

- (21) Capital Plan Committee. The Parties acknowledge that PowerStream, Enersource Hydro and Horizon are, collectively, as the Purchaser (as defined in the Brampton Purchase Agreement) entitled to appoint three representatives to the Capital Plan Committee (as defined in the Brampton Purchase Agreement) pursuant to the terms of the Brampton Purchase Agreement. The Parties agree that PowerStream, Enersource Hydro and Horizon shall each be entitled to designate one representative to such Capital Plan Committee and that each of them shall exercise their rights under the Brampton Purchase Agreement to appoint the representatives so designated.

5.5 Exclusivity

- (1) During the Interim Period and other than with respect to a Pre-Approved Shareholder, Vaughan, Markham, Barrie, VHI, MEC, BHHI, PHI and their Representatives shall not, directly or indirectly, solicit offers from, enter into any Contracts with, or provide any information to, any third party for or relating to the transfer or sale of Vaughan's, Markham's, Barrie's, VHI's, MEC's, BHHI's or PHI's direct or indirect interest in PowerStream, nor shall PowerStream or its Representatives, directly or indirectly, solicit offers from, enter into any Contracts with, or provide any information to, any third party for or relating to the transfer or sale of any assets or liabilities of PowerStream, other than in the Normal Course of Business. Vaughan, Markham, Barrie, VHI, MEC, BHHI and PHI shall advise EC, HUC and SCH as soon as practicable of all material aspects of any such unsolicited proposal which is received by Vaughan, Markham, Barrie, VHI, MEC, BHHI, PHI or PowerStream in connection with the assets or issued share capital of PowerStream.
- (2) During the Interim Period, Mississauga, BPC, EC, EHI (following its formation) and their Representatives shall not, and EC shall cause EHI not to, directly or indirectly, solicit offers from, enter into any Contracts with, or provide any information to, any third party for or relating to the transfer or sale of Mississauga's, BPC's, EC's or EHI's direct or indirect interest in Enersource Hydro, nor shall Enersource Hydro or its Representatives, directly or indirectly, solicit offers from, enter into any Contracts with, or provide any information to, any third party for or relating to the transfer or sale of any assets or liabilities of Enersource Hydro, other than in the Normal Course of Business. Mississauga, BPC, EC and EHI (following its formation) shall, and EC shall cause EHI to, advise MEC, VHI, BHHI, HUC and SCH as soon as practicable of all material aspects of any such unsolicited proposal which is received by Mississauga, BPC, EC, EHI or Enersource Hydro in connection with the assets or issued share capital of Enersource Hydro. During the Interim Period, BPC shall, subject to compliance with the provisions of the shareholder agreement governing EC among EC, BPC and Mississauga, be entitled to Transfer all but not less than all of its securities of EC, provided that the purchaser is either Mississauga, a Pre-Approved Shareholder or a Pre-Approved Third Party and provided that as a condition to the completion of such disposition, the purchaser joins as a party to this Agreement on the terms and conditions hereof and any other document or agreement ancillary to this Agreement, on the terms and conditions thereof, to which all of the Shareholders and Mississauga, Hamilton, St. Catharines, Markham, Vaughan and Barrie are party (in this section, an **"Interim Period Transfer Right"**). Notwithstanding the opening sentence of this Section 5.5(2), BPC shall be entitled to solicit offers from,

enter into Contracts with, and provide information to any third party for purposes of exercising its Interim Period Transfer Right.

- (3) During the Interim Period, St. Catharines, Hamilton, SCH, HUC, HHI and their Representatives shall not, directly or indirectly, solicit offers from, enter into any Contracts with, or provide any information to, any third party for or relation to the transfer or sale of St. Catharines', Hamilton's, SCH's, HUC's or HHI's direct or indirect interest in Horizon, nor shall Horizon or its Representatives, directly or indirectly, solicit offers from, enter into any Contracts with, or provide any information to any third party for or relating to the transfer or sale of any assets or liabilities of Horizon, other than in the Normal Course of Business. St. Catharines, Hamilton, SCH, HUC and HHI shall advise VHI, MEC, BHHI and EC as soon as practicable of all material aspects of any such unsolicited proposal which is received by St. Catharines, Hamilton, SCH, HUC, HHI or Horizon in connection with the assets or issued share capital of Horizon.
- (4) Notwithstanding the remaining provisions of this Section 5.5,
 - (a) during the Interim Period and, subject to Section 5.5(5), for a period of up to 60 days after the Closing, each of VHI, MEC, BHHI, SCH and/or HUC (each an **"Offering Shareholder"**) shall be entitled to issue and sell by way of a treasury offering of shares in the capital of such Offering Shareholder, or Vaughan, Markham, Barrie, St. Catharines and Hamilton (each an **"Offering Principal"**) may sell shares in the capital of an Offering Shareholder held by such Offering Principal, up to 10% of the issued and outstanding shares of the Offering Shareholder after giving effect to such sale, to a Pre-Approved Shareholder, to a direct or indirect shareholder of such Offering Shareholder or Offering Principal, or to another third party upon the consent of the other Parties, not to be unreasonably withheld or delayed (each, an **"Upstream Transfer"**), provided:
 - (i) such Upstream Transfer does not and would not result in adverse tax consequences to the Corporation or any other Party (unless such adverse tax consequences are a result of actions taken by a Party other than the Offering Shareholder and its shareholders);
 - (ii) after giving effect to such Upstream Transfer, such Pre-Approved Shareholder or Pre-Approved Third Party, as applicable, will not hold more than 10% of the issued and outstanding shares of the Offering Shareholder;
 - (iii) after giving effect to such Upstream Transfer, one or more municipalities continue to own at least 90% of the issued and outstanding shares of the Offering Shareholder; and
 - (iv) such third party agrees to execute and deliver a counterpart signature page to both this Agreement pursuant to Section 9.11(b) and, if the Closing has occurred at the time the Upstream Transfer is consummated, to the Corporation Shareholders Agreement, agreeing to be bound by the

respective terms hereof and thereof and where required, amendments to the representations and warranties shall be made as reasonably required by the non-selling Shareholders.

- (b) PowerStream may sell its equity interest, or acquire the equity interest held by the Corporation of the Town of Collingwood, in Collingwood PowerStream Utility Services Corp. at any time during the Interim Period but not later than 30 days prior to Closing with the prior written consent of EHI (and until its creation, EC) and HHI, acting reasonably, to the terms and conditions of such transaction;
- (c) PowerStream Energy Services Inc. may, and PHI may cause PowerStream Energy Services Inc. to, acquire all or substantially all of the shares or assets of Util-Assist Inc. at any time during the Interim Period but not later than 30 days prior to Closing with the prior written consent of EHI (and until its creation, EC) and HHI, acting reasonably, to the terms and conditions of such transaction;

and the Parties acknowledge and agree that VHI, MEC, BHHI, SCH, HUC, PowerStream and/or PHI, as applicable, shall have the unilateral right, at such Party's sole discretion, to proceed with and complete the transactions described in this section 5.5(4) without contravening any terms and conditions of this Agreement, including the remaining provisions of this section 5.5. The Parties acknowledge and agree that (i) the completion of a transaction described in this section 5.5(4) during the Interim Period shall not result in an adjustment to the applicable Party's Equity Allocation and (ii) the Parties will be permitted to amend, during the Interim Period, the representations and warranties, covenants and agreements applicable to them in order to give effect to any such transaction described in this section 5.5(4).

- (5) Any Offering Shareholder or Offering Principal may deliver one Upstream Transfer Notice at any time prior to Closing. Such Upstream Transfer Notice must be delivered to all of the other Parties. If the Upstream Transfer contemplated by such Upstream Transfer Notice is not consummated prior to Closing, the Offering Shareholder or Offering Principal delivering the Upstream Transfer Notice may exercise its rights under Section 5.5(4)(a) with respect to the Upstream Transfer that is the subject of the Upstream Transfer Notice after Closing provided such Upstream Transfer is consummated (a) prior to the date that is 60 days after the Closing and (b) in accordance with the particulars set out in the Upstream Transfer Notice.

ARTICLE 6 CONDITIONS

6.1 Conditions to Obligations of Barrie, BHHI, VHI, Vaughan, Markham and MEC

- (1) The obligations of Barrie, BHHI, Vaughan, VHI, Markham and MEC to complete the Holdings Amalgamation shall be subject to the fulfilment of the following conditions on or before the Closing Date: