCHI become Shareholders of the Corporation, amendments to this Agreement or the termination of this Agreement pursuant to Section 14.1(a) hereof, shall require the approval of the Parties on such basis as may be determined by the Parties consistent with the guiding principles of the Corporation as described in Section 2.1.
- (c) No waiver of any breach of any provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.

14.9 **Severability:** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day first above written.

**HAMILTON UTILITIES
CORPORATION**

By: _____


John Basilio
Interim President

By: _____


Marjorie Richards
Vice-President, Corporate Services

ST. CATHARINES HYDRO INC.

By: _____


Robert Marshall
Chair of the Board

By: _____

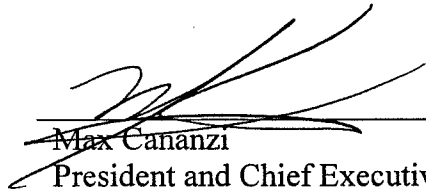
John Kerklaan
President

HORIZON HOLDINGS INC.

By: _____


Robert Dolan
Chair of the Board

By: _____


Max Cananzi
President and Chief Executive
Officer

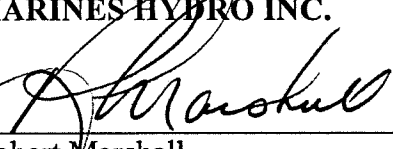
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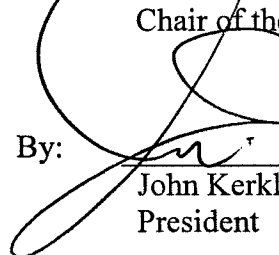
**HAMILTON UTILITIES
CORPORATION**

By: _____
John Basilio
Interim President

By: _____
Marjorie Richards
Vice-President, Corporate Services

ST. CATHARINES HYDRO INC.

By:  _____
Robert Marshall
Chair of the Board

By:  _____
John Kerklaan
President

HORIZON HOLDINGS INC.

By: _____
Robert Dolan
Chair of the Board

By: _____
Max Cananzi
President and Chief Executive
Officer

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SCHEDULE A

VALUATION METHOD

In this Schedule, the vendor and the purchaser of the Shares being sold pursuant to Article 9 of this Agreement are called the “Vendor” and the “Purchaser”, respectively.

Negotiation. If the value of the Shares must be established pursuant to any provision of this Agreement, then the Vendor and the Purchaser shall negotiate honestly and in good faith to agree upon the fair market value of the Shares.

Failure to Agree. If the Vendor and the Purchaser do not agree upon the fair value of the Shares on or before the 20th Business Day after the date on which the obligation to sell or purchase Shares arises under this Agreement, then the value of the Shares shall be determined in accordance with the following provisions:

- (a) the Purchaser shall by notice to the Vendor nominate three independent business valuers each of whom deals at Arm’s Length with the Purchaser and has experience in valuing businesses similar to the business carried on by the Corporation; the notice must be accompanied by a *curriculum vitae* of each business valuator containing the following information concerning the nominee:
 - (i) educational background and professional qualifications;
 - (ii) prior business valuation experience, including details of the nature of the business valued and the methodology used; and
 - (iii) the business valuation principles that the valuator proposes to use to determine the fair value of the Shares.
- (b) The Vendor shall select one of the three business valuers nominated by the Purchaser by notice to be given to the Purchaser within two Business Days after the day on which the Vendor receives the nomination notice, failing which, the Purchaser may select one of the business valuers. The business valuator so selected shall be the “Valuator” for the purposes of this Agreement and shall proceed to determine the fair value of all of the Shares being sold in accordance with the provisions of this Schedule A and Article 9.

Valuation by Valuator. The Valuator agreed upon or selected in accordance with this Schedule A to determine the fair value of the Shares being sold shall act as a business valuator and not as an arbitrator or umpire. The Valuator shall apply such business valuation principles as the Valuator deems appropriate. The Valuator may consult such other expert valuers as it considers advisable. The fair market value of the Shares shall be determined without regard for any restrictions applying to the transfer of Shares. The fees and disbursements of the Valuator shall be borne equally by the Vendor and the Purchaser.

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Valuation Conclusive. The determination of the value of the Shares being sold pursuant to this Agreement in accordance with this Schedule A, whether based upon the agreement of the Vendor and the Purchaser or the determination by the Valuator, shall be conclusive and binding upon the Vendor and the Purchaser, and there shall be no appeal from the determination.

SCHEDULE B

HOLDCO DIVIDEND POLICY

The following will represent the dividend policy of Horizon Holdings Inc. (“Holdco”) until such time as Phase 2 of the Restructuring has occurred, after which this dividend policy will be replaced by the dividend policy for Horizon Utilities Corporation.

The dividend policy of Holdco and its subsidiaries is predicated on the mandate of the Board of Directors which includes maximizing shareholder value. Such value is generally realized by the shareholder through dividends or the appreciation of shareholder investment. It is the intention of the Board of Directors of Holdco to use its best efforts to declare and pay dividends from available earnings and cash flow, subject to certain conditions.

Conditions Precedent to the Payment of Dividends

Dividends will be paid to the extent that such would not otherwise cause:

- (i) non-compliance with relevant statutes and regulations;
- (ii) a breach of contract or the immediate or anticipated failure to otherwise meet the terms of financing arrangements;
- (iii) an impairment in the operations and maintenance of electricity distribution infrastructure;
- (iv) an impairment in financial prudence including capital investment in electricity distribution infrastructure to sustain reliability;
- (v) a deterioration in the credit rating of Holdco or otherwise not support an “A” range or equivalent rating from credit rating agencies that rate Holdco and/ or its securities;
- (vi) an impairment in the maintenance and growth of approved businesses, or logical extensions of existing or related businesses, in line with a Board approved business plan.

Payment of Dividends

Regular Dividends

Each year, at its meeting to approve the annual budget for the next fiscal year, the Board of Directors will forecast the annual dividend by applying the DPR to budgeted earning for the next fiscal year. Quarterly dividends will, subject to meeting the above criteria, be determined by the Board of Directors and paid March 1st (or shortly following the approval of the annual audited financial statements of the preceding year), June 1st, September 1st and December 1st. The first dividend of the fiscal year, targeted for payment on March 1st, will also include any adjustment to bring the total annual dividend for the preceding year to the full DPR level.

The payment of Regular Dividends is subject, in each instance, to the review and approval of the Board of Directors in accordance with this policy and subject to the Conditions Precedent noted above.

Special Dividends

Each year, at its meeting to approve the annual audited financial statements, the Board of Directors will review the current and forecast shareholder equity requirements of Holdco and compare such to the approved capital structure of Holdco. Subject to the Conditions Precedent, the Board of Directors shall declare and pay a dividend, if any, equal to the excess of actual shareholder equity over that required to support the approved capital structure of Holdco. Where a Special Dividend has been declared, the Board of Directors will endeavour to pay such dividend on March 1st of the year in which the audited financial statements of the preceding year have been approved.

Reporting to Shareholder

In the event that the Board of Directors does not approve a payment of a Regular Dividend, the Board will promptly report the circumstances underlying the non-payment to the shareholder and, thereafter, provide progress reports on a quarterly basis until such time as the payment of Regular Dividends resumes.

HORIZON HOLDINGS INC. DIVIDEND POLICY

(Revised March 10, 2010)

The dividend policy of Horizon Holdings Inc. (Horizon) is predicated on the mandate of the Board of Directors which includes maximizing shareholder value. Such value is generally realized by the shareholder through dividends or the appreciation of shareholder investment. It is the intention of the Board of Directors of Horizon to use its best efforts to declare and pay dividends from available earnings and cash flow, subject to certain conditions precedent outlined below, as follows:

- (a) Regular Dividends at a target dividend payment rate (DPR) of up to 60% of annual net earnings;
- (b) Special Dividend periodic payments to maintain the approved capital structure of Horizon (currently approved at 60% of debt in total capitalization after consideration for any off-balance sheet contingencies);

Conditions Precedent to the Payment of Dividends

Dividends will be paid to the extent that such would not otherwise cause:

- (i) non-compliance with relevant statutes and regulations;
- (ii) a breach of contract or the immediate or anticipated failure to otherwise meet the terms of financing arrangements;
- (iii) an impairment in the operations and maintenance of electricity distribution infrastructure;
- (iv) an impairment in financial prudence including capital investment in electricity distribution infrastructure to sustain reliability;
- (v) a deterioration in the credit rating of Horizon or otherwise not support an "A" range or equivalent rating from credit rating agencies that rate Horizon and/ or its securities;
- (vi) an impairment in the maintenance and growth of approved businesses, or logical extensions of existing or related businesses, in line with a Board approved business plan.