



Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

June 17, 2014

Reply To: Thomas Brett
Direct Dial: 416.941.8861
E-mail: tbrett@foglers.com
Our File No. 134380

VIA RESS, EMAIL AND COURIER

Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto Ontario
M4P 1E4

Attention: Kirsten Walli,
Board Secretary

Dear Ms. Walli:

**Re: Suncor Energy Products Inc. ("Suncor"), Cedar Point Leave to Construct Application
Board File No. EB-2014-0022**

Pursuant to Procedural Order No. 3, please find attached redacted versions of the following:

1. Suncor's Shared Transmission Facilities and Option Agreement with Kerwood Wind Inc., Jericho Wind Inc., and Bornish Wind LP.
2. Suncor's Jericho Shared Transmission Facilities and Option Agreement with Jericho Wind Inc.

Yours truly,

FOGLER, RUBINOFF LLP

Thomas Brett

TB/dd

Encls.

cc: All Parties

SHARED TRANSMISSION FACILITIES AND OPTION AGREEMENT

By and among

BORNISH WIND, LP,
as Co-owner

- and -

KERWOOD WIND, INC.,
as Co-owner

- and -

JERICO WIND, INC.,
as Co-owner

- and -

SUNCOR ENERGY PRODUCTS INC.,
as Licensee

Dated as of January 2, 2013

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List of Exhibits

Exhibit A - Description of Shared Transmission Facilities
Exhibit B - Depiction of Complete Portfolio Site
Exhibit C - Form of Notice of Licensee's Exercise of the STFA Option

SHARED TRANSMISSION FACILITIES AND OPTION AGREEMENT

This **SHARED TRANSMISSION FACILITIES AND OPTION AGREEMENT** (this "**Agreement**") dated as of January 2, 2013 (the "**Effective Date**"), is made and entered into by and among **BORNISH WIND, LP** ("**Bornish**"), **KERWOOD WIND, INC.** ("**Kerwood**") and **JERICHO WIND, INC.** ("**Jericho**", together with Bornish and Kerwood, the "**Co-owners**" and each individually, a "**Co-owner**") and **SUNCOR ENERGY PRODUCTS INC.** (the "**Licensee**"). The Co-owners and the Licensee may each be referred to herein individually as a "**Party**", and collectively as the "**Parties**".

RECITALS

- A. Pursuant to the Shared Transmission Facilities Co-owners Agreement to be entered into between the Co-owners (the "**Co-owners Agreement**"), the Co-owners will construct, develop and own the Shared Transmission Facilities as tenants in common, which Shared Transmission Facilities are necessary to connect the Co-owners' Projects and the Licensee's Project to the IESO-controlled grid.
- B. The Co-owners wish to grant the Licensee an option to acquire a non-exclusive license to use the Shared Transmission Facilities.
- C. The Co-owners will own the Shared Transmission Facilities, which facilities are critical to the operation of the Co-owners' Projects and the Licensee's Project. In order to govern their respective rights and obligations with respect to the Shared Transmission Facilities, the Parties are entering into this Agreement, which will be the Parties' expression of their intention to establish and impose mutually beneficial limitations, restrictions, covenants and conditions to provide for the proper and orderly ownership, operation and management of each Party's respective interests in the Shared Transmission Facilities.

AGREEMENT

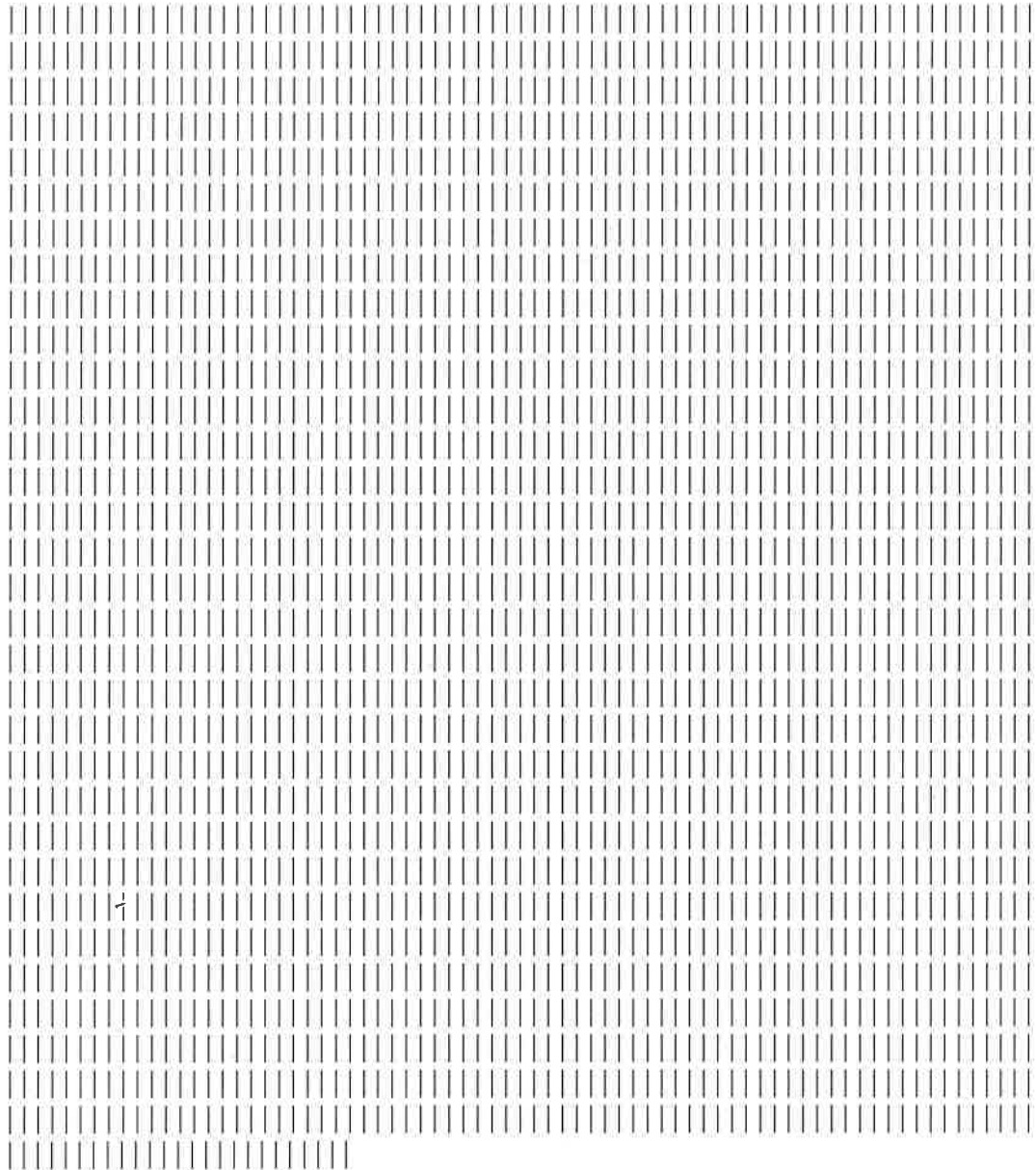
In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, intending to be legally bound the Parties agree as follows:

1. Definitions.

As used in this Agreement, the following words have the meanings herein specified.

- (1) "**Additional Capacity**" shall mean any additional generating capacity, the electrical output of which is to be delivered through the Shared Transmission Facilities, which at any time, exceeds the Projects' Contract Capacity as of the Effective Date.
- (2) |||||

- (3) |||||
- (4) **“Adelaide Project”** means the Wind Turbines and related electricity collection infrastructure that will be owned by Kerwood located on the property identified as such on Exhibit B and any Additional Capacity that will be owned by Kerwood and connected to the Shared Transmission Facilities.
- (5) **“Affected Party”** has the meaning set forth in Section 19(a).
- (6) **“Affiliate”** of any Person means, at the time such determination is being made, any other Person Controlling, Controlled by or under common Control with such first Person, in each case, whether directly or indirectly, and **“Control”** and any derivation thereof means the possession, directly or indirectly (other than in the capacity of an officer, director or employee of a Person), of the power to direct or significantly influence the management, policies or business of a Person whether through the ownership of voting securities or partnership units, by agreement or otherwise.
- (7) **“Agreed Interest Rate”** means the rate of interest, expressed as a per annum rate, which is used by the Royal Bank of Canada at its main branch in Toronto, Ontario, as a reference rate for purposes of determining rates of interests charged by it on Canadian dollar commercial loans made by it in Canada, and which is quoted by such bank, from time to time as its “prime rate”, plus 2% per annum.
- (8) **“Agreement”** has the meaning set forth in the first paragraph of this document.
- (9) ||||| 1 |||||
- (10) **“Approved Budget”** means a budget approved by the Co-owners pursuant to the Co-owners Agreement.
- (11) **“Arbitration Commitment”** has the meaning set forth in Section 35(c) herein.
- (12) **“Arm’s Length”** means the relationship between persons who are not “related persons” as defined in the *Income Tax Act* (Canada).
- (13) |||||



- (14) “**Borrowing Party**” has the meaning set forth in Section 39(b) herein.
- (15) “**Bornish Project**” means the Wind Turbines and related electricity collection infrastructure that will be owned by Bornish located on the property identified as such on Exhibit B and any Additional Capacity that will be owned by Bornish and connected to the Shared Transmission Facilities.
- (16) “**Breaching Co-owner**” has the meaning set forth in Section 32 herein.
- (17) “**Canadian Dollars**”, “Cdn. Dollars”, “Cdn. \$”, “CAD\$” and “\$” each mean the lawful money of Canada.

- (18) “**CCRA**” means the connection cost recovery agreement to be entered into between HONI and the Co-owners in respect of the connection of the Co-owners’ Projects, the Licensee’s Project and the Shared Transmission Facilities to HONI’s transmission system.
- (19) “**Commercially Reasonable Efforts**” means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by the Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the transaction therein contemplated.
- (20) “**Community Leader**” means a Chief, Band Councillor or other official of any First Nation, Métis or other aboriginal community.
- (21) “**Complete Portfolio**” means, collectively, the Co-owners’ Projects, the Licensee’s Project, the Shared Transmission Facilities and any Additional Capacity installed, commissioned and located on the Complete Portfolio Site, and to be used to generate electrical output delivered through the Shared Transmission Facilities.
- (22) “**Complete Portfolio Site**” means the real property located in Ontario, Canada, on which the Complete Portfolio is (or, upon the completion of its construction, will be) located, as more specifically depicted on Exhibit B.
- (23) “**Confidential Information**” means:
- (i) the provisions of this Agreement or any agreement in connection with the Shared Transmission Facilities or any Project and all financial, business, capital, operating, technical, administrative and personal information and data relating to:
 - (A) the Shared Transmission Facilities, any Party’s Project, including the business plans or forecasts pertaining thereto; and
 - (B) any Party or its partners, unit holders, trustees, shareholders, investors, customers, suppliers, clients, Affiliates, consultants and employees, or their respective Technology,including studies, customer lists, charts, plans, tables and compilations of business and industry information, all to the extent prepared or acquired for, or provided to or by, any Party or any Affiliate of a Party in connection with the Shared Transmission Facilities or any Project;
 - (ii) information and data related to Technology used in connection with the Shared Transmission Facilities and information received from Third Parties under an obligation of confidentiality; and

- (iii) information and data submitted or created in the course of resolution of a dispute, including any information or data created by the arbitrators, and any award or other determination;

but excluding particular information that the receiving Party can establish with demonstrable written evidence is or was, through no wrongful act or omission of the Party making the disclosure:

- (iv) at the time of disclosure generally available to the public;
- (v) prior to the time of acquisition in connection with the Shared Transmission Facilities or any Project by the receiving Party or any of its Affiliates, already in the possession of or known to the receiving Party or any of its Affiliates on a lawful basis;
- (vi) acquired from a Third Party who has, to the receiving Party's knowledge after due inquiry, lawful authority to disclose the applicable Confidential Information; or
- (vii) independently developed by or for the receiving Party or an Affiliate of the receiving Party without the use or exploitation of Confidential Information.

Any particular information forming part of the Confidential Information shall not fall within any of the foregoing exceptions merely because it is embraced by more general information falling within any of the exceptions.

- (24) **"Conflicting Party"** and **"Conflicting Parties"** has the meaning set forth in Section 35(b) herein.
- (25) **"Connection Agreement"** means the agreement entered into between HONI and the Co-owners in respect of the connection of the Adelaide Project, Bornish Project, Jericho Project, the Licensee's Project and the Shared Transmission Facilities to the IESO grid, in accordance with the provisions of the Transmission System Code.
- (26) **"Construction and Development Costs"** means the aggregate of the actual costs, fees, expenses and any applicable Taxes incurred by the Co-owners and related to the land acquisition, design, permitting, development, engineering, procurement and construction of the Shared Transmission Facilities, including without limitation and as more particularly set out in: (A) costs incurred by the Co-owners or their Affiliates related to the development and construction of the Shared Transmission Facilities, including without limitation, as more particularly set out in the Shared Transmission Facilities EPC Agreement and other Third Party Contracts; (B) the costs or expenses incurred by HONI for the connection of the Shared Transmission Facilities to HONI's transmission system, including without limitation, as more particularly set out in the CCRA; and (C) any other expenses

related to the engineering, procurement and construction of the Shared Transmission Facilities.

- (27) **“Construction Option”** has the meaning set forth in Section **Error! Reference source not found.**
- (28) **“Construction Plans”** means the engineering plans prepared on behalf of the Co-owners for the construction of the Shared Transmission Facilities, which plans will identify, among other things, the exact location of each of the Projects, the Shared Transmission Facilities Area (and the component parts of the Shared Transmission Facilities, and any access rights retained by the Co-owners and/or the Licensee as described in Section 13 herein.
- (29) **“Contract Capacity”** has the meaning set forth in the Ontario Feed-In Tariff Rules, Version 1.5.
- (30) **“Control”** has the meaning set forth in Section 1(6) herein.
- (31) **“Co-owner”** has the meaning set forth in the first paragraph of this document.
- (32) **“Co-owner’s Interest”** has the meaning set forth in Section 39(b) herein.
- (33) **“Co-owners Agreement”** has the meaning set forth in the Recitals of this document.
- (34) **“Co-owners’ Projects”** means the Bornish Project, the Adelaide Project and the Jericho Project, and **“Co-owner’s Project”** means any of them.
- (35) **“CPI”** means (i) the Consumer Price Index (All items for Ontario) published by Statistics Canada (or by a successor or other Governmental Authority, including a provincial agency), or (ii) if the CPI is no longer published, an index published in substitution for the CPI or any replacement index designated by the Co-owners, acting reasonably. If a substitution is required, the Co-owners 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 Authority) the Co-owners will make the necessary conversions.
- (36) **“Cure Period”** has the meaning set forth in Section 19(b) herein.
- (37) **“Curtailement Period”** has the meaning set forth in Section 19(f) herein.
- (38) **“Customer Impact Assessment”** means the customer impact assessment to be carried out by HONI with respect to a party’s proposed use of the Shared Transmission Facilities and issued in the name of such party, in accordance with Sections 19(a) and 19(c) herein.
- (39) **“Declaration Notice”** has the meaning set forth in Section **Error! Reference source not found.**

- (40) **"Default"** has the meaning set forth in Section 30(a) herein.
- (41) **"Designated Representative"** has the meaning set forth in Section 8 herein.
- (42) **"Dispatch Operator"** means the entity responsible for coordinating the dispatching of energy between the Complete Portfolio and the IESO at the point of connection between the Shared Transmission Facilities and HONI's transmission system.
- (43) **"Disputing Party"** has the meaning set forth in Section 15(c) herein.
- (44) **"Effective Date"** has the meaning set forth in the first paragraph of this document.
- (45) **"EPC Contractor"** has the meaning set forth in Section 10(b) herein.
- (46) **"External Curtailment"** has the meaning set forth in Section 19(f) herein.
- (47) **"Force Majeure"** has the meaning set forth in Section 40 herein.
- (48) **"Good Operating Practices"** means the good and workmanlike practices, methods, and acts, (including but not limited to the practices, methods, and acts engaged in by a significant portion of the North American electric power generation industry) that, at a particular time, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent generator or transmission operator in light of the facts known or that should reasonably have been known at the time a decision is made, could have reasonably been expected to accomplish the desired result at a reasonable cost in a manner consistent with applicable Laws, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy and expedition. Good Operating Practices are not intended to be limited to optimum practices, methods or acts to the exclusion of all others but rather are intended to delineate acceptable practices, methods or acts generally accepted in the North American electric power generation or transmission industry.
- (49) **"Governmental Agency(ies)"** means any Governmental Authority, political party, public international organization (as defined in the United States Foreign Corrupt Practices Act) and any enterprise partially or wholly owned, or controlled, by a Governmental Authority or Governmental Agency.
- (50) **"Governmental Authority"** and **"Governmental Authorities"** means, in relation to any Person, transaction, event, the Shared Transmission Facilities or any Project, any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, ministry, organization, Crown corporation, court, board, tribunal, dispute settlement panel or body or other law, rule or regulation-making party:

- (i) having or purporting to have jurisdiction on behalf of any nation, province, state or other geographic or political subdivision thereof over such Person, transaction, event, the Shared Transmission Facilities or any Project; or
- (ii) exercising or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over such Person, transaction, event, the Shared Transmission Facilities or any Project, including, without limiting the foregoing, the OEB and the IESO.
- “Governmental Official”** means an officer, employee, agent, representative or other official of any Governmental Agency, or any Person acting in an official capacity on behalf thereof, or any candidate for public office.
- “Hazardous Substance”** means any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Laws or by any Governmental Authorities under any Laws.
- “HONI”** means Hydro One Networks Inc.
- “IESO”** means the Independent Electricity System Operator.
- “Indemnified Party”** has the meaning set forth in Section 25 herein.
- “Indemnifying Party”** has the meaning set forth in Section 25 herein.
- “Index Factor”** means for any period, the number which is obtained by dividing the CPI at the end of such period by the CPI at the beginning of such period.
- |||||
- “Insolvency Event”** means in relation to any Party or third party, the occurrence of one or more of the following:
- (i) such party shall apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, administrator, trustee, liquidator or other similar official for itself or for all or any part of its assets;
- (ii) such party shall generally not pay its debts as such debts become due or admit in writing its inability to pay its debts generally, or declare any general moratorium on its indebtedness;
- (iii) such party shall commit an act of bankruptcy, or make a general assignment for the benefit of creditors or a proposal under the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) or similar Laws of any applicable jurisdiction;

- (iv) such party shall institute any proceeding seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, dissolution, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any statute, rule or regulation relating to bankruptcy, insolvency, reorganization, relief or protection of debtors or at common law or in equity (to the extent not otherwise expressly permitted hereunder);
 - (v) such party shall take any corporate action to authorize any of the actions described in this paragraph (59);
 - (vi) any cause or proceeding against any such party shall be instituted in any court of competent jurisdiction seeking in respect of any such party, an adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or the like of any such party or of all or any substantial part of its assets, or any other like relief in respect of any such party under any bankruptcy or insolvency law and:
 - (A) such cause, proceeding or other action results in an entry of an order for relief or any such adjudication or appointment unless such order, adjudication or appointment is stayed or otherwise effectively reversed within 30 days thereof; or
 - (B) if such cause, proceeding or other action is being contested by any such party, as applicable, in good faith, the same shall continue undismissed, or unstayed and in effect, for any period of sixty (60) consecutive days; or
 - (vii) all or any material part of the assets of any such party are attached, executed, sequestered or distrained upon or become subject to any order of a court or other process, and such party shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof.
- (60) **“Intellectual Property Rights”** means any and all intellectual property rights, including copyrights, design rights, trade-marks and trade-mark rights (including the goodwill therein), trade secret and confidential information rights, patent rights, and all other analogous intangible proprietary rights, which may subsist anywhere in the world, whether registered or unregistered, including all applications for registration of any of the foregoing, and all rights to file such applications.
- (61) **“Interference”** means a material impact by actions of any Party on the use or operation of any equipment of another Party that is located in the Shared Transmission Facilities Area and, without restricting the generality of the above,

any reduction to the ability of a Party's generation to be transmitted on the Shared Transmission Facilities, that arises out of activities of any Party, any additional Party, any additional use of the Shared Transmission Facilities or Shared Transmission Facilities Area by any third party, or any act of the Co-owners or Operator in respect of the Shared Transmission Facilities not otherwise considered Good Operating Practices or contemplated herein.

- (62) **“Interfering Co-owner”** has the meaning set forth in Section 19(a) herein.
- (63) **“Internal Curtailment”** has the meaning set forth in Section 19(f) herein.
- (64) **“Jericho Project”** means the Wind Turbines and related electricity collection infrastructure that will be owned by Jericho located on the property identified as such on Exhibit B and any Additional Capacity that will be owned by Jericho and connected to the Shared Transmission Facilities.
- (65) **“Jericho Shared Transmission Facilities”** means the items consisting of all transmission line equipment, facilities and appurtenances used for the common benefit of the Jericho Project and the Licensee’s Project, including but not limited to any related equipment or materials or any contract or purchase order therefor, interconnection rights and any permits related to the foregoing as further described in the Jericho Shared Transmission Facilities and Option Agreement.
- (66) **“Jericho Shared Transmission Facilities and Option Agreement”** means the Jericho Shared Transmission Facilities and Option Agreement between Jericho Wind, Inc. and Suncor Energy Products Inc. dated the date hereof.
- (67) **“Last Co-owner”** has the meaning set forth in Section **Error! Reference source not found.** herein.
- (68) **“Laws”** means any laws, rules, statutes, regulations, codes, requirements and/or ordinances enacted, imposed or enforced by any Governmental Authorities that are applicable to and/or affect all or any part of the operation, maintenance or use of the Shared Transmission Facilities.
- (69) **“Leave to Construct”** means an order in respect of the Shared Transmission Facilities or Jericho Shared Transmission Facilities, as applicable, granted to the Co-owners or Jericho Wind, Inc., as applicable, by the OEB under section 92 and subsection 96(1) of the *Ontario Energy Board Act, 1998*.
- (70) **“Licensee”** has the meaning set forth in the first paragraph of this document.
- (71) |
- (72) **“Licensee’s Interest”** has the meaning set forth in Section 39(b) herein.
- (73) **“Licensee’s Project”** means the Wind Turbines and related electricity collection infrastructure for the Cedar Point Wind Power Phase II project that will be owned

by the Licensee located on the property identified as such on Exhibit B and connected to the Shared Transmission Facilities.

- (74) |
- (75) “**Mediation Period**” has the meaning set forth in Section 35(b) herein.
- (76) “**MW**” or “**megawatt**” means the measure of electrical capacity produced by any of the Co-owners’ Projects, the Licensee’s Project or any Additional Capacity.
- (77) “**Non-Defaulting Party**” has the meaning set forth in Section 30(a)(ii).
- (78) “**Notice to Proceed**” means a notice in respect of the Licensee’s Project granted by the Ontario Power Authority that it is prepared to waive its option set out in section 2.4 of the Power Purchase Agreement for the Licensee’s Project, to terminate such agreement.
- (79) “**OEB**” means the Ontario Energy Board.
- (80) “**Operator**” means NextEra Canadian Operating Services, Inc., or its designee, which shall be the initial operator of the Shared Transmission Facilities, designated in the Shared Transmission Facilities O&M Agreement, and any other successor entity operating the Shared Transmission Facilities, which shall be responsible for the operation and maintenance of the Shared Transmission Facilities.
- (81) |
- (82) |
- (83) |
- (84) “**Party**” and “**Parties**” have the meanings set forth in the first paragraph of this document.
- (85) “**Party’s Interest**” has the meaning set forth in Section 39(b) herein.

- (86) **“Person”** means any individual, sole proprietorship, partnership, limited partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, corporation, company, limited or unlimited liability company, Governmental Authority, and where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative.
- (87) **“Power Purchase Agreement”** means in respect of each Party, the Ontario Feed-in-Tariff (FIT) contract or other power purchase arrangement between such Party and the Power Purchaser, in connection with such Party’s Project, pursuant to which the Power Purchaser has agreed to purchase Power from such Party’s Project pursuant to the Feed-in-Tariff Program.
- (88) **“Power Purchaser”** means the Ontario Power Authority, a corporation without share capital established under the *Electricity Restructuring Act, 2004* (Ontario) and its successors, or other party purchasing the output from the Complete Portfolio.
- (89) [REDACTED]
- (90) **“Projects”** means the Co-owners’ Projects and the Licensee’s Project, collectively, and **“Project”** means either each Co-owner’s Project or the Licensee’s Project, generically.
- (91) **“Reimbursement Notice”** has the meaning set forth in Section **Error! Reference source not found.** herein.
- (92) [REDACTED]
- (93) **“Related Party”** means the Licensee, each Co-owner and any of their respective Affiliates.
- (94) **“Representatives”** means the advisors, agents, consultants, directors, employees, management, officers, subcontractors, and other representatives, including accountants, auditors, financial advisors and lawyers of a Party or its Affiliates.

(95) [REDACTED]

(96) **“Service Providers”** means, collectively, the Operator and the Dispatch Operator, and **“Service Provider”** shall mean any one of the Service Providers.

(97) [REDACTED]:

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]

(v) [REDACTED]

(vi) [REDACTED]

(vii) [REDACTED]

(viii) [REDACTED]

(ix) [REDACTED]

[REDACTED]

- (98) **“Shared Transmission Facilities”** means the items consisting of all transmission line equipment, facilities and appurtenances used for the common benefit of the Projects, including but not limited to any switching station, substation and related equipment or materials or any contract or purchase order therefor, interconnection rights and any permits related to the foregoing and those items identified and described as such on Exhibits A and B.
- (99) **“Shared Transmission Facilities Area”** means the area under and immediately adjacent to the Shared Transmission Facilities that is necessary for the operation of the Shared Transmission Facilities, which area is further identified and described as such on Exhibit B and which area is owned or leased by or under an easement with the Co-owners.
- (100) **“Shared Transmission Facilities EPC Agreement”** has the meaning set forth in Section 10(b) herein.
- (101) **“Shared Transmission Facilities O&M Agreement”** means the operations and maintenance agreement to be entered into among the Co-owners and the initial Operator, or such other agreement executed in the future by the Co-owners and a successor entity to the initial Operator, for operation of the Shared Transmission Facilities, as amended, supplemented, replaced or restated from time to time.
- (102) **“Site Agreement”** and **“Site Agreements”** have the meanings set forth in Section 51 herein.
- (103) **“Standard Borrowing”** has the meaning set forth in Section 39(b) herein.
- (104) |||||
- (105) |||||
- (106) **“System Impact Assessment”** means the system impact assessment to be conducted by the IESO, or such other Governmental Authority with respect to any use of the Shared Transmission Facilities and issued in the name of the party proposing such use in accordance with Sections 19(a) and 19(c) herein.
- (107) **“Taxes”** means all taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by a Governmental Authority,

including any interest, additions to tax or penalties applicable thereto, and “**Tax**” shall be construed accordingly.

- (108) “**Technology**” means ideas, concepts, know-how, discoveries, inventions, developments, processes, systems, devices, apparatuses, compositions, computer software (including source code, object code, executables and scripts), methods, procedures, techniques, designs, specifications, plans, documents, schematics, formulae, trade secrets, algorithms, drawings, diagrams, photos, pictures, prints, models, prototypes, patterns, analyses, evaluations, research, works, physical embodiments, computer files, data, technical information, materials and similar expressions, and all Intellectual Property Rights arising in any and all of the foregoing.
- (109) “**Termination Notice**” means the notice provided pursuant to Section **Error! Reference source not found.** herein.
- (110) “**Third Party**” means a Person other than a Party or an Affiliate of a Party and “**Third Parties**” means two or more such Persons.
- (111) “**Third Party Contracts**” means legal and binding Arm’s Length agreements (other than this Agreement) with any Person (including Parties and Affiliates of Parties), for the purpose of construction or operation of the Complete Portfolio. These agreements will include but not be limited to the agreements with government funding agencies, with Persons providing tangible equipment or services for the Complete Portfolio, and with the Power Purchaser.
- (112) ~|||||
- (113) |||
- (114) “**Transmission Operation Date**” means the date on which the Shared Transmission Facilities have been constructed, connected, commissioned and synchronized to HONI’s transmission system such that electric energy may be delivered in compliance with Good Operating Practices.
- (115) “**Transmission System Code**” means the Transmission System Code of the OEB, as amended from time to time.
- (116) “**United States Foreign Corrupt Practices Act**” means *The Foreign Corrupt Practices Act of 1977* (15 U.S.C. § 78dd-1, et seq.) (USA).
- (117) |||
- (118) “**Wind Turbine**” shall mean each of the wind turbines purchased by each Party for their Project, and installed, commissioned and located (or, upon completion of construction of its Project, as shall have been installed, commissioned, and located) on the applicable Project and to be used to generate electrical output.

2. **Currency.**

All amounts referred to herein are in Canadian Dollars unless expressly noted otherwise.

3. **Effectiveness.**

The Parties hereby agree that (i) from and as of the Effective Date until the STFA Option Exercise Date, only Sections 1 - 5, **Error! Reference source not found.**, 14, 22 - 25, 33 - 35, 37 - 39, 41 - 48, 51, 53, 56 and 58 of this Agreement shall be effective, and (ii) as of the STFA Option Exercise Date, (A) Section **Error! Reference source not found.** (other than Section **Error! Reference source not found.**) shall be of no further force or effect, and (B) all other Sections in this Agreement shall be effective.

4. |||||

- (a)

- (b)

- (c)

- (d)

5. **Representations and Warranties.**

Each Party represents and warrants that:

- (a) if it is a corporation, it is a valid and subsisting corporation and if it is a partnership or limited partnership, it is duly formed, and is validly existing under

the laws of its jurisdiction of incorporation or formation, as applicable, and it has all requisite power and authority to enter into this Agreement;

- (b) the transactions contemplated in this Agreement have been duly and validly authorized and all documents and instruments contemplated in this Agreement, including this Agreement, have been duly and validly authorized, executed and delivered;
- (c) the transactions contemplated in this Agreement will not violate, nor be in conflict with any provisions of its constituting documents, by-laws or governing documents, or any agreement or contract or instrument to which it is a party or by which it is bound or any Laws;
- (d) this Agreement, and all documents and instruments contemplated thereby, are legal, valid and binding obligations of it enforceable against it in accordance with their respective terms;
- (e)
- (i)
- (ii)
- (iii)
- (iv)
- (f) it is not a non-resident of Canada within the meaning of the Tax Act.

6. Compliance with Anti-Bribery and Anti-Corruption Laws.

- (a) Each Party represents and warrants that:
- (i) such Party and its Affiliates; and
 - (ii) to the best of such Party's knowledge, any past or present Representative of, or any other Person acting on behalf of, such Party or its Affiliates;
- has not, in any manner related to or connected with the Shared Transmission Facilities or its Project, directly or indirectly, paid, promised or offered to pay, or authorized the payment of any money or anything of value to:
- (iii) a Governmental Official; or
 - (iv) any other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to a Governmental Official;

in each case for the purpose of influencing any act or decision of such Governmental Official in his, her or its official capacity, including a decision to do or omit to do any act in violation of the lawful duty of such Governmental Official, or inducing such Governmental Official to use his, her or its influence with a Governmental Agency to affect or influence any act or decision, or otherwise secure any improper advantage.

- (b) Each Party agrees that neither it nor its Affiliates shall violate, in any manner related to or connected with the Shared Transmission Facilities or its Project, any applicable anti-bribery or anti-corruption laws. Specifically, each Party agrees that it shall not, in any manner related to or connected with the Shared Transmission Facilities or its Project, directly or indirectly, pay, promise or offer to pay, or authorize the payment of any money or anything of value, to:
 - (i) a Governmental Official; or
 - (ii) any other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to a Governmental Official;

in each case for the purpose of influencing any act or decision of such Governmental Official in his, her or its official capacity, including a decision to do or omit to do any act in violation of the lawful duty of such Governmental Official, or inducing such Governmental Official to use his, her or its influence with a Governmental Agency to affect or influence any act or decision, or otherwise secure any improper advantage.

- (c) In connection with carrying out its responsibilities under this Agreement, each Party and its Affiliates shall use only lawful business practices in its commercial operations, shall not participate in bribes or kickbacks of any kind, and shall not violate any anti-bribery or anti-corruption laws.
- (d) Each Party agrees to forthwith advise the other Parties of any action taken by such Party or by any Persons acting on behalf of such Party or its Affiliates that is inconsistent with Sections 6(b) and 6(c) of which it becomes aware.
- (e) For the purposes of this Section 6, anti-bribery laws includes the laws of each of Canada and the Province of Ontario, the United States Foreign Corrupt Practices Act, as well as any other applicable anti-bribery or anti-corruption laws.
- (f) Any Party (the "**Auditing Party**"), with reasonable basis for believing another Party or its Affiliates (the "**Audited Party**") has not met its obligations under this Section 6, shall have the right, upon reasonable notice, to audit the books and records of the Audited Party in order to verify compliance by the Audited Party with the requirements and obligations of this Section 6. The Auditing Party shall be responsible for all reasonable expenses related to such audit, including the expenses incurred by the Audited Party for internal and external time and resources committed to such audit. If requested by the Audited Party, such audit

shall be conducted by a qualified independent Third Party selected by the Auditing Party, which shall provide the Auditing Party with its assessment concerning whether a breach of this Section 6 has occurred. The Audited Party shall cooperate fully with any audit performed by or on behalf of the Auditing Party and shall be entitled (on a no-reliance basis) to a copy of the final report generated by either the Auditing Party or a qualified independent Third Party auditor, as applicable.

7. Compliance in Dealings with Community Leaders

(a) Each Party represents and warrants that:

- (i) such Party and its Affiliates; and
- (ii) to the best of such Party's knowledge, any past or present Representative of, or any other Person acting on behalf of, such Party or its Affiliates;

has not, in any manner related to or connected with the Shared Transmission Facilities or its Project, directly or indirectly, paid, promised or offered to pay, or authorized the payment of any money or anything of value to:

- (iii) a Community Leader; or
- (iv) any other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to a Community Leader;

in each case for the purpose of influencing any act or decision of such Community Leader in his, her or its official capacity as a Community Leader, including a decision to do or omit to do any act in violation of the lawful duty of such Community Leader, or inducing such Community Leader to use his, her or its influence, if any, with a Governmental Agency to affect or influence any act or decision, or otherwise secure any improper advantage.

(b) Each Party agrees that it shall not, in any manner related to or connected with the Shared Transmission Facilities or its Project, directly or indirectly, pay, promise or offer to pay, or authorize the payment of any money or anything of value, to:

- (i) a Community Leader; or
- (ii) any other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to a Community Leader;

in each case for the purpose of influencing any act or decision of such Community Leader in his, her or its official capacity as a Community Leader, including a decision to do or omit to do any act in violation of the lawful duty of such Community Leader, or inducing such Community Leader to use his, her or its

influence, if any, with a Governmental Agency to affect or influence any act or decision, or otherwise secure any improper advantage.

- (c) Each Party agrees to forthwith advise the other Parties of any action taken by such Party or by any Persons acting on behalf of such Party or its Affiliates that is inconsistent with Sections 7(a) and 7(b) of which it becomes aware.
- (d) Any Party (the "**Auditing Party**"), with reasonable basis for believing another Party or its Affiliates (the "**Audited Party**") has not met its obligations under this Section 7, shall have the right, upon reasonable notice, to audit the books and records of the Audited Party in order to verify compliance by the Audited Party with the requirements and obligations of this Section 7. The Auditing Party shall be responsible for all reasonable expenses related to such audit, including the expenses incurred by the Audited Party for internal and external time and resources committed to such audit. If requested by the Audited Party, such audit shall be conducted by a qualified independent Third Party selected by the Auditing Party, which shall provide the Auditing Party with its assessment concerning whether a breach of this Section 7 has occurred. The Audited Party shall cooperate fully with any audit performed by or on behalf of the Auditing Party and shall be entitled (on a no-reliance basis) to a copy of the final report generated by either the Auditing Party or a qualified independent Third Party auditor, as applicable.

8. Declaration of Intention.

The Parties hereby declare that their relationship in and to the Shared Transmission Facilities and the Shared Transmission Facilities Area is and will be that of tenants in common in respect of the Co-owners, and licensee in respect of the Licensee, expressly subject to the terms, conditions, limitations and requirements set forth in this Agreement. Nothing contained in this Agreement will be deemed to constitute the Parties as partners or joint venturers. The Co-owners shall designate one of the Co-owners, an Affiliate of the Co-owners or any other Person (the "**Designated Representative**") as the Co-owners' representative for purposes stated in this Agreement related to communication and co-ordination of rights, obligations and responsibilities of the Co-owners and the Licensee, as applicable, under this Agreement. The Co-owners shall provide the Licensee with prompt notice of the initial designation of, or any change to, the Designated Representative. Notwithstanding the foregoing, the Designated Representative shall not assume any additional obligations or responsibilities under this Agreement nor in any way release or relieve other Co-owners from their respective obligations.

9. License to Use Shared Transmission Facilities.

Subject to the terms and conditions contained herein and subject to any contractual or regulatory restrictions on the Co-owners' ability to use the Shared Transmission Facilities, which restrictions shall apply to the Licensee *mutatis mutandis*, the Co-owners hereby grant to the Licensee, subject to applicable Laws, a non-exclusive license to access and use the Shared Transmission Facilities for purpose of the Licensee's operation of the Licensee's Project and the

dispatching of the Contract Capacity up to 100 MW generated by the Licensee's Project to the IESO grid.

10. Construction of Shared Transmission Facilities.

- (a)
- (i)
- (A)
- (B)
- (ii)
- (A)
- (B)
- (iii)
- (iv)
- (v)
- (vi)

- (b) A third party (the “**EPC Contractor**”) shall be selected by the Co-owners to expeditiously perform the engineering, procurement and construction services under an engineering, procurement and construction agreement relating to the switching station, transmission line and the substation facility (the “**Shared Transmission Facilities EPC Agreement**”). The Designated Representative shall promptly give written notice to the Licensee of any notice of default it may receive or deliver with respect to the Shared Transmission Facilities EPC Agreement and shall confer with the Licensee regarding resolution of any such dispute between the Co-owners and the EPC Contractor under the Shared Transmission Facilities EPC Agreement. The Designated Representative shall promptly notify the Licensee upon completion of the Shared Transmission Facilities.

11. Construction of Projects

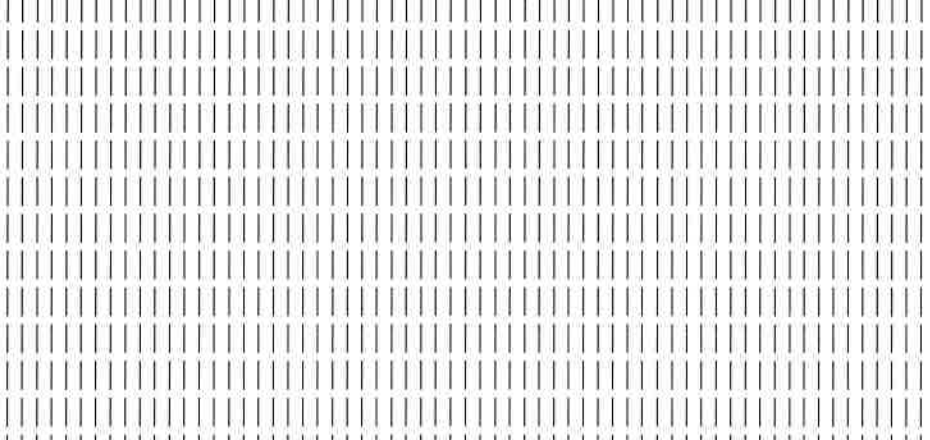
For greater certainty and notwithstanding anything to the contrary herein, each Party shall be solely responsible for any and all costs, fees, expenses and applicable Taxes, liabilities and damages incurred in respect of the construction and development of such Party's Project.

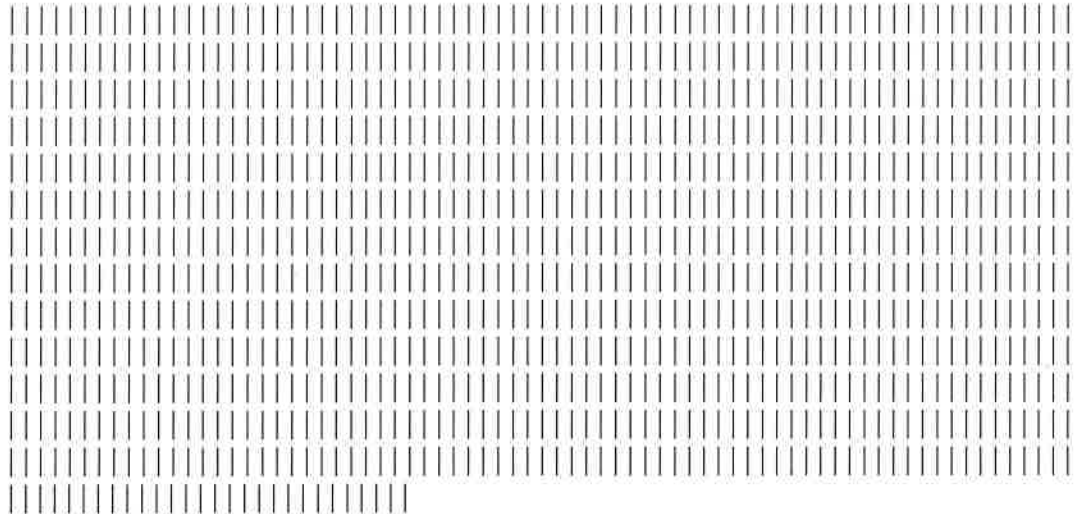
12. Term; Right of Termination.

- (a) The term of this Agreement will commence on the Effective Date, and, unless sooner terminated or extended pursuant to the terms of this Agreement, will continue as to each Party for forty (40) years after the Transmission Operation Date.
- (b) The term of the license will commence on the STFA Option Exercise Date, and unless sooner terminated pursuant to the terms of this Agreement, will continue throughout the term of this Agreement.

(c)

(d)

A 16x16 grid of small, light gray rectangles, representing a uniform texture or a fine-scale pattern.



13. Access to the Shared Transmission Facilities Area.

Subject to personnel safety restrictions or considerations that would require controlled access to certain parts of the Shared Transmission Facilities, which may include the requirement to be accompanied by a representative of the subject Project, the Co-owners and the Licensee recognize that each Party may need to retain access rights through the other Parties' Projects to gain access to the Shared Transmission Facilities Area and its own Project. To that end, each Party will grant to all other Parties, to the extent reasonably necessary, for each other Party's own benefit and the benefit of the Operator, non-exclusive and perpetual access rights across such Party's Project for the purposes of ingress and egress to and from, and for the operation, maintenance and inspection of, the Shared Transmission Facilities, the Shared Transmission Facilities Area and each Party's Project. In connection with exercising any such access rights, the Party accessing the other Party's Project shall ensure that such exercise causes no Interference with the use or operation of any equipment that is located on such Party's Project.

14. Co-operation and Co-ordination.

Each Party shall co-operate and co-ordinate with every other Party to the extent reasonably necessary to permit and facilitate the performance of such Party's obligations under this Agreement, including without limitation: (i) from time to time, executing, causing to be acknowledged and delivering such documents or instruments, and providing such certificates, as any other Party may reasonably request to carry out and fulfill the transactions, and permit the exercise and performance of the rights and obligations, as are contemplated hereunder; (ii) the construction and development of the Shared Transmission Facilities; (iii) the connection of each Party's Project to the Shared Transmission Facilities; (iv) the connection of the Shared Transmission Facilities to the IESO grid; and (v) any regulatory proceeding or submission to the Power Purchaser or a Governmental Authority, provided that in the event of a dispute with any of the Co-owners or their Affiliates with respect to the Co-owners' Projects, the Shared Transmission Facilities or any other related transmission facilities, the Licensee; (A) shall not seek and shall prevent any Affiliate from seeking permission from the Ontario Power Authority, OEB or any other Governmental Authorities to utilize the Shared Transmission Facilities; and (B) shall not file or otherwise communicate and shall prevent any Affiliate from filing or

otherwise communicating any objections or adverse comments with any Governmental Authorities in connection with the Co-owners' Projects and the Shared Transmission Facilities, without first attempting to resolve such dispute in accordance with Section 35. The provisions of Section 14(v) and Section 35 shall survive the termination or expiration of this Agreement only up to and including the Outside Date.

15. Operations and Maintenance; Shared Expenses.

- (a) The Shared Transmission Facilities will be operated, managed and maintained by the Operator, for the benefit of the Co-owners and the Licensee, pursuant to the Shared Transmission Facilities O&M Agreement. The Shared Transmission Facilities O&M Agreement shall provide, among other things, that the Shared Transmission Facilities are operated and maintained: (i) in a safe manner; (ii) in accordance with Good Operating Practices; and (iii) in compliance with all Laws.
- (b) Each Party hereby confirms its obligation to share in the periodic (no more frequently than monthly) payment of the Shared Expenses, and agrees, severally but not jointly, to pay its Pro Rata Share of the Shared Expenses (including any applicable Taxes in respect of the Shared Expenses) as and when due and payable. Each Party will pay its Pro Rata Share of any invoice for Shared Expenses consistent with the terms of the Shared Transmission Facilities O&M Agreement or, if not subject to the Shared Transmission Facilities O&M Agreement within thirty (30) days after receipt of such invoice. As it becomes practicable and desirable, the Parties from time to time may designate additional expenses as Shared Expenses to be administered by the Operator in accordance with this Section 15. Any further assumption of additional Shared Expense may be proposed by any Party, but will only be approved and become an obligation of all Parties by an amendment to this Agreement, such approval not to be unreasonably withheld or delayed.
- (c) If a Party in good faith disputes all or any portion of an invoice (a "**Disputing Party**"), the Disputing Party shall take the following steps: (i) the Disputing Party shall pay all items outlined in the invoice, including those which the Disputing Party disputes within the time period described above; and (ii) the Disputing Party shall notify both the Operator and the other Parties in writing of the basis of the dispute and of those amounts contained in the invoice for which the Disputing Party disputes the amount due, together with a request for a refund of such amount, all within the time period described above. If the Parties are unable to mutually agree on a resolution to the disputed portion of the invoice within thirty (30) days of a Party's delivery of its objections to the other Parties, then the determination of the invoice shall be promptly submitted to dispute resolution pursuant to Section 35. Failure by the Disputing Party to dispute all or any portion of an invoice within twelve (12) months after such invoice was received shall be deemed as approval by the Disputing Party of the amount due under such invoice.
- (d) The records that each Co-owner maintains with respect to Shared Expenses shall be retained by such Co-owner for a period of seven (7) years following the date

on which such costs were billed to the Licensee. The Licensee shall have the right, through its representatives to examine, copy and audit such records at reasonable times, upon not less than ten (10) days' prior notice, and at such place within Ontario as the Licensee shall reasonably designate from time to time for the keeping of such records. If pursuant to a Licensee's audit, under this Agreement or the Shared Transmission Facilities O&M Agreement with respect to the Shared Transmission Facilities and the Shared Transmission Facilities Area, it is determined that the Licensee must pay additional amounts to the Co-owners on account of Shared Expenses or that the Licensee has overpaid the Co-owners on account of Shared Expenses, then the undercharged or overpaid Party promptly shall reimburse the other Party for the payments due, including any interest charges thereon at the Agreed Interest Rate.

- (e) If the Co-owners allow the additional use of the Shared Transmission Facilities or the Shared Transmission Facilities Area in accordance with the terms of Section 19 of this Agreement: (i) each Party's Pro Rata Share shall be adjusted accordingly; and (ii) subject to applicable Laws, the Co-owners shall recapture, for the benefit of all Parties, from the third party using the Shared Transmission Facilities or the Shared Transmission Facilities Area such third party's allocable share of Construction and Development Costs and capital improvement costs previously incurred by the Parties with respect to the Shared Transmission Facilities and the Shared Transmission Facilities Area. Any such recaptured costs shall be allocated to the Parties in accordance with their Pro Rata Share prior to said adjustment. In addition, if a Co-owner or an Affiliate of a Co-owner installs (or causes to be installed) Additional Capacity on such Co-owner's Project or on a site adjacent to such Co-owner's Project, (A) each Party's Pro Rata Share shall be adjusted in accordance with the definition thereof in Section **Error! Reference source not found.** and (B), if the Licensee has paid the Total Participation Fee, the Designated Representative shall promptly pay the Licensee the difference between the amount of the Total Participation Fee actually paid by the Licensee and the amount thereof that the Licensee would have paid based upon its Pro Rata Share as adjusted.

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[illegible]

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19. **Additional Use; Interference; Outages.**

- (a) If consented to in writing by all Co-owners, each Co-owner, or any Co-owners acting together, subject to obtaining a System Impact Assessment and Customer Impact Assessment, may allow additional use of the Shared Transmission Facilities and the Shared Transmission Facilities Area by separate arrangement. If such additional use constitutes Interference with any other Party's (each, an "**Affected Party**") use of, or access to, the Shared Transmission Facilities or Shared Transmission Facilities Area, then, such Co-owner or Co-owners (the "**Interfering Co-owner**") shall use Commercially Reasonable Efforts to correct the Interference to an Affected Party's reasonable satisfaction within twenty-four (24) hours after receipt of notice from the Affected Party of such Interference (except when the nature of the Interference is such that more than twenty-four (24) hours are required for its correction, then the Interfering Co-owner shall not be deemed in breach if it commences correction within the twenty-four (24) hour period and thereafter undertakes Commercially Reasonable Efforts to correct the Interference within the minimum time required). Notwithstanding Section 33, in the event of any such Interference (i) the Interfering Co-owner shall pay any Affected Party an amount equivalent to the revenue loss directly attributable to the line loss incurred by such Affected Party, and (ii) in addition to an Affected Party's rights pursuant to Section 30 of this Agreement, any amount payable to the Interfering Co-owner under this Agreement by an Affected Party shall be equitably abated based on the degree of Interference.

- (b) Notwithstanding Section 19(a) above, if an Affected Party determines reasonably that an Interference of an Affected Party's use of or access to the Shared Transmission Facilities or the Shared Transmission Facilities Area is caused by the willful misconduct or fraudulent actions of the Interfering Co-owner (a "**Willful Interference**"), the Interfering Co-owner shall correct the Willful Interference to the Affected Party's satisfaction within twelve (12) hours after receipt of notice from an Affected Party of such Willful Interference (the "**Cure Period**"). Notwithstanding Section 33, in the event of any such Willful Interference: (i) the Interfering Co-owner shall pay any Affected Party an amount equivalent to the revenue loss directly attributable to the line loss and generation loss incurred by such Affected Party; and (ii) in addition to an Affected Party's rights pursuant to Section 30 of this Agreement, any amount payable to the Interfering Co-owner under this Agreement by an Affected Party shall be equitably abated based on the degree of Interference. In addition, the Interfering Co-owner acknowledges that, due to the Willful Interference, the Affected Party may be suffering irreparable harm for which monetary damages are inadequate, and the Affected Party may petition a court of competent jurisdiction for injunctive relief, specific performance or other equitable relief.
- (c) Subject to obtaining a System Impact Assessment and Customer Impact Assessment, to the extent available or possible, and if consented to in writing by the Designated Representative in its sole discretion, the Licensee may be allowed additional use of the Shared Transmission Facilities and the Shared Transmission Facilities Area by separate arrangement. If any Interference of the Shared Transmission Facilities or Shared Transmission Facilities Area is caused by the Licensee, the Licensee shall use its Commercially Reasonable Efforts to correct the Interference to the Affected Party's reasonable satisfaction within twenty-four (24) hours after receipt of notice from the Affected Party of the Interference (except when the nature of the Interference is such that more than twenty-four (24) hours are required for its correction, then the Licensee shall not be deemed in breach if it commences correction within the twenty-four (24) hour period and thereafter undertakes Commercially Reasonable Efforts to correct the Interference within the minimum time required.
- (d) Except for: (i) as otherwise provided for in this Section 19; (ii) gross negligence or willful misconduct as to maintenance or repairs of the Shared Transmission Facilities; and (iii) a Default by the Interfering Co-owner, the Interfering Co-owner and its Affiliates shall have no liability to an Affected Party or its Affiliates for any damage or loss related to any defect in, damage to, malfunction of or other failure to operate, any portion of the Shared Transmission Facilities.
- (e) The Designated Representative and Operator shall control any outage schedule for the Shared Transmission Facilities and such schedule shall be applied equitably to the generation components of the Projects. The Designated Representative and the Operator shall provide reasonable advance notice to the other Parties of any such outage schedule.

- (f) The Parties acknowledge that other energy may be generated at the Projects pursuant to other agreements or arrangements involving the Parties or other non-parties to this Agreement. The Parties further acknowledge that there could occur constraints: (A) related to market conditions, HONI's transmission system, the IESO grid or otherwise mandated by the IESO ("**External Curtailment**") and (B) related to the Complete Portfolio or the Shared Transmission Facilities ("**Internal Curtailment**") which require curtailments that affect deliveries to the IESO grid of energy generated at the Projects for a period of time (the "**Curtailment Period**"). The Parties understand and agree that in the event of an External Curtailment or Internal Curtailment, the Dispatch Operator or the Operator, as applicable, shall inform the Operator or the Dispatch Operator, as applicable, the Designated Representative, the Co-owners and the Licensee of such External Curtailment or Internal Curtailment, including the particulars thereof, and each of the Designated Representative, the Dispatch Operator and the Operator shall, during the Curtailment Period, coordinate their actions to curtail the Parties' deliveries of energy to the extent required, and in the following order:
- (i) first, if any action or inaction of a Party caused or contributed to such External Curtailment or Internal Curtailment, the energy scheduled to be generated at any time during the Curtailment Period by such Party's Project (if more than one Party, each Party's deliveries of energy shall be curtailed on a pro rata basis);
 - (ii) second, if Additional Capacity has been installed at a Project or Projects, the energy scheduled to be generated by such Additional Capacity at any time during the Curtailment Period; and
 - (iii) third, for such External Curtailment or Internal Curtailment as remains after the application of sections 19(f)(i) and 19(f)(ii), a Party's Project's pro rata share of all energy scheduled to be generated by the Projects at any time during such Curtailment Period (calculated by dividing the total energy scheduled to be generated by a Party's Project at any time during the Curtailment Period, by the aggregate energy scheduled to be generated by the Projects at such time during the Curtailment Period).

20. Operation and Management.

- (a) Each Party shall operate and maintain its respective Project, or shall cause its Project to be operated and maintained, acting as a prudent operator and manager: (i) in a safe manner; (ii) in accordance with Good Operating Practices; (iii) in compliance with all Laws; and (iv) without causing a material adverse effect on any other Party's Project. Each Party will bear the risk of damage, loss, or taking to or of its Project assets.
- (b) Subject to Section **Error! Reference source not found.**, the Co-owners shall cause the Shared Transmission Facilities to be constructed, operated and maintained: (i) in a safe manner; in accordance with Good Operating Practices;

(ii) in compliance with all Laws, and (iii) without causing a material adverse effect on the Licensee's Project. The appointment of one or more of the Co-owners to operate the Shared Transmission Facilities pursuant to the Shared Transmission Facilities O&M Agreement shall, subject to the provisions of the Shared Transmission Facilities O&M Agreement, in no way relieve them of their collective obligations set forth in this Section 20(b).

- (c) The Parties hereto agree that any Related Party providing services to the Shared Transmission Facilities through Services Agreements, shall neither earn a profit nor suffer a loss in performing such services.

21. Right of Inspection.

To the extent the Licensee is not otherwise in Default, upon reasonable notice to the Operator and during normal business hours, the Licensee shall have the right to inspect the Shared Transmission Facilities and the Shared Transmission Facilities Area. In exercising this right of inspection, the Licensee shall comply with all safety procedures and policies of the Co-owners. The Licensee shall defend, indemnify and hold harmless the Co-owners and their officers, directors, employees and agents from and against all loss, damage, expense, costs and liability, including reasonable attorneys' fees, arising from any claims against the Co-owners arising from injury to or death of individuals or damage to or destruction of property occurring at the Shared Transmission Facilities and the Shared Transmission Facilities Area to the extent caused by the Licensee during any such inspection, except to the extent caused by the gross negligence or willful misconduct of the Co-owners or Operator.

22. Reporting.

The Designated Representative will deliver to the Licensee:

- (a) 15 days prior to the end of each calendar year, the Approved Budget;
- (b) 15 days prior to the end of each calendar year, an annual operating plan setting forth the underlying assumptions and implementation plans in connection with the Approved Budget;
- (c) promptly after receipt thereof from the Operator, any material information concerning new or significant aspects of the Shared Transmission Facilities operations such as, but not limited to, any emergency affecting the safety or protection of Persons or endangering the Shared Transmission Facilities or property located in the Shared Transmission Facilities Area, including any action taken by the Operator to prevent or mitigate the same;
- (d) promptly after they have been approved by the Co-owners: (i) any drawings, plans, designs, specifications or blueprints prepared by the EPC Contractor, pursuant to which the Shared Transmission Facilities are to be constructed; and (ii) any changes to such items;

- (e) promptly after any termination, material amendment or assignment of the Shared Transmission Facilities O&M Agreement that has been executed by the Co-owners, notice and copies of such termination, amendment or assignment;
- (f) promptly after any termination, material amendment or assignment of the Shared Transmission Facilities EPC Agreement that has been executed by the Co-owners, notice and copies of such termination, amendment or assignment;
- (g) promptly after receipt thereof, copies of any EPC Contractor reports, status reports or certificates pertaining to the construction of the Shared Transmission Facilities; and
- (h) promptly after receipt thereof, copies of any studies or reports (including system impact and connection impact studies) related to an agreement entered into by a Co-owner or Co-owners that will allow Additional Capacity.

23. Licensee Input.

The Licensee may provide the Co-owners with input on Additional Capital Costs that the Co-owners propose to incur, as set out in Section **Error! Reference source not found.**, and on any of the items delivered pursuant to Section 22, provided that, for greater certainty, such input shall not bind the Co-owners to any action or course of action.

24. Compliance with Laws.

Each Party shall conduct its operations pursuant to this Agreement in compliance with applicable Laws. Should any Party fail to comply in all material respects with any applicable Laws, and such Party fails to cause the non-compliance to be cured within the time frame allowed by the applicable Governmental Authority, such failure shall be considered a Default. For greater certainty, with respect to the Licensee's license, each Party's obligations hereunder are subject to applicable Laws.

25. Indemnity.

- (a) Except as otherwise provided in this Agreement, each Party (an "**Indemnifying Party**") will be liable to and as a separate independent covenant indemnify, defend and hold harmless each other Party (an "**Indemnified Party**"), to the full extent lawful, from and against any and all losses, damages, liabilities, claims, judgments, actions, liens, penalties, costs and expenses, joint or several, including, without limitation, reasonable attorneys' fees, which:
 - (i) may be imposed upon or incurred by such Indemnified Party or asserted against such Indemnified Party by any third Person in connection with any negligent or willful acts or omissions of or on behalf of the Indemnifying Party or;

- (ii) may be directly incurred by such Indemnified Party, in connection with any gross negligence or willful misconduct of or on behalf of the Indemnifying Party;

in each case on or with respect to the performance of its obligations under this Agreement during the term hereof, provided that in no event shall an Indemnifying Party's total liability under this Section 25 exceed such Indemnifying Party's Pro Rata Share of the Construction and Development Costs, except and to the extent such losses, damages, liabilities, claims, judgments, liens, penalties, costs and expenses, including, without limitation, reasonable attorneys' fees, arose or were caused by the fraud, gross negligence or willful misconduct of the Indemnifying Party in which case there will be no dollar limit to the obligations of the Indemnifying Party.

- (b) If for any reason the foregoing indemnification is unavailable to an Indemnified Party or is insufficient to hold an Indemnified Party harmless, the Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such expense, loss, claim, action, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnifying Party on the one hand and such Indemnified Party on the other hand but also the relative fault of the Indemnifying Party or, such Indemnified Party as well as any relevant equitable considerations.
- (c) Promptly after receiving notice of an action, suit, proceeding or claim against an Indemnified Party or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought from the Indemnifying Party, such Indemnified Party will notify the Indemnifying Party in writing of the particulars thereof, will provide copies of all relevant documentation to the Indemnifying Party and, unless the Indemnifying Party assumes the defence thereof, will keep the Indemnifying Party advised of the progress thereof and will discuss all significant actions proposed. The omission to notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability which the Indemnifying Party may have to such Indemnified Party except only to the extent that any such delay in giving or failure to give notice as herein required materially prejudices the defence of such action, suit, proceeding, claim or investigation or results in any material increase in the liability which the Indemnifying Party would otherwise have under this indemnity had such Indemnified Party not so delayed in giving or failed to give the notice required hereunder.
- (d) The Indemnifying Party shall be entitled, at its own expense, to participate in and, to the extent it may wish to do so, assume the defence thereof, provided such defence is conducted by experienced and competent counsel. Upon the Indemnifying Party notifying an Indemnified Party in writing of its election to assume the defence and retain counsel, the Indemnifying Party shall not be liable to such Indemnified Party for any legal expenses subsequently incurred by it in connection with such defence. If such defence is assumed by the Indemnifying

Party, the Indemnifying Party throughout the course thereof will provide copies of all relevant documentation to such Indemnified Party, will keep such Indemnified Party advised of the progress thereof and will discuss with such Indemnified Party all significant actions proposed.

- (e) Notwithstanding the foregoing paragraph, an Indemnified Party shall have the right, at the Indemnifying Party's expense, to employ counsel of such Indemnified Party's choice, in respect of the defence of any action, suit, proceeding, claim or investigation if: (i) the employment of such counsel has been authorized by the Indemnifying Party; or (ii) the Indemnifying Party has not assumed the defence and employed counsel therefor within a reasonable time after receiving notice of such action, suit, proceeding, claim or investigation; or (iii) counsel retained by the Indemnifying Party or such Indemnified Party has advised such Indemnified Party that representation of both parties by the same counsel would be inappropriate for any reason, including without limitation because there may be legal defences available to such Indemnified Party which are different from or in addition to those available to the Indemnifying Party (in which event and to that extent, the Indemnifying Party shall not have the right to assume or direct the defence on such Indemnified Party's behalf) or that there is a conflict of interest between the Indemnifying Party and such Indemnified Party or the subject matter of the action, suit, proceeding, claim or investigation may not fall within the indemnity set forth herein (in either of which events the Indemnifying Party shall not have the right to assume or direct the defence on such Indemnified Party's behalf).
- (f) No admission of liability and no settlement of any action, suit, proceeding, claim or investigation shall be made without the consent of the Indemnified Parties affected, such consent not to be unreasonably withheld. No admission of liability shall be made and the Indemnifying Party shall not be liable for any settlement of any action, suit, proceeding, claim or investigation made without its consent, such consent not to be unreasonably withheld.
- (g) Notwithstanding the foregoing, the Licensee shall not be subject to any liability in respect of the Shared Transmission Facilities arising out of this Agreement, the Shared Transmission Facilities EPC Agreement, Shared Transmission Facilities O&M Agreement and any other agreement related to the Shared Transmission Facilities, in each case which arise from or relate to events which occurred prior to the STFA Option Exercise Date, except for liability resulting from the fraud, gross negligence or willful misconduct of the Licensee, and (y) the Co-owners shall indemnify, pay, defend and hold harmless Licensee and each of Licensee's employees, directors, officers, contractors and agents (the "**Licensee's Indemnitees**") against any and all claims that may be brought by a third party, or any losses and liabilities that may be suffered, sustained, paid or incurred by Licensee or any Licensee Indemnitee, in each case in respect of this Agreement, the Shared Transmission Facilities EPC Agreement, Shared Transmission Facilities O&M Agreement and any other agreement related to the Shared Transmission Facilities, in each case which arise from or relate to events which

occurred prior to the STFA Option Exercise Date, except for claims that may be brought by a third party, or any losses and liabilities that may be suffered, sustained, paid or incurred by Licensee or any Licensee Indemnitee, resulting from the fraud, gross negligence or willful misconduct of Licensee; provided however that the foregoing shall not affect Licensee's obligation after the STFA Option Exercise Date in respect of costs and expenses incurred by the Co-owners prior to the STFA Option Exercise Date.

- (h) The provisions of this Section 25 shall survive the termination or expiration of this Agreement.

26. No Waste or Nuisance.

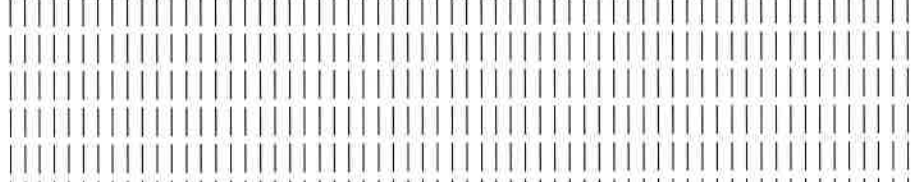
No Party will use or permit the use of the Shared Transmission Facilities in any manner that would create waste or nuisance, or that would increase the rate, or jeopardize the issuance or maintenance, of any insurance policy relating to the Shared Transmission Facilities, or otherwise damage or interfere with the Shared Transmission Facilities. The Parties will at all times while conducting their respective operations and activities use Commercially Reasonable Efforts to minimize the impact of such operations and activities upon the other Parties' use of the Shared Transmission Facilities.

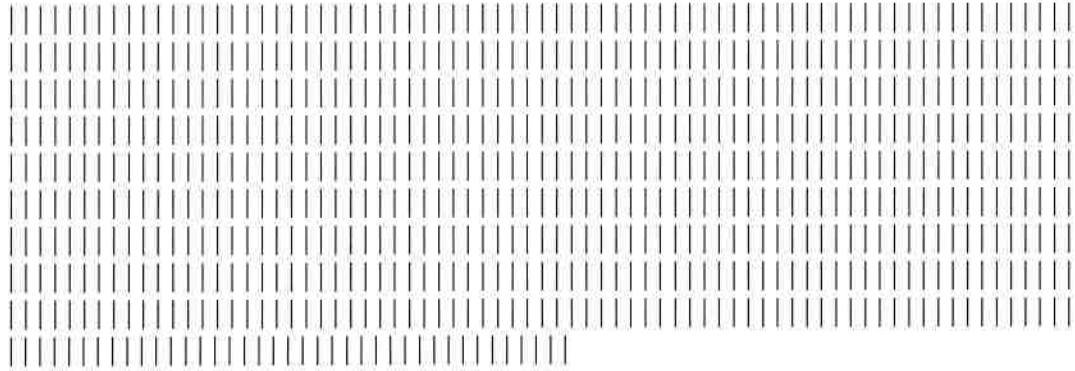
27. Co-owners' Use.

Nothing in this Agreement shall be construed so as to limit a Co-owner's right to use, alter or upgrade transmission and generation facilities (under its control only) at any time or for any purpose not inconsistent with the rights granted to the Licensee and the other Co-owners by this Agreement and in respect of the Co-owners, the Co-owners Agreement, provided that in no event shall such Co-owner's use, alterations or upgrading cause a material adverse effect on the use or operations of the Licensee's Project, any other Co-owner's Project, the Shared Transmission Facilities, or the Shared Transmission Facilities Area.

28.

- (a) 

- (b)
- 
- The figure displays a 10x10 grid of 100 small plots. Each plot contains a time series of data points (small circles) and a fitted curve (solid line). The plots show various patterns of data points and fitted curves, suggesting different parameter values or initial conditions for the model being fitted.



29. Environmental Representation and Covenants.

Each Party agrees to comply with all Laws relating to environmental matters applicable to the rights permitted and retained under this Agreement. Each Party covenants to notify the other Parties of any correspondence or any discussions between it and any Governmental Authorities concerning the presence of any Hazardous Substance or any actual or alleged violation of any Laws related to the Shared Transmission Facilities, Shared Transmission Facilities Area or any Project, within five (5) calendar days of such correspondence or discussion. Any failure by a Party to comply with any such Laws, or with any order or judgment issued against a Party for failure to comply with such Laws, shall constitute a breach under this Agreement.

30. Default.

- (a) For the purposes of this Agreement, “**Default**” by a Party hereto, including a Party in its capacity as the Designated Representative, and to the extent applicable, means any of the following:
 - (i) such Party becomes subject to an Insolvency Event;
 - (ii) the Party fails to pay when due any payment required to be paid under this Agreement, if such failure to pay continues uncured for a period of thirty (30) days from the date of that Party’s receipt of a notice of default issued by any other Party (a “**Non-Defaulting Party**”) of such failure to pay;
 - (iii) a breach in the performance of any duty or obligation under this Agreement (other than a failure to pay), under any Third Party Contract (directly related to, and necessary for the operation of, the Shared Transmission Facilities), or both, if its failure to cure such breach continues for a period of sixty (60) days from the date of such Party’s receipt of a notice of default issued by the Non-Defaulting Party;
 - (iv) any of the representations or warranties made or deemed to be made by any Party in Section 5 of this Agreement shall prove to be or have been incorrect in any material respect when made or deemed to have been made;

- (v) the transfer or other disposition of a Co-owner's Interest, the license granted to the Licensee hereunder, or any part thereof in contravention of any of the provisions of this Agreement that is not rectified within sixty (60) days from the date of such Party's receipt of a notice of default issued by the Non-Defaulting Party; and
 - (vi) a change in Control that: (A) directly or indirectly results in or causes a material negative change in the financial ability, credit status, or credit rating of such Party; or (B) directly affects the other Parties in a material negative manner or creates a competitive conflict between a remaining Party and the new Controlling entity; if its failure to cure or resolve such effect continues for a period of sixty (60) days from the date of such defaulting Party's receipt of a notice of default is issued by the Non-Defaulting Party.
- (b) Notwithstanding the foregoing list of events of Default in Section 30(a) or anything to the contrary in this Agreement:
- (i) no judgment, court order or other legal process shall be characterized as an event of Default while it is actively and diligently being contested in good faith and in a timely manner by the defaulting Party; and
 - (ii) A Non-Defaulting Party shall not exercise any right to terminate another Party's rights or suspend this Agreement as a result of a Default by the defaulting Party unless the Non-Defaulting Party shall have given any lender prior written notice of its intent to so terminate or suspend, specifying the Default giving rise to such right, and the lender shall not have caused such Default to be cured within thirty (30) days after such notice; provided that if such Default cannot reasonably be cured by the lender within such period and the lender commences and continues to pursue in good faith the cure of such Default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional sixty (60) days in the case of a defaulting Party payment Default or ninety (90) days in the case of any other Default and provided that during this extended cure period, any payments required to be made to the Non-Defaulting Party hereunder continue to be made by the defaulting Party or by the lender.

31. Co-owner Remedies.

In the event of any Default by the Licensee and the Licensee's failure to cure such breach within the periods set out in Section 30, or some other time period as may be expressly provided herein, the Co-owners shall, jointly or severally (but only jointly in respect of (ii) below), have the right, in addition to all remedies available to the Co-owners at law or in equity, to either (i) cure the Default on behalf of Licensee (subject to the Co-owners' right of reimbursement described herein), provided that in the event of an emergency a Co-owner shall not be required to provide the Licensee with notice and/or an opportunity to cure, or (ii) terminate all of the

Licensee's rights and benefits under this Agreement. If a Co-owner chooses to cure the Licensee's Default, the Licensee shall be obligated to reimburse such Co-owner upon demand for all commercially reasonable costs incurred by the Co-owner in curing such breach, together with interest thereon as provided in Section 36 of this Agreement. If the Co-owners terminate the Licensee's rights and benefits under this Agreement for the Licensee's Default, the Licensee shall be obligated to reimburse the Co-owners upon demand for all commercially reasonable costs incurred by the Co-owners as a result of the Licensee's Default, together with interest thereon as provided in Section 36 of this Agreement, subject to the limitation of liability outlined in Section 33 of this Agreement.

32. Licensee Remedies.

In the event of any Default by a Co-owner (a "**Breaching Co-owner**") and such Breaching Co-owner's failure to cure such Default within the periods set out in Section 30, or some other time period as may be expressly provided herein, the Licensee shall have the right, in addition to all remedies available to the Licensee at law or in equity, to either (i) cancel, rescind or otherwise terminate the Licensee's rights, benefits and obligations (other than obligations which are specifically deemed to survive the term of this Agreement) under this Agreement (in which event the Co-owners shall promptly return to the Licensee (A) prior to the Transmission Operation Date, the amount of the Total Participation Fee paid by Licensee to the Co-owners or (B) on or after the Transmission Operation Date, the amount of the Total Participation Fee paid by Licensee to the Co-owners as reduced by the Licensee's Pro Rata Share of any amortization or depreciation in respect of the Shared Transmission Facilities) or (ii) cure such Default on behalf of the Breaching Co-owner, provided that in the event of an emergency, the Licensee shall not be required to provide the Breaching Co-owner with notice and/or an opportunity to cure. If the Licensee chooses to cure any such Default on behalf of the Breaching Co-owner, the Breaching Co-owner shall reimburse the Licensee upon demand for all commercially reasonable costs incurred by the Licensee in curing such Default, together with interest thereon as provided by Section 36 of this Agreement, subject to the limitation of liability outlined in Section 33 of this Agreement, and if the Breaching Co-owner fails to so reimburse the Licensee, the Licensee may elect to deduct such costs from any amounts next payable to the Breaching Co-owner pursuant to this Agreement (or, if the Operator is an Affiliate of the Breaching Co-owner, payable to Operator).

33. Waiver of Consequential Damages, Etc.

TO THE FULLEST EXTENT PERMITTED BY LAW, NO PARTY SHALL ASSERT, AND EACH PARTY HEREBY WAIVES, ANY CLAIM, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AGAINST THE OTHER PARTIES, THEIR AFFILIATES, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES, ON ANY THEORY OF LIABILITY, FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS OPPORTUNITIES (WHETHER THE FOREGOING ARE INCURRED ON A DIRECT, INDIRECT OR CONSEQUENTIAL BASIS) AND INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, AGGRAVATED OR EXEMPLARY DAMAGES ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT, OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY.

34. **Injunctive Relief**

The Parties agree that monetary damages may be an insufficient remedy with respect to a breach of the provisions of this Agreement and that the non-breaching party shall be entitled to injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.

35. **Dispute Resolution**

- (a) **Conciliation.** Any controversy, dispute, claim or difference between any of the Parties relating to this Agreement, if not amicably settled by such Parties within thirty (30) days following notice of such controversy, dispute, claim or difference, shall be referred to senior management of such Parties for resolution.
- (b) **Mediation.** In the event a controversy, dispute, claim or difference arises between any of the Parties relating to this Agreement (the “**Conflicting Parties**” and each a “**Conflicting Party**”) is not resolved pursuant to Section 35(a), an aggrieved Conflicting Party shall promptly provide notice of such controversy, dispute, claim or difference to the other Conflicting Party within thirty (30) days after the thirty (30) day period referred to in Section 35(a). A meeting shall be held within ten (10) days (or such other time period agreed by the Conflicting Parties) between the Conflicting Parties, attended by representatives of the Conflicting Parties with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If within fifteen (15) days after such meeting or the date on which such meeting was to have occurred, the Conflicting Parties have not succeeded in negotiating a resolution of the dispute, the Conflicting Parties shall submit the dispute to mediation. The Conflicting Parties shall bear equally the costs of the mediation. The Conflicting Parties shall promptly appoint a single mutually acceptable mediator. If the Conflicting Parties are unable to agree upon such appointment within fifteen (15) days of submission of the dispute to mediation then either Conflicting Party may apply to a judge of the Superior Court of Justice to appoint a mediator. The Conflicting Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of fifteen (15) days (the “**Mediation Period**”). The mediation shall be conducted in the English language.
- (c) **Arbitration.** If the Conflicting Parties do not reach a solution for the dispute within the Mediation Period, then any one Conflicting Party may unilaterally demand in writing (such dated writing an “**Arbitration Commitment**”) to resolve the dispute through arbitration pursuant to Sections 35(c)(i) - 35(c)(iv), and thereafter the dispute shall be referred to arbitration for final settlement, to be binding on all Parties in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), including any amendments or replacements thereto, as follows:
 - (i) If the amount claimed is less than One Million Canadian Dollars (\$1,000,000) (which amount shall be adjusted every ten (10) years by

multiplying by the Index Factor), or if the dispute does not involve a monetary claim, the arbitration tribunal shall consist of one (1) arbitrator appointed by mutual agreement of the Conflicting Parties or, in the event of failure to agree within ten (10) days after the date of the Arbitration Commitment, then either Conflicting Party may apply to a judge of the Superior Court of Justice to appoint an arbitrator. If the amount claimed is equal to or greater than One Million Canadian Dollars (\$1,000,000) (which amount shall be adjusted every ten (10) years by multiplying by the Index Factor), then the arbitration tribunal shall consist of three (3) arbitrators, one (1) arbitrator appointed by each Conflicting Party and the third appointed by mutual agreement of the two (2) arbitrators appointed by the Conflicting Parties or, in the event of failure to agree within thirty (30) days after the date of the Arbitration Commitment, then either Conflicting Party may apply to a judge of the Superior Court of Justice to appoint the third arbitrator. The arbitrators shall be qualified by education, training and experience to pass upon the particular matter to be decided;

- (ii) The arbitrator shall be instructed that time is of the essence in proceeding with the determination of the dispute;
 - (iii) The arbitration shall be conducted in English and shall take place in Toronto, Canada or in any other place and location mutually agreed upon by the Conflicting Parties; and
 - (iv) The arbitration award shall be given in writing and shall be final and binding on the Conflicting Parties, including the question of cost of the arbitration and all matters related thereto, and the arbitration award shall not be subject to any appeal.
- (d) **Continuation of Work.** Pending final resolution of any controversy, dispute, claim or difference pursuant to this Section 35, the Parties shall continue to fulfill their respective obligations hereunder.
- (e) **Court Enforcement.** Where appropriate, any Party may apply to the courts of the Province of Ontario for interim equitable relief, including but not limited to injunctions and specific performance, during the dispute resolution process while awaiting the final written decision of the arbitrator. In addition, any Party may apply to such courts for enforcement of any dispute resolution decisions.

36. Late or Nonpayment.

Any amount not paid when due hereunder shall bear interest from and including the applicable due date to but excluding the date such amount is paid, at a rate equal to the Agreed Interest Rate. Any collection of interest with respect to overdue payments under this Agreement shall be in addition to, and not in limitation of, the remedies at law or equity otherwise available to the Parties.

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39. Successors and Assigns.

- (a) This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. A Party may, after providing the other Parties thirty (30) days' notice of the proposed assignment, assign this Agreement and its rights, interests or obligations hereunder to an Affiliate or in connection with a change of Control of an Affiliate without consent of the other Parties, provided that the Affiliate, or other Person assuming Control of an Affiliate, shall be of equivalent or greater financial strength to the assigning Party. Subject to the immediately preceding sentence, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto without prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Any such assignment described in the preceding sentences occurring without the prior written consent of the other Parties, where required, shall be void and of no effect. Except as expressly set forth herein, nothing contained herein is intended to confer on any Person other than the Parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement. Absent written agreement from the other Parties, no assignment of this Agreement (other than to an Affiliate or in connection with a change of Control of an Affiliate) shall release the assigning Party from any covenant or obligation under this Agreement.
- (b) Notwithstanding anything contained in this Agreement to the contrary, each Party (a "**Borrowing Party**"), will be permitted to borrow funds ("**Standard Borrowing**") without the need to obtain consent from the other Parties, secured by (i) in the case of a Co-owner, such Co-owner's ownership interest in the Shared Transmission Facilities and its interest in this agreement (the "**Co-owner's Interest**"), or (ii) in the case of the Licensee, by the license granted hereunder and its interest in this Agreement (the "**Licensee's Interest**") as follows. The Co-owner's Interest or the Licensee's Interest is sometimes generically referred to herein as the "**Party's Interest**").
- (i) Standard Borrowing may be secured by the Party's Interest of the Borrowing Party but shall be on a limited recourse, non-recourse/limited recourse or non-recourse basis with respect solely to the Party's Interest of the Borrowing Party and shall not in any manner encumber the Party's

Interest of any other Party. No Party shall be required to guarantee or otherwise provide any security in respect of any Standard Borrowing.

- (ii) It shall be a condition of each Standard Borrowing that such Standard Borrowing is not and shall not be prohibited by, and does not and shall not create a default under, any other Standard Borrowing or any permitted encumbrance or other agreement related to the Shared Transmission Facilities in each case, whether existing at, or subsequent to, the time of such Standard Borrowing, to which any of the Parties is a party. Reasonable third party out-of-pocket costs and fees related to any such Standard Borrowing that are incurred by each Party that is not a Borrowing Party shall be for the account of the Borrowing Party and the Borrowing Party shall reimburse such other Party upon demand.
- (c) Promptly after effecting such Standard Borrowing, the Borrowing Party shall notify the other Parties in writing of the name, address, and telephone and facsimile numbers of each lender to which the Borrowing Party's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the lenders to whom all written and telephonic communications may be addressed.
- (d) After giving the other Parties such initial notice, the Borrowing Party shall promptly give the other Parties notice of any change in the information provided in the initial notice or any revised notice.
- (e) If the Borrowing Party encumbers its interest under this Agreement as permitted by this Section 39, the following provisions shall apply:
 - (i) The Parties, except as provided by the terms of this Agreement, shall not modify or cancel this Agreement without the prior written consent of the lenders (and the Borrowing Party hereby agrees to negotiate with the lenders that such consents shall not be unreasonably withheld);
 - (ii) The lenders or their designees shall have the right, but not the obligation, to perform any act required to be performed by the Borrowing Party under this Agreement to prevent or cure a Default by the Borrowing Party and such act performed by the lenders or their designees shall be as effective to prevent or cure a Default as if done by the Borrowing Party;
 - (iii) The other Parties shall upon reasonable request and advance notice by the Borrowing Party execute statements certifying that this Agreement is unmodified (or, modified and stating the nature of the modification), in full force and effect and the absence or existence (and the nature thereof) of then known Defaults hereunder by the Borrowing Party and documents of consent to such assignment to the encumbrance and any assignment to such lenders; and

- (iv) Upon the receipt of a written request from the Borrowing Party or any lender, the other Parties shall execute, or arrange for the delivery of, such certificates, opinions and other documents at the Borrowing Party's or the lender's expense as may be reasonably necessary and in a commercially reasonable timeframe in order for the Borrowing Party to consummate any financing or refinancing of the Shared Transmission Facilities or such Party's Project or any part thereof, and will enter into reasonable agreements with such lender, including a consent to assignment in a form reasonably acceptable to the lender. Said agreements will grant certain rights to the lender as more fully developed and described in such documents, including: (a) this Agreement shall not be terminated (except for termination pursuant to the terms of this Agreement) without the consent of the lender, which consent is not to be unreasonably withheld or delayed; (b) the lender shall be given notice of, and the opportunity to cure any breach or default of this Agreement by the Borrowing Party; (c) that if the lender forecloses, takes a deed in lieu of foreclosure or otherwise exercise its remedies pursuant to any security documents, then: (i) the other Parties shall, at the lender's request, continue to perform all of their obligations hereunder, and the lender or its nominee may perform in the place of the Borrowing Party, and may assign this Agreement to another Person in place of the Borrowing Party; (ii) the lender shall have no liability under this Agreement except during the period of such lender's ownership or operation of the Borrowing Party's Project; and (iii) that the other Parties shall accept performance in accordance with this Agreement by the lender or its nominee; and (d) that the other Parties shall each make representations and warranties to the lender as the lender may reasonably request with regard to: (1) such other Party's existence; (2) such other Party's authority to execute, deliver and perform this Agreement; (3) the binding nature of the document evidencing such other Party's consent to assignment to the lender of this Agreement; and (4) receipt of regulatory approvals by such other Party with respect to its execution and performance under this Agreement.

40. **Force Majeure.**

For the purposes of this Agreement, the term "**Force Majeure**" means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, that is beyond the affected Party's reasonable control, and shall include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;

- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of (i) such Party, or (ii) a Third Party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute);
- (e) delays or disruptions (including those arising from events of Force Majeure referred to in this Section 40) in the construction of any assets that are required for the Shared Transmission Facilities to deliver electricity;
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;
- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure; and
- (i) any unanticipated maintenance or outage affecting the Shared Transmission Facilities which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure.

In the event of any Force Majeure, such Party shall promptly notify the other Parties thereof and, so long as such condition shall persist, such Party shall not be liable for the delay in performance of, or the failure to perform, its obligations (other than obligations for payment of amounts due hereunder) under this Agreement caused directly or indirectly thereby. Notwithstanding the foregoing, reasons such as and including lack of money or financial inability shall not be Force Majeure. The claiming Party shall give the other Party notice describing the particulars of the Force Majeure. Within fifteen (15) days after giving notice of the Force Majeure, the claiming Party shall give the other Party an estimate of the Force Majeure's expected duration and probable impact. The claiming Party shall continue to furnish the other Party with timely regular reports during the continuation of the Force Majeure. Each Party shall immediately and continuously exercise Commercially Reasonable Efforts to mitigate or limit the impact to its obligations hereunder as a result of the Force Majeure.

41. Modification.

This Agreement may be amended, modified and supplemented only by written agreement of the Parties.

42. Validity and Severance.

If any clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion thereof shall remain in full force and effect.

43. Governing Law.

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

44. Entire Agreement.

This Agreement embodies the entire agreement and understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties with respect to such subject matter.

45. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile transmission or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

46. Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

47. Exculpation.

The Parties agree that a Party's officers, directors, employees, agents or authorized representatives shall not be personally liable for any obligation of such Party, except as otherwise provided by law.

48. Time is of the Essence.

Time is of the essence with respect to each and every provision of this Agreement.

49. Recording.

At the Licensee's request, the Parties shall execute and record a memorandum of this Agreement in recordable form giving notice of such terms as the Licensee may reasonably request. Any memorandum of lease or easement recorded by the Co-owners pursuant to a Site Agreement shall describe the Licensee's rights under this Agreement.

50. Quiet Enjoyment.

The Co-owners covenant that they have a lawful interest in the Shared Transmission Facilities Area and have the right to enter into this Agreement for the term hereof. The Licensee shall at all times during the term of this Agreement have the peaceable and quiet enjoyment of the Shared Transmission Facilities Area pursuant to the terms of this Agreement.

51. Site Agreements.

During the term of this Agreement, except as otherwise provided for herein, the Designated Representative shall negotiate, or obtain, as applicable, all such agreements, permits or approvals providing the Co-owners with a leasehold or other interest in the Shared Transmission Facilities Area (individually, a "**Site Agreement**", and collectively, the "**Site Agreements**"). The other Co-owners agree to execute and enter into the Site Agreements as presented by the Designated Representative, such execution not to be unreasonably withheld, conditioned or delayed. Each Co-owner shall comply with all material terms and provisions of the Site Agreements relating to the Shared Transmission Facilities. The Designated Representative shall promptly give written notice to the other Co-owners of any notice of default it may receive or deliver with respect to the Site Agreements relating to the Shared Transmission Facilities and shall confer reasonably with the other Parties regarding resolution of any dispute between the Co-owners and any owner of the land on which the Shared Transmission Facilities Area or any part thereof is situated.

52. Shared Transmission Facilities O&M Agreement.

The Co-owners shall comply with all terms and provisions of the Shared Transmission Facilities O&M Agreement, and shall use Commercially Reasonable Efforts to obtain for the Licensee the benefit of all rights of access or transmission of energy granted to the Co-owners, as party to the Shared Transmission Facilities O&M Agreement, with respect to the Shared Transmission Facilities Area in order to effectuate the intent of the Parties and the purpose of this Agreement. Each Co-owner shall promptly give written notice to the Licensee of any notice of default it may receive or deliver with respect to the Shared Transmission Facilities O&M Agreement related to the Shared Transmission Facilities and shall confer with the Licensee regarding resolution of any such dispute between the Co-owners and Operator under the Shared Transmission Facilities O&M Agreement. In the event the Shared Transmission Facilities are not being maintained as required under the Shared Transmission Facilities O&M Agreement or operated in accordance with Good Operating Practices, the Licensee will have the right, in

addition to all remedies available to the Licensee at law or in equity, to exercise its rights set forth in Section 32 of this Agreement.

53. Billing, Metering and Settlement Agreement.

From and after the Effective Date, the Parties agree to use Commercially Reasonable Efforts to negotiate with the Operator, the Billing, Metering and Settlement Agreement respecting the Shared Transmission Facilities and execute such agreement in a timely fashion. The Parties acknowledge and agree that the Billing, Metering and Settlement Agreement is integral to the operation of the Shared Transmission Facilities.

54. Interconnection Agreement.

With respect to the Co-owners' obligations hereunder, the Co-owners shall not discriminate against the Licensee's Project in favour of the Co-owners' Projects. No Co-owner will consent to any termination, material amendment or modification of the CCRA, Connection Agreement or any other connection agreement which disproportionately and negatively impacts the Licensee's Project without the prior written consent of the Licensee, such consent not to be unreasonably withheld, conditioned or delayed.

55. Duties in Case of Loss.

- (a) Each Party shall notify the other Parties immediately upon becoming aware of any material fire or other material damage to any part of the Shared Transmission Facilities. Each Party shall notify the other Parties immediately if a Party has knowledge that any Hazardous Substances or other contaminants are released on, about, under or in the immediate vicinity of the Shared Transmission Facilities. With respect to the Shared Transmission Facilities Area, such Party shall not settle any losses, complete loss reports or adjust losses on behalf of the other Parties or enter into any remediation plan or other agreement with respect to Hazardous Substances with any national or local regulatory agency without the prior written consent of the other Parties.
- (b) Each Party shall notify the other Parties promptly after learning of any bodily injury or property damage occurring to or claimed by any third party on or with respect to any part of the Shared Transmission Facilities or the Shared Transmission Facilities Area. Each Party shall forward to the other Parties, immediately upon receipt, copies of any summons, subpoena or other like legal document served upon such Party relating to actual or alleged potential liability of any Party with respect to the Shared Transmission Facilities or the Shared Transmission Facilities Area.

56. Licensee's Failure to Obtain Generation License or Access to the Grid.

In the event that the Licensee is unable to obtain (i) in a timely manner a generation license from the OEB in respect of the Licensee's Project, and/or (ii) if necessary, permission from the IESO or HONI to transmit energy from the Licensee's Project to the IESO grid through the Shared Transmission Facilities, in each case due to the Licensee's status as a licensee under

this Agreement, the Parties agree to negotiate, in good faith, an agreement (on substantively similar terms) which would allow the Licensee to obtain such generation license and/or connect to the grid.

57. Termination of Agreement.

If this Agreement is terminated due to issues related to the Licensee's status as a licensee under this Agreement, the Designated Representative shall return any deposits, all prepaid fees and other prepaid sums to Licensee within thirty (30) days of the date of termination of this Agreement.

58. Confidentiality and Public Announcements.

(a) Confidential Information.

- (i) The Parties acknowledge and agree that all Confidential Information that may be delivered by each Party hereunder will remain the property of the disclosing Party, will not become owned by the other Party, and will be treated as confidential by each receiving Party. The receiving Party will not use the Confidential Information for any purpose other than as contemplated in this Agreement. The receiving Party will not disclose the Confidential Information to anyone except its Affiliates, employees and representatives (which term will include outside agents or advisors) who have a need to know the Confidential Information in connection herewith and who have been advised of the confidential nature of such Confidential Information, provided that the receiving Party will be liable to and will indemnify the disclosing Party for any breaches of this Section 58 by the receiving Party's Affiliates, employees and representatives.
- (ii) These provisions will not apply to Confidential Information if it:
 - (A) is known to the receiving Party prior to receipt thereof under this Agreement, as evidenced by written records;
 - (B) is disclosed without restriction to the receiving Party in good faith by a Third Party who is in lawful possession thereof and who has the right to make such disclosure, or who represents itself to the receiving Party as having such lawful right;
 - (C) is, or at such time as it becomes, public knowledge by publication or otherwise, through no fault or breach on the part of the receiving Party;
 - (D) is developed or discovered by the receiving Party independently of and without reference to the Confidential Information;
 - (E) is Confidential Information which is required to be disclosed pursuant to any Laws or any judicial, administrative or

governmental order, or any request permitted pursuant to legislative requirements to which the receiving Party is subject; provided that the receiving Party will take reasonable steps to give the disclosing Party sufficient notice in order to permit the disclosing Party to contest such request, requirements or order; or

(F) is Confidential Information which is reasonably required to be disclosed by a Borrowing Party to a lender in respect of a Standard Borrowing; provided: (i) that if the disclosure of such Confidential Information would result in a Party's breach of a confidentiality agreement with a Third Party, the Borrowing Party may not disclose such Confidential Information without first obtaining consent from such Third Party; (ii) the Borrowing Party requires the lender(s) receiving such Confidential Information to use and treat such information in the same manner as it uses and treats the Confidential Information of the Borrowing Party; and (iii) that the Borrowing Party provides the Party whose Confidential Information is being disclosed to a lender(s) with prompt notice prior to such disclosure of the nature and content of such Party's Confidential Information being disclosed.

(iii) The provisions of confidentiality set out herein will survive termination or expiry of this Agreement for a period of three (3) years after such termination or expiry date.

(iv) The Parties acknowledge that any breach of this Section 58 will cause irreparable damage to the Parties, and accordingly agree that in addition to any other legal or equitable remedies provided by law or under this Agreement, any Party may seek an injunction or an order for specific performance to restrain such breach and breaching Person (including a Party).

(b) Public Announcements.

No public announcement, filing or press release concerning the Shared Transmission Facilities, the existence of or the terms of this Agreement, the relationship between the Parties, or Confidential Information pertaining to the Shared Transmission Facilities or operations thereon, will be made without the prior written approval of all of the Parties, except to the extent such public announcement or press release is required under Third Party Contracts entered into with a Governmental Authority or under any Laws. The Parties will ensure that any translation of a press release or public announcement to be issued is accurate and appropriate in context, although a word-by-word translation will not be required.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CO-OWNER:

BORNISH WIND, LP, by its general Partner **BORNISH WIND GP, INC.**

By: _____

Name: John DiDonato

Title: Vice President

CO-OWNER:

KERWOOD WIND, INC.

By: _____

Name: John DiDonato

Title: Vice President

CO-OWNER:

JERICHO WIND, INC.

By: _____

Name: John DiDonato

Title: Vice President

LICENSEE:

SUNCOR ENERGY PRODUCTS INC.

By: _____

Name: Jim Provias

Title: Vice President, Renewable Energy

EXHIBIT A

SHARED TRANSMISSION FACILITIES

- (a) Bornish 115 kV Switching Station - The Bornish 115 kV Switching Station shall consist of a four or five breaker ring bus and capacitor banks to the extent required under the SIA studies. It will be owned by the Co-owners.
- (b) Bornish Transmission Line BTS1P – The Bornish 115 kV Switching Station will be connected via a 115 kV line, approximately 11.4 km long, 1272 54/19 ACSR Pheasant bundled conductor to a 115/500 kV step up substation called Parkhill CTS 115/500 kV Substation. The Bornish BTS1P line will be owned by the Co-owners and/or Hydro One.
- (c) Parkhill CTS 115/500 kV Substation - The Parkhill CTS 115/500 kV Substation will have a 256 / 341 / 426 MVA, 500 kV/115 kV, Delta / Wye, $Z = 8\%$ or equivalent transformation capacity. It will be adjacent to a new three breaker ring bus which will be called Evergreen 500 kV Switching Station. The Parkhill CTS will be owned by the Co-owners.
- (d) Evergreen 500 kV Switching Station - Evergreen 500 kV Switching Station will consist of a three breaker ring bus that will loop in and out of one of the Bruce – Longwood 500 kV lines, circuit B562L or B563L. The Evergreen 500 kV Switching Station will be owned by Hydro One.

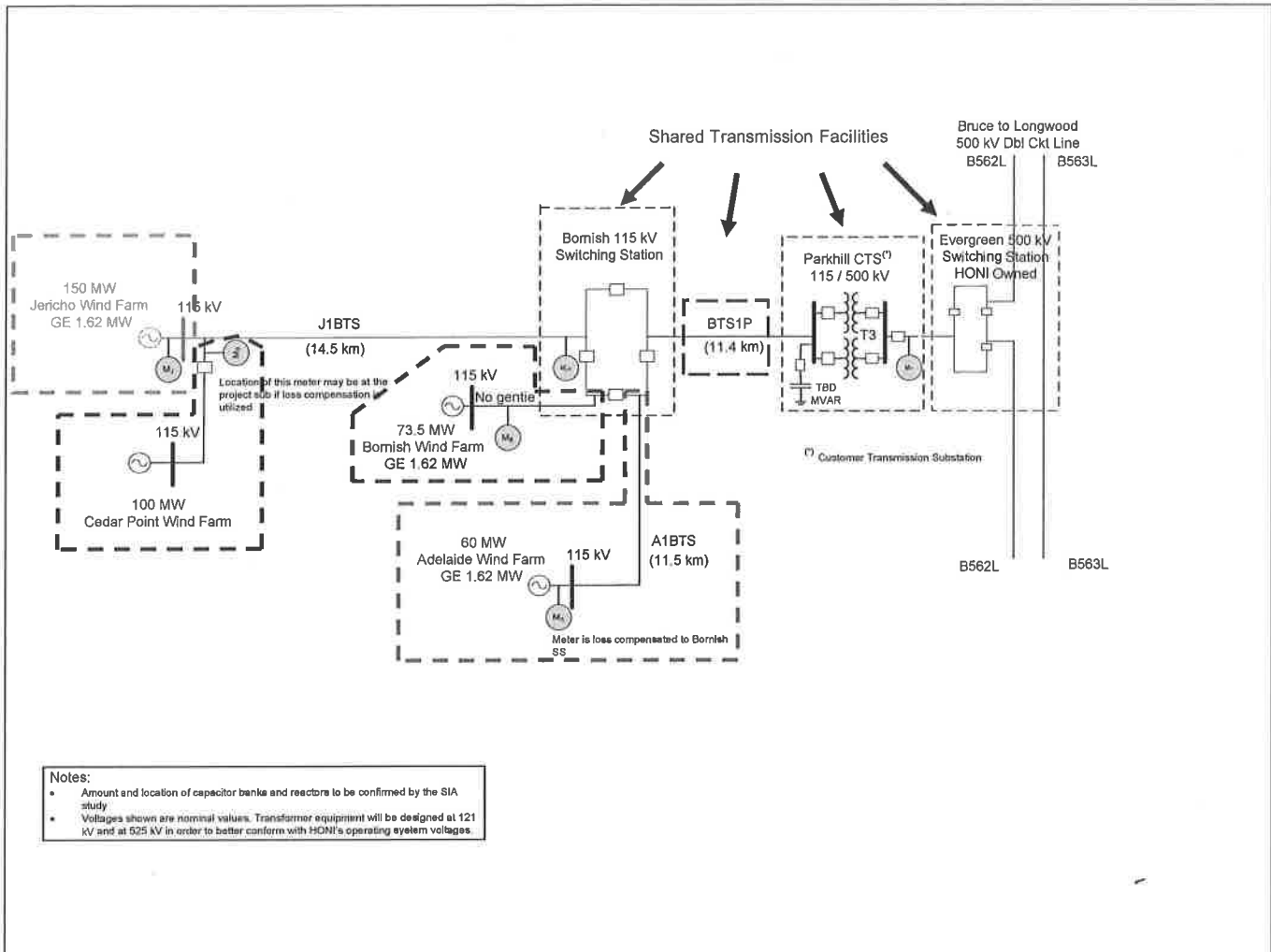
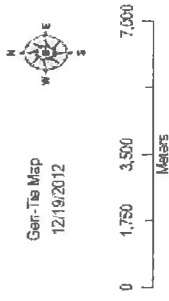


EXHIBIT B

The attached plan is illustrative only and merely identifies the property upon which the Complete Portfolio will be developed and the approximate locations of the Projects and the Shared Transmission Facilities Area on such property. Once the Construction Plans are completed for purposes of commencing construction of the Complete Portfolio, the attached plan shall be deemed null and void and shall be replaced by the Construction Plans.

Exhibit B
Depiction of Complete
Portfolio Site
Ontario, Canada



Legend

- Substation
- Switching Station
- Existing Transmission
- Project Transmission
- Cedarpoint II Project Boundary
- Project Boundary
- Townships

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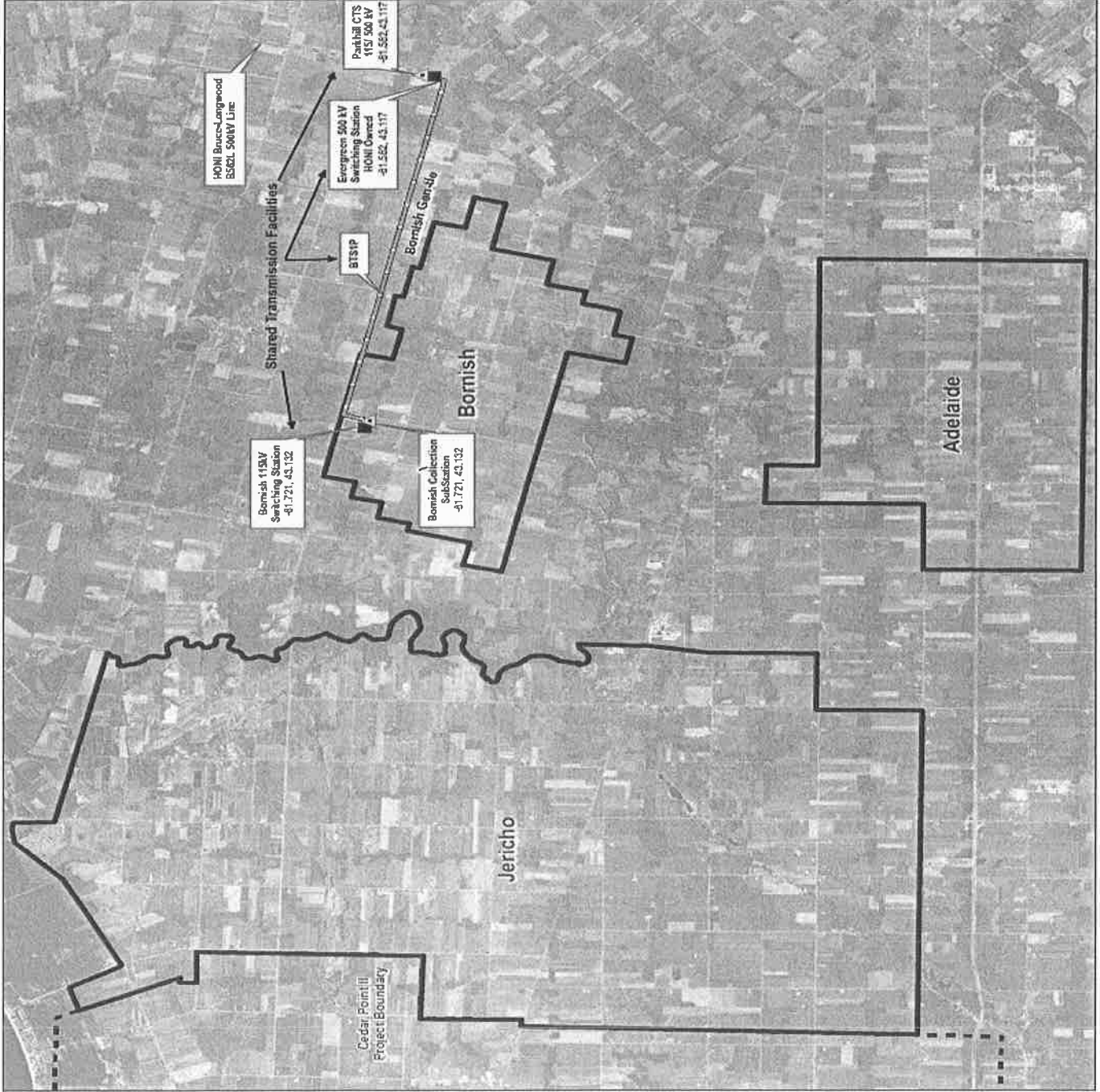


EXHIBIT C

FORM OF NOTICE OF LICENSEE'S EXERCISE OF THE STFA OPTION

NOTICE OF LICENSEE'S EXERCISE OF THE STFA OPTION

To: [Designated Representative] ("Designated Representative")

Re: STFA Option pursuant to the Shared Transmission Facilities and Option Agreement (the "**Agreement**") dated as of January 2, 2013 by and among **BORNISH WIND, LP** ("**Bornish**"), **KERWOOD WIND, INC.** ("**Kerwood**") and **JERICHO WIND, INC.** ("**Jericho**", together with Bornish and Kerwood, the "**Co-owners**" and each individually, a "**Co-owner**") and **SUNCOR ENERGY PRODUCTS INC.** (the "**Licensee**").

Defined terms used in this Notice have the meaning ascribed to them in the Agreement.

The undersigned is, in accordance with Section **Error! Reference source not found.** of the Agreement, hereby notifying the Designated Representative that the undersigned is, as of ■ [Note: Insert the date] exercising the STFA Option, and that as of the STFA Option Exercise Date, the Agreement shall be in full force and effect as set out therein, and the undersigned shall be bound by its obligations thereunder.

DATED the ■ day of ■, 20■.

SUNCOR ENERGY PRODUCTS INC.

Per:

Name:

Title:

I have authority to bind Suncor Energy Products Inc.

JERICO SHARED TRANSMISSION FACILITIES AND OPTION AGREEMENT

By and among

JERICO WIND, INC.,
as Owner

- and -

SUNCOR ENERGY PRODUCTS INC.,
as Licensee

Dated as of January 2, 2013

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List of Exhibits

Exhibit A - Description of Jericho Shared Transmission Facilities

Exhibit B - Depiction of Complete Portfolio Site

Exhibit C - Form of Notice of Licensee's Exercise of the Jericho STFA Option

JERICO SHARED TRANSMISSION FACILITIES AND OPTION AGREEMENT

This **JERICO SHARED TRANSMISSION FACILITIES AND OPTION AGREEMENT** (this "**Agreement**") dated as of January 2, 2013 (the "**Effective Date**"), is made and entered into by and among **JERICO WIND, INC.**, (the "**Owner**") and **SUNCOR ENERGY PRODUCTS INC.** (the "**Licensee**"). The Owner and the Licensee may each be referred to herein individually as a "**Party**", and collectively as the "**Parties**".

RECITALS

- A. The Owner will construct, develop and own the Jericho Shared Transmission Facilities, which Jericho Shared Transmission Facilities are necessary to connect the Owner's Project and the Licensee's Project to the Bornish Switching Station (and ultimately to the IESO-controlled grid.)
- B. The Owner wishes to grant the Licensee an option to acquire a non-exclusive license to use the Jericho Shared Transmission Facilities.
- C. The Owner will own the Jericho Shared Transmission Facilities, which facilities are critical to the operation of the Owner's Project and the Licensee's Project. In order to govern their respective rights and obligations with respect to the Jericho Shared Transmission Facilities, the Parties are entering into this Agreement, which will be the Parties' expression of their intention to establish and impose mutually beneficial limitations, restrictions, covenants and conditions to provide for the proper and orderly ownership, operation and management of each Party's respective interests in the Jericho Shared Transmission Facilities.

AGREEMENT

In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, intending to be legally bound the Parties agree as follows:

1. Definitions.

As used in this Agreement, the following words have the meanings herein specified.

- (1) "**Additional Capacity**" shall mean any additional generating capacity, the electrical output of which is to be delivered through the Jericho Shared Transmission Facilities, which at any time, exceeds the Projects' Contract Capacity as of the Effective Date.
- (2) |
- (3) |
- (4) "**Affected Party**" has the meaning set forth in Section 19(a).

- (5) **“Affiliate”** of any Person means, at the time such determination is being made, any other Person Controlling, Controlled by or under common Control with such first Person, in each case, whether directly or indirectly, and **“Control”** and any derivation thereof means the possession, directly or indirectly (other than in the capacity of an officer, director or employee of a Person), of the power to direct or significantly influence the management, policies or business of a Person whether through the ownership of voting securities or partnership units, by agreement or otherwise.
- (6) **“Agreed Interest Rate”** means the rate of interest, expressed as a per annum rate, which is used by the Royal Bank of Canada at its main branch in Toronto, Ontario, as a reference rate for purposes of determining rates of interests charged by it on Canadian dollar commercial loans made by it in Canada, and which is quoted by such bank, from time to time as its “prime rate”, plus 2% per annum.
- (7) **“Agreement”** has the meaning set forth in the first paragraph of this document.
- (8)
- (9) **“Approved Budget”** means a budget approved by the Owner.
- (10) **“Arbitration Commitment”** has the meaning set forth in Section 35(b) herein.
- (11) **“Arm’s Length”** means the relationship between persons who are not “related persons” as defined in the *Income Tax Act* (Canada).
- (12)
- (13) **“Bornish Switching Station”** means the switching station located at the Bornish Wind, LP project and as depicted in Exhibits A and B.
- (14) **“Borrowing Party”** has the meaning set forth in Section 39(b) herein.
- (15) **“Breaching Owner”** has the meaning set forth in Section 32 herein.
- (16) **“Canadian Dollars”**, “Cdn. Dollars”, “Cdn. \$”, “CAD\$” and “\$” each mean the lawful money of Canada.
- (17) **“Commercially Reasonable Efforts”** means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the

consummation of, a transaction, activity or undertaking contemplated by the Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the transaction therein contemplated.

- (18) **“Community Leader”** means a Chief, Band Councillor or other official of any First Nation, Métis or other aboriginal community.
- (19) **“Complete Portfolio”** means, collectively, the Owner’s Project, the Licensee’s Project, the Jericho Shared Transmission Facilities and any Additional Capacity installed, commissioned and located on the Complete Portfolio Site, and to be used to generate electrical output delivered through the Jericho Shared Transmission Facilities.
- (20) **“Complete Portfolio Site”** means the real property located in Ontario, Canada, on which the Complete Portfolio is (or, upon the completion of its construction, will be) located, as more specifically depicted on Exhibit B.
- (21) **“Confidential Information”** means:
 - (i) the provisions of this Agreement or any agreement in connection with the Jericho Shared Transmission Facilities or any Project and all financial, business, capital, operating, technical, administrative and personal information and data relating to:
 - (A) the Jericho Shared Transmission Facilities, any Party’s Project, including the business plans or forecasts pertaining thereto; and
 - (B) any Party or its partners, unit holders, trustees, shareholders, investors, customers, suppliers, clients, Affiliates, consultants and employees, or their respective Technology,

including studies, customer lists, charts, plans, tables and compilations of business and industry information, all to the extent prepared or acquired for, or provided to or by, any Party or any Affiliate of a Party in connection with the Jericho Shared Transmission Facilities or any Project;

- (ii) information and data related to Technology used in connection with the Jericho Shared Transmission Facilities and information received from Third Parties under an obligation of confidentiality; and
- (iii) information and data submitted or created in the course of resolution of a dispute, including any information or data created by the arbitrators, and any award or other determination;

but excluding particular information that the receiving Party can establish with demonstrable written evidence is or was, through no wrongful act or omission of the Party making the disclosure:

- (iv) at the time of disclosure generally available to the public;
- (v) prior to the time of acquisition in connection with the Jericho Shared Transmission Facilities or any Project by the receiving Party or any of its Affiliates, already in the possession of or known to the receiving Party or any of its Affiliates on a lawful basis;
- (vi) acquired from a Third Party who has, to the receiving Party's knowledge after due inquiry, lawful authority to disclose the applicable Confidential Information; or
- (vii) independently developed by or for the receiving Party or an Affiliate of the receiving Party without the use or exploitation of Confidential Information.

Any particular information forming part of the Confidential Information shall not fall within any of the foregoing exceptions merely because it is embraced by more general information falling within any of the exceptions.

- (22) **"Conflicting Party"** and **"Conflicting Parties"** has the meaning set forth in Section 35(b) herein.
- (23) **"Construction and Development Costs"** means the aggregate of the actual costs, fees, expenses and any applicable Taxes incurred by the Owner and related to the land acquisition, design, permitting, development, engineering, procurement and construction of the Jericho Shared Transmission Facilities, including without limitation: (A) costs incurred by the Owner or its Affiliates related to the development and construction of the Jericho Shared Transmission Facilities, including without limitation, as more particularly set out in the Jericho Shared Transmission Facilities EPC Agreement and other Third Party Contracts; (B) the costs or expenses incurred by the Owner for the connection of the Jericho Shared Transmission Facilities to the Bornish Switching Station; and (C) any other expenses related to the engineering, procurement and construction of the Jericho Shared Transmission Facilities.
- (24) **"Construction Option"** has the meaning set forth in Section **Error! Reference source not found.**
- (25) **"Construction Plans"** means the engineering plans prepared on behalf of the Owner for the construction of the Jericho Shared Transmission Facilities, which plans will identify, among other things, the exact location of each of the Projects, the Jericho Shared Transmission Facilities Area (and the component parts of the Jericho Shared Transmission Facilities, and any access rights retained by the Owner and/or the Licensee as described in Section 13 herein.
- (26) **"Contract Capacity"** has the meaning set forth in the Ontario Feed-In Tariff Rules, Version 1.5.

- (27) **“Control”** has the meaning set forth in Section 1(5) herein.
- (28) **“Co-owners”** means Bornish Wind, LP, Kerwood Wind, Inc. and Jericho Wind, Inc. in respect of the Shared Transmission Facilities.
- (29) **“CPI”** means (i) the Consumer Price Index (All items for Ontario) published by Statistics Canada (or by a successor or other Governmental Authority, including a provincial agency), or (ii) if the CPI is no longer published, an index published in substitution for the CPI or any replacement index designated by the Owner, acting reasonably. If a substitution is required, the Owner 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 Authority) the Owner will make the necessary conversions.
- (30) **“Cure Period”** has the meaning set forth in Section 19(b) herein.
- (31) **“Curtailment Period”** has the meaning set forth in Section 19(f) herein.
- (32) **“Customer Impact Assessment”** means the customer impact assessment to be carried out by HONI with respect to a party’s proposed use of the Jericho Shared Transmission Facilities and issued in the name of such party, in accordance with Sections 19(a) and 19(c) herein.
- (33) **“Declaration Notice”** has the meaning set forth in Section **Error! Reference source not found.**
- (34) **“Default”** has the meaning set forth in Section 30(a) herein.
- (35) **“Designated Representative”** has the meaning set forth in Section 8 herein.
- (36) **“Dispatch Operator”** means the entity responsible for coordinating the dispatching of energy between the Complete Portfolio and the Bornish Switching Station.
- (37) **“Disputing Party”** has the meaning set forth in Section 15(c) herein.
- (38) **“Effective Date”** has the meaning set forth in the first paragraph of this document.
- (39) **“EPC Contractor”** has the meaning set forth in Section 10(b) herein.
- (40) **“External Curtailment”** has the meaning set forth in Section 19(f) herein.
- (41) **“Force Majeure”** has the meaning set forth in Section 40 herein.
- (42) **“Good Operating Practices”** means the good and workmanlike practices, methods, and acts, (including but not limited to the practices, methods, and acts engaged in by a significant portion of the North American electric power

generation industry) that, at a particular time, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent generator or transmission operator in light of the facts known or that should reasonably have been known at the time a decision is made, could have reasonably been expected to accomplish the desired result at a reasonable cost in a manner consistent with applicable Laws, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy and expedition. Good Operating Practices are not intended to be limited to optimum practices, methods or acts to the exclusion of all others but rather are intended to delineate acceptable practices, methods or acts generally accepted in the North American electric power generation or transmission industry.

- (43) **"Governmental Agency(ies)"** means any Governmental Authority, political party, public international organization (as defined in the United States Foreign Corrupt Practices Act) and any enterprise partially or wholly owned, or controlled, by a Governmental Authority or Governmental Agency.
- (44) **"Governmental Authority"** and **"Governmental Authorities"** means, in relation to any Person, transaction, event, the Jericho Shared Transmission Facilities or any Project, any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, ministry, organization, Crown corporation, court, board, tribunal, dispute settlement panel or body or other law, rule or regulation-making party:
 - (i) having or purporting to have jurisdiction on behalf of any nation, province, state or other geographic or political subdivision thereof over such Person, transaction, event, the Jericho Shared Transmission Facilities or any Project; or
 - (ii) exercising or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over such Person, transaction, event, the Jericho Shared Transmission Facilities or any Project, including, without limiting the foregoing, the OEB and the IESO.
- (45) **"Governmental Official"** means an officer, employee, agent, representative or other official of any Governmental Agency, or any Person acting in an official capacity on behalf thereof, or any candidate for public office.
- (46) **"Hazardous Substance"** means any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Laws or by any Governmental Authorities under any Laws.
- (47) **"HONI"** means Hydro One Networks Inc.
- (48) **"IESO"** means the Independent Electricity System Operator.
- (49) **"Indemnified Party"** has the meaning set forth in Section 25 herein.

- [illegible]

- (B) if such cause, proceeding or other action is being contested by any such party, as applicable, in good faith, the same shall continue undismissed, or unstayed and in effect, for any period of sixty (60) consecutive days; or
 - (vii) all or any material part of the assets of any such party are attached, executed, sequestered or distrained upon or become subject to any order of a court or other process, and such party shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof.
- (54) **“Intellectual Property Rights”** means any and all intellectual property rights, including copyrights, design rights, trade-marks and trade-mark rights (including the goodwill therein), trade secret and confidential information rights, patent rights, and all other analogous intangible proprietary rights, which may subsist anywhere in the world, whether registered or unregistered, including all applications for registration of any of the foregoing, and all rights to file such applications.
- (55) **“Interference”** means a material impact by actions of any Party on the use or operation of any equipment of another Party that is located in the Jericho Shared Transmission Facilities Area and, without restricting the generality of the above, any reduction to the ability of a Party's generation to be transmitted on the Jericho Shared Transmission Facilities, that arises out of activities of any Party, any additional Party, any additional use of the Jericho Shared Transmission Facilities or Jericho Shared Transmission Facilities Area by any third party, or any act of the Owner or Operator in respect of the Jericho Shared Transmission Facilities not otherwise considered Good Operating Practices or contemplated herein.
- (56) **“Interfering Owner”** has the meaning set forth in Section 19(a) herein.
- (57) **“Internal Curtailment”** has the meaning set forth in Section 19(f) herein.
- (58) **“Jericho Project”** or **“Owner’s Project”** means the Wind Turbines and related electricity collection infrastructure that will be owned by the Owner located on the property identified as such on Exhibit B and any Additional Capacity that will be owned by the Owner and connected to the Jericho Shared Transmission Facilities.
- (59) **“Jericho Shared Transmission Facilities”** means the items consisting of all transmission line equipment, facilities and appurtenances used for the common benefit of the Projects, including but not limited to any related equipment or materials or any contract or purchase order therefor, interconnection rights and any permits related to the foregoing and those items identified and described as such on Exhibits A and B.
- (60) **“Jericho Shared Transmission Facilities Area”** means the area under and immediately adjacent to the Jericho Shared Transmission Facilities that is

necessary for the operation of the Jericho Shared Transmission Facilities, which area is further identified and described as such on Exhibit B and which area is owned or leased by or under an easement with the Owner.

- (61) |||||
- (62) |||||
- (63) **“Jericho STFA Option”** has the meaning set forth in Section **Error! Reference source not found.** herein.
- (64) **“Jericho STFA Option Exercise Date”** has the meaning set forth in Section **Error! Reference source not found.** herein.
- (65) **“Laws”** means any laws, rules, statutes, regulations, codes, requirements and/or ordinances enacted, imposed or enforced by any Governmental Authorities that are applicable to and/or affect all or any part of the operation, maintenance or use of the Jericho Shared Transmission Facilities.
- (66) **“Leave to Construct”** means an order in respect of the Jericho Shared Transmission Facilities or the Shared Transmission Facilities, as applicable, granted to the Owner or the Co-owners, as applicable, by the OEB under section 92 and subsection 96(1) of the *Ontario Energy Board Act, 1998*.
- (67) **“Licensee”** has the meaning set forth in the first paragraph of this document.
- (68) |||||
- (69) **“Licensee’s Interest”** has the meaning set forth in Section 39(b) herein.
- (70) **“Licensee’s Project”** means the Wind Turbines and related electricity collection infrastructure for the Cedar Point Wind Power Phase II project that will be owned by the Licensee located on the property identified as such on Exhibit B and connected to the Jericho Shared Transmission Facilities.
- (71) |||||
- (72) **“Mediation Period”** has the meaning set forth in Section 35(b) herein.
- (73) **“MW”** or **“megawatt”** means the measure of electrical capacity produced by the Owner’s Project, the Licensee’s Project or any Additional Capacity.
- (74) **“Non-Defaulting Party”** has the meaning set forth in Section 30(a)(ii).
- (75) **“Notice to Proceed”** means a notice in respect of the Licensee’s Project granted by the Ontario Power Authority that it is prepared to waive its option set out in

section 2.4 of the Power Purchase Agreement for the Licensee's Project, to terminate such agreement.

(76) **"OEB"** means the Ontario Energy Board.

(77) [REDACTED]

(78) [REDACTED]

(79) [REDACTED]

(80) [REDACTED]

(81) **"Owner"** has the meaning set forth in the first paragraph of this document.

(82) **"Owner's Interest"** has the meaning set forth in Section 39(b) herein.

(83) **"Owner's Project"** has the meaning set forth in Section 1(58) herein.

(84) **"Party"** and **"Parties"** have the meanings set forth in the first paragraph of this document.

(85) **"Party's Interest"** has the meaning set forth in Section 39(b) herein.

(86) **"Person"** means any individual, sole proprietorship, partnership, limited partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, corporation, company, limited or unlimited liability company, Governmental Authority, and where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative.

(87) **"Power Purchase Agreement"** means in respect of each Party, the Ontario Feed-in-Tariff (FIT) contract or other power purchase arrangement between such Party and the Power Purchaser, in connection with such Party's Project, pursuant to

which the Power Purchaser has agreed to purchase Power from such Party's Project pursuant to the Feed-in-Tariff Program.

- (88) **"Power Purchaser"** means the Ontario Power Authority, a corporation without share capital established under the *Electricity Restructuring Act, 2004* (Ontario) and its successors, or other party purchasing the output from the Complete Portfolio.

- (89) [REDACTED]

- (90) **"Projects"** means the Owner's Project and the Licensee's Project, collectively, and **"Project"** means either the Owner's Project or the Licensee's Project, generically.

- (91) **"Reimbursement Notice"** has the meaning set forth in Section **Error! Reference source not found.** herein.

- (92) [REDACTED]

- (93) **"Related Party"** means the Licensee, the Owner and any of their respective Affiliates.

- (94) **"Representatives"** means the advisors, agents, consultants, directors, employees, management, officers, subcontractors, and other representatives, including accountants, auditors, financial advisors and lawyers of a Party or its Affiliates.

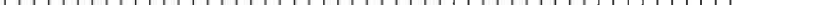
- (95) [REDACTED]

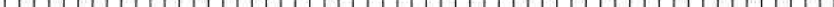
- (96) **"Service Providers"** means, collectively, the Operator and the Dispatch Operator, and **"Service Provider"** shall mean any one of the Service Providers.

- (97) [REDACTED]


- (i) [REDACTED]

(ii) 

(iii) 

(iv) 

(v) 

(vi) 

[illegible]

(viii) $\{1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100\}$

(ix) 

[illegible]

(98) **“Shared Transmission Facilities”** means the items consisting of all transmission line equipment, facilities and appurtenances used for the common benefit of the Jericho Project, Bornish Wind, LP’s project, Kerwood Wind, Inc.’s project and the Licensee’s Project, including but not limited to any related equipment or materials or any contract or purchase order therefor, interconnection rights and any permits related to the foregoing as further described in the Shared Transmission Facilities and Option Agreement.

(99)

- (108)

|||||

(109) |||||

(110) **“Transmission Operation Date”** means the date on which the Jericho Shared Transmission Facilities have been constructed, connected, commissioned and synchronized to HONI’s transmission system such that electric energy may be delivered in compliance with Good Operating Practices.

(111) **“Transmission System Code”** means the Transmission System Code of the OEB, as amended from time to time.

(112) **“United States Foreign Corrupt Practices Act”** means *The Foreign Corrupt Practices Act of 1977* (15 U.S.C. § 78dd-1, et seq.) (USA).

(113) |||||

(114) **“Wind Turbine”** shall mean each of the wind turbines purchased by each Party for their Project, and installed, commissioned and located (or, upon completion of construction of its Project, as shall have been installed, commissioned, and located) on the applicable Project and to be used to generate electrical output.

2. **Currency.**

All amounts referred to herein are in Canadian Dollars unless expressly noted otherwise.

3. **Effectiveness.**

The Parties hereby agree that (i) from and as of the Effective Date until the Jericho STFA Option Exercise Date, only Sections 1 - 5, **Error! Reference source not found.**, 14, 22 - 25, 33 - 35, 37 - 39, 41 - 48, 51, 53, 56 and 58 of this Agreement shall be effective, and (ii) as of the Jericho STFA Option Exercise Date, (A) Section **Error! Reference source not found.** (other than Section **Error! Reference source not found.**) shall be of no further force or effect, and (B) all other Sections in this Agreement shall be effective.

4. |||||

(a) |||||

(b) |||||

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(c) |||||

(d) |||||
|||||
|||||

5. Representations and Warranties.

Each Party represents and warrants that:

(a) if it is a corporation, it is a valid and subsisting corporation and if it is a partnership or limited partnership, it is duly formed, and is validly existing under the laws of its jurisdiction of incorporation or formation, as applicable, and it has all requisite power and authority to enter into this Agreement;

(b) the transactions contemplated in this Agreement have been duly and validly authorized and all documents and instruments contemplated in this Agreement, including this Agreement, have been duly and validly authorized, executed and delivered;

(c) the transactions contemplated in this Agreement will not violate, nor be in conflict with any provisions of its constituting documents, by-laws or governing documents, or any agreement or contract or instrument to which it is a party or by which it is bound or any Laws;

(d) this Agreement, and all documents and instruments contemplated thereby, are legal, valid and binding obligations of it enforceable against it in accordance with their respective terms;

(e) |||||
|||||
|||||

(i) |||||

(ii) |||||

(f) it is not a non-resident of Canada within the meaning of the Tax Act.

6. Compliance with Anti-Bribery and Anti-Corruption Laws.

(a) Each Party represents and warrants that:

(i) such Party and its Affiliates; and

- (ii) to the best of such Party's knowledge, any past or present Representative of, or any other Person acting on behalf of, such Party or its Affiliates;

has not, in any manner related to or connected with the Jericho Shared Transmission Facilities or its Project, directly or indirectly, paid, promised or offered to pay, or authorized the payment of any money or anything of value to:

- (iii) a Governmental Official; or
- (iv) any other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to a Governmental Official;

in each case for the purpose of influencing any act or decision of such Governmental Official in his, her or its official capacity, including a decision to do or omit to do any act in violation of the lawful duty of such Governmental Official, or inducing such Governmental Official to use his, her or its influence with a Governmental Agency to affect or influence any act or decision, or otherwise secure any improper advantage.

- (b) Each Party agrees that neither it nor its Affiliates shall violate, in any manner related to or connected with the Jericho Shared Transmission Facilities or its Project, any applicable anti-bribery or anti-corruption laws. Specifically, each Party agrees that it shall not, in any manner related to or connected with the Jericho Shared Transmission Facilities or its Project, directly or indirectly, pay, promise or offer to pay, or authorize the payment of any money or anything of value, to:

- (i) a Governmental Official; or
- (ii) any other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to a Governmental Official;

in each case for the purpose of influencing any act or decision of such Governmental Official in his, her or its official capacity, including a decision to do or omit to do any act in violation of the lawful duty of such Governmental Official, or inducing such Governmental Official to use his, her or its influence with a Governmental Agency to affect or influence any act or decision, or otherwise secure any improper advantage.

- (c) In connection with carrying out its responsibilities under this Agreement, each Party and its Affiliates shall use only lawful business practices in its commercial operations, shall not participate in bribes or kickbacks of any kind, and shall not violate any anti-bribery or anti-corruption laws.
- (d) Each Party agrees to forthwith advise the other Parties of any action of any action taken by such Party or by any Persons acting on behalf of such Party or its Affiliates that is inconsistent with Sections 6(b) and 6(c) of which it becomes aware.

- (e) For the purposes of this Section 6, anti-bribery laws includes the laws of each of Canada and the Province of Ontario, the United States Foreign Corrupt Practices Act, as well as any other applicable anti-bribery or anti-corruption laws.
- (f) Any Party (the "**Auditing Party**"), with reasonable basis for believing another Party or its Affiliates (the "**Audited Party**") has not met its obligations under this Section 6, shall have the right, upon reasonable notice, to audit the books and records of the Audited Party in order to verify compliance by the Audited Party with the requirements and obligations of this Section 6. The Auditing Party shall be responsible for all reasonable expenses related to such audit, including the expenses incurred by the Audited Party for internal and external time and resources committed to such audit. If requested by the Audited Party, such audit shall be conducted by a qualified independent Third Party selected by the Auditing Party, which shall provide the Auditing Party with its assessment concerning whether a breach of this Section 6 has occurred. The Audited Party shall cooperate fully with any audit performed by or on behalf of the Auditing Party and shall be entitled (on a no-reliance basis) to a copy of the final report generated by either the Auditing Party or a qualified Third Party auditor, as applicable.

7. **Compliance in Dealings with Community Leaders**

- (a) Each Party represents and warrants that:
 - (i) such Party and its Affiliates; and
 - (ii) to the best of such Party's knowledge, any past or present Representative of, or any other Person acting on behalf of, such Party or its Affiliates;

has not, in any manner related to or connected with the Jericho Shared Transmission Facilities or its Project, directly or indirectly, paid, promised or offered to pay, or authorized the payment of any money or anything of value to:

- (iii) a Community Leader; or
- (iv) any other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to a Community Leader;

in each case for the purpose of influencing any act or decision of such Community Leader in his, her or its official capacity as a Community Leader, including a decision to do or omit to do any act in violation of the lawful duty of such Community Leader, or inducing such Community Leader to use his, her or its influence, if any, with a Governmental Agency to affect or influence any act or decision, or otherwise secure any improper advantage.

- (b) Each Party agrees that it shall not, in any manner related to or connected with the Jericho Shared Transmission Facilities or its Project, directly or indirectly, pay,

promise or offer to pay, or authorize the payment of any money or anything of value, to:

- (i) a Community Leader; or
- (ii) any other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to a Community Leader;

in each case for the purpose of influencing any act or decision of such Community Leader in his, her or its official capacity as a Community Leader, including a decision to do or omit to do any act in violation of the lawful duty of such Community Leader, or inducing such Community Leader to use his, her or its influence, if any, with a Governmental Agency to affect or influence any act or decision, or otherwise secure any improper advantage.

- (c) Each Party agrees to forthwith advise the other Party of any action taken by such Party or by any Persons acting on behalf of such Party or its Affiliates that is inconsistent with Sections 7(a) and 7(b) of which it becomes aware.
- (d) Any Party (the "**Auditing Party**"), with reasonable basis for believing another Party or its Affiliates (the "**Audited Party**") has not met its obligations under this Section 7, shall have the right, upon reasonable notice, to audit the books and records of the Audited Party in order to verify compliance by the Audited Party with the requirements and obligations of this Section 7. The Auditing Party shall be responsible for all reasonable expenses related to such audit, including the expenses incurred by the Audited Party for internal and external time and resources committed to such audit. If requested by the Audited Party, such audit shall be conducted by a qualified independent Third Party selected by the Auditing Party, which shall provide the Auditing Party with its assessment concerning whether a breach of this Section 7 has occurred. The Audited Party shall cooperate fully with any audit performed by or on behalf of the Auditing Party and shall be entitled (on a no-reliance basis) to a copy of the final report generated by either the Auditing Party or a qualified independent Third Party auditor, as applicable.

8. **Declaration of Intention.**

The Parties hereby declare that their relationship in and to the Jericho Shared Transmission Facilities and the Jericho Shared Transmission Facilities Area is and will be that of owner in respect of the Owner, and licensee in respect of the Licensee, expressly subject to the terms, conditions, limitations and requirements set forth in this Agreement. Nothing contained in this Agreement will be deemed to constitute the Parties as partners or joint venturers. The Owner shall designate itself, an Affiliate of the Owner or any other Person (the "**Designated Representative**") as the Owner's representative for purposes stated in this Agreement related to communication and co-ordination of rights, obligations and responsibilities of the Owner and the Licensee, as applicable, under this Agreement. The Owner shall provide the Licensee with

prompt notice of the initial designation of, or any change to, the Designated Representative. Notwithstanding the foregoing, the Designated Representative shall not assume any additional obligations or responsibilities under this Agreement nor in any way release or relieve the Owner from its obligations.

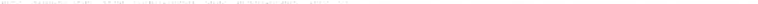
9. License to Use Jericho Shared Transmission Facilities.

Subject to the terms and conditions contained herein and subject to any contractual or regulatory restrictions on the Owner's ability to use the Jericho Shared Transmission Facilities, which restrictions shall apply to the Licensee *mutatis mutandis*, the Owner hereby grants to the Licensee, subject to applicable Laws, a non-exclusive license to access and use the Jericho Shared Transmission Facilities for purpose of the Licensee's operation of the Licensee's Project and the dispatching of the Contract Capacity up to 100 MW generated by the Licensee's Project to the Bornish Switching Station.

10. Construction of Jericho Shared Transmission Facilities.

(a) 

(i)

(A) 

(B)

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	5
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(ii)

- (A) [REDACTED]
- (B) [REDACTED]
- (iii) [REDACTED]
- (iv) [REDACTED]
- (v) [REDACTED]
- (vi) [REDACTED]

- (b) A third party (the “**EPC Contractor**”) shall be selected by the Owner to expeditiously perform the engineering, procurement and construction services under an engineering, procurement and construction agreement relating to the switching station, transmission line and the substation facility (the “**Jericho Shared Transmission Facilities EPC Agreement**”). The Designated Representative shall promptly give written notice to the Licensee of any notice of default it may receive or deliver with respect to the Jericho Shared Transmission Facilities EPC Agreement and shall confer with the Licensee regarding resolution of any such dispute between the Owner and the EPC Contractor under the Jericho Shared Transmission Facilities EPC Agreement. The Designated Representative shall promptly notify the Licensee upon completion of the Jericho Shared Transmission Facilities.

11. Construction of Projects

For greater certainty and notwithstanding anything to the contrary herein, each Party shall be solely responsible for any and all costs, fees, expenses and applicable Taxes, liabilities and damages incurred in respect of the construction and development of such Party’s Project.

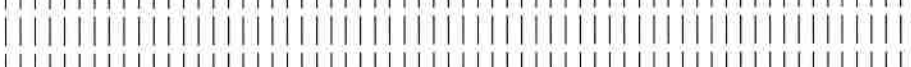
12. Term; Right of Termination.

- (a) The term of this Agreement will commence on the Effective Date, and, unless sooner terminated or extended pursuant to the terms of this Agreement, will

continue as to each Party for forty (40) years after the Transmission Operation Date (as defined in the Shared Transmission Facilities and Option Agreement).

- (b) The term of the license will commence on the Jericho STFA Option Exercise Date, and unless sooner terminated pursuant to the terms of this Agreement, will continue throughout the term of this Agreement.

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- (d)
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13. Access to the Jericho Shared Transmission Facilities Area.

Subject to personnel safety restrictions or considerations that would require controlled access to certain parts of the Jericho Shared Transmission Facilities, which may include the requirement to be accompanied by a representative of the subject Project, the Owner and the

Licensee recognize that each Party may need to retain access rights through the other Party's Project to gain access to the Jericho Shared Transmission Facilities Area and its own Project. To that end, each Party will grant to the other Party, to the extent reasonably necessary, for the other Party's own benefit and the benefit of the Operator, non-exclusive and perpetual access rights across such Party's Project for the purposes of ingress and egress to and from, and for the operation, maintenance and inspection of, the Jericho Shared Transmission Facilities, the Jericho Shared Transmission Facilities Area and each Party's Project. In connection with exercising any such access rights, the Party accessing the other Party's Project shall ensure that such exercise causes no Interference with the use or operation of any equipment that is located on such Party's Project.

14. Co-operation and Co-ordination.

Each Party shall co-operate and co-ordinate with the other Party to the extent reasonably necessary to permit and facilitate the performance of such Party's obligations under this Agreement, including without limitation: (i) from time to time, executing, causing to be acknowledged and delivering such documents or instruments, and providing such certificates, as the other Party may reasonably request to carry out and fulfill the transactions, and permit the exercise and performance of the rights and obligations, as are contemplated hereunder; (ii) the construction and development of the Jericho Shared Transmission Facilities; (iii) the connection of each Party's Project to the Jericho Shared Transmission Facilities; (iv) the connection of the Jericho Shared Transmission Facilities to the IESO grid; and (v) any regulatory proceeding or submission to the Power Purchaser or a Governmental Authority, provided that in the event of a dispute with the Owner or its Affiliates with respect to the Owner's Project, the Jericho Shared Transmission Facilities or any other related transmission facilities, the Licensee; (A) shall not seek and shall prevent any Affiliate from seeking permission from the Ontario Power Authority, OEB or any other Governmental Authorities to utilize the Jericho Shared Transmission Facilities; and (B) shall not file or otherwise communicate and shall prevent any Affiliate from filing or otherwise communicating any objections or adverse comments with any Governmental Authorities in connection with the Owner's Project and the Jericho Shared Transmission Facilities, without first attempting to resolve such dispute in accordance with Section 35. The provisions of Section 14(v) and Section 35 shall survive the termination or expiration of this Agreement only up to and including the Outside Date.

15. Operations and Maintenance; Shared Expenses.

- (a) The Jericho Shared Transmission Facilities will be operated, managed and maintained by the Operator, for the benefit of the Owner and the Licensee, pursuant to the Jericho Shared Transmission Facilities O&M Agreement. The Jericho Shared Transmission Facilities O&M Agreement shall provide, among other things, that the Jericho Shared Transmission Facilities are operated and maintained: (i) in a safe manner; (ii) in accordance with Good Operating Practices; and (iii) in compliance with all Laws.
- (b) Each Party hereby confirms its obligation to share in the periodic (no more frequently than monthly) payment of the Shared Expenses, and agrees, severally but not jointly, to pay its Pro Rata Share of the Shared Expenses (including any

applicable Taxes in respect of the Shared Expenses) as and when due and payable. Each Party will pay its Pro Rata Share of any invoice for Shared Expenses consistent with the terms of the Jericho Shared Transmission Facilities O&M Agreement or, if not subject to the Jericho Shared Transmission Facilities O&M Agreement within thirty (30) days after receipt of such invoice. As it becomes practicable and desirable, the Parties from time to time may designate additional expenses as Shared Expenses to be administered by the Operator in accordance with this Section 15. Any further assumption of additional Shared Expense may be proposed by any Party, but will only be approved and become an obligation of all Parties by an amendment to this Agreement, such approval not to be unreasonably withheld or delayed.

- (c) If a Party in good faith disputes all or any portion of an invoice (a **"Disputing Party"**), the Disputing Party shall take the following steps: (i) the Disputing Party shall pay all items outlined in the invoice, including those which the Disputing Party disputes within the time period described above; and (ii) the Disputing Party shall notify both the Operator and the other Party in writing of the basis of the dispute and of those amounts contained in the invoice for which the Disputing Party disputes the amount due, together with a request for a refund of such amount, all within the time period described above. If the Parties are unable to mutually agree on a resolution to the disputed portion of the invoice within thirty (30) days of a Party's delivery of its objections to the other Party, then the determination of the invoice shall be promptly submitted to dispute resolution pursuant to Section 35. Failure by the Disputing Party to dispute all or any portion of an invoice within twelve (12) months after such invoice was received shall be deemed as approval by the Disputing Party of the amount due under such invoice.
- (d) The records that the Owner maintains with respect to Shared Expenses shall be retained by the Owner for a period of seven (7) years following the date on which such costs were billed to the Licensee. The Licensee shall have the right, through its representatives to examine, copy and audit such records at reasonable times, upon not less than ten (10) days' prior notice, and at such place within Ontario as the Licensee shall reasonably designate from time to time for the keeping of such records. If pursuant to a Licensee's audit, under this Agreement or the Jericho Shared Transmission Facilities O&M Agreement with respect to the Jericho Shared Transmission Facilities and the Jericho Shared Transmission Facilities Area, it is determined that the Licensee must pay additional amounts to the Owner on account of Shared Expenses or that the Licensee has overpaid the Owner on account of Shared Expenses, then the undercharged or overpaid Party promptly shall reimburse the other Party for the payments due, including any interest charges thereon at the Agreed Interest Rate.
- (e) If the Owner allows the additional use of the Jericho Shared Transmission Facilities or the Jericho Shared Transmission Facilities Area in accordance with the terms of Section 19 of this Agreement: (i) each Party's Pro Rata Share shall be adjusted accordingly; and (ii) subject to applicable Laws, the Owner shall recapture, for the benefit of all Parties, from the third party using the Jericho

Shared Transmission Facilities or the Jericho Shared Transmission Facilities Area such third party's allocable share of Construction and Development Costs and capital improvement costs previously incurred by the Parties with respect to the Jericho Shared Transmission Facilities and the Jericho Shared Transmission Facilities Area. Any such recaptured costs shall be allocated to the Parties in accordance with their Pro Rata Share prior to said adjustment. In addition, if the Owner or an Affiliate of the Owner installs (or causes to be installed) Additional Capacity on the Owner's Project or on a site adjacent to the Owner's Project, (A) each Party's Pro Rata Share shall be adjusted in accordance with the definition thereof in Section **Error! Reference source not found.** and (B), if the Licensee has paid the Total Participation Fee, the Designated Representative shall promptly pay the Licensee the difference between the amount of the Total Participation Fee actually paid by the Licensee and the amount thereof that the Licensee would have paid based upon its Pro Rata Share as adjusted.

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Handwriting practice lines with dashed midlines and arrows indicating stroke direction.

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19.

- (a) Subject to obtaining a System Impact Assessment and Customer Impact Assessment, the Owner may allow additional use of the Jericho Shared Transmission Facilities and the Jericho Shared Transmission Facilities Area by separate arrangement. If such additional use constitutes Interference with the other Party's (the "**Affected Party**") use of, or access to, the Jericho Shared Transmission Facilities or Jericho Shared Transmission Facilities Area, then, the Owner (the "**Interfering Owner**") shall use Commercially Reasonable Efforts to correct the Interference to the Affected Party's reasonable satisfaction within twenty-four (24) hours after receipt of notice from the Affected Party of such Interference (except when the nature of the Interference is such that more than twenty-four (24) hours are required for its correction, then the Interfering Owner shall not be deemed in breach if it commences correction within the twenty-four (24) hour period and thereafter undertakes Commercially Reasonable Efforts to correct the Interference within the minimum time required). Notwithstanding Section 33, in the event of any such Interference (i) the Interfering Owner shall pay the Affected Party an amount equivalent to the revenue loss directly attributable to the line loss incurred by the Affected Party, and (ii) in addition to the Affected Party's rights pursuant to Section 30 of this Agreement, any amount payable to the Interfering Owner under this Agreement by the Affected Party shall be equitably abated based on the degree of Interference.
- (b) Notwithstanding Section 19(a) above, if the Affected Party determines reasonably that an Interference of the Affected Party's use of or access to the Jericho Shared Transmission Facilities or the Jericho Shared Transmission Facilities Area is caused by the willful misconduct or fraudulent actions of the Interfering Owner (a "**Willful Interference**"), the Interfering Owner shall correct the Willful Interference to the Affected Party's satisfaction within twelve (12) hours after receipt of notice from the Affected Party of such Willful Interference (the "**Cure Period**"). Notwithstanding Section 33, in the event of any such Willful Interference: (i) the Interfering Owner shall pay the Affected Party an amount equivalent to the revenue loss directly attributable to the line loss and generation loss incurred by the Affected Party; and (ii) in addition to the Affected Party's

rights pursuant to Section 30 of this Agreement, any amount payable to the Interfering Owner under this Agreement by the Affected Party shall be equitably abated based on the degree of Interference. In addition, the Interfering Owner acknowledges that, due to the Willful Interference, the Affected Party may be suffering irreparable harm for which monetary damages are inadequate, and the Affected Party may petition a court of competent jurisdiction for injunctive relief, specific performance or other equitable relief.

- (c) Subject to obtaining a System Impact Assessment and Customer Impact Assessment, to the extent available or possible, and if consented to in writing by the Designated Representative in its sole discretion, the Licensee may be allowed additional use of the Jericho Shared Transmission Facilities and the Jericho Shared Transmission Facilities Area by separate arrangement. If any Interference of the Jericho Shared Transmission Facilities or Jericho Shared Transmission Facilities Area is caused by the Licensee, the Licensee shall use its Commercially Reasonable Efforts to correct the Interference to the Affected Party's reasonable satisfaction within twenty-four (24) hours after receipt of notice from the Affected Party of the Interference (except when the nature of the Interference is such that more than twenty-four (24) hours are required for its correction, then the Licensee shall not be deemed in breach if it commences correction within the twenty-four (24) hour period and thereafter undertakes Commercially Reasonable Efforts to correct the Interference within the minimum time required.
- (d) Except for: (i) as otherwise provided for in this Section 19; (ii) gross negligence or willful misconduct as to maintenance or repairs of the Jericho Shared Transmission Facilities; and (iii) a Default by the Interfering Owner, the Interfering Owner and its Affiliates shall have no liability to the Affected Party or its Affiliates for any damage or loss related to any defect in, damage to, malfunction of or other failure to operate, any portion of the Jericho Shared Transmission Facilities.
- (e) The Designated Representative and Operator shall control any outage schedule for the Jericho Shared Transmission Facilities and such schedule shall be applied equitably to the generation components of the Projects. The Designated Representative and the Operator shall provide reasonable advance notice to the other Parties of any such outage schedule.
- (f) The Parties acknowledge that other energy may be generated at the Projects pursuant to other agreements or arrangements involving the Parties or other non-parties to this Agreement. The Parties further acknowledge that there could occur constraints: (A) related to market conditions, HONI's transmission system, the IESO grid or otherwise mandated by the IESO ("**External Curtailment**") and (B) related to the Complete Portfolio or the Jericho Shared Transmission Facilities or any transmission system between HONI's transmission system and the Jericho Shared Transmission Facilities ("**Internal Curtailment**") which require curtailments that affect deliveries to the IESO grid of energy generated at the Projects for a period of time (the "**Curtailment Period**"). The Parties

understand and agree that in the event of an External Curtailment or Internal Curtailment, the Dispatch Operator or the Operator, as applicable, shall inform the Operator or the Dispatch Operator, as applicable, the Designated Representative, the Owner and the Licensee of such External Curtailment or Internal Curtailment, including the particulars thereof, and each of the Designated Representative, the Dispatch Operator and the Operator shall, during the Curtailment Period, coordinate their actions to curtail the Parties' deliveries of energy to the extent required, and in the following order:

- (i) first, if any action or inaction of a Party caused or contributed to such External Curtailment or Internal Curtailment, the energy scheduled to be generated at any time during the Curtailment Period by such Party's Project (if more than one Party, each Party's deliveries of energy shall be curtailed on a pro rata basis);
- (ii) second, if Additional Capacity has been installed at a Project or Projects, the energy scheduled to be generated by such Additional Capacity at any time during the Curtailment Period; and
- (iii) third, for such External Curtailment or Internal Curtailment as remains after the application of sections 19(f)(i) and 19(f)(ii), a Party's Project's pro rata share of all energy scheduled to be generated by the Projects at any time during such Curtailment Period (calculated by dividing the total energy scheduled to be generated by a Party's Project at any time during the Curtailment Period, by the aggregate energy scheduled to be generated by the Projects at such time during the Curtailment Period).

20. Operation and Management.

- (a) Each Party shall operate and maintain its respective Project, or shall cause its Project to be operated and maintained, acting as a prudent operator and manager: (i) in a safe manner; (ii) in accordance with Good Operating Practices; (iii) in compliance with all Laws; and (iv) without causing a material adverse effect on the other Party's Project. Each Party will bear the risk of damage, loss, or taking to or of its Project assets.
- (b) Subject to Section **Error! Reference source not found.**, the Owner shall cause the Jericho Shared Transmission Facilities to be constructed, operated and maintained: (i) in a safe manner; in accordance with Good Operating Practices; (ii) in compliance with all Laws, and (iii) without causing a material adverse effect on the Licensee's Project. The appointment of the Owner to operate the Jericho Shared Transmission Facilities pursuant to the Jericho Shared Transmission Facilities O&M Agreement shall, subject to the provisions of the Jericho Shared Transmission Facilities O&M Agreement, in no way relieve it of its collective obligations set forth in this Section 20(b).

- (c) The Parties hereto agree that any Related Party providing services to the Jericho Shared Transmission Facilities through Services Agreements, shall neither earn a profit nor suffer a loss in performing such services.

21. Right of Inspection.

To the extent the Licensee is not otherwise in Default, upon reasonable notice to the Operator and during normal business hours, the Licensee shall have the right to inspect the Jericho Shared Transmission Facilities and the Jericho Shared Transmission Facilities Area. In exercising this right of inspection, the Licensee shall comply with all safety procedures and policies of the Owner. The Licensee shall defend, indemnify and hold harmless the Owner and its officers, directors, employees and agents from and against all loss, damage, expense, costs and liability, including reasonable attorneys' fees, arising from any claims against the Owner arising from injury to or death of individuals or damage to or destruction of property occurring at the Jericho Shared Transmission Facilities and the Jericho Shared Transmission Facilities Area to the extent caused by the Licensee during any such inspection, except to the extent caused by the gross negligence or willful misconduct of the Owner or Operator.

22. Reporting.

The Designated Representative will deliver to the Licensee:

- (a) 15 days prior to the end of each calendar year, the Approved Budget;
- (b) 15 days prior to the end of each calendar year, an annual operating plan setting forth the underlying assumptions and implementation plans in connection with the Approved Budget;
- (c) promptly after receipt thereof from the Operator, any material information concerning new or significant aspects of the Jericho Shared Transmission Facilities operations such as, but not limited to, any emergency affecting the safety or protection of Persons or endangering the Jericho Shared Transmission Facilities or property located in the Jericho Shared Transmission Facilities Area, including any action taken by the Operator to prevent or mitigate the same;
- (d) promptly after they have been approved by the Owner: (i) any drawings, plans, designs, specifications or blueprints prepared by the EPC Contractor, pursuant to which the Jericho Shared Transmission Facilities are to be constructed; and (ii) any changes to such items;
- (e) promptly after any termination, material amendment or assignment of the Jericho Shared Transmission Facilities O&M Agreement that has been executed by the Owner, notice and copies of such termination, amendment or assignment;
- (f) promptly after any termination, material amendment or assignment of the Jericho Shared Transmission Facilities EPC Agreement that has been executed by the Owner, notice and copies of such termination, amendment or assignment;

- (g) promptly after receipt thereof, copies of any EPC Contractor reports, status reports or certificates pertaining to the construction of the Jericho Shared Transmission Facilities; and
- (h) promptly after receipt thereof, copies of any studies or reports (including system impact and connection impact studies) related to an agreement entered into by the Owner that will allow Additional Capacity.

23. Licensee Input.

The Licensee may provide the Owner with input on Additional Capital Costs that the Owner proposes to incur, as set out in Section **Error! Reference source not found.**, and on any of the items delivered pursuant to Section 22, provided that, for greater certainty, such input shall not bind the Owner to any action or course of action.

24. Compliance with Laws.

Each Party shall conduct its operations pursuant to this Agreement in compliance with applicable Laws. Should any Party fail to comply in all material respects with any applicable Laws, and such Party fails to cause the non-compliance to be cured within the time frame allowed by the applicable Governmental Authority, such failure shall be considered a Default. For greater certainty, with respect to the Licensee's license, each Party's obligations hereunder are subject to applicable Laws.

25. Indemnity.

- (a) Except as otherwise provided in this Agreement, each Party (an "**Indemnifying Party**") will be liable to and as a separate independent covenant indemnify, defend and hold harmless each other Party (an "**Indemnified Party**"), to the full extent lawful, from and against any and all losses, damages, liabilities, claims, judgments, actions, liens, penalties, costs and expenses, joint or several, including, without limitation, reasonable attorneys' fees, which:
 - (i) may be imposed upon or incurred by such Indemnified Party or asserted against such Indemnified Party by any third Person in connection with any negligent or willful acts or omissions of or on behalf of the Indemnifying Party or;
 - (ii) may be directly incurred by such Indemnified Party, in connection with any gross negligence or willful misconduct of or on behalf of the Indemnifying Party;

in each case on or with respect to the performance of its obligations under this Agreement during the term hereof, provided that in no event shall an Indemnifying Party's total liability under this Section 25 exceed such Indemnifying Party's Pro Rata Share of the Construction and Development Costs, except and to the extent such losses, damages, liabilities, claims, judgments, liens, penalties, costs and expenses, including, without limitation, reasonable attorneys'

fees, arose or were caused by the fraud, gross negligence or willful misconduct of the Indemnifying Party in which case there will be no dollar limit to the obligations of the Indemnifying Party.

- (b) If for any reason the foregoing indemnification is unavailable to an Indemnified Party or is insufficient to hold an Indemnified Party harmless, the Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such expense, loss, claim, action, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnifying Party on the one hand and such Indemnified Party on the other hand but also the relative fault of the Indemnifying Party or, such Indemnified Party as well as any relevant equitable considerations.
- (c) Promptly after receiving notice of an action, suit, proceeding or claim against an Indemnified Party or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought from the Indemnifying Party, such Indemnified Party will notify the Indemnifying Party in writing of the particulars thereof, will provide copies of all relevant documentation to the Indemnifying Party and, unless the Indemnifying Party assumes the defence thereof, will keep the Indemnifying Party advised of the progress thereof and will discuss all significant actions proposed. The omission to notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability which the Indemnifying Party may have to such Indemnified Party except only to the extent that any such delay in giving or failure to give notice as herein required materially prejudices the defence of such action, suit, proceeding, claim or investigation or results in any material increase in the liability which the Indemnifying Party would otherwise have under this indemnity had such Indemnified Party not so delayed in giving or failed to give the notice required hereunder.
- (d) The Indemnifying Party shall be entitled, at its own expense, to participate in and, to the extent it may wish to do so, assume the defence thereof, provided such defence is conducted by experienced and competent counsel. Upon the Indemnifying Party notifying an Indemnified Party in writing of its election to assume the defence and retain counsel, the Indemnifying Party shall not be liable to such Indemnified Party for any legal expenses subsequently incurred by it in connection with such defence. If such defence is assumed by the Indemnifying Party, the Indemnifying Party throughout the course thereof will provide copies of all relevant documentation to such Indemnified Party, will keep such Indemnified Party advised of the progress thereof and will discuss with such Indemnified Party all significant actions proposed.
- (e) Notwithstanding the foregoing paragraph, an Indemnified Party shall have the right, at the Indemnifying Party's expense, to employ counsel of such Indemnified Party's choice, in respect of the defence of any action, suit, proceeding, claim or investigation if: (i) the employment of such counsel has been authorized by the Indemnifying Party; or (ii) the Indemnifying Party has not assumed the defence

and employed counsel therefor within a reasonable time after receiving notice of such action, suit, proceeding, claim or investigation; or (iii) counsel retained by the Indemnifying Party or such Indemnified Party has advised such Indemnified Party that representation of both parties by the same counsel would be inappropriate for any reason, including without limitation because there may be legal defences available to such Indemnified Party which are different from or in addition to those available to the Indemnifying Party (in which event and to that extent, the Indemnifying Party shall not have the right to assume or direct the defence on such Indemnified Party's behalf) or that there is a conflict of interest between the Indemnifying Party and such Indemnified Party or the subject matter of the action, suit, proceeding, claim or investigation may not fall within the indemnity set forth herein (in either of which events the Indemnifying Party shall not have the right to assume or direct the defence on such Indemnified Party's behalf).

- (f) No admission of liability and no settlement of any action, suit, proceeding, claim or investigation shall be made without the consent of the Indemnified Parties affected, such consent not to be unreasonably withheld. No admission of liability shall be made and the Indemnifying Party shall not be liable for any settlement of any action, suit, proceeding, claim or investigation made without its consent, such consent not to be unreasonably withheld.
- (g) Notwithstanding the foregoing, the Licensee shall not be subject to any liability in respect of the Jericho Shared Transmission Facilities arising out of this Agreement, the Jericho Shared Transmission Facilities EPC Agreement, Jericho Shared Transmission Facilities O & M Agreement and any other agreement related to the Jericho Shared Transmission Facilities, in each case which arise from or relate to events which occurred prior to the Jericho STFA Option Exercise Date, except for liability resulting from the fraud, gross negligence or wilful misconduct of the Licensee, and (y) the Owner shall indemnify, pay, defend and hold harmless Licensee and each of Licensee's employees, directors, officers, contractors and agents (the "**Licensee's Indemnitees**") against any and all claims that may be brought by a third party, or any losses and liabilities that may be suffered, sustained, paid or incurred by Licensee or any Licensee Indemnitee, in each case in respect of this Agreement, the Jericho Shared Transmission Facilities EPC Agreement, Jericho Shared Transmission Facilities O & M Agreement and any other agreement related to the Jericho Shared Transmission Facilities, in each case which arise from or relate to events which occurred prior to the Jericho STFA Option Exercise Date, except for claims that may be brought by a third party, or any losses and liabilities that may be suffered, sustained, paid or incurred by Licensee or any Licensee Indemnitee, resulting from the fraud, gross negligence or wilful misconduct of Licensee; provided however that the foregoing shall not affect Licensee's obligation after the Jericho STFA Option Exercise Date in respect of costs and expenses incurred by the Owner prior to the Jericho STFA Option Exercise Date.

- (h) The provisions of this Section 25 shall survive the termination or expiration of this Agreement.

26. No Waste or Nuisance.

No Party will use or permit the use of the Jericho Shared Transmission Facilities in any manner that would create waste or nuisance, or that would increase the rate, or jeopardize the issuance or maintenance, of any insurance policy relating to the Jericho Shared Transmission Facilities, or otherwise damage or interfere with the Jericho Shared Transmission Facilities. The Parties will at all times while conducting their respective operations and activities use Commercially Reasonable Efforts to minimize the impact of such operations and activities upon the other Parties' use of the Jericho Shared Transmission Facilities.

27. Owner's Use.

Nothing in this Agreement shall be construed so as to limit the Owner's right to use, alter or upgrade transmission and generation facilities (under its control only) at any time or for any purpose not inconsistent with the rights granted to the Licensee by this Agreement, provided that in no event shall the Owner's use, alterations or upgrading cause a material adverse effect on the use or operations of the Licensee's Project, the Jericho Shared Transmission Facilities, or the Jericho Shared Transmission Facilities Area.

28.

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- Figure 1 consists of two schematic diagrams. Diagram (a) shows a single layer of vertical rods. A light source is positioned to the left, emitting a beam that passes through the rods. A detector is positioned to the right, receiving the transmitted light. Diagram (b) shows a multi-layered structure. It consists of several layers of vertical rods, with a light source on the left and a detector on the right. The layers are stacked vertically, and the light beam passes through all of them.

29. Environmental Representation and Covenants.

Each Party agrees to comply with all Laws relating to environmental matters applicable to the rights permitted and retained under this Agreement. Each Party covenants to notify the other Parties of any correspondence or any discussions between it and any Governmental Authorities concerning the presence of any Hazardous Substance or any actual or alleged violation of any Laws related to the Jericho Shared Transmission Facilities, Jericho Shared Transmission Facilities Area or any Project, within five (5) calendar days of such correspondence or discussion. Any failure by a Party to comply with any such Laws, or with any order or judgment issued against a Party for failure to comply with such Laws, shall constitute a breach under this Agreement.

30. **Default.**

- (a) For the purposes of this Agreement, “**Default**” by a Party hereto, including a Party in its capacity as the Designated Representative, and to the extent applicable, means any of the following:
 - (i) such Party becomes subject to an Insolvency Event;
 - (ii) the Party fails to pay when due any payment required to be paid under this Agreement, if such failure to pay continues uncured for a period of thirty (30) days from the date of that Party’s receipt of a notice of default issued by the other Party (a “**Non-Defaulting Party**”) of such failure to pay;
 - (iii) a breach in the performance of any duty or obligation under this Agreement (other than a failure to pay), under any Third Party Contract (directly related to, and necessary for the operation of, the Jericho Shared Transmission Facilities), or both, if its failure to cure such breach continues for a period of sixty (60) days from the date of such Party’s receipt of a notice of default issued by the Non-Defaulting Party;
 - (iv) any of the representations or warranties made or deemed to be made by any Party in Section 5 of this Agreement shall prove to be or have been incorrect in any material respect when made or deemed to have been made;
 - (v) the transfer or other disposition of the Owner’s Interest, the license granted to the Licensee hereunder, or any part thereof in contravention of any of the provisions of this Agreement that is not rectified within sixty (60) days from the date of such Party’s receipt of a notice of default issued by the Non-Defaulting Party; and
 - (vi) a change in Control that: (A) directly or indirectly results in or causes a material negative change in the financial ability, credit status, or credit rating of such Party; or (B) directly affects the other Parties in a material negative manner or creates a competitive conflict between a remaining Party and the new Controlling entity; if its failure to cure or resolve such effect continues for a period of sixty (60) days from the date of such defaulting Party’s receipt of a notice of default is issued by the Non-Defaulting Party.
- (b) Notwithstanding the foregoing list of events of Default in Section 30(a) or anything to the contrary in this Agreement:
 - (i) no judgment, court order or other legal process shall be characterized as an event of Default while it is actively and diligently being contested in good faith and in a timely manner by the defaulting Party; and

- (ii) A Non-Defaulting Party shall not exercise any right to terminate another Party's rights or suspend this Agreement as a result of a Default by the defaulting Party unless the Non-Defaulting Party shall have given any lender prior written notice of its intent to so terminate or suspend, specifying the Default giving rise to such right, and the lender shall not have caused such Default to be cured within thirty (30) days after such notice; provided that if such Default cannot reasonably be cured by the lender within such period and the lender commences and continues to pursue in good faith the cure of such Default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional sixty (60) days in the case of a defaulting Party payment Default or ninety (90) days in the case of any other Default and provided that during this extended cure period, any payments required to be made to the Non-Defaulting Party hereunder continue to be made by the defaulting Party or by the lender.

31. Owner Remedies.

In the event of any Default by the Licensee and the Licensee's failure to cure such breach within the periods set out in Section 30, or some other time period as may be expressly provided herein, the Owner shall, have the right, in addition to all remedies available to the Owner at law or in equity, to either (i) cure the Default on behalf of Licensee (subject to the Owner's right of reimbursement described herein), provided that in the event of an emergency the Owner shall not be required to provide the Licensee with notice and/or an opportunity to cure, or (ii) terminate all of the Licensee's rights and benefits under this Agreement. If the Owner chooses to cure the Licensee's Default, the Licensee shall be obligated to reimburse the Owner upon demand for all commercially reasonable costs incurred by the Owner in curing such breach, together with interest thereon as provided in Section 36 of this Agreement. If the Owner terminates the Licensee's rights and benefits under this Agreement for the Licensee's Default, the Licensee shall be obligated to reimburse the Owner upon demand for all commercially reasonable costs incurred by the Owner as a result of the Licensee's Default, together with interest thereon as provided in Section 36 of this Agreement, subject to the limitation of liability outlined in Section 33 of this Agreement.

32. Licensee Remedies.

In the event of any Default by the Owner (the "**Breaching Owner**") and such Breaching Owner's failure to cure such Default within the periods set out in Section 30, or some other time period as may be expressly provided herein, the Licensee shall have the right, in addition to all remedies available to the Licensee at law or in equity, to either (i) cancel, rescind or otherwise terminate the Licensee's rights, benefits and obligations (other than obligations which are specifically deemed to survive the term of this Agreement) under this Agreement (in which event the Owner shall promptly return to the Licensee (A) prior to the Transmission Operation Date, the amount of the Total Participation Fee paid by Licensee to the Owner or (B) on or after the Transmission Operation Date, the amount of the Total Participation Fee paid by Licensee to the Owner as reduced by the Licensee's Pro Rata Share of any amortization or depreciation in respect of the Jericho Shared Transmission Facilities) or (ii) cure such Default on behalf of the

Breaching Owner, provided that in the event of an emergency, the Licensee shall not be required to provide the Breaching Owner with notice and/or an opportunity to cure. If the Licensee chooses to cure any such Default on behalf of the Breaching Owner, the Breaching Owner shall reimburse the Licensee upon demand for all commercially reasonable costs incurred by the Licensee in curing such Default, together with interest thereon as provided by Section 36 of this Agreement, subject to the limitation of liability outlined in Section 33 of this Agreement, and if the Breaching Owner fails to so reimburse the Licensee, the Licensee may elect to deduct such costs from any amounts next payable to the Breaching Owner pursuant to this Agreement (or, if the Operator is an Affiliate of the Breaching Owner, payable to Operator).

33. Waiver of Consequential Damages, Etc.

TO THE FULLEST EXTENT PERMITTED BY LAW, NO PARTY SHALL ASSERT, AND EACH PARTY HEREBY WAIVES, ANY CLAIM, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AGAINST THE OTHER PARTIES, THEIR AFFILIATES, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES, ON ANY THEORY OF LIABILITY, FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS OPPORTUNITIES (WHETHER THE FOREGOING ARE INCURRED ON A DIRECT, INDIRECT OR CONSEQUENTIAL BASIS) AND INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, AGGRAVATED OR EXEMPLARY DAMAGES ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT, OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY.

34. Injunctive Relief

The Parties agree that monetary damages may be an insufficient remedy with respect to a breach of the provisions of this Agreement and that the non-breaching party shall be entitled to injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.

35. Dispute Resolution

- (a) **Conciliation.** Any controversy, dispute, claim or difference between any of the Parties relating to this Agreement, if not amicably settled by such Parties within thirty (30) days following notice of such controversy, dispute, claim or difference, shall be referred to senior management of such Parties for resolution.
- (b) **Mediation.** In the event a controversy, dispute, claim or difference arises between any of the Parties relating to this Agreement (the “**Conflicting Parties**” and each a “**Conflicting Party**”) is not resolved pursuant to Section 35(a), an aggrieved Conflicting Party shall promptly provide notice of such controversy, dispute, claim or difference to the other Conflicting Party within thirty (30) days after the thirty (30) day period referred to in Section 35(a). A meeting shall be held within ten (10) days (or such other time period agreed by the Conflicting Parties) between the Conflicting Parties, attended by representatives of the Conflicting Parties with decision-making authority regarding the dispute, to

attempt in good faith to negotiate a resolution of the dispute. If within fifteen (15) days after such meeting or the date on which such meeting was to have occurred, the Conflicting Parties have not succeeded in negotiating a resolution of the dispute, the Conflicting Parties shall submit the dispute to mediation. The Conflicting Parties shall bear equally the costs of the mediation. The Conflicting Parties shall promptly appoint a single mutually acceptable mediator. If the Conflicting Parties are unable to agree upon such appointment within fifteen (15) days of submission of the dispute to mediation then either Conflicting Party may apply to a judge of the Superior Court of Justice to appoint a mediator. The Conflicting Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of fifteen (15) days (the "**Mediation Period**"). The mediation shall be conducted in the English language.

- (c) **Arbitration.** If the Conflicting Parties do not reach a solution for the dispute within the Mediation Period, then any one Conflicting Party may unilaterally demand in writing (such dated writing an "**Arbitration Commitment**") to resolve the dispute through arbitration pursuant to Sections 35(c)(i) - 35(c)(iv), and thereafter the dispute shall be referred to arbitration for final settlement, to be binding on all Parties in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), including any amendments or replacements thereto, as follows:

- (i) If the amount claimed is less than One Million Canadian Dollars (\$1,000,000) (which amount shall be adjusted every ten (10) years by multiplying by the Index Factor), or if the dispute does not involve a monetary claim, the arbitration tribunal shall consist of one (1) arbitrator appointed by mutual agreement of the Conflicting Parties or, in the event of failure to agree within ten (10) days after the date of the Arbitration Commitment, then either Conflicting Party may apply to a judge of the Superior Court of Justice to appoint an arbitrator. If the amount claimed is equal to or greater than One Million Canadian Dollars (\$1,000,000) (which amount shall be adjusted every ten (10) years by multiplying by the Index Factor), then the arbitration tribunal shall consist of three (3) arbitrators, one (1) arbitrator appointed by each Conflicting Party and the third appointed by mutual agreement of the two (2) arbitrators appointed by the Conflicting Parties or, in the event of failure to agree within thirty (30) days after the date of the Arbitration Commitment, then either Conflicting Party may apply to a judge of the Superior Court of Justice to appoint the third arbitrator. The arbitrators shall be qualified by education, training and experience to pass upon the particular matter to be decided;
- (ii) The arbitrator shall be instructed that time is of the essence in proceeding with the determination of the dispute;
- (iii) The arbitration shall be conducted in English and shall take place in Toronto, Canada or in any other place and location mutually agreed upon by the Conflicting Parties; and

- (iv) The arbitration award shall be given in writing and shall be final and binding on the Conflicting Parties, including the question of cost of the arbitration and all matters related thereto, and the arbitration award shall not be subject to any appeal.
- (d) **Continuation of Work.** Pending final resolution of any controversy, dispute, claim or difference pursuant to this Section 35, the Parties shall continue to fulfill their respective obligations hereunder.
- (e) **Court Enforcement.** Where appropriate, any Party may apply to the courts of the Province of Ontario for interim equitable relief, including but not limited to injunctions and specific performance, during the dispute resolution process while awaiting the final written decision of the arbitrator. In addition, any Party may apply to such courts for enforcement of any dispute resolution decisions.

36. Late or Nonpayment.

Any amount not paid when due hereunder shall bear interest from and including the applicable due date to but excluding the date such amount is paid, at a rate equal to the Agreed Interest Rate. Any collection of interest with respect to overdue payments under this Agreement shall be in addition to, and not in limitation of, the remedies at law or equity otherwise available to the Parties.

37. Nonwaiver.

Any failure of a Party to enforce any remedy allowed for the violation of any provision of this Agreement shall not imply the waiver of any such provision, even if such violation is continued or repeated, and no express waiver shall affect any provision other than the one(s) specified in such waiver and only for the time and in the manner specifically stated.

38. $\begin{array}{cccccc} | & | & | & | & | & | \end{array}$

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39. Successors and Assigns.

- (a) This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. A Party may, after providing the other Parties thirty (30) days' notice of the proposed assignment,

assign this Agreement and its rights, interests or obligations hereunder to an Affiliate or in connection with a change of Control of an Affiliate without consent of the other Parties, provided that the Affiliate, or other Person assuming Control of an Affiliate, shall be of equivalent or greater financial strength to the assigning Party. Subject to the immediately preceding sentence, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto without prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Any such assignment described in the preceding sentences occurring without the prior written consent of the other Parties, where required, shall be void and of no effect. Except as expressly set forth herein, nothing contained herein is intended to confer on any Person other than the Parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement. Absent written agreement from the other Parties, no assignment of this Agreement (other than to an Affiliate or in connection with a change of Control of an Affiliate) shall release the assigning Party from any covenant or obligation under this Agreement.

- (b) Notwithstanding anything contained in this Agreement to the contrary, each Party (a **"Borrowing Party"**), will be permitted to borrow funds (**"Standard Borrowing"**) without the need to obtain consent from the other Parties, secured by (i) in the case of the Owner, the Owner's ownership interest in the Jericho Shared Transmission Facilities and its interest in this agreement (the **"Owner's Interest"**), or (ii) in the case of the Licensee, by the license granted hereunder and its interest in this Agreement (the **"Licensee's Interest"**) as follows. The Owner's Interest or the Licensee's Interest is sometimes generically referred to herein as the **"Party's Interest"**).
 - (i) Standard Borrowing may be secured by the Party's Interest of the Borrowing Party but shall be on a limited recourse, non-recourse/limited recourse or non-recourse basis with respect solely to the Party's Interest of the Borrowing Party and shall not in any manner encumber the Party's Interest of the other Party. No Party shall be required to guarantee or otherwise provide any security in respect of any Standard Borrowing.
 - (ii) It shall be a condition of each Standard Borrowing that such Standard Borrowing is not and shall not be prohibited by, and does not and shall not create a default under, any other Standard Borrowing or any permitted encumbrance or other agreement related to the Jericho Shared Transmission Facilities in each case, whether existing at, or subsequent to, the time of such Standard Borrowing, to which any of the Parties is a party. Reasonable third party out-of-pocket costs and fees related to any such Standard Borrowing that are incurred by each Party that is not a Borrowing Party shall be for the account of the Borrowing Party and the Borrowing Party shall reimburse such other Party upon demand.
- (c) Promptly after effecting such Standard Borrowing, the Borrowing Party shall notify the other Party in writing of the name, address, and telephone and facsimile

numbers of each lender to which the Borrowing Party's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the lenders to whom all written and telephonic communications may be addressed.

- (d) After giving the other Party such initial notice, the Borrowing Party shall promptly give the other Party notice of any change in the information provided in the initial notice or any revised notice.
- (e) If the Borrowing Party encumbers its interest under this Agreement as permitted by this Section 39, the following provisions shall apply:
 - (i) The Parties, except as provided by the terms of this Agreement, shall not modify or cancel this Agreement without the prior written consent of the lenders (and the Borrowing Party hereby agrees to negotiate with the lenders that such consents shall not be unreasonably withheld);
 - (ii) The lenders or their designees shall have the right, but not the obligation, to perform any act required to be performed by the Borrowing Party under this Agreement to prevent or cure a Default by the Borrowing Party and such act performed by the lenders or their designees shall be as effective to prevent or cure a Default as if done by the Borrowing Party;
 - (iii) The other Party shall upon reasonable request and advance notice by the Borrowing Party execute statements certifying that this Agreement is unmodified (or, modified and stating the nature of the modification), in full force and effect and the absence or existence (and the nature thereof) of then known Defaults hereunder by the Borrowing Party and documents of consent to such assignment to the encumbrance and any assignment to such lenders; and
 - (iv) Upon the receipt of a written request from the Borrowing Party or any lender, the other Party shall execute, or arrange for the delivery of, such certificates, opinions and other documents at the Borrowing Party's or the lender's expense as may be reasonably necessary and in a commercially reasonable timeframe in order for the Borrowing Party to consummate any financing or refinancing of the Jericho Shared Transmission Facilities or such Party's Project or any part thereof, and will enter into reasonable agreements with such lender, including a consent to assignment in a form reasonably acceptable to the lender. Said agreements will grant certain rights to the lender as more fully developed and described in such documents, including: (a) this Agreement shall not be terminated (except for termination pursuant to the terms of this Agreement) without the consent of the lender, which consent is not to be unreasonably withheld or delayed; (b) the lender shall be given notice of, and the opportunity to cure any breach or default of this Agreement by the Borrowing Party; (c) that if the lender forecloses, takes a deed in lieu of foreclosure or otherwise

exercise its remedies pursuant to any security documents, then: (i) the other Party shall, at the lender's request, continue to perform all of its obligations hereunder, and the lender or its nominee may perform in the place of the Borrowing Party, and may assign this Agreement to another Person in place of the Borrowing Party; (ii) the lender shall have no liability under this Agreement except during the period of such lender's ownership or operation of the Borrowing Party's Project; and (iii) that the other Party shall accept performance in accordance with this Agreement by the lender or its nominee; and (d) that the other Party shall make representations and warranties to the lender as the lender may reasonably request with regard to: (1) the other Party's existence; (2) the other Party's authority to execute, deliver and perform this Agreement; (3) the binding nature of the document evidencing the other Party's consent to assignment to the lender of this Agreement; and (4) receipt of regulatory approvals by the other Party with respect to its execution and performance under this Agreement.

40. Force Majeure.

For the purposes of this Agreement, the term "**Force Majeure**" means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, that is beyond the affected Party's reasonable control, and shall include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of (i) such Party, or (ii) a Third Party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute);
- (e) delays or disruptions (including those arising from events of Force Majeure referred to in this Section 40) in the construction of any assets that are required for the Jericho Shared Transmission Facilities to deliver electricity;
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;

- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure; and
- (i) any unanticipated maintenance or outage affecting the Jericho Shared Transmission Facilities which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure.

In the event of any Force Majeure, such Party shall promptly notify the other Party thereof and, so long as such condition shall persist, such Party shall not be liable for the delay in performance of, or the failure to perform, its obligations (other than obligations for payment of amounts due hereunder) under this Agreement caused directly or indirectly thereby. Notwithstanding the foregoing, reasons such as and including lack of money or financial inability shall not be Force Majeure. The claiming Party shall give the other Party notice describing the particulars of the Force Majeure. Within fifteen (15) days after giving notice of the Force Majeure, the claiming Party shall give the other Party an estimate of the Force Majeure's expected duration and probable impact. The claiming Party shall continue to furnish the other Party with timely regular reports during the continuation of the Force Majeure. Each Party shall immediately and continuously exercise Commercially Reasonable Efforts to mitigate or limit the impact to its obligations hereunder as a result of the Force Majeure.

41. Modification.

This Agreement may be amended, modified and supplemented only by written agreement of the Parties.

42. Validity and Severance.

If any clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion thereof shall remain in full force and effect.

43. Governing Law.

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

44. Entire Agreement.

This Agreement embodies the entire agreement and understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties with respect to such subject matter.

45. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile transmission or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

46. Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

47. Exculpation.

The Parties agree that a Party's officers, directors, employees, agents or authorized representatives shall not be personally liable for any obligation of such Party, except as otherwise provided by law.

48. Time is of the Essence.

Time is of the essence with respect to each and every provision of this Agreement.

49. Recording.

At the Licensee's request, the Parties shall execute and record a memorandum of this Agreement in recordable form giving notice of such terms as the Licensee may reasonably request.

50. Quiet Enjoyment.

The Owner covenants that it has a lawful interest in the Jericho Shared Transmission Facilities Area and has the right to enter into this Agreement for the term hereof. The Licensee shall at all times during the term of this Agreement have the peaceable and quiet enjoyment of the Jericho Shared Transmission Facilities Area pursuant to the terms of this Agreement.

51. Site Agreements.

During the term of this Agreement, except as otherwise provided for herein, the Designated Representative shall negotiate, or obtain, as applicable, all such agreements, permits or approvals providing the Owner with a leasehold or other interest in the Jericho Shared Transmission Facilities Area (individually, a “**Site Agreement**”, and collectively, the “**Site Agreements**”). The Owner agrees to execute and enter into the Site Agreements as presented by the Designated Representative, such execution not to be unreasonably withheld, conditioned or delayed. The Owner shall comply with all material terms and provisions of the Site Agreements relating to the Jericho Shared Transmission Facilities. The Designated Representative shall promptly give written notice to the Owner of any notice of default it may receive or deliver with respect to the Site Agreements relating to the Jericho Shared Transmission Facilities and shall confer reasonably with the other Party regarding resolution of any dispute between the Owner and any owner of the land on which the Jericho Shared Transmission Facilities Area or any part thereof is situated. The Owner will or will cause the Designated Representative to assist the Licensee with obtaining such rights to access and use the real property on which the Jericho substation is located, as are necessary on that parcel for the Licensee to connect the Licensee’s Project to the Jericho Shared Transmission Facilities.

52. Jericho Shared Transmission Facilities O&M Agreement.

The Owner shall comply with all terms and provisions of the Jericho Shared Transmission Facilities O&M Agreement, and shall use Commercially Reasonable Efforts to obtain for the Licensee the benefit of all rights of access or transmission of energy granted to the Owner, as party to the Jericho Shared Transmission Facilities O&M Agreement, with respect to the Jericho Shared Transmission Facilities Area in order to effectuate the intent of the Parties and the purpose of this Agreement. The Owner shall promptly give written notice to the Licensee of any notice of default it may receive or deliver with respect to the Jericho Shared Transmission Facilities O&M Agreement related to the Jericho Shared Transmission Facilities and shall confer with the Licensee regarding resolution of any such dispute between the Owner and Operator under the Jericho Shared Transmission Facilities O&M Agreement. In the event the Jericho Shared Transmission Facilities are not being maintained as required under the Jericho Shared Transmission Facilities O&M Agreement or not being operated in accordance with Good Operating Practices, the Licensee will have the right, in addition to all remedies available to the Licensee at law or in equity, to exercise its rights set forth in Section 32 of this Agreement.

53. Billing, Metering and Settlement Agreement.

From and after the Effective Date, the Parties agree to use Commercially Reasonable Efforts to negotiate with the Operator, the Billing, Metering and Settlement Agreement respecting the Jericho Shared Transmission Facilities and execute such agreement in a timely fashion. The Parties acknowledge and agree that the Billing, Metering and Settlement Agreement is integral to the operation of the Jericho Shared Transmission Facilities.

54. Interconnection Agreement.

With respect to the Owner's obligations hereunder, the Owner shall not discriminate against the Licensee's Project in favour of the Owner's Project. The Owner will not consent to any termination, material amendment or modification of any connection agreement which disproportionately and negatively impacts the Licensee's Project without the prior written consent of the Licensee, such consent not to be unreasonably withheld, conditioned or delayed.

55. Duties in Case of Loss.

- (a) Each Party shall notify the other Party immediately upon becoming aware of any material fire or other material damage to any part of the Jericho Shared Transmission Facilities. Each Party shall notify the other Party immediately if a Party has knowledge that any Hazardous Substances or other contaminants are released on, about, under or in the immediate vicinity of the Jericho Shared Transmission Facilities. With respect to the Jericho Shared Transmission Facilities Area, such Party shall not settle any losses, complete loss reports or adjust losses on behalf of the other Party or enter into any remediation plan or other agreement with respect to Hazardous Substances with any national or local regulatory agency without the prior written consent of the other Party.
- (b) Each Party shall notify the other Party promptly after learning of any bodily injury or property damage occurring to or claimed by any third party on or with respect to any part of the Jericho Shared Transmission Facilities or the Jericho Shared Transmission Facilities Area. Each Party shall forward to the other Party, immediately upon receipt, copies of any summons, subpoena or other like legal document served upon such Party relating to actual or alleged potential liability of any Party with respect to the Jericho Shared Transmission Facilities or the Jericho Shared Transmission Facilities Area.

56. Licensee's Failure to Obtain Generation License or Access to the Grid.

In the event that the Licensee is unable to obtain (i) in a timely manner a generation license from the OEB in respect of the Licensee's Project, and/or (ii) if necessary, permission from the IESO or HONI to transmit energy from the Licensee's Project to the IESO grid through the Jericho Shared Transmission Facilities, in each case due to the Licensee's status as a licensee under this Agreement, the Parties agree to negotiate, in good faith, an agreement (on substantively similar terms) which would allow the Licensee to obtain such generation license and/or connect to the grid.

57. Termination of Agreement.

If this Agreement is terminated due to issues related to the Licensee's status as a licensee under this Agreement, the Designated Representative shall return any deposits, all prepaid fees and other prepaid sums to Licensee within thirty (30) days of the date of termination of this Agreement.

58. Confidentiality and Public Announcements.

(a) Confidential Information.

- (i) The Parties acknowledge and agree that all Confidential Information that may be delivered by each Party hereunder will remain the property of the disclosing Party, will not become owned by the other Party, and will be treated as confidential by each receiving Party. The receiving Party will not use the Confidential Information for any purpose other than as contemplated in this Agreement. The receiving Party will not disclose the Confidential Information to anyone except its Affiliates, employees and representatives (which term will include outside agents or advisors) who have a need to know the Confidential Information in connection herewith and who have been advised of the confidential nature of such Confidential Information, provided that the receiving Party will be liable to and will indemnify the disclosing Party for any breaches of this Section 58 by the receiving Party's Affiliates, employees and representatives.
- (ii) These provisions will not apply to Confidential Information if it:
 - (A) is known to the receiving Party prior to receipt thereof under this Agreement, as evidenced by written records;
 - (B) is disclosed without restriction to the receiving Party in good faith by a Third Party who is in lawful possession thereof and who has the right to make such disclosure, or who represents itself to the receiving Party as having such lawful right;
 - (C) is, or at such time as it becomes, public knowledge by publication or otherwise, through no fault or breach on the part of the receiving Party;
 - (D) is developed or discovered by the receiving Party independently of and without reference to the Confidential Information;
 - (E) is Confidential Information which is required to be disclosed pursuant to any Laws or any judicial, administrative or governmental order, or any request permitted pursuant to legislative requirements to which the receiving Party is subject; provided that the receiving Party will take reasonable steps to give the disclosing Party sufficient notice in order to permit the disclosing Party to contest such request, requirements or order; or
 - (F) is Confidential Information which is reasonably required to be disclosed by a Borrowing Party to a lender in respect of a Standard Borrowing; provided: (i) that if the disclosure of such Confidential Information would result in a Party's breach of a confidentiality agreement with a Third Party, the Borrowing Party may not

disclose such Confidential Information without first obtaining consent from such Third Party; (ii) the Borrowing Party requires the lender(s) receiving such Confidential Information to use and treat such information in the same manner as it uses and treats the Confidential Information of the Borrowing Party; and (iii) that the Borrowing Party provides the Party whose Confidential Information is being disclosed to a lender(s) with prompt notice prior to such disclosure of the nature and content of such Party's Confidential Information being disclosed.

- (iii) The provisions of confidentiality set out herein will survive termination or expiry of this Agreement for a period of three (3) years after such termination or expiry date.
- (iv) The Parties acknowledge that any breach of this Section 58 will cause irreparable damage to the Parties, and accordingly agree that in addition to any other legal or equitable remedies provided by law or under this Agreement, any Party may seek an injunction or an order for specific performance to restrain such breach and breaching Person (including a Party).

(b) Public Announcements.

No public announcement, filing or press release concerning the Jericho Shared Transmission Facilities, the existence of or the terms of this Agreement, the relationship between the Parties, or Confidential Information pertaining to the Jericho Shared Transmission Facilities or operations thereon, will be made without the prior written approval of all of the Parties, except to the extent such public announcement or press release is required under Third Party Contracts entered into with a Governmental Authority or under any Laws. The Parties will ensure that any translation of a press release or public announcement to be issued is accurate and appropriate in context, although a word-by-word translation will not be required.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

OWNER:

JERICO WIND, INC.

By: _____

Name: John DiDonato

Title: Vice President

LICENSEE:

SUNCOR ENERGY PRODUCTS INC.

By: _____

Name: Jim Provias

Title: Vice President, Renewable Energy

EXHIBIT A

JERICO SHARED TRANSMISSION FACILITIES

Jericho Transmission Line J1BTS – The Jericho 115 kV collection substation will be connected via a 115 kV line, approximately 14.5 km long, 1272 54/19 ACSR Pheasant bundled conductor to the Bornish 115 kV Switching Station.

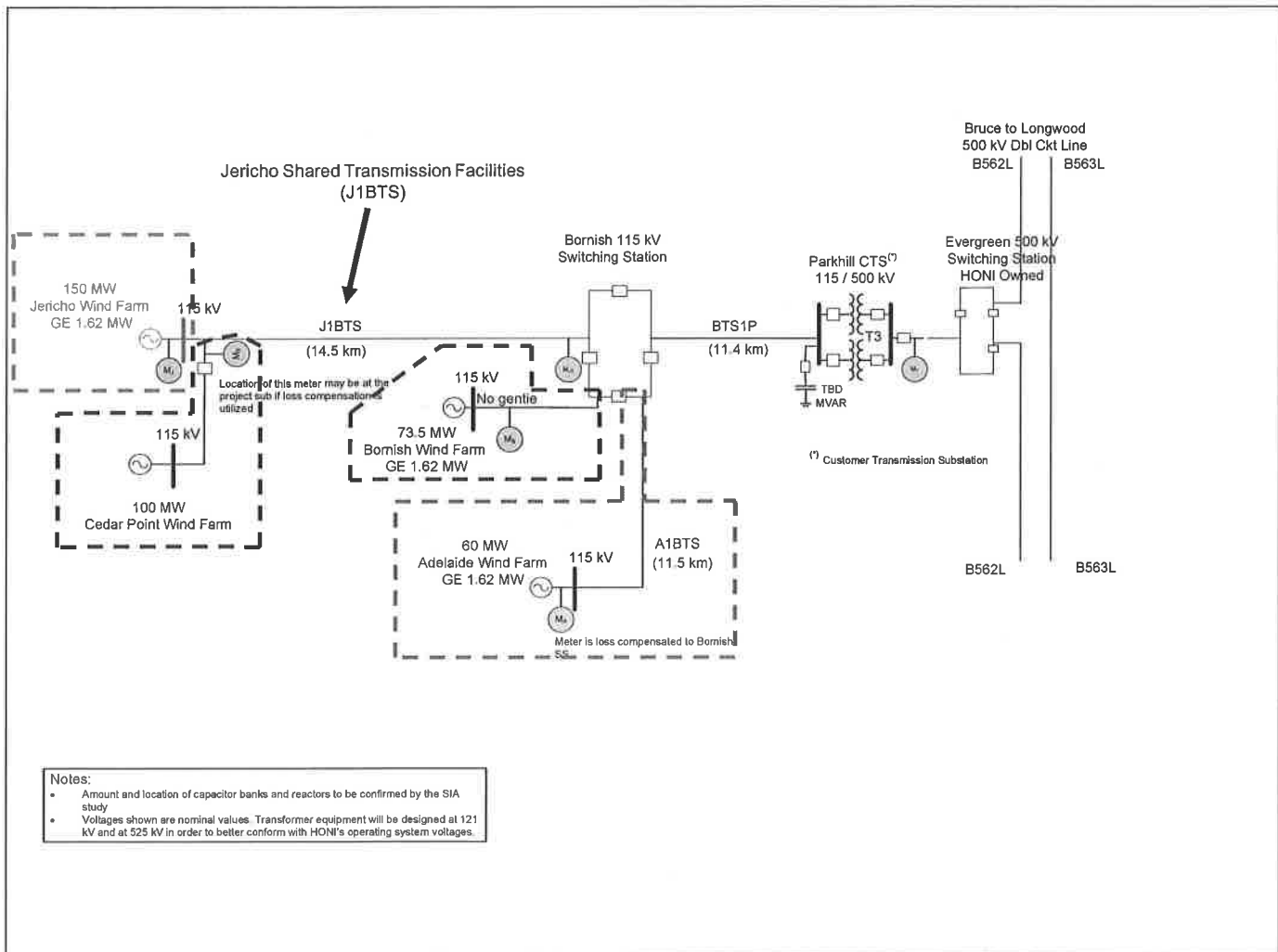


EXHIBIT B

The attached plan is illustrative only and merely identifies the property upon which the Complete Portfolio will be developed and the approximate locations of the Projects and the Jericho Shared Transmission Facilities Area on such property. Once the Construction Plans are completed for purposes of commencing construction of the Complete Portfolio, the attached plan shall be deemed null and void and shall be replaced by the Construction Plans.

EXHIBIT C

FORM OF NOTICE OF LICENSEE'S EXERCISE OF THE JERICHO STFA OPTION

NOTICE OF LICENSEE'S EXERCISE OF THE JERICHO STFA OPTION

To: [Designated Representative] ("Designated Representative")

Re: Jericho STFA Option pursuant to the Jericho Shared Transmission Facilities and Option Agreement (the "**Agreement**") dated as of January 2, 2013 by and among **JERICHO WIND, INC.** (the "**Owner**") and **SUNCOR ENERGY PRODUCTS INC.** (the "**Licensee**").

Defined terms used in this Notice have the meaning ascribed to them in the Agreement.

The undersigned is, in accordance with Section **Error! Reference source not found.** of the Agreement, hereby notifying the Designated Representative that the undersigned is, as of ■ **[Note: Insert the date]** exercising the Jericho STFA Option, and that as of the Jericho STFA Option Exercise Date, the Agreement shall be in full force and effect as set out therein, and the undersigned shall be bound by its obligations thereunder.

DATED the ■ day of ■, 20■.

SUNCOR ENERGY PRODUCTS INC.

Per:

Name:

Title:

I have authority to bind Suncor Energy Products Inc.