

thereof), computer software, information technology, inventions, works, designs, formulae, processes, procedures, know-how, trade secrets, industrial designs and plans, engineering designs and plans, blueprints and as built plans and specifications, training, operating, safety, maintenance and any other manuals, documentation of procedures and processes, design, user and maintenance information and service records and warranty records;

“Interim Period” means the period from and including the date of this Agreement to and including the Closing Date or the earlier termination of this Agreement;

“Interim Period Transfer Right” has the meaning set out in Section 5.5(2);

“Knowledge” means:

- (a) in respect of Mississauga, the actual knowledge of the Chief Administrative Officer of Mississauga after due enquiry with each of the Chief Executive Officer, Executive Vice-President and Chief Financial Officer EC;
- (b) in respect of EC, the actual knowledge of the Chief Executive Officer, Executive Vice President and Chief Financial Officer of EC;
- (c) in respect of Markham, the actual knowledge of the Chief Administrative Officer of Markham after due enquiry with each of the President and the Treasurer of MEC and the President and Chief Executive Officer and the Executive Vice-Presidents of PowerStream;
- (d) in respect of MEC, the actual knowledge of the President of MEC after due enquiry with each of the President and Chief Executive Officer and the Executive Vice-Presidents of PowerStream;
- (e) in respect of Vaughan, the actual knowledge of the Chief Administrative Officer of Vaughan after due enquiry with each of the Chief Executive Officer and Chief Financial Officer of VHI and the President and Chief Executive Officer and the Executive Vice-Presidents of PowerStream;
- (f) in respect of VHI, the actual knowledge of the Chief Executive Officer of VHI after due enquiry with each of the President and Chief Executive Officer and the Executive Vice-Presidents of PowerStream;
- (g) in respect of PowerStream, the actual knowledge of the President and Chief Executive Officer and the Executive Vice-Presidents of PowerStream;
- (h) in respect of Enersource Hydro, the actual knowledge of the Chief Executive Officer and Executive Vice President and Chief Financial Officer of EC;
- (i) in respect of Hamilton, the actual knowledge of the Chief Administrative Officer of Hamilton after due enquiry with each of the President and the Treasurer of

“Mississauga” means The Corporation of the City of Mississauga;

“Moral Rights” means the rights of an author of a work in which copyright subsists in any country, to claim authorship of the work and to object to any distortion, mutilation or other modification of or other derogatory action in relation to the said work, which would be prejudicial to his or her honour or reputation, and includes all rights conferred upon authors of a work in which copyright subsists, independent of the author’s economic rights in the work established by any act or legislation of any country;

“Net Operating Assets” has the meaning set out in section 2.3(6)(f);

“Net Relative Basis” has the meaning set out in section 2.3(6)(h);

“Non-Disclosure Agreement” means the Mutual Non-Disclosure Agreement dated December 15, 2014 entered into by PHI, EC and HHI;

“Normal Course of Business” when used in reference to a particular Person means the normal course of business of such Person, including actions consistent with Good Utility Practices;

“OBCA” means the *Business Corporations Act* (Ontario), as now enacted or as the same may from time to time be amended, re-enacted or replaced;

“OEB” means the Ontario Energy Board or any successor thereto;

“OEB Act” means the *Ontario Energy Board Act, 1998* (Ontario), as now enacted or as the same may from time to time be amended, re-enacted or replaced, and any regulations thereunder;

“OEB Approval” means the approval of the OEB of the Merge Co LDC Amalgamation and any corresponding relief requested pursuant to the MAAD Application;

“Offering Principal” has the meaning set out in section 5.5(4);

“Offering Shareholder” has the meaning set out in section 5.5(4);

“Parties” means the parties to this Agreement, and **“Party”** means anyone of them;

“PCBs” means poly-chlorinated biphenyls;

“Pension Fund” means any registered Canadian pension plan or pension fund that is registered in Ontario or any subsidiary of such a pension plan or fund;

“Permitted Backstop Allocation” has the meaning set out in section 2.12.1(3);

“Permitted Backstop Sale” has the meaning set out in section 2.12.1(3);

“Permitted Encumbrances” means:

“PowerStream Real Property” means all real property (excluding PowerStream Leased Property and PowerStream Easements) that is owned by PowerStream or any Deal Affiliate of PowerStream and described in the PowerStream Disclosure Schedule;

“PowerStream Realty Interests” means all PowerStream Real Property, PowerStream Leased Property and PowerStream Easements;

“PowerStream Shareholders Agreement” means the unanimous shareholders agreement in respect of PHI entered into between Vaughan, Markham, Barrie, VHI, MEC, BHHI, PHI, PowerStream and PowerStream Energy Services Inc., dated as of November 1, 2013;

“Pre-Approved Shareholder” means any:

- (a) public or quasi-public pension fund regulated by the Office of the Superintendent of Financial Institutions (Canada), a pension commission or similar regulatory authority of a jurisdiction of Canada with assets in excess of \$5,000,000,000 or any Affiliate of such a pension fund, pension commission or similar regulatory authority or a Person that invests the assets of one or more such pension funds, pension commission or similar regulatory authority (to the exclusion of any other assets);
- (b) any of the largest five banks listed in Schedule I to the *Bank Act* (Canada), measured by assets reported on its most recently filed financial statements or any Affiliate of such a bank;
- (c) any of the top ten life insurance companies authorized by a statute of Canada to carry on business in Canada, measured by gross written premiums written in the most recently completed calendar year, with assets in excess of \$10,000,000,000 or any Affiliate of such a life insurance company;
- (d) any credit union or caisse populaires that is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada and which, together with its Affiliates, has assets under management in excess of \$5,000,000,000, or any Subsidiary of such credit union or caisse populaire, or any Affiliate of such a credit union or caisse populaire; or
- (e) any investment fund (as such term is defined in National Instrument 81-106 - Investment Fund Continuous Disclosure) which, together with its Affiliates, has assets under management in excess of \$10,000,000,000, or any Affiliate of such an investment fund,

provided that a Pre-Approved Shareholder excludes any of the foregoing which directly or through any Person with whom it does not deal at Arm's Length operates any electricity generating, distribution or transmission assets or that is otherwise in competition with the Corporation or any of the Corporation's Affiliates.

“Pre-Approved Third Party” means a Person that has previously been approved by a unanimous vote of the Shareholders, such approval not to be unreasonably withheld or delayed.

“Public Announcement” has the meaning set out in section 5.4(4);

“Release” means any release, spill, leak, emission, discharge, leaching, dumping, escape or other disposal;

“Remediation” means action of any kind to address a Release, the threat of a Release or the presence of any Hazardous Substance, including but not limited to any or all of the following activities to the extent they relate to or arise from a Release, the threat of a Release or the presence of any Hazardous Substance at or from any such site (including activities carried out by consultants, engineers and legal advice related thereto):

- (a) monitoring, investigation, assessment, treatment, clean-up, containment, removal, transportation and permanent disposal, mitigation, response or restoration work;
- (b) obtaining any permits, consents, approvals or authorizations of any Governmental Authority necessary to conduct any such activity;
- (c) preparing and implementing any plans or studies for any such activity;
- (d) reporting on the progress or results of any such activity to an applicable Governmental Authority;
- (e) the use, implementation, application, installation, operation, maintenance or decommissioning of technologies for the remediation or treatment of surface or subsurface soils, off-site treatment of surface water or groundwater, including engineering controls, or in situ controls; and
- (f) any other activities reasonably determined by a Party to be necessary or appropriate or required under Environmental Law to address the presence or Release of any Hazardous Substance at any such site or off-site location;

“Renewal Terms” has the meaning set out in section 5.1(10)(d);

“Representatives” of a Party means its Affiliates and directors, officers, employees, agents, partners and advisors of the Party and/or its Affiliates (including external accountants, lawyers, environmental consultants, financial advisors and other authorized representatives);

“Shareholder Quotient” has the meaning set out in section 7.2(5);

“Shareholders” means VHI, MEC, BHHI, EC, HUC and SCH;

“Solar Deadline Date” means the earlier of October 31, 2016 and the Closing Date;

“Time of Closing” means 10:00 a.m. (Toronto time) on the Closing Date or such other time acceptable to the Parties;

“Transfer” means:

- (a) any transfer, sale, assignment, exchange, gift, donation or other disposition of securities where possession, legal title, beneficial ownership or the economic risk or return associated with such securities passes from one Person to another or to the same Person in a different legal capacity, whether or not for value, whether or not voluntary and however occurring, and for greater certainty includes the granting of a security interest; and
- (b) any agreement, undertaking or commitment to effect any of the foregoing.

“Transfer Tax” means the tax payable pursuant to Section 94 of the Electricity Act or any similar tax or replacement or substitution thereof;

“Transitional Committee” has the meaning set out in section 5.4(20)(a);

“Upstream Transfer” has the meaning set out in section 5.5(4);

“Upstream Transfer Notice” means a notice in writing from an Offering Shareholder or an Offering Principal certifying: (a) that it has entered into a written agreement of purchase and sale with a Pre-Approved Shareholder, a direct or indirect shareholder of PowerStream, Enersource Hydro or Horizon or another third party (to whom the other Parties have consented) to consummate an Upstream Transfer, and (b) the following particulars as to the Upstream Transfer contemplated by the agreement of purchase and sale: the purchaser and the class and number of securities to be purchased and sold;

“Valuation” means the Valuation in respect of PowerStream, Enersource Hydro and Horizon dated July 27, 2015 prepared by Deloitte LLP on behalf of the Shareholders;

“Vaughan” means the Corporation of the City of Vaughan;

“Vaughan Note” has the meaning set out in section 1.1(a)(10)(b);

“VHI” means Vaughan Holdings Inc., a corporation incorporated under the laws of Ontario; and

“Working Capital Allowance Basis” has the meaning set out in section 2.3(6)(i).

1.2 Appendices and Schedules

The following appendices and schedules which are attached to this Agreement are incorporated into this Agreement by reference and form a part hereof:

Schedule Number	Schedule Title
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