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Regulatory Affairs

BY EMAIL, RESS AND COURIER

January 24, 2020

Ms. Christine E. Long
Board Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Long:

Re: EB-2019-0007 – Imperial Oil Limited Leave to Construct Pipeline and Associated Infrastructure in the City of Hamilton to the City of Toronto

Pursuant to Procedural Order #6, issued December 6, 2019, please find enclosed Hydro One Networks Inc.'s submissions in the aforementioned proceeding.

An electronic copy of this submission has been filed through the Ontario Energy Board's Regulatory Electronic Submission System.

Sincerely,

ORIGINAL SIGNED BY JOANNE RICHARDSON

Joanne Richardson

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ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15 (Sched. B), as amended (the “Act”);

AND IN THE MATTER OF an Application by Imperial Oil
Limited under sections 90(1) and 97 of the Act for an order
granting Leave to Construct of a hydrocarbon distribution
pipeline and ancillary facilities to serve the Greater Toronto and
Hamilton Area.

1. Pursuant to Ontario Energy Board (“OEB”) Procedural Order #6 (“PO #6”) issued December 6, 2019, Hydro One Networks Inc. (“Hydro One”) provides this submission to document to the OEB that Hydro One supports the need for the Imperial Oil Limited (“Imperial”) Waterdown to Finch Project (“WATFIN Project” or “Project”), however, Hydro One does not support the leave to construct approval sought to complete the Project as filed.
2. This document will provide Hydro One’s submission regarding the application and interrogatory responses provided by Imperial as well as discuss relevant policies, filing guidelines and/or applicable legislation and prior cases that dealt with similar issues. In so doing, this submission will also address any representations made by Imperial on the record of this proceeding that Hydro One does not completely agree with.
3. Imperial seeks approval under s. 90 of the *Ontario Energy Board Act, 1998* (“OEB Act”) to install approximately 63 kilometres of 12-inch diameter pipeline and associated infrastructure between Imperial’s pump station in rural Hamilton (Waterdown Pump Station) and its terminal storage facility in Toronto’s North York area (Finch Storage Terminal).
4. When assessing an application made pursuant to s. 90 of the OEB Act, the OEB is guided by s.96 (1) of the OEB Act. For ease of reference, s. 96 (1) of the OEB Act is provided below:

Order allowing work to be carried out

96 (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

- 1 5. Previous OEB decisions on gas leave to construct applications provide insight on how the
2 OEB has established and assessed the *public interest*. When determining whether a project
3 is in the public interest, the OEB typically examines the need for the project; the project
4 cost and economics; the environmental impacts; impacts on landowners; and Indigenous
5 consultation¹.
6
- 7 6. Imperial’s evidence notes that the Project is required to replace the transportation
8 capabilities of the existing Sarnia Products Pipeline (“SPPL”) which provides refined
9 products used by households and businesses across the Greater Toronto and Hamilton
10 Area. Hydro One has no comment on the need for the Project and it seems apparent through
11 the letters of support to Imperial and filed in this Application that there is a need for the
12 Project.
13
- 14 7. As documented at Exhibit A, Tab 1, Schedule 3, page 3 of the Imperial prefiled evidence,
15 Imperial is a non-rate regulated private enterprise and the Project is completely financed
16 by Imperial. Consequently, there are no cost impacts on ratepayers. Therefore, disclosure
17 of project costs and an economic feasibility assessment have not been assessed in this
18 proceeding nor do they need to be in accordance with the OEB filing guidelines. As a result
19 Hydro One has no specific comment on the economic feasibility and corresponding rate
20 impacts of the Project.
21
- 22 8. It is anticipated that the new pipeline will be constructed following the existing SPPL as
23 closely as possible. The existing pipeline is within an Imperial easement for approximately
24 one-third of the route or 18.8 km (11.6 mi), on fee simple lands. Approximately two-thirds
25 or 43.3 km (26.8 mi) will be within a corridor managed by Hydro One on lands that are
26 owned by the Province and administered by Infrastructure Ontario (“IO”)². In its AIC,
27 Imperial submits that the Project proactively responds to all land matters and that the
28 Project’s route has been assessed as the only feasible route³.
29
- 30 9. New easements will be required within the Hydro One ROW and Imperial has been
31 working with Hydro One and IO to secure the necessary agreements since early 2018.
32 Hydro One and IO represent more than 70% of the necessary permanent easement rights
33 required to initiate the WATFIN Project. Imperial has secured none of those rights. In
34 fact, Imperial has confirmed that it has secured no permanent easement rights with any
35 stakeholder to begin construction of the WATFIN Project⁴. Similarly, Imperial has secured

¹ EB-2016-0013 and EB-2018-0306 – OEB Decisions – June 29, 2019 and March 28, 2019

² EB-2019-0007 – Imperial Pre-filed Evidence – February 22, 2019 – Exhibit F, Tab 1, Schedule 1 – Page 1 of 6

³ EB-2019-0007 - Imperial Argument-In-Chief – January 10, 2020 – Paragraph 48

⁴ EB-2019-0007 – Imperial Interrogatory Responses - August 2, 2019 – HONI – 1 d., Table 52-1

1 less than 4% of all temporary workspace requirements to effectuate the Project⁵. This is
2 the evidence on the record.
3

4 10. Given the current state of all land negotiations, and other items discussed later in this
5 submission, Hydro One suggests that the proposed Project schedule⁶, which indicates a
6 *December 2019* construction start date be updated to reflect the current state of the Project
7 and in-so-doing forecast plausible dates for the receipt of all land-related permits and
8 agreements⁷.
9

10 11. As aforementioned, land issues, and specifically, the impacts on landowners, are a key
11 consideration of the OEB in ascertaining whether a project is in the public interest. Hydro
12 One, as public stewards of the transmission infrastructure that the WATFIN Project will
13 impact, highlights the following significant concerns with the Project with respect to Hydro
14 One's and IO's land interests.
15

16 12. Throughout the prefiled evidence and again throughout its AIC, Imperial identified the
17 high-voltage electricity transmission corridor as a *utility corridor*. That, in fact, is not the
18 case. Through a Hydro One interrogatory, the applicant concedes that Hydro One has a
19 statutory right to the corridor and that Hydro One's electric transmission system is granted
20 the primary use⁸ of those lands. To elaborate on this further, Bill 58, the *Reliable Energy*
21 *and Consumer Protection Act*, amended the Electricity Act resulting in the transfer of lands
22 owned by Hydro One for its transmission system to the Government of Ontario. The
23 legislation provides Hydro One the primacy of use of the corridor lands for the purpose of
24 a transmission or distribution system.
25

26 13. Despite Imperial's acknowledgement that Hydro One has a statutory right to the corridor
27 and that Hydro One's electric transmission and distribution system have primacy of use
28 of the *corridor*, Imperial goes on to state in the interrogatory response that there are
29 multiple active hydrocarbon pipelines in the *corridor* and that they have been active for
30 decades. Additionally, in the same interrogatory response, Imperial brings forward that the
31 Province has identified a significant portion of this *corridor* under the Parkway Belt West
32 Plan ("PBWP") which the Ministry of Municipal Affairs has indicated was implemented
33 to "create a multi-purpose utility corridor, urban separator and linked open space system"⁹.

⁵ Ibid – Table 52-2

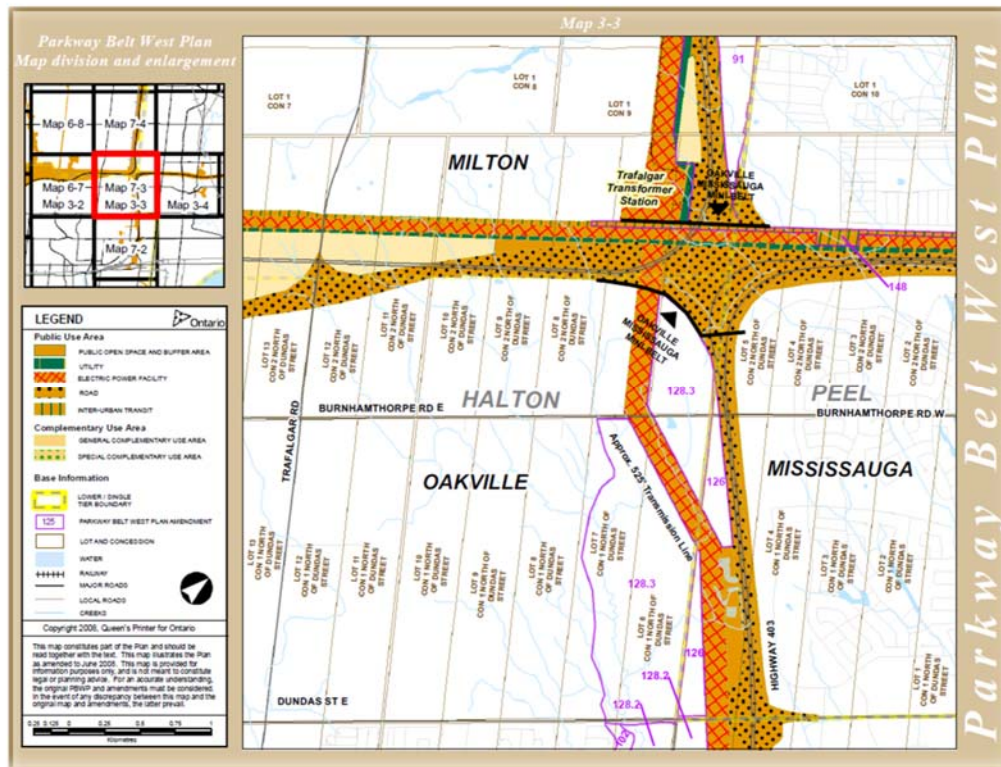
⁶ EB-2019-0007 – Imperial Pre-filed Evidence – February 22, 2019 – Exhibit E, Tab 1, Schedule 6 – Page 1 of 2

⁷ EB-2019-0007 – Imperial Argument-In-Chief – January 10, 2019 – Paragraph 56: Imperial forecasts that the all land-related permits and agreements will be received in Q3 2020.

⁸ EB-2019-0007 – Imperial Interrogatory Responses - August 2, 2019 – HONI – 1 a.

⁹ EB-2019-0007 – Imperial Interrogatory Responses - August 2, 2019 – HONI – 1 a.

1 14. In response, Hydro One does not dispute that the PBWP does indeed encompass a utility
2 corridor; it even encompasses a transit corridor. However, Hydro One's submissions are
3 simply that these corridors are not the same as the electric power corridor. The utility
4 corridor that is documented in the PBWP, and referenced by Imperial, is located adjacent
5 to the electric power corridor. For ease of reference and to help illustrate this point clearly,
6 Hydro One has embedded a map from the Ministry of Municipal Affairs and Housing for
7 a section of the PBWP corridors below in this submission¹⁰. As is apparent from the map,
8 the corridors are separately identified. The transit corridor is identified as being north of
9 the electricity corridor while the utility corridor is south of the electricity corridor.
10



11 15. The Government of Ontario has put in place a Provincial Secondary Land Use Program
12 (PSLUP) that allows for the use of transmission corridor lands, while taking into account
13 the primary purpose of the land for electricity transmission and distribution. Imperial is
14 relying on this Program to have access to the transmission corridor. In accordance with
15 the PSLUP, Hydro One has indeed permitted the co-location of multiple active
16 hydrocarbon pipelines in this specific electricity *corridor* and those pipelines have indeed
17 been active for decades. Hydro One does not dispute that. However, none of those active
18

¹⁰ <http://www.mah.gov.on.ca/AssetFactory.aspx?did=5617>

1 occupations have been granted an easement width as aggressive as those suggested by
2 Imperial for the WATFIN Project.
3

4 16. Imperial independently asserts that HONI and IO are proposing easement widths in excess
5 of land Imperial requires to operate and safely maintain its pipeline¹¹, thereby claiming
6 there is sufficient space to accommodate its pipeline. However Imperial cannot
7 independently determine if there is sufficient space to accommodate the pipeline through
8 the Bill 58 lands. The basis of the PSLUP is that Hydro One's existing and future
9 transmission and distribution requirements, along with all technical, operational and safety
10 requirements must first be met before a secondary land use will be considered¹².
11

12 17. With respect to secondary land use activities pursued by pipeline infrastructure, the
13 aforementioned technical, operational and safety requirements are assessed through
14 various studies, including a Technical Feasibility Study and AC Mitigation Studies (“the
15 Technical Studies”). Regrettably, the Technical Studies have not been completed yet for
16 this Project and are not expected to be finalized for some time. Preliminary results have
17 identified multiple contentious points of co-location along the route that will need to be
18 addressed before any occupation is provided on the electricity corridor. Hydro One has
19 informed Imperial of these issues. Therefore, while Hydro One has supported and
20 continues to support Imperial’s requests for information on the Transmission Corridor and
21 has negotiated in good faith, and remains open to continued discussion regarding the
22 necessary easement width, Hydro One submits that to date Imperial Oil has only
23 unilaterally determined through consultation with its own operations and maintenance
24 teams, the appropriate permanent easement requirements to safely install, operate and
25 maintain the pipeline¹³.
26

27 18. As discussed, approximately two-thirds or 43.3 km (26.8 mi) of the route for this Project
28 will be within the electricity corridor managed by Hydro One on lands that are owned by
29 the Province and administered by IO¹⁴. Given the outstanding work that remains to finalize
30 the Technical Studies of the co-location of the existing electricity facilities and the
31 proposed Project, Hydro One finds it striking that Imperial submits that the majority of the
32 land-related permits and agreements will be received by Q2 2020¹⁵. Hydro One would
33 assume that for Imperial to receive the majority of land-related permits, Imperial would
34 not only have completed the review of the Technical Studies but would have also

¹¹ EB-2019-0007 – Imperial Interrogatory Responses - August 2, 2019 – HONI – 1e

¹² <https://www.infrastructureontario.ca/Provincial-Secondary-Land-Use-Program/>

¹³ EB-2019-0007 – Imperial Interrogatory Responses - August 2, 2019 – HONI – 2 b

¹⁴ EB-2019-0007 – Imperial Pre-filed Evidence – February 22, 2019 – Exhibit F, Tab 1, Schedule 1 – Page 1 of 6

¹⁵ EB-2019-0007 – Imperial Argument-In-Chief – January 10, 2019 – Paragraph 56

1 completed any other due diligence and all requisite surveys for the permits to be obtained.
2 If this is not what Imperial intended by stating that the majority of all land permits will be
3 received by Q2 2020 then Hydro One asks that Imperial clarifies the record.
4

5 19. Imperial contends that constructing the Project following the existing SPPL as closely as
6 possible will minimize landowner impacts and in order to further minimize impacts to
7 competing land use in the area, Imperial has reduced easement width requirements to the
8 extent possible.¹⁶ Based on these easement reductions, Imperial goes on to estimate the
9 total approximate area in hectares required to complete the Project.¹⁷
10

11 20. Given that the Technical Studies have not been completed, neither Hydro One or IO have
12 yet agreed to the reduced easement width requirements proposed by Imperial in this
13 application nor will Hydro One agree to any such occupation without the completion,
14 review, and implementation of the recommendations of the Technical Studies.
15

16 21. Hydro One submits that leave to construct approval of this Project should be conditional
17 on having all impacted parties complete the necessary review of the finalized Technical
18 Studies. Concurrence must be reached by Hydro One and Imperial that any necessary
19 mitigations recommended by the Technical Studies that are required to maintain the
20 integrity of the proposed pipeline and co-existing electricity infrastructure will be
21 incorporated prior to the commencement of construction of the pipeline. All mitigations,
22 including a potentially wider easement than the 12 inch easement proposed by Imperial or
23 changes to engineering designs, will be paid, in full, by Imperial.
24

25 22. It is not unusual for the OEB to render a leave to construct approval conditional upon an
26 applicant entering into a written agreement with Hydro One or another utility. The OEB
27 enforced a similar condition on Union Gas when Union Gas proposed to build within close
28 proximity to Hydro One's approved Supply to Essex County Transmission Reinforcement
29 Project ("the Leamington Example")¹⁸.
30

31 23. In that proceeding, after an oral hearing on the specific co-location issue between Hydro
32 One and Union Gas, the agreement between the parties, and the condition of approval in
33 the proceeding, established that the edge of the Union Gas pipeline wall, for the entire co-
34 location of the Union pipeline and the Hydro One transmission towers, must be at least 4

¹⁶ EB-2019-0007 – Imperial Argument-In-Chief – Paragraph 53

¹⁷ EB-2019-0007 – Imperial Argument-In-Chief – Paragraph 55

¹⁸ EB-2016-0013

1 metres from the footing of each Hydro One tower¹⁹. The separation was granted based on
2 the fact that there is low risk to the co-location due to the low ground resistivity, low short-
3 circuit levels at the location, and the planned provision of two skywires/shieldwires on the
4 transmission towers in that specific area. This data and understanding only became
5 reliably available after a review of the AC Mitigation Study.
6

7 24. In the Leamington Example, the minimum 10 foot separation was maintained even with all
8 the low risk variables to co-location. When Imperial was asked to provide examples of any
9 Ontario pipelines where a minimum 10 foot easement had not been adhered to, Imperial
10 referenced only one Project, namely, it's Credit River Valley Project. Imperial describes
11 that the "... new easement for a HDD trenchless technology installed section of pipe
12 overlapped the existing easement of the pipeline being replaced. HONI and IO accepted a
13 5-foot easement width at this location²⁰".
14

15 25. Though technically correct, what Imperial fails to document in the response is that the 5
16 foot easement granted for the Credit River Valley Project entirely overlapped the existing
17 easement of the existing pipeline being replaced which was already 10 feet in width.
18

19 26. The Credit River Valley Project example documented by Imperial provides a striking
20 foreshadowing into one of the main land issues with the WATFIN Project; specifically,
21 access and maintenance concerns over the life of the asset.
22

23 27. Access for Imperial to maintain its proposed pipeline has not been approved by Hydro One,
24 nor will it form any part whatsoever of the easement if Imperial insists on proceeding with
25 an easement of less than 10 feet. To date, Imperial has not approached Hydro One for any
26 additional lands for maintenance. With the Imperial requested 1 foot easement, it remains
27 unclear to Hydro One how Imperial will ensure that it has access to complete any future
28 maintenance activities. Imperial will need more than one foot to construct and maintain its
29 facility. If Imperial's plans are to acquire temporary rights in the future for maintenance
30 activities, Hydro One nor IO can guarantee that such temporary access will be available,
31 and Imperial can only guarantee the Board that it will have access to maintain its facilities
32 if that property right is secured in advance.
33

34 28. Imperial has repeatedly mentioned throughout the record that in "...the unlikely event of
35 an integrity issue with the pipeline in an area installed using HDD trenchless technology,
36 the section of the pipe would be isolated and abandoned, and a new pipe would be installed

¹⁹ EB-2016-0013 – Ontario Energy Board Decision and Order – June 29, 2016 – Page 21

²⁰ EB-2019-0007 – Imperial Interrogatory Responses - August 2, 2019 – HONI – 2c

1 using HDD trenchless technology”²¹. Again, it remains unclear how Imperial would be
2 accessing the asset to conduct an integrity dig without sufficient property rights for access
3 and maintenance to confirm if an integrity issue exists. Moreover, and potentially of even
4 more concern, is that in the event that the integrity dig did unearth an integrity issue with
5 the proposed WATFIN pipeline, it is glaringly apparent that there would be insufficient
6 land for this WATFIN pipeline to be isolated and another replacement pipeline to be
7 situated if the permanent easement being requested is only as wide as the 12 inch pipe
8 being installed for the proposed WATFIN pipeline.
9

10 29. Imperial also bring forward in interrogatory responses that:

11 “The 2014 Provincial Policy Statement also provides direction that
12 ‘Planning authorities shall plan for and **protect corridors**
13 **(emphasis added)** and rights-of-way for infrastructure [which
14 includes oil and gas pipelines and associated facilities], including
15 transportation, transit and electricity generation facilities and
16 transmission systems to meet current and projected needs.’²²”
17

18 30. Hydro One recognizes the provincial planning objectives of these corridors and has been
19 amenable to permitting secondary land uses and co-location in electricity transmission
20 corridors throughout the province of Ontario as already discussed. However, in so doing,
21 Hydro One and other planning authorities are cognizant and respectful of Hydro One’s
22 primary of use on Bill 58 lands and of the need to protect the integrity of existing
23 infrastructure and corridors consistent with the 2014 Provincial Policy Statement as
24 referenced by Imperial.
25

26 31. Finally, given that the land required to complete this Project is predominantly situated on
27 the aforementioned electricity transmission corridor²³, Hydro One and IO are providing the
28 land forms that will be utilized for any occupation on the transmission corridor. Hydro One
29 submits that it will be prudent for the OEB to review and approve the form of these
30 agreements as well given that they more accurately reflect the agreement that will be
31 utilized for the majority of the lands Imperial is seeking to acquire. The land forms are
32 provided as Attachments 1 through 6 of this submission and are filed in the following order:
33

- 34 • Provincial (Ministry of Government and Consumer Services) Easement Schedule (Bill
35 58 lands)

²¹ EB-2019-0007 – Imperial Interrogatory Responses - August 2, 2019 – HONI – 2b

²² EB-2019-0007 – Imperial Interrogatory Responses - August 2, 2019 – HONI – 1 a

²³ EB-2019-0007 – Imperial Interrogatory Responses - August 2, 2019 – HONI – 1 d, Table 52:1 and Table 52:2

- 1 • Provincial (Ministry of Government and Consumer Services) Easement Schedule
- 2 Temporary Use and Access Agreement (Bill 58 lands)
- 3 • Hydro One Easement Schedule (Hydro One owned lands)
- 4 • Hydro One Temporary use and Access Agreement (Hydro One owned lands)
- 5 • Construction Agreement (Hydro One easement lands)
- 6 • Construction and Encroachment Agreement (Hydro One easement lands)
- 7

8 32. In short, Hydro One does not oppose the Project or the need for the Project however,
9 considering our obligations to our ratepayers and shareholders, Hydro One is not in a
10 position to support Imperial’s currently filed approach to land acquisition specifically with
11 respect to lands situated in the electricity transmission corridor.

12
13 33. Imperial defends that the proposed pipeline route is the only reasonable option, particularly
14 within the urban landscape, because it benefits from following the existing utility
15 corridors²⁴. Hydro One is not certain this statement is entirely accurate. Specifically, Hydro
16 One and IO had suggested to Imperial that the Provincial Parkway Belt lands located north
17 of Hydro One’s right-of-way be used for this installation in Mississauga. It is not apparent
18 from the Environmental Report that the socio-economic effects of alternative routes such
19 as this one brought forward by Hydro One and Infrastructure Ontario were ever fully
20 explored and compared against the preferred alternative.

21
22 34. Hydro One submits that the evidence on land matters is incomplete and requires further
23 review. In the absence of any concrete and tested evidence it would be ineffective for the
24 OEB to approve a route, and permit the construction of a facility whose co-location safety
25 impacts with existing utility infrastructure had not been fully studied. This is especially
26 true in this instance where the requested easement significantly deviates from the 10 foot
27 minimum easement that has been utilized throughout the province of Ontario as a
28 practicing standard irrespective of the use of HDD trenchless technology. Consequently,
29 Hydro One reiterates that should the OEB determine that this application is in the public
30 interest then any approval of this application should be conditional upon the completion
31 and review of all Technical Studies and that any mitigations necessary to maintain the
32 integrity of the electricity transmission system should be incorporated into the design and
33 cost of the WATFIN pipeline and agreed to prior to construction commencement.

34
35 35. All of which is respectfully submitted.

²⁴ EB-2019-0007 - Imperial AIC – January 10, 2020 – Paragraph 51

SCHEDULE "A"

GRANT OF EASEMENT

RECITALS

1. Her Majesty the Queen in right of Ontario is the owner in fee simple of certain lands located in the **XXXXXX**, described in Appendix I attached hereto (hereinafter referred to as the "Servient Tenement").
2. The Transferee acknowledges that the fee simple interest in the Servient Tenement was transferred to Her Majesty the Queen in right of Ontario pursuant to section 114.2(1) of the *Electricity Act (Ontario)* (the "Act") and that pursuant to section 114.5(1) of the Act, Hydro One Networks Inc. has the primary right to use the Servient Tenement to operate a Transmission System or Distribution System.
3. The Transferee is the owner of a system of **XXXXXX** transmission, distribution and service pipelines and associated works and certain lands shown in Appendix II attached hereto (hereinafter referred to as the "Dominant Tenement").
4. Her Majesty the Queen in right of Ontario confirms that an authorized signing officer of Ontario Infrastructure and Lands Corporation ("OILC") has the authority to execute this grant of easement (the "Grant of Easement") on behalf of Her Majesty the Queen in right of Ontario, and Her Majesty the Queen in right of Ontario and OILC are and shall be bound by all the Transferor's covenants, representations and warranties provided herein.
5. The Transferee has offered to purchase for consideration a non-exclusive right, interest and easement upon, under, along, over and across the Servient Tenement for the purposes of constructing, installing, operating, maintaining, inspecting, removing, replacing and reconstructing **One (1) Twelve (12) Inch (Nominal Pipe Size) Hydrocarbon Pipeline** (the "Purpose") and for the installation of improvements, appurtenances or accessories thereto (hereinafter referred to as the "Works").
6. The Transferee acknowledges that its right, interest and easement as granted hereby is subject and subordinate to the right of Hydro One Networks Inc. pursuant to the Act.

IN CONSIDERATION of the mutual covenants hereinafter set forth and other good and valuable consideration, the Transferor and Transferee hereto agree as follows:

DEFINITIONS:

1. As used in this Grant of Easement, the following terms shall have the following meanings:
 - (a) "Authority" means any governmental authority, quasi-governmental authority, agency, body or department whether federal, provincial or municipal, having jurisdiction over the Servient Tenement, or the use thereof.
 - (b) "Distribution System" shall have the same meaning as defined in the Act and for the purpose of this Grant of Easement includes any part of a Distribution System located on the Servient Tenement.
 - (c) "Environmental Contaminant" means (i) any substance which, when it exists in a building or the water supplied to or in a building, or when it is released into a building or any part thereof, or into the water or the natural environment, is likely to cause, at any time, material harm or degradation to a building or any part thereof, or to the natural environment or material risk to human health, and includes, without limitation, any flammables, explosives, radioactive materials, asbestos, lead paint, PCBs, fungal contaminants (including *stachybotrys chartarum* and other moulds), mercury and its compounds, dioxans and furans, chlordane (DDT), polychlorinated

biphenyls, chlorofluorocarbons (CFCs), hydro chlorofluorocarbons (HCFCs), volatile organic compounds (VOCs), urea formaldehyde foam insulation, radon gas, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic or noxious substances or related materials, petroleum and petroleum products, or (ii) any substance declared to be hazardous or toxic under any Environmental Laws now or hereafter enacted or promulgated by any Authority, or (iii) both (i) and (ii).

- (d) "Environmental Laws" - means any federal, provincial or local law, statute, ordinance, regulation, policy, guideline or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Environmental Contaminants, including, without limitation, the *Environmental Protection Act (Ontario)*, the *Environmental Assessment Act (Ontario)*, the *Ontario Water Resources Act (Ontario)*, the *Occupational Health and Safety Act (Ontario)*, the *Safe Drinking Water Act (Ontario)*, and applicable air quality guidelines, as such statutes, regulations and guidelines may be amended from time to time.
- (e) "Open Data" means data that is required to be released to the public pursuant to the Open Data Directive.
- (f) "Open Data Directive" means the Management Board of Cabinet's Open Data Directive, updated on April 29, 2016, as amended from time to time.
- (g) "Permittee" means any existing or contemplated tenant, subtenant, invitee, licensee, permittee, grantee of an easement, mortgagee, security holder or other person including any competent authority.
- (h) "Transferee" includes the successors and permitted assigns of the Transferee.
- (i) "Transferor" includes Her Majesty the Queen in right of Ontario, Ontario Infrastructure and Lands Corporation and the successors and permitted assigns of the Transferor.
- (j) "Transmission System" shall have the same meaning as defined in the Act and for the purpose of this Grant of Easement includes any part of a Transmission System located on the Servient Tenement.
- (k) "Works" means any improvements, appurtenances or accessories thereto installed on the Servient Tenement by the Transferee pursuant to this Easement.

All references to a statute or regulation includes all amendments, re-enactments or replacements of the statute or regulation.

2. **Grant of Easement:** The Transferor hereby transfers to the Transferee, a non-exclusive right, interest and easement upon, under, along, over and across the Servient Tenement for the Purpose and subject to the terms and conditions set out in this Grant of Easement, including, without limiting the generality of the foregoing, those terms and conditions dealing with termination rights, for a perpetual term commencing on the date of registration of the Grant of Easement (hereinafter referred to as the "Term") and subject to the terms and conditions set out herein, including, without limiting the generality of the foregoing, those terms and conditions dealing with termination rights, and which the Transferee hereby accepts and agrees to perform and abide by.
3. **Consideration:** For the rights, interest and easement granted herein, the Transferee has paid to the Transferor an Easement Fee in the sum of **XXXXXX** dollars (**\$XXXXX.00**) plus all applicable taxes.
4. **Additional Taxes, Grants, Rates, etc.:** The Transferee shall also pay to the Transferor within thirty (30) days of written demand, in addition to any other monies payable hereunder, any additional taxes, grants, rates, fees or other assessments or payments in lieu thereof that the Transferor, in its sole and absolute discretion, but acting reasonably, determines represents the reasonable allocation or assessment of such charges or levies

applicable to the Servient Tenement as owned by the Transferor and used by the Transferee pursuant to this Grant of Easement for the purposes stated herein.

5. **Taxes:** The Transferee shall pay all applicable taxes on any and all payments if required by law.
6. **No Rights Granted in Lands and Roads not Under the Transferor's Jurisdiction and Control:** The rights, interest and easement granted herein does not confer any rights in regard to any lands and roadways which are not under the Transferor's jurisdiction and control.
7. **Transferor Ownership Rights:** Subject to the rights and covenants contained herein, the Transferor shall have the charge, administration, management, sale and disposition of the Servient Tenement and shall have the right to fully use and enjoy same.
8. **Transferor Not to Damage Works:** The Transferor shall not do or suffer to be done anything which might cause injury, loss, or damage to the Works.
9. **No Transferor Representations Regarding Condition of Title, Zoning etc.:** The Transferee acknowledges that no representations or warranties have been made by the Transferor, or anyone acting on its behalf, as to the condition of or title to or the use or zoning of or with respect to any other matter or thing in connection with the Servient Tenement or as to the performance of any parts thereof or as to the presence or absence of hazardous substances on the Servient Tenement including, without limitation, urea formaldehyde foam insulation and any Environmental Contaminant. The Transferee acknowledges that the rights, interest and easement granted upon, under, along, over and across the Servient Tenement are on an "as is, where is" basis and without any representation, warranty, covenant or condition as to title, description, fitness for purpose, or use, zoning, physical condition, environmental condition, soil condition, quantity, or quality thereof or in respect of any other thing whatsoever and the Transferee shall continue to exercise the rights and perform the obligations set out herein without abatement of the Easement Fee or any other claim in respect of the Servient Tenement or the use thereof. The Transferee acknowledges and agrees that the Transferor shall not be required to undertake any work whatsoever with respect to the Servient Tenement.
10. **Transferee Notice to Transferor Prior to Commencing Any Work:** The Transferee shall, except in case of emergency, before commencing any work authorized by this Grant of Easement, give to the Transferor forty-eight (48) hours prior written notice, and in cases of emergency such prior notice as is reasonably possible, and during any construction work, repair and maintenance, the Transferor, any Permittee whose presence is considered necessary by the Transferor and/or Hydro One Networks Inc. may have its/their representatives present, for whose time and necessary expenses the Transferee shall pay on presentation of invoices therefore.
11. **Priority of Third Party Rights:** This Grant of Easement is subject to the primary right of Hydro One Networks Inc. to use the Servient Tenement to operate a Transmission System or Distribution System pursuant to section 114.5(1) of the Act to the subsurface easement in favour of Hydro One Telecom Inc. and to all leases, subleases, easements, licenses, permits, rights of use or occupation, secondary uses or other rights now existing or hereafter renewed or extended or entered into by the Transferor or Hydro One Networks Inc. with respect to the Servient Tenement, and despite anything to the contrary, it is agreed that the Transferor and Hydro One Networks Inc. hereby reserve the unrestricted right in their sole discretion without any claim or compensation to the Transferee, to renew, extend, issue or grant such rights aforesaid on terms and conditions entirely satisfactory to the Transferor or Hydro One Networks Inc.
12. **Right of Termination Upon Default of Payment:** If at any time the Easement Fee or any other amount payable hereunder is not paid when due, the Transferor shall provide written notice to the Transferee of such arrears and the Transferee shall have **thirty (30)** consecutive days from the delivery of such notice within which to pay such arrears, failing which the Transferor may terminate this Grant of Easement without any further notice.
13. **Interest on Amounts in Default:** In the event of default in payment of any amount due by the Transferee hereunder, interest shall accrue and be payable on such amount at that

rate of interest per annum posted and charged from time to time by the Minister of Finance, compounded monthly until paid. Acceptance of any overdue payment or interest shall not constitute a waiver of any rights or remedies that the Transferor may have hereunder or at law.

14. **Transferee Compliance with Standards and Laws:** The Transferee shall comply with the design standards of Hydro One Networks Inc., Canada Standards Association Standard C-22.3, the “Safety Rules and Standard Protection Code” of Hydro One Networks Inc., *The Occupational Health and Safety Act R.S.O. 1990* and any amendment thereto and any regulations passed thereunder when using heavy equipment during any construction or maintenance.

15. **Due Diligence Requirements:**

Required Documentation

- (a) The Transferee shall provide the Transferor and Hydro One Networks Inc. with the following information with respect to the Servient Tenement within sixty (60) days of the completion of such study/report/document:
- (i) a summary of **any** environmental protection, mitigation commitments and conditions imposed by the regulating authority (either the National Energy Board (“NEB”) or the Ontario Energy Board (“OEB”) through the Technical Standards and Safety Authority (“TSSA”));
 - (ii) copies of all documentation submitted to the NEB/OEB/TSSA related to: environmental impacts and protection; spill/leak detection; and spill/leak response; and
 - (iii) evidence that the Ontario Ministry of Natural Resources and Forestry and the Ontario Ministry of the Environment, Conservation and Parks have been consulted and been provided with an opportunity to comment on: the Transferee’s contingency plan for leaks and spills; and the Transferee’s environmental response plan.
- (b) The Transferee shall provide the Transferor and Hydro One Networks Inc. with a 24-hour emergency contact information list in the event of a spill/leak.

Pre-Design Considerations

- (c) With respect to the Servient Tenement, the Transferee agrees that it shall, within sixty (60) days of the completion of such study/report/document/plan,:
- (i) identify pipeline segments within high consequence areas (i.e., highly populated areas, drinking water resource areas and environmentally sensitive areas such as water crossings) and provide details on additional preventative measures (i.e., use of additional cover, increased inspection frequency along these segment lengths, etc) proposed to be implemented based on the identified risk;
 - (ii) conduct baseline soil and groundwater studies in areas of relatively high environmental risk in accordance with Brownfields Regulation 153.04 (in the event of a spill/leak, these studies shall be subject to peer review by a third party consultant chosen by the Transferor and/or Hydro One Networks Inc. at the sole cost of the Transferee);
 - (iii) provide details related to its integrity management plan including a schedule for anticipated inspection frequency and details of steps required if integrity thresholds are met and remedial action is required; and
 - (iv) provide details of financial assurance plan submitted to NEB or TSSA should a worst-case spill scenario, or other high impact emergency occur.

Integrity Digs/Test Digs

- (d) Prior to accessing the Servient Tenement, the Transferee agrees that it shall:

- (i) provide details related to integrity/test digs which will include dig location, monitoring activities, implementation of environmental controls and test dig results;
- (ii) provide details of test dig and oversight of work by an independent monitor to assist in resolution of potential environmental concerns;
- (iii) submit a copy of the results with a detailed interpretation of the results and planned corrective actions; and
- (iv) provide copies of all necessary approvals.

Abandonment /Deactivation

- (e) The Transferee agrees that in the event of abandonment or deactivation of all, or any portion of the pipeline, it shall:
 - (i) notify the Transferor and Hydro Networks Inc. within sixty (60) days and provide details regarding the location and method of abandonment/deactivation;
 - (ii) not transfer or surrender this Easement to any other party unless specifically authorized by the Transferor to do so;
 - (iii) physically remove the pipeline from the ground, if required to do so by the Transferor and/or Hydro Networks Inc.; and
 - (iv) if the pipeline to be abandoned or deactivated is in a state that requires ongoing maintenance, provide the Transferor and Hydro One Networks Inc. with a management plan related to its post-abandonment surveillance programs. The Transferor and/or Hydro One Networks Inc. shall have a third party consultant chosen by it to review the management plan to ensure adequate ongoing maintenance, at the sole cost of the Transferee.

16. Transferee Archeology Compliance:

The Transferee shall not undertake any work whatsoever on or in the proximity of any known or newly found archeological site(s), without the prior written authorization of the Transferor.

17. Transferee Environmental Compliance

- (a) The Transferee shall use its continuing efforts to ensure that it shall not, except as expressly permitted by this Easement: (i) use or permit to be used any part of the Servient Tenement for any dangerous, noxious or offensive activity; and (ii) do or bring anything or permit anything to be done or brought on or about the Servient Tenement which the Transferor may reasonably deem to be hazardous or a nuisance to any other Transferee on the Servient Tenement, if applicable, or any other persons permitted to be on the Servient Tenement.
- (b) The Transferee shall not store, bring in or permit the presence of any Environmental Contaminant in or on the Servient Tenement except if such is required for the Transferee's use of the Servient Tenement as permitted by this Easement, and then only if the Transferee is in strict compliance with all laws and requirements of all relevant Authorities, including, without limitation, Environmental Laws, occupational health and safety laws, regulations, requirements, permits and by-laws.
- (c) The Transferee shall use its continuing efforts to ensure that it shall not cause the mobilization or migration of any existing contaminants, and if it does, the Transferee shall immediately clean up and remove same, at its sole cost and expense.
- (d) If the Transferee shall bring or create upon the Servient Tenement, any Environmental Contaminant contrary to the terms of this Agreement, then such Environmental Contaminant shall be and remain the sole property of the Transferee

and the Transferee shall remove same, at its sole cost and expense as soon as directed to do so by any Authority, or if required to effect compliance with any Environmental Laws, or if required by the Transferor and/or Hydro One Networks Inc. If any such Environmental Contaminant is not removed forthwith by the Transferee, the Transferor shall be entitled, but not required, to remove the same on the Transferee's behalf, and the Transferee shall reimburse the Transferor for the cost and expense thereof.

- (e) In addition to and without restricting any other obligations or covenants herein, the Transferee covenants that it will:
- (i) comply in all respects with all Environmental Laws relating to the Servient Tenement or the use thereof;
 - (ii) promptly notify the Transferor in writing of any notice by any Authority alleging a possible violation of or with respect to any other matter involving any Environmental Laws relating to the Servient Tenement, or relating to any person on or about the Servient Tenement for whom the Transferee is in law responsible, or any notice from any other party concerning any release or alleged release of any Environmental Contaminant from the Servient Tenement;
 - (iii) promptly notify the Transferor of the existence of any Environmental Contaminant on the Servient Tenement to the extent released, deposited, placed or used upon the Servient Tenement by the Transferee or any person for whom the Transferee is responsible in law; and
 - (iv) provide the Transferor and Hydro One Networks Inc. with copies of all environmental studies and reports that it possesses or enters into respecting the Servient Tenement, such studies and reports shall be subject to peer review by a third party consultant chosen by the Transferor and/or Hydro One Networks Inc. at the sole cost of the Transferee.

18. **Environmental Indemnification**

In addition to and without restricting any other obligations or covenants contained herein, the Transferee shall indemnify and hold the Transferor and Hydro One Networks Inc. harmless at all times from and against any and all losses, damages, penalties, fines, costs, fees and expenses (including legal fees on a solicitor and client basis and consultants' fees and expenses) resulting from:

- (a) any breach of or non-compliance with the foregoing environmental covenants of the Transferee; and
- (b) any legal or administrative action commenced by, or claim made or notice from, any third party, including, without limitation, any Authority, to or against the Transferor and/or Hydro One Networks Inc., arising from the introduction of Environmental Contaminants onto, or the release of Environmental Contaminants from, the Servient Tenement by the Transferee or those for whom it is responsible in law, including any and all costs associated with air quality issues.

19. **Trespass/Snow Restrictions:** The Transferee shall not in any way use or trespass on any lands adjoining the Servient Tenement. The Transferee shall not pile snow on any of the Servient Tenement which would result in piles exceeding two metres (6.5 ft) in height or being closer than eight metres (26.2 ft) from any of Hydro One Networks Inc.'s Transmission System or Distribution System. In the event of the Transferee acting in breach of this condition, the Transferor may remove any such pile, and the Transferee shall pay to the Transferor forthwith upon demand all costs of the Transferor for the removal of any such pile of snow.

20. **Hydro One Networks Inc. Prior Approval Required for Improvements, Grading, etc.:** The construction or location of all improvements and structures and the grading and planting of trees on the Servient Tenement is subject to the prior written approval of the Transferor and Hydro One Networks Inc.

21. **Transferee Fences and Barriers:**

- (a) If required to do so by the Transferor or Hydro One Networks Inc., the Transferee shall at its own expense erect and maintain fences or barriers to protect all present and future works of the Transferor and the Transmission System and Distribution System of Hydro One Networks Inc. on the Servient Tenement according to specifications of the Transferor and/or Hydro One Networks Inc.
- (b) In the event the Transferee acts in breach of subsection (a), the Transferor may erect and maintain any such fences or barriers, and the Transferee shall pay to the Transferor forthwith upon demand all costs of the Transferor in erecting or maintaining any such fences or barriers.

22. **Transferee Not to Interfere with Hydro One Networks Inc. System or Transferor's Permittees:**

The Transferee covenants and agrees that the Transferee, its uses, works, installations, equipment, improvements, property and Permittees shall not in any way interfere with, obstruct, delay or cause any damage or inefficiencies to any works of the Transferor or of the Transferor's Permittees, or to the Transmission System or Distribution System of Hydro One Networks Inc. now or hereafter constructed or contemplated on, in or in respect of all or any portion of the Servient Tenement from time to time, and without limiting the generality of the foregoing, the Transferee shall ensure that the height of any vehicle, load or other object, including attachments, or people standing thereon near Hydro One Networks Inc.'s Transmission System or Distribution System does not exceed 4.115 m (13.5 ft.) above the existing grade.

23. **Transferee Access Subject to Rights of Third Parties:**

The Transferor shall provide the Transferee with free and unimpeded access at all times to the Works, subject to any existing agreements, easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with the Servient Tenement, and subject to the right of Hydro One Networks Inc. pursuant to the Act.

24. **Transferee Access to Works:**

For the purposes set out herein and for all purposes necessary or incidental to the exercise of the rights hereby created, but subject to the restrictions contained in clauses 11 and 23, the Transferee shall have access to the Works located on the Servient Tenement at all times by its servants, agents, contractors and subcontractors and its vehicles, supplies, machinery and equipment, as appurtenant to the Dominant Tenement.

25. **Transferee Right to Remove Trees, Rocks, etc.:**

The Transferor shall permit the Transferee to remove, trim, sever, or fell any obstructions such as trees, roots, brush, stumps, boulders or rocks encountered during the course of completion of the Works, subject to any legal requirements and any existing agreements, easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with the Servient Tenement, and subject to the right of Hydro One Networks Inc. pursuant to the Act.

26. **Transferee to Exclude Third Parties:**

The Transferee shall take all reasonable steps to ensure that persons not affiliated with the Transferee shall not be permitted access to such portions of the Servient Tenement as are occupied by the Transferee during any period of construction, inspection, maintenance or reconstruction during the term of this Grant of Easement.

27. **Transferor and Transferee to Obtain Approvals and Consents and Compliance with Laws:**

This Agreement shall be effective to create an interest in the Servient Tenement only if the applicable subdivision control provisions of the *Planning Act (Ontario)*, are complied with on or before the commencement of the Term. The Transferor, at the cost of the Transferee, shall obtain all necessary approvals, including zoning and consent from the Committee of Adjustment. The Transferee shall obtain consents from other easement holders on the Servient Tenement including Hydro One Networks Inc. and shall comply with all provisions of law, including, without limitation, all federal and provincial legislative enactments, municipal by-laws and any other governmental or municipal by-laws, regulations and orders, including environmental protection laws, that relate to the Servient Tenement, this Grant of Easement or the

exercise of any of the rights or obligations in this Grant of Easement. The Transferee shall reimburse the Transferor for the cost of obtaining the approval and Consent from the Committee of Adjustment prior to registration of this easement.

28. **Markers Identifying Location of the Works:** At the request of the Transferor or Hydro One Networks Inc., the location of the Works shall be indicated by permanent markers of size and design approved by the Transferor, which markers shall be placed and thereafter maintained by the Transferee at the Transferee's own expense in positions designated by the Transferor, and the Transferee shall reimburse the Transferor for all costs incurred by the Transferor in the installation of aerial warning devices or in taking other measures to comply with any rules and regulations of any governmental authority which would not have been incurred but for the rights, interest and easement herein granted.
29. **Construction Liens:** The Transferee shall make all payments and take all steps as may be necessary to ensure that no lien is registered against the Servient Tenement as a result of any work, services, or materials supplied to the Transferee or to the Servient Tenement. The Transferee shall cause any such registration to be discharged or vacated immediately after notice thereof from the Transferor or within ten (10) days following such registration, whichever is earlier. The Transferee shall indemnify and save harmless the Transferor from and against any liabilities, claims, liens, damages, costs and expenses, including legal fees, arising in connection with any work, services or materials supplied to the Transferee or the Servient Tenement. If the Transferee fails to cause any such registration to be discharged or vacated as aforesaid, then, in addition to any other rights of the Transferor, the Transferor may, but shall not be obliged to, discharge the same by paying the amount claimed into court, and the amount so paid and all related costs incurred in respect thereof by the Transferor, including legal fees and disbursements, shall be paid by the Transferee to the Transferor forthwith upon demand.
30. **Transferee Property and People at Its Risk:** All persons for whom the Transferee is responsible at law and all property of the Transferee at any time on the Servient Tenement shall be at the sole risk of the Transferee, and except to the extent caused by Hydro One Networks Inc. or Transferor's gross negligence or wilful misconduct neither the Transferor nor Hydro One Networks Inc. shall be liable for any loss, damage, or injury, including loss of life, to them or it however occurring and the Transferee releases the Transferor and Hydro One Networks Inc. from all claims and demands in respect of any such loss, damage or injury.
31. **Release of Transferor and Hydro One Networks Inc. for All Costs, Expenses, Losses, etc. arising from Termination:** In order to induce the Transferor to grant this Grant of Easement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Transferee on behalf of itself, its successors and assigns, hereby:
- (a) releases and forever discharges the Transferor and Hydro One Networks Inc. and each of their successors and assigns, from any and all actions, causes of action, claims and demands for damages, loss or injury, howsoever arising, which heretofore may have been and which may hereafter be sustained by the Transferee, its successors and assigns, in respect or in consequence of the lawful termination of this Grant of Easement in whole or in part(s), as the case may be, including all damages above described as well as all damage, loss or injury not now known or anticipated but which may arise in the future and all effects and consequences thereof;
 - (b) agrees not to make any claim or take any proceedings against any other person or corporation who might claim contribution or indemnity under the common law or under the provisions of the *Negligence Act* and the amendments thereto from the Transferor or Hydro One Networks Inc.; and
 - (c) agrees that the Transferor and Hydro One Networks Inc. may plead this Grant of Easement as an estoppel.

32. **Works to Remain Property of Transferee:** Notwithstanding any rule of law or equity, any part of the Works consisting of fixtures, equipment and structures and appurtenances thereto, located upon the Servient Tenement pursuant to this Grant of Easement, shall be the property of the Transferee even though the same may have become annexed or affixed to the Servient Tenement.
33. **Transferee Damage to Servient Tenement and Obligation to Restore:** The Transferee shall be liable for physical and tangible damage done to the Servient Tenement and/or the Transferor's adjoining lands, by reason of the exercise of the Transferee of any or all of the rights and obligations set out herein and it shall remove all debris from the Servient Tenement and/or the Transferor's adjoining lands and repair and replace such damage and restore the Servient Tenement and/or the Transferor's adjoining lands to the satisfaction of the Transferor and Hydro One Networks Inc., at no expense to the Transferor.
34. **Restriction of Assignment of Easement:** The Transferee shall not assign, transfer, sublease, part with possession or dispose of all or any part of the Servient Tenement or this Grant of Easement or any privileges or interests hereby granted to it without the prior written consent of the Transferor, acting reasonably. Notwithstanding the above, the Transferee may assign this Grant of Easement to an affiliate; provided, however, the Transferee shall remain liable for all its liabilities and obligations, whether expressed or implied, under this Grant of Easement.
35. **Transferee to Execute a Surrender of this Grant of Easement:** In the event that the Transferee abandons the Works, the Transferee shall within a period of one (1) year thereafter, execute and deliver a surrender, transfer and release of the rights and easement herein granted.
36. **Works May be Removed, etc. by Transferor and Hydro One Networks Inc. on 24 Hours' Notice:** The Transferor, Hydro One Networks Inc. and anyone acting pursuant to its authority may at any time enter on the Servient Tenement and upon twenty-four (24) hours prior written notice to the Transferee or at any time without notice in case of emergency to inspect, maintain, repair, re-arrange, add to, replace, relocate and remove any of the Transferor's installations or equipment or the Transmission System or Distribution System of Hydro One Networks Inc. and further may construct, add, inspect, maintain, repair, alter, re-arrange, relocate and remove such new installations or equipment or new Transmission System or Distribution System as the Transferor or Hydro One Networks Inc. determines necessary or desirable and the Transferor and Hydro One Networks Inc. shall not be liable for and are hereby released from all damages, losses, injuries, costs, charges, expenses, suits, proceedings, claims and demands arising in connection with carrying out the work aforesaid, including, without limitation, all claims for damages, indemnification, reimbursement or compensation by reason of loss, interruption or suspension of business or interference or inconvenience howsoever caused or physical damage to the Servient Tenement.
37. **Transferor May Terminate this Grant of Easement on Notice:** Despite anything to the contrary in this Grant of Easement and without prejudice to the rights of the Transferor hereunder or otherwise, the Transferor shall have the option in its sole discretion at any time(s), to be exercised in each instance by at least **two (2) years** prior written notice to the Transferee, to terminate this Grant of Easement in whole or in part, as the case may be, if the Transferee, its permitted uses, works, installations, equipment, improvements, property and Permittees in any way interfere with, obstruct, limit or impede the right of Hydro One Networks Inc. to use the Servient Tenement to operate a Transmission System or Distribution System pursuant to section 114.5(1) of the Act, all without any claim by or compensation for the Transferee including without limitation for any inconvenience, interruption, nuisance, discomfort, relocation or removal costs caused thereby, but subject to an adjustment in the Easement Fee payable hereunder.
38. **Termination Matters, Including Removal of Works:** If the Transferor delivers notice of termination pursuant to clause 37 above, then all or such required portion of the Servient Tenement shall be deemed deleted from this Grant of Easement effective on the date of termination set out in such notice (the "Effective Date") and this Grant of Easement shall be deemed to have been terminated or amended, as the case may be, in respect of such specific area(s) as of the Effective Date. In the event of delivery of notice

of termination aforesaid, the Transferee shall at its sole expense and without claim or compensation of any kind remove or cause its Works to be removed from the Servient Tenement or such specific area(s) on or before the Effective Date in the manner set out in clause 45 below. Without prejudice to the rights of the Transferor hereunder, the Transferor will consider any reasonable request from the Transferee to continue beyond the Effective Date the Transferee's use of the Servient Tenement.

39. **Hydro One Networks Inc. May Relocate or Remove Transferee and the Works if They Interfere with Hydro System:** The Transferor reserves the right to inspect the Servient Tenement at any time. If in the opinion of the Transferor or Hydro One Networks Inc., the Transferee does anything or permits anything to be done on the Servient Tenement or the adjoining lands of the Transferor which may be a nuisance, cause damage, endanger or interfere with access for the Transmission System or Distribution System of Hydro One Networks Inc. or be considered dangerous by the Transferor or Hydro One Networks Inc. acting reasonably, the Transferor or Hydro One Networks Inc., at the Transferee's expense, may forthwith remove, relocate or clear the offending work from the Servient Tenement and/or the Transferor's adjoining lands without being liable for any damages caused thereby and the Transferee shall reimburse the Transferor or Hydro One Networks Inc. for all expense in so doing or the Transferor or Hydro One Networks Inc. may require the Transferee to immediately remove, relocate, clear or cease such activity.
40. **Transferee Right to Notice of Default and Time to Cure:** In the event of default of any of the terms or obligations in this Grant of Easement by the Transferee other than payment of any amount due hereunder, the Transferor may provide written notice to the Transferee specifying the default, and if the default is not remedied or if adequate and sufficient measures are not being taken to satisfactorily remedy the same within **thirty (30)** consecutive days of the delivery of the notice, the Transferor may terminate this Grant of Easement immediately upon the expiration of the **thirty (30)** day period aforesaid without any further notice.
41. **Transferor May Cure Transferee Defaults:** In the event of any default of the Transferee in performing any work, repairs, or other obligations of the Transferee under this Grant of Easement or making any payments due or claimed due by the Transferee to third parties, the Transferor may perform any such work, repairs, or other obligations of the Transferee or make any payments due or claimed to be due by the Transferee to third parties, and without being in breach of any of the Transferor's covenants hereunder and without thereby being deemed to infringe upon any of the Transferee's rights pursuant hereto, and, in such case, the Transferee shall pay to the Transferor forthwith upon demand all amounts paid by the Transferor to third parties in respect of such default and all costs of the Transferor in remedying or attempting to remedy any such default.
42. **Transferee Assumption of Liability and Release of Transferor and Hydro One Networks Inc.:** The Transferee shall assume all liability and obligation for any and all loss, damage, or injury (including death) to persons or property that would not have happened but for this Grant of Easement or anything done or maintained by the Transferee thereunder or intended so to be, and the Transferee shall at all times indemnify and save harmless the Transferor and Hydro One Networks Inc., and their successors, administrators, permitted assigns, directors, officers, employees, agents, servants, representatives, appointees and all others for whom they are responsible in law from and against all such loss, damage, or injury and all actions, suits, proceedings, costs, charges, damages, expenses, claims, or demands arising therefrom or connected therewith. The Transferee expressly recognizes and acknowledges that Hydro One Networks Inc. has installed and maintained or has the right to install and maintain a Transmission System or Distribution System on the Servient Tenement, and willingly assumes any and all risks associated with its proposed activities in such close proximity to such systems. Notwithstanding the above, the Transferee shall not be liable hereunder for any loss, damage or injury to the extent that it arises from the gross negligence of the Transferor or Hydro One Networks Inc.
43. **Transferee Liability Insurance:** The Transferee shall at its own expense, arrange and maintain a liability insurance policy satisfactory to the Transferor in the minimum amount of Five Million (\$5,000,000.00) dollars in order to indemnify the Transferor and Hydro One Networks Inc. as provided in paragraph 40 of this Grant of Easement. The

Transferee shall pay any and all deductibles with respect to any claim arising thereunder. Such insurance shall (a) name Her Majesty the Queen in right of Ontario, as represented by the Minister of Infrastructure, and OILC and Hydro One Networks Inc. as additional insureds, (b) contain a cross liability clause, and (c) specify that it is primary coverage and not contributory with or in excess of any insurance maintained by the Transferor or Hydro One Networks Inc. A certified copy of such policy or satisfactory certificate in lieu thereof shall be delivered to the Transferor prior to the effective date of this Grant of Easement.

- 44. **Transferee to Maintain Works:** The Transferee shall maintain the Works in a good and substantial state of repair at all times.
- 45. **Transferee to Remove Works within 2 Yearss of Termination:** Upon termination of this Grant of Easement as herein set out or if at any time the Transferee should abandon the Works, the Transferee shall remove the Works from the Servient Tenement at its sole cost and expense within **two (2) years** of its abandonment or termination and restore the Servient Tenement to a condition satisfactory to the Transferor and Hydro One Networks Inc., unless notified in writing by the Transferor to the contrary. If the Transferor provides such written notice to the Transferee, all Works shall become the property of the Transferor without cost.
- 46. **Freedom of Information and Protection of Privacy Act and Open Data Directive:** The Transferee acknowledges that this Grant of Easement and any information or documents that are provided hereunder may be released pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario), or the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and Open Data may be released pursuant to the Open Data Directive. This acknowledgment shall not be construed as a waiver of any right to object to the release of this Grant of Easement or of any information or documents.
- 47. **Transferee Conflict of Interest:** The Transferee and any of its successors, administrators, permitted assigns, directors, officers, employees, agents, servants, representatives, and appointees shall not engage in any activity where such activity creates a conflict of interest, actual or potential, in the sole opinion of the Transferor, with the Grant of Easement or the exercise of any of the rights or obligations of the Transferee hereunder. The Transferee shall disclose to the Transferor in writing and without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.

For clarification, a “conflict of interest” means, in relation to the performance of its contractual obligations pursuant to this Grant of Easement, the Transferee’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations pursuant to this Grant of Easement.

- 48. **Notices:** Where this Grant of Easement requires notice to be delivered by one party to the other, such notice shall be given in writing and delivered either personally, or by pre-paid registered post or by telecopier, by the party wishing to give such notice, or by the solicitor acting for such party, to the other party or to the solicitor acting for the other party at the addresses noted below. In the case of notice to the Transferor, to it in care of:

c/o Ontario Infrastructure and Lands Corporation
Sales & Acquisitions
1 Dundas Street West, 20th Floor
Toronto, Ontario,
M5G 2L5

Attention: Patrick Grace – Director, Land Transactions, Hydro Corridors and Public Works
Telephone: (416) 327-2959
Facsimile: (416) 327-3942

and, in the case of notice to the Transferee, to it in care of:

Imperial Oil Limited
100 Concession 5 East
Waterdown, Ontario
L8B 1K5

Attention: Ron Tourigny

Telephone: 289 391 0117

Facsimile: 905 689 3553

- 49. **No Waiver:** The failure of any party to exercise any right, power or option or to enforce any remedy or to insist upon the strict compliance with the terms, conditions and covenants under this Grant of Easement shall not constitute a waiver of the terms, conditions and covenants herein with respect to that or any other or subsequent breach thereof or a waiver by that party at any time thereafter to require strict compliance with all terms, conditions and covenants hereof, including the terms, conditions and covenants with respect to which the party has failed to exercise such right, power or option. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by a duly authorized officer of the applicable party which expressly or impliedly waives a right, power or option under this Grant of Easement.
- 50. **Successors and Assigns:** The rights, privileges and easement hereby granted are and shall be of the same force and effect as a covenant running with the lands and this easement, including all covenants and conditions contained herein, shall extend to, be binding upon and enure to the benefit of the Transferor and the Transferee.
- 51. **Entire Agreement:** No right, title or interest in or to the Servient Tenement or any part or parts of it or any adjoining lands of the Transferor is being conveyed to the Transferee except as expressly set out in and subject to all the terms and conditions of this Grant of Easement.
- 52. **Governing Law:** This Grant of Easement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein and the Parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in the event of a dispute hereunder.
- 53. **Registration and Legal Fees:** The Transferee shall be responsible for the payment of Land Transfer Tax and registration fees and any other taxes and fees payable in connection with the registration of the Grant of Easement. All legal costs incurred by the Transferor's solicitor, inclusive of disbursements and all applicable taxes, as they pertain to the Grant of Easement and completion of the transaction shall be paid by the Transferee.

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

Signed by the Transferee at _____ this _____ day of _____ 20____.

IMPERIAL OIL LIMITED

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Corporation.

Signed by the Transferor at _____ this _____ day of _____ 20__.

**HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO as represented by THE
MINISTER OF GOVERNMENT AND
CONSUMER SERVICES, as represented by
ONTARIO INFRASTRUCTURE AND
LANDS CORPORATION**

Per: _____

Name:

Position:

I have authority to bind the Corporation

APPENDIX I
SERVIENT TENEMENT

XXXXXXXXXX

APPENDIX II

DOMINANT TENEMENT

City of Toronto, formerly the Township of North York,

described as being Part of West Half of Lot 21, Concession 3 West of Yonge Street (known as 1150 Finch Avenue West, City of Toronto, Roll 1908)

LICENCE OF LAND FOR TEMPORARY USE AND ACCESS

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
as represented by THE MINISTER OF GOVERNMENT AND
CONSUMER SERVICES**

(hereinafter called the "Licensor")

- and -

[INSERT LICENSEE]

(hereinafter called the "Licensee")

RECITALS:

- A. The Licensor (previously the Minister of Economic Development, Employment and Infrastructure or the Minister of Infrastructure) is the owner in fee simple of certain lands located in the City/Town of _____, in the Regional Municipality/County of, described as _____ and shown hatched on the sketch attached hereto as Schedule "A"(hereinafter referred to as the "Lands").
- B. The Licensee acknowledges that the fee simple interest in the Lands was transferred to Her Majesty the Queen in right of Ontario pursuant to section 114.2(1) of the *Electricity Act* (the "Act") as amended and that pursuant to section 114.5(1) of the Act, Hydro One Networks Inc. has the right to use the Lands to operate a Transmission System or Distribution System.
- C. Her Majesty the Queen in right of Ontario confirms that an authorized signing officer of Ontario Infrastructure and Lands Corporation ("OILC") has the authority to execute this Licence on behalf of Her Majesty the Queen in right of Ontario, and Her Majesty the Queen in right of Ontario and OILC are and shall be bound by all the Licensor's covenants, representations and warranties as provided herein.
- D. The Licensee has offered to purchase for consideration a licence to use the Lands for the purpose of a setup and staging area in preparation for construction_(hereinafter referred to as the "Use") and the Licensor is agreeable to the Licensee using the Lands in order to complete the said Use on the covenants, terms and conditions contained herein.

IN CONSIDERATION of the mutual covenants hereinafter set forth and other good and valuable consideration, the Licensor and Licensee hereto agree as follows:

Definitions

1. As used in this Licence, the following terms shall have the following meanings:
 - (a) **"Authority"** means any governmental authority, quasi-governmental authority, agency, body or department whether federal, provincial or municipal, having jurisdiction over the Lands, or the use thereof.

- (b) **“Business Day”** means any day on which the Government of Ontario normally conducts business.
- (c) **“Distribution System”** shall have the same meaning as defined in the Electricity Act and for the purpose of this Licence includes any part of a Distribution System located on the Lands.
- (d) **“Environmental Contaminant”** means (i) any substance which, when it exists in a building or the water supplied to or in a building, or when it is released into a building or any part thereof, or into the water or the natural environment, is likely to cause, at any time, material harm or degradation to a building or any part thereof, or to the natural environment or material risk to human health, and includes, without limitation, any flammables, explosives, radioactive materials, asbestos, lead paint, PCBs, fungal contaminants (including stachybotrys chartarum and other moulds), mercury and its compounds, dioxans and furans, chlordane (DDT), polychlorinated biphenyls, chlorofluorocarbons (CFCs), hydro-chlorofluorocarbons (HCFCs), volatile organic compounds (VOCs), urea formaldehyde foam insulation, radon gas, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic or noxious substances or related materials, petroleum and petroleum products, or (ii) any substance declared to be hazardous or toxic under any Environmental Laws now or hereafter enacted or promulgated by any Authority, or (iii) both (i) and (ii).
- (e) **“Environmental Laws”** - means any federal, provincial or local law, statute, ordinance, regulation, policy, guideline or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Environmental Contaminants, including, without limitation, the *Environmental Protection Act (Ontario)*, the *Environmental Assessment Act (Ontario)*, the *Ontario Water Resources Act (Ontario)*, the *Occupational Health and Safety Act (Ontario)*, the *Safe Drinking Water Act (Ontario)* and applicable air quality guidelines, as such statutes, regulations and guidelines may be amended from time to time.
- (f) **“Licensee”** includes the successors and permitted assigns of the Licensee.
- (g) **“Licensor”** includes Her Majesty the Queen in right of Ontario, Ontario Infrastructure and Lands Corporation and the successors and permitted assigns of the Licensor.
- (h) **“Open Data”** means data that is required to be released to the public pursuant to the Open Data Directive.
- (i) **“Open Data Directive”** means the Management Board of Cabinet’s Open Data Directive, updated on April 29, 2016, as amended from time to time.
- (j) **“Permittee”** means any existing or contemplated tenant, subtenant, dominant owner of an easement, invitee, licensee, permittee, mortgagee, grantee, security holder or other person including any competent authority.
- (k) **“Transmission System”** shall have the same meaning as defined in the Act and for the purpose of this Licence includes any part of a Transmission System located on the Lands.

All references to a statute or regulation includes all amendments, re-enactments or replacements of the statute or regulation.

Grant of Licence, Term, Fee

For Proposed Temporary Workspace Area as defined in Schedule A

2. The Licensor hereby grants permission to the Licensee to use the Lands on a non-exclusive basis for the purpose of the Use only, for a term of _____ **days/months/year** (the “Term”) with a starting date of the ____ day of _____, 20____ (the “Starting Date”) and a completion date of the ____ day of _____, 20____ (the “Completion Date”) and subject to

the terms and conditions set out in this Licence and which the Licensee hereby accepts and agrees to perform and abide by.

3. For the permission granted herein, the Licensee shall pay to the Licensor a Licence Fee in the sum of _____ dollars (\$ _____), plus all applicable taxes, payable to Ontario Infrastructure and Lands Corporation on or before the Starting Date.

For Proposed Pipeline Easement Area as defined in Schedule A

4. The Licensor hereby grants permission to the Licensee to use the Lands on a non-exclusive basis for the purpose of the Use only, for a term of _____ (the "Term") with a starting date of the ____ day of _____, _____ and a completion date of the ____ day of _____, _____ and subject to the terms and conditions set out in this Licence and which the Licensee hereby accepts and agrees to perform and abide by.
5. For the permission granted herein, the Licensee shall pay to the Licensor a Licence Fee in the sum of _____ (\$ _____) plus all applicable taxes payable to Ontario Infrastructure and Lands Corporation on or before the ____ of _____.
6. The Licensee shall provide to the Licensor on or before the Starting Date a certified cheque in the amount of _____ dollars (\$ _____) payable to Hydro One Networks Inc., to be held by the Licensor as security for the Licensee's obligations under this Licence (the "Security Bond").
7. The Licensee shall pay all applicable taxes on any and all payments, if required by law.

Use of Lands

8. The permission granted herein does not confer any rights in regard to any lands and roadways which are not under the Licensor's jurisdiction and control.
9. (a) The Licence is subject to the primary right of Hydro One Networks Inc. to use the Lands to operate a Transmission System or Distribution System pursuant to section 114.5(1) of the Act to the subsurface easement in favour of Hydro One Telecom Inc. and to all leases, subleases, easements, licences, permits, rights of use or occupation, secondary uses or other rights now existing or hereafter renewed or extended or entered into by the Licensor or Hydro One Networks Inc., and despite anything to the contrary, it is agreed that the Licensor and Hydro One Networks Inc. hereby reserve the unrestricted right in their sole discretion without any claim or compensation to the Licensee, to renew, extend, issue or grant such rights aforesaid on terms and conditions entirely satisfactory to the Licensor or Hydro One Networks Inc.
 - (b) For the sake of clarity, and in no way limiting anything in section 9(a), the Licensee explicitly acknowledges and agrees that Hydro One Networks Inc. has first priority to use the Lands for the purposes of transmission and/or distribution and that this Licence is subordinate to that prior and primary right of Hydro One Networks Inc.
10. The Licensee acknowledges that no representations or warranties have been made by the Licensor, or anyone acting on its behalf, as to the condition of or title to or the use or zoning of or with respect to any other matter or thing in connection with the Lands or as to the performance of any parts thereof or as to the presence or absence of hazardous substances on the Lands including, without limitation, urea formaldehyde foam insulation and any Environmental Contaminant. The Licensee acknowledges that the Lands are licensed on an "as is, where is" basis and without any representation, warranty, covenant, or condition as to title, description, fitness for purpose, or use, zoning, physical condition, environmental condition, soil condition, quantity, or quality thereof or in respect of any other thing whatsoever and the Licensee shall complete the term of this Licence or any extension thereof without abatement of the Licence Fee or any other claim in respect of the Lands or the use thereof. The Licensee acknowledges and agrees that the Licensor shall not be required to undertake any work whatsoever with respect to the Lands.

Licensee's Covenants

11. The Licensee shall, except in the case of emergency, before commencing any work authorized by this Licence or intended so to be, give to the Licensor forty-eight (48) hours prior written notice, and in cases of emergency such previous notice as is reasonably possible, and during any construction work, repair and maintenance, the Licensor and/or Hydro One Networks Inc. may have its/their representatives present, for whose time and necessary expenses the Licensee shall pay on presentation of invoices therefor.
12. The Licensee shall comply with all provisions of law, including, without limitation, all federal and provincial legislative enactments, municipal by-laws and any other governmental or municipal by-laws, regulations and orders that relate to the Lands, the Licence or the exercise of any of the rights or obligations in the Licence herein granted.
13. The Licensee shall make arrangements for access to the Lands with the Licensor at least seventy-two (72) hours prior to the commencement of the work authorized by this Licence.
14. The Licensor shall provide the Licensee with a defined access and crossing with respect to the Lands and the Licensee agrees only to use such defined access and crossing point.
15. Prior to the Licensee's first entry onto the Lands, the Licensee shall install temporary fences around the area of its use of or access to the Lands and such fences shall be maintained in place for the duration of this Licence in accordance with the specifications, if any, of the Licensor and Hydro One Networks Inc.
16. The Licensee agrees that while the gates if any to the Lands are open, any access to the Lands will be the Licensee's responsibility, and the Licensee further agrees that these gates must be kept closed when the Licensee is not using the Lands.
17. The Licensee shall maintain the Lands and any of the Licensee's installations thereon in a neat and tidy condition satisfactory to the Licensor.
18. The Licensee shall not undertake any work whatsoever on or in the proximity of any known or newly found archeological site(s), without the prior written authorization of the Licensor.
19.
 - (a) The Licensee shall use its continuing efforts to ensure that it shall not, except as expressly permitted by this License: (i) use or permit to be used any part of the Lands for any dangerous, noxious or offensive activity; and (ii) do or bring anything or permit anything to be done or brought on or about the Lands which the Licensor may reasonably deem to be hazardous or a nuisance to any other Licensee on the Lands, if applicable, or any other persons permitted to be on the Lands.
 - (b) The Licensee shall not store, bring in or permit the presence of any Environmental Contaminant in or on the Lands except if such is required for the Licensee's use of the Lands as permitted by this License, and then only if the Licensee is in strict compliance with all laws and requirements of all relevant Authorities, including, without limitation, Environmental Laws, occupational health and safety laws, regulations, requirements, permits and by-laws.
 - (c) The Licensee shall use its continuing efforts to ensure that it shall not cause the mobilization or migration of any existing contaminants, and if it does, the Licensee shall immediately clean up and remove same, at its sole cost and expense.
 - (d) If the Licensee shall bring or create upon the Lands, any Environmental Contaminant contrary to the terms of this Agreement, then such Environmental Contaminant shall be and remain the sole property of the Licensee and the Licensee shall remove same, at its sole cost and expense as soon as directed to do so by any Authority, or if required to effect compliance with any Environmental Laws, or if required by the Licensor and/or Ontario Hydro Networks Inc. If any such Environmental Contaminant is not removed forthwith by the Licensee, the Licensor

shall be entitled, but not required, to remove the same on the Licensee's behalf, and the Licensee shall reimburse the Licensor for the cost and expense thereof.

- (e) In addition to and without restricting any other obligations or covenants herein, the Licensee covenants that it will:
 - (i) comply in all respects with all Environmental Laws relating to the Lands or the use thereof;
 - (ii) promptly notify the Licensor in writing of any notice by any Authority alleging a possible violation of or with respect to any other matter involving any Environmental Laws relating to the Lands, or relating to any person on or about the Lands for whom the Licensee is in law responsible, or any notice from any other party concerning any release or alleged release of any Environmental Contaminant from the Lands;
 - (iii) promptly notify the Licensor of the existence of any Environmental Contaminant on the Lands to the extent released, deposited, placed or used upon the Lands by the Licensee or any person for whom the Licensee is responsible in law; and
 - (iv) provide the Licensor and Hydro One Networks Inc. with copies of all environmental studies and reports that it possesses or enters into respecting the Lands, such studies and reports shall be subject to peer review by a third party consultant chosen by the Licensor and/or Hydro Networks Inc. at the sole cost of the Licensee.
20. In addition to and without restricting any other obligations or covenants contained herein, the Licensee shall indemnify and hold the Licensor and Hydro One Networks Inc. harmless at all times from and against any and all losses, damages, penalties, fines, costs, fees and expenses (including legal fees on a solicitor and client basis and consultants' fees and expenses) resulting from:
- (a) any breach of or non-compliance with the foregoing environmental covenants of the Licensee; and
 - (b) any legal or administrative action commenced by, or claim made or notice from, any third party, including, without limitation, any Authority, to or against the Licensor and/or Hydro One Networks Inc., arising from the introduction of Environmental Contaminants onto, or the release of Environmental Contaminants from, the Lands by the Licensee or those for whom it is responsible in law, including any and all costs associated with air quality issues.
21. The Licensee shall not in any way use or trespass on any lands adjoining the Lands.
22. The Licensee shall not pile snow on the Lands or any of the lands adjoining the Lands which would result in piles exceeding two metres (6.5 ft.) in height or being closer than eight metres (26.2 ft.) from any of Hydro One Networks Inc.'s Transmission System or Distribution System. In the event of the Licensee acting in breach of this condition, the Licensor may remove any such pile, and the Licensee shall pay to the Licensor forthwith upon demand all costs of the Licensor for the removal of any such pile of snow.
23. The Licensee is responsible for obtaining all underground locates on the Lands.
24. The Licensee shall not leave any open trenches on the Lands unattended. All open trenches shall be completed and clearly fenced in, with such fencing to remain up for the duration of the trenching work.
25. The Licensee agrees that:
- (a) all construction and other work carried out by the Licensee under this Licence Agreement, shall be carried out in a safe manner;

- (b) there shall be no dumping of any materials on the Lands and no raising of dump boxes or loader buckets under the live overhead conductors;
 - (c) there shall be no loading or storage of material under the live overhead conductors. Loading or temporary storage of material is permitted elsewhere on the Lands, but the exact location of this activity must first be clearly identified and approved by the Licensor or Hydro One Networks Inc.;
 - (d) any access must be identified and approved by the Licensor or Hydro One Networks Inc. and fenced with temporary snow fences, for the duration of this Licence, in order to keep equipment away from any structures, or live overhead apparatus;
 - (e) the Licensor may require the Licensee to post danger warning signs at designated locations of the Lands; and
 - (f) the Use shall not, in the Licensor's sole discretion, in any way reflect improperly on the Licensor or the Government of Ontario.
 - (g) A distance of five (5) metres shall be maintained from all guy wires and structures. The Licensee, prior to access, shall ensure that all guy wires are properly flagged.
26. In the event the Licensor considers it necessary that fences or barriers be installed or any part or parts of the perimeter of the Lands or around any of the Licensee's installations, the Licensee shall install such fences or barriers at its expense according to the specifications of the Licensor or Hydro One Networks Inc.
27. The Licensee covenants and agrees that the Licensee, its uses, works, installations, equipment, improvements, property and Permittees shall not in any way interfere with, obstruct, delay or cause any damage or inefficiencies to any works of the Licensor or of the Licensor's Permittees, or to the Transmission System or Distribution System of Hydro One Networks Inc. now or hereafter constructed or contemplated on, in or in respect of all or any portion of the Lands from time to time, and without limiting the generality of the foregoing, the Licensee shall ensure that the height of any vehicle, load or other object, including attachments, or people standing thereon near Hydro One Networks Inc.'s Transmission System or Distribution System does not exceed 4.115 m (13.5 ft.) above the existing grade.
28. The Licensee shall remove all of its materials, equipment, installations and all debris, trash and other waste from the Lands and to restore the Lands to its original condition, and to the satisfaction of the Licensor prior to the Completion Date. The Licensee shall contact the Licensor upon completion of the restoration of the Lands to provide the Licensor the opportunity to ensure that the conditions of the Lands are restored to the Licensor's satisfaction.
29. The Licensee agrees that in the event the Lands have not been restored by the Completion Date, the Security Bond will be forfeited to the Licensor, who shall be entitled to restore the Lands to the Licensor's satisfaction. If the cost of repairing or restoring the Lands exceeds the amount secured under the Security Bond, the Licensee will be further liable to the Licensor for payment of such additional costs and shall pay these additional costs to the Licensor within three (3) consecutive Business Days of being invoiced for such additional costs.

Default

30. If the Licence Fee or any other amount payable hereunder is not paid when due, the Licensor shall provide written notice to the Licensee of such arrears and the Licensee shall have ten (10) consecutive days from the delivery of such notice within which to pay such arrears, failing which the Licensor may terminate this Licence without any further notice.
31. In the event of default in payment of any amount due by the Licensee hereunder, interest shall accrue and be payable on such amount at that rate of interest per annum posted and charged from time to time by the Minister of Finance, compounded monthly until paid.

Acceptance of any overdue payment or interest shall not constitute a waiver of any rights or remedies that the Licensor may have hereunder or at law.

32. In the event of any default of the Licensee in performing any work, repairs, or other obligations of the Licensee under this Licence or making any payments due or claimed due by the Licensee to third parties, the Licensor may perform any such work, repairs, or other obligations of the Licensee or make any payments due or claimed to be due by the Licensee to third parties, and without being in breach of any of the Licensor's covenants hereunder and without thereby being deemed to infringe upon any of the Licensee's rights pursuant hereto, and, in such case, the Licensee shall pay to the Licensor forthwith upon demand all amounts paid by the Licensor to third parties in respect of such default and all costs of the Licensor in remedying or attempting to remedy any such default.
33. In the event of default of any of the terms or obligations in this Licence by the Licensee other than payment of any amount due hereunder and other than a default under section 25(f) hereof, the Licensor may provide written notice to the Licensee specifying the default, and if the default is not remedied or if adequate and sufficient measures are not being taken to satisfactorily remedy the same within seven (7) consecutive days of the delivery of the notice, the Licensor may terminate this Licence immediately upon the expiration of the seven (7) day period aforesaid without any further notice.
34. Despite anything to the contrary in this Licence and without prejudice to the rights of the Licensor hereunder or otherwise, the Licensor shall have the option in its sole discretion at any time(s), to forthwith and without any notice terminate this Licence if the Licensee contravenes section 25(f) hereof.

Right to Enter or Terminate

35. The Licensor reserves the right to inspect the Lands at any time. If in the opinion of the Licensor or Hydro One Networks Inc. the Licensee does anything or permits anything to be done on the Lands or the adjacent lands of the Licensor which may be a nuisance, cause damage, endanger or interfere with access for the Transmission System or Distribution System of Hydro One Networks Inc. or be considered dangerous or offensive by the Licensor or Hydro One Networks Inc. acting reasonably, the Licensor may at the Licensee's expense, forthwith remove, relocate or clear the offending activity from the Lands and/or the Licensor's adjacent lands without being liable for any damages caused thereby and the Licensee shall reimburse the Licensor for all expense to the Licensor in so doing or the Licensor may require the Licensee to immediately remove, relocate, clear or cease such activity.
36. The Licensor, Hydro One Networks Inc. and anyone acting pursuant to its authority may at any time upon twenty-four hours' prior written notice to the Licensee or at any time without notice in case of emergency enter on the Lands and inspect, operate, maintain, repair, re-arrange, add to, upgrade, reconstruct, replace, relocate and remove any of the Licensor's works or equipment or the Transmission System or Distribution System of Hydro One Networks Inc. and further may construct, add, inspect, maintain, repair, alter, re-arrange, relocate and remove such new works or equipment or new Transmission System or Distribution System as the Licensor or Hydro One Networks Inc. determines necessary or desirable and the Licensor and Hydro One Networks Inc. shall not be liable for and are hereby released from all damages, losses, injuries, costs, charges, expenses, suits, proceedings, claims and demands arising in connection with carrying out the work aforesaid, including, without limitation, all claims for damages, indemnification, reimbursement or compensation by reason of loss, interruption or suspension of business or interference or inconvenience howsoever caused or physical damage to the Lands.
37. Despite anything to the contrary in this Licence and without prejudice to the rights of the Licensor hereunder or otherwise, the Licensor shall have the option in its sole discretion at any time(s), to be exercised in each instance by seven (7) consecutive days' prior written notice to the Licensee, to terminate this Licence in whole or in part, as the case may be, if the Licensee, its permitted uses, works, installations, equipment, improvements, property and Permittees in any way interfere with, obstruct, limit or impede the right of Hydro One Networks Inc. to use the Lands to operate a Transmission System or Distribution System pursuant to section 114.5(1) of the Act, all without any claim by or compensation for the Licensee including without limitation for any inconvenience, interruption, nuisance,

discomfort, relocation or removal costs caused thereby, but subject to an adjustment in the Licence Fee payable hereunder.

38. If the Licensor delivers notice of termination pursuant to section 37 above, then all or such required portion of the Lands shall be deemed deleted from this Licence effective on the date set out in such notice (the "Effective Date") and the Licence shall be deemed to have been terminated or amended, as the case may be, in respect of such specific area(s) as of the Effective Date. In the event of delivery of notice of termination aforesaid, the Licensee shall at its sole expense and without claim or compensation of any kind remove or cause its works to be removed from the Lands or such specific area(s) on or before the Effective Date in the manner set out in section 28 above. Without prejudice to the rights of the Licensor hereunder, the Licensor will consider any reasonable request from the Licensee to continue beyond the Effective Date the Licensee's use of the Lands.

Indemnity and Release

39. (a) All persons and property at any time on the Lands shall be at the sole risk of the Licensee, and neither the Licensor nor Hydro One Networks Inc. shall be liable for any loss, damage, or injury, including loss of life, to them or it however occurring and the Licensee releases both the Licensor and Hydro One Networks Inc. from all claims and demands in respect of any such loss, damage or injury.
- (b) The Licensee shall assume all liability and obligation for any and all loss, damage, or injury (including death) to persons or property that would not have happened but for this Licence or anything done or maintained by the Licensee thereunder or intended so to be, and the Licensee shall at all times indemnify and save harmless the Licensor and its successors, administrators, permitted assigns, directors, officers, employees, agents, servants, representatives, appointees and all others for whom the Licensor is responsible in law and Hydro One Networks Inc. and its affiliates and their respective successors, administrations, permitted assigns, directors, officers, employees, agents, servants, representatives, appointees and all others for whom Hydro One Networks Inc is responsible in law from and against all such loss, damage, or injury and all actions, suits, proceedings, costs, charges, damages, expenses, claims, or demands arising therefrom or connected therewith. The Licensee expressly recognizes and acknowledges that Hydro One Networks Inc. has installed and maintained or has the right to install and maintain a Transmission System or Distribution System on the Lands, and willingly assumes any and all risks associated with its proposed activities in such close proximity to such systems. Notwithstanding the above, the Licensee shall not be liable hereunder for any loss, damage or injury to the extent that it arises from the gross negligence of the Licensor or Hydro One Networks Inc.
- (c) The Licensee shall at its own expense, arrange and maintain a liability insurance policy satisfactory to the Licensor in the minimum amount of Five Million (\$5,000,000.00) dollars in order to indemnify the Licensor and Hydro One Networks Inc. as provided in subsection 39(b) of this Licence. The Licensee shall pay any and all deductibles with respect to any claim arising thereunder. Such insurance shall (1) name Her Majesty the Queen in right of Ontario, as represented by the Minister of Government and Consumer Services, and OILC and Hydro One Networks Inc. as additional insureds, (2) contain a cross liability clause, and (3) specify that it is primary coverage and not contributory with or in excess of any insurance maintained by the Licensor or Hydro One Networks Inc. A certified copy of such policy or satisfactory certificate in lieu thereof shall be delivered to the Licensor prior to the Starting Date.
40. In order to induce the Licensor to grant this Licence and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Licensee on behalf of itself, its successors and assigns, hereby:
- (a) releases and forever discharges the Licensor and Hydro One Networks Inc. and each of their respective successors and assigns, from any and all actions, causes of action, claims and demands for damages, loss or injury, howsoever arising, which heretofore may have been and which may hereafter be sustained by the Licensee,

its successors and assigns, in respect or in consequence of the termination of this Licence in whole or in part(s), as the case may be, including all damages above described as well as all damage, loss or injury not now known or anticipated but which may arise in the future and all effects and consequences thereof;

- (b) agrees not to make any claim or take any proceedings against any other person or corporation who might claim contribution or indemnity under the common law or under the provisions of the *Negligence Act* and the amendments thereto from the Licensor or Hydro One Networks Inc.; and
- (c) agrees that the Licensor may plead this Licence as an estoppel.

Assignment

- 41. The Licensee shall not assign, transfer, sublease, part with possession or dispose of all or any part of the Lands or this Licence or any privileges or interests hereby granted to it without the prior written consent of the Licensor, acting reasonably.

General

- 42. The Licensee acknowledges that this Agreement and any information or documents that are provided hereunder may be released pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario) or the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) or and Open Data may be released pursuant to the Open Data Directive. This acknowledgement shall not be construed as a waiver of any right to object to the release of this Agreement or of any information or documents.
- 43. The failure of any party to exercise any right, power or option or to enforce any remedy or to insist upon the strict compliance with the terms, conditions and covenants under this Licence shall not constitute a waiver of the terms, conditions and covenants herein with respect to that or any other or subsequent breach thereof nor a waiver by that party any time thereafter to require strict compliance with all terms, conditions and covenants hereof, including the terms, conditions and covenants with respect to which the party has failed to exercise such right, power or option. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by a duly authorized officer of the applicable party which expressly waives a right, power or option under this Licence.
- 44. The Licensee and any of its successors, administrators, permitted assigns, directors, officers, employees, agents, servants, representatives, and appointees shall not engage in any activity where such activity creates a conflict of interest, actual or potential, in the sole opinion of the Licensor, with the Licence or the exercise of any of the rights or obligations of the Licensee hereunder. The Licensee shall disclose to the Licensor in writing and without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.

For clarification, a “conflict of interest” means, in relation to the performance of its contractual obligations pursuant to this Licence, the Licensee’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations pursuant to this Licence.

- 45. Where this Licence requires notice to be delivered by one party to the other, such notice shall be given in writing and delivered either personally, or by pre-paid registered post or by telecopier, by the party wishing to give such notice, or by the solicitor acting for such party, to the other party or to the solicitor acting for the other party at the addresses noted below. In the case of notice to the Licensor, to it in care of:

c/o Ontario Infrastructure and Lands Corporation
Sales & Acquisitions
1 Dundas Street West, Suite 2000
Toronto, Ontario,
M5G 2L5

Attention: Patrick Grace
Director, Land Transactions – Hydro Corridors and Public Works

Telephone: (416) 327-2959
Facsimile: (416) 327-3942

and, in the case of notice to the Licensee, to it in care of:

Attention: _____

Telephone: _____

Facsimile: _____

- 46. The provisions of this Licence shall be binding upon and enure to the benefit of the Licensor and the Licensee.
- 47. No interest in the Lands is being conveyed by the granting of this Licence and the Licensee shall not register the Licence or any notice in respect thereof on title without the prior written consent of the Licensor, which consent may be arbitrarily withheld.
- 48. This Licence shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in the event of a dispute hereunder.

IN WITNESS WHEREOF the parties hereto have executed this Licence.

[THE REMAINDER OF THIS DOCUMENT IS BLANK]

Signed by the Licensee at _____ this _____ day of _____ 20__.

[INSERT LICENSEE]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Corporation

Signed by the Licensor at _____ this _____ day of _____ 20__.

**HER MAJESTY THE QUEEN IN
RIGHT OF ONTARIO, as represented
by THE MINISTER OF
GOVERNMENT AND CONSUMER
SERVICES, as represented by
ONTARIO INFRASTRUCTURE AND
LANDS CORPORATION**

Per: _____

Name:

Title:

I have authority to bind the Corporation

SCHEDULE "A"

GRANT OF EASEMENT

WHEREAS Hydro One Networks Inc. (the "Transferor") is the owner in fee simple of the lands described as Part of Lot __, Concession __, in the _____, City/Town of _____, The Regional Municipality/County of _____ and more particularly described as Part __ on Reference Plan _____ (the "Servient Tenement");

AND WHEREAS the Transferee is the owner in fee simple of certain lands located in the City/Town of _____, in the Regional Municipality/County of _____ described as being _____ (hereinafter referred to as the "Dominant Tenement").

AND WHEREAS the Transferee has offered to purchase for consideration a non-exclusive right, interest and easement upon, under, along, over and across the Servient Tenement for the purposes of _____ (the "Purpose") and for the installation of improvements, appurtenances or accessories thereto (hereinafter referred to as the "Works")

AND WHEREAS the Transferor has agreed to grant to the Transferee an easement over the Servient Lands on the terms and conditions set out herein.

IN CONSIDERATION of the mutual covenants hereinafter set forth and other good and valuable consideration, the Transferor and Transferee hereto agree as follows:

DEFINITIONS:

1. As used in this Grant of Easement, the following terms shall have the following meanings:
 - (a) "Authority" means any governmental authority, quasi-governmental authority, agency, body or department whether federal, provincial or municipal, having jurisdiction over the Servient Tenement, or the use thereof.
 - (b) "Distribution System" shall have the same meaning as defined in the Act and for the purpose of this Grant of Easement includes any part of a Distribution System located on the Servient Tenement.
 - (c) "Environmental Contaminant" means (i) any substance which, when it exists in a building or the water supplied to or in a building, or when it is released into a building or any part thereof, or into the water or the natural environment, is likely to cause, at any time, material harm or degradation to a building or any part thereof, or to the natural environmental or material risk to human health, and includes, without limitation, any flammables, explosives, radioactive materials, asbestos, lead paint, PCBs, fungal contaminants (including stachybotrys, chartarum and other moulds), mercury and its compounds, dioxans and furans, chlordane (DDT), polychlorinated biphenyls, chlorofluorocarbons (CFCs), hydro chlorofluorocarbons (HCFCs), volatile organic compounds (VOCs), urea formaldehyde foam insulation, radon gas, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic or noxious substances or related materials, petroleum and petroleum products, or (ii) any substance declared to be hazardous or toxic under any environmental laws now or hereafter enacted or promulgated by any Authority, or (iii) both (i) and (ii).
 - (d) "**Environmental Laws**" - means any federal, provincial or local law, statute, ordinance, regulation, policy, guideline or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Environmental Contaminants, including, without limitation, the *Environmental Protection Act*, R.S.O. 1990, c. E.19, the *Environmental Assessment Act*, R.S.O. 1990, c. E.18, the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40, the *Occupational Health and Safety Act*, R.S.O. 1990, c. 0.1, the

Safe Drinking Water Act, 2002, S.O.2002, c.32, and applicable air quality guidelines, as such statutes, regulations and guidelines may be amended from time to time.

- (e) "Transferee" includes the successors and permitted assigns of the Transferee.
- (f) "Transferor" includes the successors and permitted assigns of the Transferor.
- (g) "Transmission System" shall have the same meaning as defined in the Act and for the purpose of this Grant of Easement includes any part of a Transmission System located on the Servient Tenement.

2. **Grant of Easement:** The Transferor hereby transfers to the Transferee, a non-exclusive right, interest and easement upon, under, along, over and across the Servient Tenement for the Purpose and subject to the terms and conditions set out in this Grant of Easement, including, without limiting the generality of the foregoing, those terms and conditions dealing with termination rights, for a perpetual term commencing on the date of registration of the Grant of Easement (hereinafter referred to as the "Term") and subject to the terms and conditions set out herein, including, without limiting the generality of the foregoing, those terms and conditions dealing with termination rights, and which the Transferee hereby accepts and agrees to perform and abide by

3. **Consideration:** In respect of the rights, interest and easement granted herein, the Transferee shall pay to the Transferor a one-time fee upon execution hereof of XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX DOLLARS (\$XXXX.00) plus Harmonized Sales Tax (the "Easement Fee").

4. **Additional Taxes, Grants, Rates, etc.:** The Transferee shall also pay to the Transferor within thirty (30) days of written demand, in addition to any other monies payable hereunder, any additional taxes, grants, rates, fees or other assessments or payments in lieu thereof that the Transferor, in its sole and absolute discretion, but acting reasonably, determines represents the reasonable allocation or assessment of such charges or levies applicable to the Servient Tenement as owned by the Transferor and used by the Transferee pursuant to this Grant of Easement for the purposes stated herein.

5. **Taxes:** The Transferee shall pay all applicable taxes on any and all payments if required by law.

6. **No Rights Granted in Lands and Roads not Under the Transferor's Jurisdiction and Control:** The rights, interest and easement granted herein does not confer any rights in regard to any lands and roadways which are not under the Transferor's jurisdiction and control.

7. **Transferor Ownership Rights:** Subject to the rights and covenants contained herein, the Transferor shall have the charge, administration, management, sale and disposition of the Servient Tenement and shall have the right to fully use and enjoy same

8. **Transferor Not to Damage Works:** The Transferor shall not do or suffer to be done anything which might cause injury, loss, or damage to the Works

9. **No Transferor Representations Regarding Condition of Title, Zoning etc.:** The Transferee acknowledges that no representations or warranties have been made by the Transferor, or anyone acting on its behalf, as to the condition of or title to or the use or zoning of or with respect to any other matter or thing in connection with the Servient Tenement or as to the performance of any parts thereof or as to the presence or absence of hazardous substances on the Servient Tenement including, without limitation, urea formaldehyde foam insulation and any Environmental Contaminant. The Transferee acknowledges that the rights, interest and easement granted upon, under, along, over and across the Servient Tenement are on an "as is, where is" basis and that no representation or warranty is expressed or can be implied as to title, description, fitness for purpose, quantity, condition or quality thereof or in respect of any other thing whatsoever and the Transferee shall continue to exercise the rights and perform the obligations set out herein without abatement of the Easement Fee or any other claim in respect of the Servient Tenement or the use thereof. The Transferee acknowledges and agrees that the Transferor shall not be required to undertake any work whatsoever with respect to the Servient Tenement.

10. **Transferee Notice to Transferor Prior to Commencing Any Work:** The Transferee shall, except in case of emergency, before commencing any work authorized by this indenture or intended so to be, give to the Transferor forty-eight (48) hours previous written notice, and in cases of emergency such previous notice as is reasonably possible, and during any construction work, repair and

maintenance, the Transferor may have its representatives present, for whose time and necessary expenses the Transferee shall pay on presentation of invoices therefore.

11. **Priority of Third Party Rights:** This Grant of Easement is subject to **the subsurface easement in favour of Hydro One Telecom Inc.** and to all leases, subleases, easements, licenses, permits, rights of use or occupation, secondary uses or other rights now existing or hereafter renewed or extended or entered into by the Transferor and despite anything to the contrary, it is agreed that the Transferor hereby reserve the unrestricted right in its sole discretion without any claim or compensation to the Transferee, to renew, extend, issue or grant such rights aforesaid on terms and conditions entirely satisfactory to the Transferor. [NOTE – DANIEL, IF THE LANDS ARE NOT SUBJECT TO HYDRO ONE TELECOM'S SUBSURFACE EASEMENT, THEN THE HIGHLIGHTED HAS TO BE DELETED BEFORE THIS TEMPLATE IS PROVIDED TO THE PROPONENT]

12. **Right of Termination Upon Default of Payment:** If at any time the Easement Fee or any other amount payable hereunder is not paid when due, the Transferor shall provide written notice to the Transferee of such arrears and the Transferee shall have ten (10) consecutive days from the delivery of such notice within which to pay such arrears, failing which the Transferor may terminate this Grant of Easement without any further notice

13. **Transferee Compliance with Standards and Laws:** The Transferee shall comply with the Design Standards of the Transferor, Canada Standards Association Standard C-22.3, the "Safety Rules and Standard Protection Code" of Hydro One Networks Inc., the *Occupational Health and Safety Act*, R.S.O. 1990 and any amendment thereto and any regulations passed thereunder when using heavy equipment during any construction or maintenance.

14. **Transferee Environmental Compliance:**

- (a) The Transferee shall use its continuing efforts to ensure that it shall not, except as expressly permitted by this Easement: (i) use or permit to be used any part of the Servient Tenement for any dangerous, noxious or offensive activity; and (ii) do or bring anything or permit anything to be done or brought on or about the Servient Tenement which the Transferor may reasonably deem to be hazardous or a nuisance to any other Transferee on the Servient Tenement, if applicable, or any other persons permitted to be on the Servient Tenement.
- (b) The Transferee shall not store, bring in or permit the presence of any Environmental Contaminant in or on the Servient Tenement except if such is required for the Transferee's use of the Servient Tenement as permitted by this Easement, and then only if the Transferee is in strict compliance with all laws and requirements of all relevant Authorities, including, without limitation, Environmental Laws, occupational health and safety laws, regulations, requirements, permits and by-laws.
- (c) If the Transferee shall bring or create upon the Servient Tenement, any Environmental Contaminant contrary to the terms of this Easement, then such Environmental Contaminant shall be and remain the sole property of the Transferee and the Transferee shall remove same, at its sole cost and expense as soon as directed to do so by any Authority, or if required to effect compliance with any Environmental Laws, or if required by the Transferor. If any such Environmental Contaminant is not removed forthwith by the Transferee, the Transferor shall be entitled, but not required, to remove the same on the Transferee's behalf, and the Transferee shall reimburse the Transferor for the cost and expense thereof.
- (d) In addition to and without restricting any other obligations or covenants herein, the Transferee covenants that it will:
 - (i) comply in all respects with all Environmental Laws relating to the Servient Tenement or the use thereof;
 - (ii) promptly notify the Transferor in writing of any notice by any Authority alleging a possible violation of or with respect to any other matter involving any Environmental Laws relating to the Servient Tenement, or relating to any person on or about the Servient Tenement for whom the Transferee is in law responsible, or any notice from any other party concerning any release or alleged release of any Environmental Contaminant from the Servient Tenement;

- (iii) promptly notify the Transferor of the existence of any Environmental Contaminant on the Servient Tenement to the extent released, deposited, placed or used upon the Servient Tenement by the Transferee or any person for whom the Transferee is responsible in law; and
- (iv) provide the Transferor with copies of all environmental studies and reports.

15. **Environmental Indemnification**

In addition to and without restricting any other obligations or covenants contained herein, the Transferee shall indemnify and hold the Transferor harmless at all times from and against any and all losses, damages, penalties, fines, costs, fees and expenses (including legal fees on a solicitor and client basis and consultants' fees and expenses) resulting from: (a) any breach of or non-compliance with the foregoing environmental covenants of the Transferee; and (b) any legal or administrative action commenced by, or claim made or notice from, any third party, including, without limitation, any Authority, to or against the Transferor arising from the introduction of Environmental Contaminants onto, or the release of Environmental Contaminants from, the Servient Tenement by the Transferee or those for whom it is responsible in law, including any and all costs associated with air quality issues

16. **Trespass/Snow Restrictions:** The Transferee shall not in any way use or trespass on any of the Transferor's lands adjoining the Servient Tenement. The Transferee shall not pile snow on any part of the Servient Tenement or any of the lands adjoining the Servient Tenement which would result in piles exceeding two metres (6.5 feet) in height or being closer than eight metres (26.2 feet) from any of the Transferor's Transmission System or Distribution System. In the event of the Transferee acting in breach of this condition, the Transferor may remove any such pile, and the Transferee shall pay to the Transferor forthwith upon demand all costs of the Transferor for the removal of any such pile of snow

17. **Hydro One Networks Inc. Prior Approval Required for Improvements, Grading, etc.:** The construction or location of all improvements and structures and the grading and planting of trees on the Servient Tenement is subject to the prior written approval of the Transferor, which approval may be unreasonably withheld.

18. **Transferee Fences and Barriers:** If required to do so by the Transferor, the Transferee shall at its own expense erect and maintain fences or barriers to protect all present and future works of the Transferor and the Transferor's Transmission System and/or Distribution System on the Servient Tenement according to specifications of the Transferor. In the event the Transferee acts in breach of this condition, the Transferor may erect and maintain any such fences or barriers, and the Transferee shall pay to the Transferor forthwith upon demand all costs of the Transferor in erecting or maintaining any such fences or barriers.

19. **Transferee Not to Interfere:** The Transferee covenants and agrees that the Transferee, its uses, works, installations, equipment, improvements, property and its employees, agents and contractors shall not in any way interfere with, obstruct, delay or cause any damage or inefficiencies to any works of the Transferor or to the Transferor's and the Transferor's Transmission System and/or Distribution System. now or hereafter constructed or contemplated on, in or in respect of all or any portion of the Servient Tenement from time to time, and without limiting the generality of the foregoing, the Transferee shall ensure that the height of any vehicle, load or other object, including attachments, or people standing thereon near Transferor's Transmission System and/or Distribution System does not exceed 4.115 metres (13.5 feet) above the existing grade, without prior written permission from the Transferor.

20. **Transferee Access Subject to Rights of Third Parties:** The Transferor shall provide the Transferee with free and unimpeded access at all times to the Works, subject to any existing agreements, easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with Servient Tenement.

21. **Transferee Access to Works:** For the purposes set out herein and for all purposes necessary or incidental to the exercise of the rights hereby created, but subject to the restrictions contained in clauses 10 and 11 herein, the Transferee shall have access to the Works located on the Easement Lands at all times by its servants, agents, contractors and subcontractors and its vehicles, supplies, machinery and equipment.

22. **Transferee Right to Remove Trees, Rocks, etc.:** The Transferee may with the prior written consent of the Transferor, which consent may be unreasonably withheld, remove, trim, sever, or fell any obstructions such as trees, roots, brush, stumps, boulders or rocks encountered during the course of completion of the Works, subject to any legal requirements and any existing agreements, easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with the Servient Tenement.

23. **Transferee to Exclude Third Parties:** The Transferee shall take all reasonable steps to ensure that persons not affiliated with the Transferee not be permitted access to the Servient Tenement during the term of this Grant of Easement. When requested in writing, the Transferor shall have the option at its sole discretion and acting reasonably, to permit persons not affiliated with the Transferee, access to the Servient Tenement during the term of the this Grant of Easement.

[NOTE – DANIEL, IF THE WORKS ARE ALL ABOVE GROUND, DELETE THE HIGHLIGHTED]

For SUBSURFACE EASEMENTS use following alternative Section 23 WHEN ALL INFRASTRUCTURE IS BELOW GRADE:

23. Transferee to Exclude Third Parties: The Transferee shall take all reasonable steps to ensure that persons not affiliated with the Transferee shall not be permitted access to such portions of the Servient Tenement as are occupied by the Transferee during any period of construction, inspection, maintenance or reconstruction during the term of this Grant of Easement.

24. **Transferor and Transferee to Obtain Approvals and Consents and Compliance with Laws:** This Agreement shall be effective to create an interest in the Servient Tenement only if the applicable subdivision control provisions of the *Planning Act*, R.S.O. 1990, as amended, are complied with on or before the commencement of the Term. The Transferee, at its cost, shall obtain all necessary approvals, including zoning and consent from the Committee of Adjustment. The Transferee shall obtain consents from other easement holders on the Servient Tenement and shall comply with all provisions of law, including, without limitation, all federal and provincial legislative enactments, municipal by-laws and any other governmental or municipal by-laws, regulations and orders, including environmental protection laws, that relate to the Servient Tenement, this Grant of Easement or the exercise of any of the rights or obligations in this Grant of Easement.

25. **Markers Identifying Location of the Works:** At the request of the Transferor, the location of the Works shall be indicated by permanent markers of size and design approved by the Transferor, which markers shall be placed and thereafter maintained by the Transferee at the Transferee's own expense in positions designated by the Transferor, and the Transferee shall reimburse the Transferor for all costs incurred by the Transferor in the installation of aerial warning devices or in taking other measures to comply with any rules and regulations of any governmental authority which would not have been incurred but for the rights, interest and easement herein granted

26. **Construction Liens:** The Transferee shall make all payments and take all steps as may be necessary to ensure that no lien is registered against any part of the Servient Tenement as a result of any work, services, or materials supplied to the Transferee or to the Servient Tenement. The Transferee shall cause any such registration to be discharged or vacated as soon as is possible after notice thereof from the Transferor. The Transferee shall indemnify and save harmless the Transferor from and against any liabilities, claims, liens, damages, costs and expenses, including legal fees, arising in connection with any work, services or materials supplied to the Transferee or the Servient Tenement. If the Transferee fails to cause any such registration to be discharged or vacated as aforesaid, then, in addition to any other rights of the Transferor, the Transferor may, but shall not be obliged to, discharge the same by paying the amount claimed into court, and the amount so paid and all related costs incurred in respect thereof by the Transferor, including legal fees and disbursements, shall be paid by the Transferee to the Transferor forthwith upon demand

27. **Transferee Property and People at Its Risk:** All persons and property of the Transferee at any time on the Servient Tenement shall be at the sole risk of the Transferee, and the Transferor shall not be liable for any loss, damage, or injury, including loss of life, to them or it however occurring and the Transferee releases the Transferor from all claims and demands in respect of any such loss, damage or injury. The Transferee shall be considered a "constructor" as defined by the *Occupational Health and Safety Act*, R.S.O. 1990 during the construction and maintenance of the Works.

28. **Works to Remain Property of Transferee:** Notwithstanding any rule of law or equity, any part of the Works consisting of fixtures, equipment and structures and appurtenances thereto, located

upon the Servient Tenement pursuant to this Grant of Easement, shall be the property of the Transferee even though the same may have become annexed or affixed to the Servient Tenement

29. **Transferee Damage to Servient Tenement and Obligation to Restore:** The Transferee shall be liable for physical and tangible damage done to the Servient Tenement and/or the Transferor's adjoining lands, by reason of the exercise of the Transferee of any or all of the rights and obligations set out herein and it shall remove all debris from the Servient Tenement and/or the Transferor's adjoining lands and repair and replace such damage and restore the Servient Tenement and/or the Transferor's adjoining lands to the satisfaction of the Transferor at no expense to the Transferor.

30. **Restriction of Assignment of Easement:** The Transferee shall not assign, transfer, sublease, part with possession or dispose of all or any part of the Servient Tenement or this Grant of Easement or any privileges or interests hereby granted to it without the prior written consent of the Transferor which may be unreasonably or arbitrarily withheld, failing which the Transferor shall be entitled to terminate this Grant of Easement.

31. **Removal of Works and Release of Easement:** Upon termination of this Grant of Easement as herein set out or if at any time the Transferee should abandon the Works, the Transferee shall remove the Works from the Servient Tenement at its sole cost and expense within six (6) months of its abandonment or termination and restore the Servient Tenement to a condition satisfactory to the Transferor, acting reasonably, unless notified in writing by the Transferor to the contrary. If the Transferor provides such written notice to the Transferee, all Works shall become the property of the Transferor without cost. In the event that the Transferee abandons and/or removes the Works and the Transferor does not provide the aforesaid written notice, the Transferee shall within a period of one (1) year thereafter, execute and deliver a surrender, transfer and release of the rights and easement herein granted.

32. **Works May be Removed, etc. by Transferor on 24 Hours' Notice:** The Transferor and anyone acting pursuant to its authority may at any time enter on the Servient Tenement and upon twenty-four (24) hours prior written notice to the Transferee or at any time without notice in case of emergency inspect, maintain, repair, re-arrange, add to, replace, relocate and remove any of the Transferor's installations or equipment or the Transferor's Transmission System or Distribution System and further may construct, add, inspect, maintain, repair, alter, re-arrange, relocate and remove such new installations or equipment or new Transmission System or Distribution System as the Transferor determines necessary or desirable and the Transferor shall not be liable for and is hereby released from all damages, losses, injuries, costs, charges, expenses, suits, proceedings, claims and demands arising in connection with carrying out the work aforesaid, including, without limitation, all claims for damages, indemnification, reimbursement or compensation by reason of loss, interruption or suspension of business or interference or inconvenience howsoever caused or physical damage to the Servient Tenement

33. **Transferor May Terminate this Grant of Easement on Notice:** Despite anything to the contrary in this Grant of Easement the Transferor may use the Servient Tenement for any and all purposes of its undertaking and if at any time or times, in the opinion of the Transferor, the presence or use of the Works interferes with the Transferor's use or intended use of the Servient Tenement, then the Transferor may require the Transferee to relocate the Works or any part or parts of them in another location or locations on the Servient Tenement or on adjacent lands of the Transferor within six months from the time of such request, and all terms and conditions of this Grant of Easement shall then apply to the Works in their new location or locations and the cost of such relocation shall be borne solely by the Transferee.

Provided that in the event it is impracticable to relocate the Works or any part or parts of them as aforesaid, then despite anything to the contrary in this Grant of Easement and without prejudice to the rights of the Transferor hereunder or otherwise, the Transferor shall have the option in its sole discretion at any time(s), to be exercised in each instance by at least twenty-four (24) months prior written notice to the Transferee, to terminate this Grant of Easement in whole or in part, as the case may be.

34. **Termination Matters, Including Removal of Works:** If the Transferor delivers notice of termination pursuant to clause 33 above, then all or such required portion of the Servient Tenement shall be deemed deleted from this Grant of Easement effective on the date of termination set out in such notice (the "Effective Date") and this Grant of Easement shall be deemed to have been terminated or amended, as the case may be, in respect of such specific area(s) as of the Effective Date. In the event of delivery of notice of termination aforesaid, the Transferee shall at its sole expense and without claim or

compensation of any kind remove or cause its Works to be removed from the Servient Tenement or such specific area(s) on or before the Effective Date in the manner set out in clause 30 above. Without prejudice to the rights of the Transferor hereunder, the Transferor will consider any reasonable request from the Transferee to continue beyond the Effective Date the Transferee's use of the Servient Tenement.

35. **Transferor May Relocate or Remove Transferee and the Works if They Interfere with Transmission or Distribution System:** The Transferor reserves the right to inspect the Servient Tenement at any time. If in the opinion of the Transferor, the Transferee does anything or permits anything to be done on the Servient Tenement or the adjoining lands of the Transferor which may be a nuisance, cause damage, endanger or interfere with access for the Transmission System or Distribution System of the Transferor or be considered dangerous by the Transferor acting reasonably, the Transferor may, at the Transferee's expense, forthwith remove, relocate or clear the offending work from the Servient Tenement without being liable for any damages caused thereby and the Transferee shall reimburse the Transferor for all expense in so doing or the Transferor may require the Transferee to immediately remove, relocate, clear or cease such activity

36. **Transferee Right to Notice of Default and Time to Cure:** In the event of default of any of the terms or obligations in this Grant of Easement by the Transferee other than payment of any amount due hereunder, the Transferor may provide written notice to the Transferee specifying the default, and if the default is not remedied or if adequate and sufficient measures are not being taken to satisfactorily remedy the same within ten (10) consecutive days of the delivery of the notice, the Transferor may terminate this Grant of Easement immediately upon the expiration of the ten (10) day period aforesaid without any further notice

37. **Transferor May Cure Transferee Defaults:** In the event of any default of the Transferee in performing any work, repairs, or other obligations of the Transferee under this Grant of Easement or making any payments due or claimed due by the Transferee to third parties, the Transferor may perform any such work, repairs, or other obligations of the Transferee or make any payments due or claimed to be due by the Transferee to third parties, and without being in breach of any of the Transferor's covenants hereunder and without thereby being deemed to infringe upon any of the Transferee's rights pursuant hereto, and, in such case, the Transferee shall pay to the Transferor forthwith upon demand all amounts paid by the Transferor to third parties in respect of such default and all costs of the Transferor in remedying or attempting to remedy any such default.

38. **Transferee Assumption of Liability and Release of Transferor:** The Transferee shall assume all liability and obligation for any and all loss, damage, or injury (including death) to persons or property that would not have happened but for this Grant of Easement or anything done or maintained by the Transferee thereunder or intended so to be, and the Transferee shall at all times indemnify and save harmless the Transferor, and its successors, administrators, permitted assigns, directors, officers, employees, agents, servants, representatives, appointees and all others for whom the Transferor is responsible in law from and against all such loss, damage, or injury and all actions, suits, proceedings, costs, charges, damages, expenses, claims, or demands arising therefrom or connected therewith. The Transferee expressly recognizes and acknowledges that the Transferor has installed and maintained or has the right to install and maintain a Transmission System or Distribution System on the Servient Tenement, and the Transferee willingly assumes any and all risks associated with its proposed activities in such close proximity to such systems. Notwithstanding the above, the Transferee shall not be liable hereunder for any loss, damage or injury arising from the gross negligence of the Transferor.

39. **Insurance:** The Transferee shall at its own expense, arrange and maintain a liability insurance policy satisfactory to the Transferor in the minimum amount of Ten Million (\$10,000,000.00) dollars in order to indemnify the Transferor as provided in clause 38 of this Grant of Easement. The Transferee shall pay any and all deductibles with respect to any claim arising thereunder. Such insurance shall (a) name the Transferor as additional insureds, (b) contain a cross liability clause, and (c) specify that it is primary coverage and not contributory with or in excess of any insurance maintained by the Transferor. A certified copy of such policy or satisfactory certificate in lieu thereof shall have been delivered to the Transferor prior to the effective date of this Grant of Easement. [NOTE - INSURANCE AMENDED TO \$10 MILLION]

40. **Transferee to Maintain Works:** The Transferee shall maintain the Works in a good and substantial state of repair at all times.

41. **Notices:** Where this Grant of Easement requires notice to be delivered by one party to the other, such notice shall be given in writing and delivered either personally, or by pre-paid registered post or by telecopier, by the party wishing to give such notice, or by the solicitor acting for such party, to the other party or to the solicitor acting for the other party at the addresses noted below. In the case of notice to the Transferor, to it in care of:

Hydro One Networks Inc.

[NOTE – INSERT ADDRESS FOR SERVICE]

and, in the case of notice to the Transferee, to it in care of:

[NOTE – INSERT ADDRESS FOR SERVICE]

42. **No Waiver:** The failure of any party to exercise any right, power or option or to enforce any remedy or to insist upon the strict compliance with the terms, conditions and covenants under this Grant of Easement shall not constitute a waiver of the terms, conditions and covenants herein with respect to that or any other or subsequent breach thereof or a waiver by that party at any time thereafter to require strict compliance with all terms, conditions and covenants hereof, including the terms, conditions and covenants with respect to which the party has failed to exercise such right, power or option. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by a duly authorized officer of the applicable party which expressly or impliedly waives a right, power or option under this Grant of Easement.

43. **Successors and Assigns:** The rights, privileges and easement hereby granted are and shall be of the same force and effect as a covenant running with the lands and this easement, including all covenants and conditions contained herein, shall extend to, be binding upon and enure to the benefit of the Transferor and the Transferee.

44. **Entire Agreement:** No right, title or interest in or to the Servient Tenement or any part or parts of it or any adjoining lands of the Transferor is being conveyed to the Transferee except as expressly set out in and subject to all the terms and conditions of this Grant of Easement.

45. **Governing Law:** This Grant of Easement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein and the Parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in the event of a dispute hereunder.

46. **Registration and Legal Fees:** The Transferee shall be responsible for the payment of Land Transfer Tax and registration fees and any other taxes and fees payable in connection with the registration of the Grant of Easement.

47. **Interest on Amounts in Default:** In the event of default in payment of any amount due by the Transferee hereunder, interest shall accrue and be payable on such amount at that rate of 19.56 per cent per year on all payments thirty (30) days overdue. Acceptance of any overdue payment or interest shall not constitute a waiver of any rights or remedies that the Transferor may have hereunder or at law.

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

Signed by the Transferee at _____ this _____ day of _____ 20__.

[FULL LEGAL NAME OF TRANSFEREE]

Per: _____
Name:
Position:

Per: _____
Name:

Position:

We/I have authority to bind the Corporation

Signed by the Transferor at _____ this _____ day of _____ 20__.

HYDRO ONE NETWORKS INC.

Per: _____

Name:

Position:

I have authority to bind the Corporation

Hydro One Telecom Inc., the owner of an unregistered subsurface easement in the Servient Lands, hereby consents to the granting of this easement by Hydro One Networks Inc. to [INSERT FULL LEGAL NAME OF TRANSFEREE].

HYDRO ONE TELECOM INC.

Per: _____

Name:

Position:

I have authority to bind the Corporation

TEMPORARY LAND USE AND ACCESS PERMIT

WHEREAS:

1. Hydro One Networks Inc. ("HONI") is the owner of certain lands located in the **Municipality of XXXXX** (the "Lands") and the undersigned (the "Applicant") has requested permission to use a portion of the Lands for the purpose of **temporary access (the "Use")**.
2. HONI is agreeable to the Applicant using a portion of the Lands for the Use on the covenants, terms and conditions contained herein.

NOW THEREFORE WITNESSES that in consideration of the sum of TWO DOLLARS (\$2.00), the premises and the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the parties hereto covenant and agree as follows:

1. For the payment by the Applicant to HONI of **\$XXX.00 + Harmonized Sales Tax**, HONI hereby grants permission to the Applicant to use the portion of the Lands **more particularly shown outlined in XXXXX** for the purpose of the Use.
2. The Applicant agrees to post a security bond in the amount of **\$XXXXX.00** in the form of a certified cheque payable to Hydro One Networks Inc. (the "Security Bond").
3. The parties covenant and agree that this Agreement is effective from the starting date until the completion date as shown below:

STARTING DATE: XXXXXX

COMPLETION DATE: XXXXXX

In the event NextBridge has not completed the construction by October 31st, 2020, NextBridge shall deliver written notice to HONI prior to such date specifying the required extension of the term and this Agreement shall be extended by such period.

4. The Applicant agrees to restore the Lands to its original condition, and to the satisfaction of HONI by the completion date (the "Restoration Date").
5. All persons, agents, delegates, representatives, contractors, employees or others under the direction of the Applicant who enter onto the Lands at any time shall be at the sole risk of the Applicant, and HONI will not be liable for any loss, damage or injury (including loss of life) to them or it however occurring save and except where such loss, damage or injury is caused or contributed to by the negligence or wilful misconduct of HONI and those for whom it is responsible in law.
6. The Applicant shall assume all liability and obligation for any and all loss, damage, or injury (including death) to persons or property that would not have happened but for this Agreement or anything done or maintained by the Applicant thereunder or intended so to be and the Applicant shall at all times indemnify and save harmless HONI and its successors, administrators, permitted assigns, directors, officers, employees, agents and all others HONI is responsible for in law from and against all such loss, damage, or injury and all actions, suits, proceedings, costs, charges, damages, expenses, claims, or demands arising therefrom or connected therewith save and except where such loss, damage or injury is caused or contributed to by the negligence or wilful misconduct of HONI and those for whom it is responsible in law. The Applicant expressly recognizes and acknowledges that HONI maintains a high voltage line on the Lands, and the Applicant willingly assumes any and all risks associated with the Applicants proposed activities in such close proximity to this line.
7. The Applicant agrees that in the event the Lands have not been restored by the Restoration Date, the Security Bond will be forfeited to HONI, who shall be entitled to restore the Lands to HONI's satisfaction. If the cost of repairing or restoring the Lands exceeds the amount secured under the Security Bond, the Applicant will be further liable to HONI for payment of such additional costs and shall pay these additional costs to HONI within 30 business days of being invoiced for such additional costs.

8. Arrangements for access to the site must be made with HONI's representative, **XXXXXXXX** at least one (1) week prior to the commencement of the Work. Damian must also be contacted upon completion of the restoration of the Lands to ensure that the conditions of the Lands are restored to HONI's satisfaction.
9. The Applicant agrees that while the gates, if any, to the Lands are open, any access to the Lands will be the Applicant's responsibility, and the Applicant further agrees that these gates must be kept closed when not in use by the Applicant. Damage of any kind, caused in any manner as a result of or arising from the gates not being properly secured by the Applicant will be the responsibility of the Applicant.
10. HONI shall provide the Applicant with a defined access and crossing with respect to the lands and the Applicant agrees to only use such defined access and crossing point.
11. A temporary fence around the area of use or access must be installed by the Applicant and maintained in place for the duration of this Agreement. Such temporary fence must be installed prior to any entry onto Lands.
12. The Applicant is responsible to obtain for all underground locates on the Lands.
13. The Applicant shall not to leave any open trenches on the Lands unattended. All open trenches shall be completed and clearly fenced in, with such fencing to remain up for the duration of the trenching work.
14.
 - (a) The Applicant shall not interfere in any way with or cause any damage to any works or facilities of HONI existing on the Land, and without limiting the generality of the foregoing, the Applicant shall ensure that the height of any vehicle, load or other object, including attachments, or people standing thereon near the HONI's live overhead conductors will not exceed 4.115 m (13.5 ft) above the existing grade. The Applicant shall ensure that all employees, servants and agents are made aware of this requirement. The Applicant acknowledges that the transmission lines on the Lands can raise and lower without notice depending on load supply and demand.
 - (b) The Applicant shall not interfere in any way with or cause any damage to any HONI works or facilities (including poles, towers, footings, distribution or transmission lines) now existing or hereinafter constructed on the lands. Without limiting the generality of the foregoing, the Applicant shall ensure that minimum clearances between any vehicle, load or other object including attachments or people standing thereon and HONI conductors will be maintained at all times in accordance with the provisions of The Occupational Health and Safety Act, R.S.O. 1990 and any amendment thereto and any regulations passed thereunder (collectively the "OSHA"). The Applicant shall monitor any and all installation or similar activity occurring on the lands to ensure that safe clearances to overhead conductors are maintained at all times in accordance with the OSHA. Should any clarification be required with respect to the maintenance of appropriate clearances in accordance with these provisions, the Applicant shall be responsible for engaging the services of a qualified engineering or other appropriate professional to provide for such clarifications.
 - (c) The Applicant acknowledges that:
 - (i) There is to be no dumping on the Lands and no raising of dump boxes or loader buckets is permitted under the live overhead conductors.
 - (ii) There is to be absolutely no loading or storage of material under the live overhead conductors. Loading or temporary storage of material is permitted elsewhere on the Lands, but the exact location of this activity must first be clearly identified.
 - (iii) Any access must be identified and fenced with temporary snow fences, for the duration of this Agreement, in order to keep equipment away from any structures, or live overhead apparatus.
 - (iv) A minimum of two signs are to be posted in prominent locations on the Lands with the words "stay clear/live overhead lines DANGER"
 - (v) A distance of 10 metres is to be maintained from all guy wires and structures. The Applicant, prior to access, shall flag any guy wire covered with a wooden guard with red tape.
 - (vi) There is to be no buildings, structures (including lighting standards, flag poles, signs or similar installations), works, work shacks, materials, equipment, trees, garbage, refuse, debris, snow, ice or soil, aggregate or other similar installations/materials to be constructed, built, installed, accommodated, completed, stored, parked or planted on the lands at any time.
 - (vii) The dispensing gasoline/ diesel fuel is not permitted on the Lands.

- 15. The Applicant shall at its own expense, arrange and maintain a liability insurance policy satisfactory to HONI in the minimum amount of **Ten Million Dollars (\$10,000,000.00)** in order to indemnify the Licensor as provided in paragraphs 6 of this Agreement. Such insurance shall (1) name Hydro One Networks Inc. as an additional insured, (2) contain a cross liability clause, and (3) specify that it is primary coverage and not contributory with or excess of any insurance maintained by the Licensor. A certified copy of such policy or satisfactory certificate in lieu thereof shall be given to the Licensor for approval upon request.
- 16. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein and the Parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in the event of a dispute hereunder.
- 17. The failure of HONI to exercise any right, power or option or to enforce any remedy or to insist upon the strict compliance with the terms, conditions and covenants under this Agreement shall not constitute a waiver of the terms, conditions and covenants herein with respect to that or any other or subsequent breach thereof nor a waiver by HONI at any time thereafter to require strict compliance with all terms, conditions and covenants hereof, including the terms, conditions and covenants with respect to which HONI has failed to exercise such right, power or option. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by a duly authorized officer of HONI which expressly or impliedly waives a right, power or option under this Agreement.
- 18. The provisions of the attached Schedule "B" shall form part of the Agreement as if set out herein.

Signed by the Applicant at _____ this _____ day of _____ 20__.

XXXXXXXXXX

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We/I have the authority to bind the General Partner.

The Corporation has the authority to bind the Limited Partnership.

Signed by the Owner at _____ this _____ day of _____ 20__.

HYDRO ONE NETWORKS INC.

Per: _____
Name: XXXXXX
Title: XXXXXX

I have authority to bind the Corporation.

SCHEDULE "A"

CONSTRUCTION AGREEMENT

THIS AGREEMENT made in duplicate this _____th day of _____, 20_____.

B E T W E E N:

HYDRO ONE NETWORKS INC.

hereinafter called "HONI"
of the First Part

-and-

[INSERT FULL LEGAL NAME]

hereinafter called "**ABCDE**"
of the Second Part

[NTD – THE RECITALS MUST BE TAILORED TO YOUR SPECIFIC FACTS]

WHEREAS **The Hydro-Electric Power Commission of Ontario (CHANGE TO NAME GRANTED TO)** is the registered owner of a transmission line easement in, over, along, across and upon those certain parcels and tracts of land lying and being in **Part of Lot __, Concession __, in the Township of _____, now in the City/Town of _____ in the Municipality of _____** (hereinafter called the "Strip"), which easement is registered as Instrument Number _____ hereinafter called the "Easement").

AND WHEREAS the name of The Hydro-Electric Power Commission of Ontario was changed to Ontario Hydro by virtue of *The Power Commission Amendment Act, 1973* proclaimed in force March 4, 1974. **[NTD – THIS RECITAL IS ONLY USED IF THE EASEMENT WAS GRANTED IN THE NAME OF HEPC]**

AND WHEREAS Ontario Hydro's interest in the Easement was transferred unconditionally to HONI by or pursuant to a transfer order, as amended, made under the *Electricity Act, 1998*, as amended, which transfer has taken effect. **[NTD – THIS RECITAL IS ONLY USED IF THE EASEMENT WAS GRANTED IN THE NAME OF HEPC OR ONTARIO HYDRO]**

AND WHEREAS the Easement is employed by HONI to accommodate HONI's existing transmission line.

AND WHEREAS **ABCDE** has or is about to construct an **[INSERT USE]** (hereafter called "the Project"), and **ABCDE** wishes to enter upon the Strip for its said purpose of construction and installation of certain portions of the Project within the Strip in such manner as described and illustrated on the drawings prepared by **[]** and attached hereto as Schedule "A", and HONI is agreeable thereto.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of **Five dollars (\$5.00)** and the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto covenant and agree as follows:

CONSTRUCTION TERMS AND CONDITIONS

1. For the purposes of this agreement, the following definitions shall apply:
 - (a) "Commencement of Construction" means the point in time at which **ABCDE** or its independent contractors or appointees places any equipment or materials on the Strip or excavates any earth, save and except for equipment and work required and approved of in writing by HONI beforehand as necessary to carry out preliminary surveying, engineering and soil testing.
 - (b) "Date of Final Approval" means the date at which HONI provides written notification to **ABCDE** that it has, to HONI's satisfaction, conducted the construction to complete the Project.
 - (c) "Encroachment" means the encroachment of the Project generally and the Works specifically upon the Strip by **ABCDE**.
 - (d) "Plan" means collectively the drawings prepared for **ABCDE** showing the Project as constructed relative to the limits of the Strip, and HONI's works and equipment on the Strip and attached hereto as Schedule "A".

- (e) "Project" as noted above includes the supply, construction and installation of all facilities required to provide for the Works, described and shown on Plan.
- (f) "Strip" means HONI's above noted electrical transmission line easement, whether or not specifically identified and labelled as such on the Plan.
- (g) "Works" means all plant, equipment, and facility of ABCDE intended to be placed in, on, over, through or across the Strip for ABCDE's purposes of its Project only and intended to be constructed so as to encroach within the Strip as described and shown on the Plan.
2. The Project will entail the supply, construction and installation, at the sole expense of ABCDE, of the following:
- (a) Supply and installation of all services on and in the Strip associated with the Works. Notwithstanding the text and illustration on the Plan, the Works shall be designed and constructed to withstand the following loads:
- (i) Moving heavy equipment – CL-625-ONT Truck loading according to CAN/CSA-S6-00; and
- (ii) Moving mobile cranes set up for work with counterweights in place – 267 KN per tandem axle, dual wheel, 1.53m axle spacing, 360mm tires;
- (b) Any underground pipe, duct, cable, culvert, or bridge installation must be capable of withstanding the weight of heavy construction equipment; and
- (c) Other miscellaneous work as may be included as part of the Project from time to time (hereinafter together with section 2(a) above shall collectively be called the "Construction"), save and except any aerial service lines or pole mounted facilities, such as electrical power, telephone, cable television, street lighting or other similar pole mounted facilities for which ABCDE shall make separate submission to HONI for approval.
3. HONI grants to ABCDE approval to install the Works strictly in compliance with the covenants; terms and conditions herein below set out.
4. The Parties covenant and agree that this construction portion of this Agreement is effective for a one (1) year period commencing DATE to DATE, (the "Term").
5. ABCDE shall at all times at its sole expense to the satisfaction of HONI during the term of this Agreement and any permitted extension(s) or renewal(s) thereof:
- (a) Be responsible for and shall and does hereby covenant and agree to indemnify and save harmless HONI from and against all loss, damage or injury to property or persons whatever and howsoever caused (including loss of life) arising out of the permission hereby granted including without limitation the construction, operation and maintenance of the Works, save and except where such loss, damage or injury is caused or contributed by the negligence or wilful misconduct of HONI and those for whom it is responsible in law;
- (b) Agree that the installation of the Project is being installed at ABCDE's own risk and the Works and all other property of ABCDE at any time within the Strip shall be at the sole risk of ABCDE and HONI shall not be liable for any loss or damage thereto howsoever occurring and ABCDE fully releases HONI from all claims and demands in respect of any such loss or damage, except and to the extent to which such loss or damage is caused or contributed to by the negligence or wilful default of HONI and those for whom it is responsible in law. ABCDE specifically hereby releases HONI from any loss, damage or injury to any of the Project's installation which may occur when HONI crosses the Strip with its vehicles;
- (c) Agree that HONI is not responsible for any damages or injuries resulting from ice falling from structures or conductors;
- (d) Reimburse HONI for all expenses incurred or paid or payable by HONI associated with all of the subsequent restoration of any disturbed area of the Strip; and
- (e) Reimburse HONI for any expense incurred by HONI to install any crossing ramp or crossing plating on the Strip as a result of the Project.

Notwithstanding anything to the contrary contained in this Agreement or otherwise, sections 5(a), (b) and (c) hereof shall survive the termination of this Agreement.

6. **ABCDE** covenants and agrees that prior to Commencement of Construction, **ABCDE** shall at all times, at its sole expense in a manner satisfactory to HONI:
- (a) Provide HONI with and secure its consent to its proposed Construction schedule and not deviate therefrom without written notification and agreement of HONI;
 - (b) Arrange and maintain throughout the term of this Agreement or any extension thereof, the following insurance and pay all premiums during the term of this Agreement or any extension thereof with respect to such insurance:
 - (i) Insurance of the type commonly called commercial general liability insurance which shall include coverage for personal injury, death and property damage, all on an occurrence basis with respect to all operations carried out upon the Strip or in any building and other facilities and **ABCDE**'s use and occupancy of the Strip, with limits for any one occurrence or claim not less than Five Million dollars (\$5,000,000.00). Such insurance shall (1) name **ABCDE** and HONI as additional insured; (2) and contain a cross liability and severability of interest clause; and (3) specify that it is primary coverage and not contributory with or in excess of any other insurance that may be maintained by **ABCDE**.
 - (ii) **ABCDE** agrees that if **ABCDE** fails to take out or keep in force such insurance, HONI will have the right to do so and to pay the premiums thereof, in which event **ABCDE** shall pay to HONI the amount paid as premiums. A certified copy of such policy(ies) or satisfactory certificate(s) in lieu thereof shall be given to HONI for approval on or before the commencement of this Agreement and any extension(s) or renewal(s). Such insurance policies shall contain an endorsement clause that such policies shall not be cancelled or modified so as to restrict or reduce coverage except upon 30 days notice in writing thereof to HONI.
 - (c) Comply with all applicable statutes, by-laws, regulations, orders, codes, standards and directions of all governmental and regulatory authorities having jurisdiction, including to the extent applicable, *The Occupational Health and Safety Act*, R.S.O. 1990 ("OHSA") and any amendments thereto and any regulations passed thereunder and the Canada Standards Association Standard C-22.3;
 - (d) Inform all its contractors of any special conditions in the construction area of the Strip, including it being a high-voltage environment and ensure all contractors and invitees comply with all safety and environmental laws and all rules and regulations applicable thereto. The transmission line(s) on the Strip is designed to operate at _____ kV;
 - (e) **ABCDE** is responsible for arranging underground locates prior to digging or auguring any holes, or performing any excavation works;
 - (f) Give HONI a minimum of seventy-two (72) hours notice prior to Commencement of Construction so that HONI, at its sole discretion, may have its representatives present at **ABCDE**'s expense, to ensure conformity with the terms and conditions of this agreement;
 - (g) Mark all poles and guy wires on the property with bright markers, such as yellow plastic guards on the guy wires, and either red or yellow tape or paint on the poles at eye level and lower, to avoid potential hazards. These markers must be in place prior to the Commencement of Construction and left on and kept in good condition for the duration of the Term or any renewal thereof;
 - (h) Erect signage on the Strip in accordance with the *Occupational Health and Safety Act*, R.S.O., 1990, c. O.1 ("OHSA"). Signs must be clearly visible, and maintained upright at all times during the Term or any renewal thereof;
 - (i) Any proposed drainage ditch or drains of any kind crossing or within the Strip must be pre-approved by HONI and meet the following conditions:

- (i) Any culvert or similar crossing must allow HONI and its contractors, linear crossing of the ditch at all times;
 - (ii) The culvert must be capable of withstanding heavy loads similar to a pipeline installation;
 - (iii) Must be a minimum cement culvert with appropriate cover that will never require maintenance;
 - (iv) The culvert must be a minimum of 7.62 metres (25 feet) wide;
 - (v) The culvert must be kept free of debris and water blockage;
 - (vi) Maintain the culvert cover and allow HONI to cross at any time without notice;
 - (vii) The culvert must be capable of handling flows considered to be heavy as would be evaluated in 100 year storm water run-off; and
 - (viii) Swales proposed must have a culvert installation to ensure crossing of the swale will not result in damage, and create ruts that do not allow water to pass effectively and prevent HONI's access to its facilities at any time;
- (j) Ensure the Works do not interfere with the natural drainage patterns along the Strip and does not result in standing water within 15.0 metres (49 feet) of the existing HONI structure bases or anywhere else on the Strip;
 - (k) Ensure the design of any proposed underground collector line will withstand the loading conditions created by heavy maintenance vehicles that may be used by HONI;
 - (l) Ensure all proposed works on the Strip provide adequate overhead transmission line clearance from the high voltage conductors at maximum sag conditions to the proposed ground elevations;
 - (m) Ensure that safe working clearances as specified in the OHSA for workers and equipment are maintained at all times during construction activities. The transmission line(s) on the Strip is designed to operate at _____ kV;
 - (n) Ensure that access to HONI's structures and works is maintained at all times. HONI maintenance and repair equipment includes large heavy rubber tired road vehicles and large heavy tracked equipment. An adequately sized work zone must be maintained at the base of a structure at all times. HONI requires 15.0 metres (49 feet) of clearance on all sides around its structures as measured from the legs of the structures in order to carry out maintenance operations. No activity that restricts HONI's access to its structures will be permitted on the Strip;
 - (o) Install temporary fencing around all HONI's transmission line structures and associated equipment. The temporary fencing must be at a minimum a 1.22 metres (4 feet) high orange nylon snow fence, maintained in an upright condition for the Term or any renewal thereof. Fencing must be installed at a minimum of 3.0 metres (10 feet) away from all HONI owned structures and equipment;
 - (p) Shall not obstruct access to HONI facilities, at any time, during construction or after the facilities are in service. The Strip must be kept free of all debris and equipment which could prohibit access to HONI facilities;
 - (q) Be responsible for maintaining security of the site and for the safety of its workers and contractors on the Strip;
 - (r) Suspend its operations, if required, in the case of HONI emergency work, until HONI crews have completed their work;
 - (s) Any change in grade that may adversely affect the present water flow on the Strip must be reviewed and approved by HONI; and
 - (t) Ensure no grading and/or excavation work is carried out using heavy machinery within 10.0 metres (33 feet) of the tower footings. Within 10.0 metres (33 feet) of tower footings

grading and/or excavation work must be carried out by hand or by using a VAC system in order to protect the tower foundations.

7. During construction of the Works **ABCDE** shall at all times, at its sole expense:
- (a) Obtain confirmation and approval in writing from HONI of any deviations from the Plan;
 - (b) Not erect or allow any structures, buildings, installations, works, work shacks to be erected, built or installed; nor store or located any materials, equipment, garbage, refuse, snow, ice, soil, on the Strip except in those places or in such manner as shall be approved in writing by HONI;
 - (c) Not dispense gasoline, diesel fuel or any other combustible substance within the limits of the Strip, nor shall these substances be stored on the Strip;
 - (d) Not store flammable substances within the Strip;
 - (e) Not place or store under the transmission lines on the Strip any metal garbage bins, construction trailers, nor park tractor trailers under the transmission lines;
 - (f) Erect satisfactory temporary barriers on access routes and make all reasonable efforts to prevent use of these routes by private or commercial vehicles;
 - (g) Erect temporary barriers such as snow-fencing between **ABCDE**'s access road(s), and construction areas and all transmission towers and poles so as to provide a minimum 3.0 metres (10 feet) horizontal separation between the barriers and towers and poles on the Strip to restrict all access road and construction traffic, equipment and material from within the fenced area(s), including ploughed snow;
 - (h) Participate in and attend from time to time as requested HONI arranged co-ordination meetings with representatives of **ABCDE**'s contractors, if required;
 - (i) Comply satisfactorily with all instructions of HONI's inspectors from time to time including without limitation, instructions to halt construction if, in the opinion of such inspectors, HONI's works from time to time may be interfered with, or the safety of the public or such works may be in danger, or the Project is not being constructed in accordance with the terms and conditions of this agreement;
 - (j) Contact HONI immediately when HONI's buried counterpoise (ground wire(s)) are exposed, damaged or cut through during Construction; and
 - (k) Provide HONI minimum of thirty (30) days prior notice of all blasting operations. **ABCDE** must ensure ground vibrations do not exceed a peak particle velocity rate of 50 millimetres per second, and shall further ensure that appropriate blast-mats are in place during all blasting operations within 61 metres (200 feet) of any transmission line to eliminate damage or injury to HONI's plant and equipment from blasted flyrock.
8. After Construction and completion of the Project, **ABCDE** shall, at all times at its sole expense and to the satisfaction of HONI:
- (a) Advise HONI, seventy-two (72) hours prior notice in writing, that all Construction on the Strip has been completed and ready for HONI's inspection if required to ensure that all proper clearance requirements are maintained;
 - (b) Repair and restore all fences, gates and improvements (including, without limitation, field tiles and wells) to a condition equivalent to that existing prior to installation of the Works;
 - (c) Restore all earth, topsoil and ground cover disturbed by Construction, and do all requested or necessary grading to ensure soil and slope stability to the satisfaction of HONI. The remaining unoccupied width of the Strip must be at least 6.0 metres (20 feet) for longitudinal corridor access and mid-span maintenance of the lines. Access routes should not have a slope greater than ten per cent (10%); and
 - (d) Reimburse HONI within thirty (30) days of invoicing all costs incurred by HONI for replacing, relocating or repairing all or any of HONI's works as a result of the Project and

Construction or presence of the Works and/or for any costs incurred by HONI pursuant to this Agreement.

- 9. Any renewal of this Agreement is at the sole discretion of HONI. Request for renewal must be submitted in writing by ABCDE to HONI at least two months prior to the expiration of the Agreement.
- 10. ABCDE shall not perform nor allow to be performed any act, which shall cause further encroachment over or upon the Strip and without limiting the generality of the foregoing, ABCDE shall:
 - (a) Not increase the size nor alter the position of the Works;
 - (b) Not use any equipment on the Strip closer than 6.1 metres (20 feet)[500kV], 4.5 metres (15 feet) [230 kV], 3.0 metres (10 feet) [115 kV] to all HONI electrical wires;
 - (c) Not install any light standards, flag poles, power distribution pole lines or other aerial installations on the Strip, whether temporary or permanent, without the written approval from HONI;
 - (d) Not plant, without prior permission, other than grass or approved species in accordance with then current HONI’s Forestry policy. All plantings and landscape must be reviewed and approved by HONI on proper numbered drawings;
 - (e) Keep tower bases clear of plantings, material storage or debris of any kind at all times. A 3.0 metre (10 feet) radius around HONI structures must be left unpaved for access to structure footings; and
 - (f) Not burn brush, agricultural, or construction debris on the Strip.
- 11. The rights and easement of HONI are hereby ratified and confirmed.
- 12. The provisions hereof shall enure to the benefit of the undersigned and be binding upon their respective successors and assigns. Any assignment of this Agreement is prohibited without the prior written consent of HONI.
- 13. The failure of HONI to exercise any right, power or option or to enforce any remedy or to insist upon the strict compliance with the terms, conditions and covenants under this Agreement shall not constitute a waiver of the terms, conditions and covenants herein with respect to that or any other or subsequent breach thereof nor a waiver by HONI at any time thereafter to require strict compliance with all terms, conditions and covenants hereof, including the terms, conditions and covenants with respect to which HONI has failed to exercise such right, power or option. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by a duly authorized officer of HONI which expressly or impliedly waives a right, power or option under this Agreement.
- 14. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein, and the parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in the event of a dispute hereunder.
- 15. Time shall in all respects be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the parties.
- 16. The provisions of the attached Schedule “A” shall form part of this Agreement as if set out herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the signatures of their proper officers, as of the day and year first written above.

[INSERT FULL LEGAL NAME OF ENTITY]

Per: _____
Name:
Position:

Per: _____
Name:
Position:

We/I have the authority to bind the Corporation.

IF PROPONENT IS A LIMITED PARTNERSHIP USE THE FOLLOWING:

ABC LP by its General Partner ABC GP INC.

Per: _____
Print Name:
Print Title:

Per: _____
Print Name:
Print Title:

We/I have authority to bind the general partner and the general partner has the authority to bind the limited partnership.

HYDRO ONE NETWORKS INC.

Per: _____

INSERT NAME
Senior Real Estate Coordinator
Real Estate Management

I have authority to bind the Corporation.

SCHEDULE "A"

CONSTRUCTION and ENCROACHMENT AGREEMENT

THIS AGREEMENT made in duplicate thisth day of, year.

B E T W E E N:

HYDRO ONE NETWORKS INC.

hereinafter called "Hydro"
of the First Part

-and-

.....
hereinafter called "ABCDE"
of the Second Part

WHEREAS The Hydro-Electric Commission of Ontario is the registered owner of a transmission line easement in, over, along, across and upon those certain parcels and tracts of land lying and being in Part of Lot __ Concession __, in the Township of _____, now in the City/Town of _____ in the Municipality of _____ (hereinafter called the "Strip"), which easement is registered as **Instrument Number** _____ hereinafter called the "Easement").

AND WHEREAS the name of The Hydro-Electric Power Commission of Ontario was changed to Ontario Hydro by virtue of The Power Commission Amendment Act, 1973 proclaimed in force March 4, 1974.

AND WHEREAS Ontario Hydro's interest in the Easement was transferred unconditionally to Hydro by or pursuant to a transfer order, as amended, made under the *Electricity Act, 1998*, as amended, which transfer has taken effect.

AND WHEREAS the Easement is employed by Hydro to accommodate Hydro's existing steel tower transmission line.

AND WHEREAS ABCDE has or is about to construct an (Insert Use) (hereafter called "the Project"), and ABCDE wishes to enter upon the Strip for its said purpose of construction and installation of certain portions of the Project within the Strip in such manner as described and illustrated on the following; drawing prepared by attached as **Schedule (insert Schedule)**, and Hydro is agreeable thereto.

NOW THEREFORE WITNESSES that in consideration of the covenants and agreements herein contained and the lump sum of payment of ONE THOUSAND, FIVE HUNDRED (\$1,500.00)

DOLLARS (plus Harmonized Sales Tax) now paid by **ABCDE** to Hydro, the receipt and sufficiency of which is acknowledged, the parties hereto covenant and agree as follows:

CONSTRUCTION TERMS AND CONDITIONS

1. For the purposes of this agreement, the following definitions shall apply:
 - i) "Commencement of Construction" means the point in time at which **ABCDE** or its independent contractors or appointees places any equipment or materials on the Strip or excavates any earth, save and except for equipment and work required and approved of in writing by Hydro beforehand as necessary to carry out preliminary surveying, engineering and soil testing.
 - ii) "Date of Final Approval" means the date at which Hydro provides written notification to **ABCDE** that it has, to Hydro's satisfaction, conducted the construction to complete the Project.
 - iii) "Encroachment" means the encroachment of the Project generally and the Works specifically upon the Strip by **ABCDE**.
 - iv) "Plan" means together the drawings prepared for **ABCDE** showing the Project as constructed relative to the limits of the Strip, and Hydro's works and equipment on the Strip.
 - v) "Project" as noted above includes the supply, construction and installation of all facilities required to provide for the Works, described and shown on Plan;
 - vi) "Strip" means Hydro's above noted electrical transmission line easement, whether or not specifically identified and labelled as such on the Plan;
 - vii) "Works" means all plant, equipment, and facility of **ABCDE** intended to be placed in, on, over, through or across the Strip for **ABCDE**'s purposes of its Project only and intended to be constructed so as to encroach within the Strip as described and shown on the Plan;

2. The Project will entail the supply, construction and installation, at the sole expense of **ABCDE**, of the following:
 - a) Any underground pipe, duct, cable, etc. or culvert, bridge, etc. installation must be capable of withstanding the weight of heavy construction equipment.
 - b) Supply and installation of all services on and in the Strip associated with the Works including: clearing, grubbing, excavation, filling, compaction, grading, ditches, topsoiling, seeding, landscaping and planting. Notwithstanding the text and

illustration on the Plan the Works shall be designed and constructed to withstand the following loads:

- i) Moving heavy equipment – CL-625-ONT Truck loading according to CAN/CSA-S6-00
 - ii) Moving mobile cranes set up for work with counterweights in place – 267 KN per tandem axle, dual wheel, 1.53m axle spacing, 360mm tires
 - c) Other miscellaneous work as may be included as part of the Project from time to time (hereinafter collectively called the "Construction"), save and except street lighting or other similar pole mounted facilities for which approval ABCDE shall make separate submission to Hydro.
3. Hydro grants to ABCDE exclusively, approval to install the Works strictly in compliance with the covenants; terms and conditions herein below set out.
 4. The Parties covenant and agree that this construction portion of this agreement is effective, 20..... for a one year period (the "Term").
 5. ABCDE shall at all times at its sole expense to the satisfaction of Hydro during the term of this Agreement and any permitted extension(s) or renewal(s) thereof:
 - a) Be responsible for exclusively and shall and does hereby covenant and agree to indemnify and save harmless Hydro from and against all loss, damage or injury to property or persons whatever and howsoever caused (including loss of life) arising out of the permission hereby granted including without limitation the construction, operation and maintenance of the Works, save and except where such loss or damage is caused or contributed by the negligence or wilful misconduct of Hydro and those for whom it is responsible in law. Notwithstanding anything to the contrary contained in this agreement or otherwise, the provisions hereof shall survive the termination of this agreement and any and all permitted extension(s) or renewal(s).
 - b) Agree that the installation of the Project is being installed at ABCDE's own risk and ABCDE hereby releases Hydro from any loss, damage or injury to the Project's installation which may occur when Hydro crosses the Strip with its vehicles. Notwithstanding anything to the contrary contained in this agreement or otherwise, the provisions hereof shall survive the termination of this agreement and any and all permitted extension(s) or renewal(s).
 - c) Reimburse Hydro on demand for all expenses incurred or paid or payable by Hydro associated with all of its engineering and inspection services respecting its approval of the location and installation of the Works and the subsequent restoration of any disturbed area of the Strip.

- d) Reimburse Hydro on demand for any expense incurred by Hydro to install any crossing ramp or crossing plating on the Strip as a result of the Project.
6. **ABCDE** covenants and agrees and does hereby undertake at its sole expense to;
- a) act on Hydro's behalf as Hydro's agent to secure the consent of authority having jurisdiction in any respect to the Project.
 - b) act on Hydro's behalf as Hydro's agent to secure the appropriate change in designated zoning of the Strip to effect the appropriate zoning if required to permit the Project to proceed to realization.
7. **ABCDE** covenants and agrees that prior to Commencement of Construction, **ABCDE** shall at all times, at its sole expense in a manner satisfactory to Hydro:
- a) Provide Hydro with and secure its consent to its proposed Construction schedule and not deviate therefrom without written notification and agreement in writing.
 - b) Arrange and maintain throughout the term of this Agreement or any extension thereof, the following insurance and pay all premiums during the term of this Agreement or any extension thereof with respect to such insurance:
 - i) Insurance of the type commonly called commercial general liability insurance which shall include coverage for personal injury, death and property damage, all on an occurrence basis with respect to all operations carried out upon the Strip or in any building and other facilities and **ABCDE**'s use and occupancy of the Strip, with limits for any one occurrence or claim not less than \$10,000,000. Such insurance shall 1) name **ABCDE** and Hydro as additional insured; 2) and contain a cross liability and severability of interest clause; and 3) specify that it is primary coverage and not contributory with or in excess of any other insurance that may be maintained by **ABCDE**.
 - ii) **ABCDE** agrees that if **ABCDE** fails to take out or keep in force such insurance, Hydro will have the right to do so and to pay the premiums thereof, in which event **ABCDE** shall pay to Hydro the amount paid as premiums. A certified copy of such policy(ies) or satisfactory certificate(s) in lieu thereof shall be given to Hydro for approval on or before the commencement of this Agreement and any extension(s) or renewal(s). Such insurance policies shall contain an endorsement clause that such policies shall not be cancelled or modified so as to restrict or reduce coverage except upon 30 days notice in writing thereof to Hydro.

- c) Comply with all statutes, by-laws, regulations, orders and directions of all Governmental and regulatory authorities having jurisdiction, affecting the design, installation and operation of the Works, and provide evidence of such compliance upon request.
- d) Inform all its contractors of any special conditions in the construction area of the Strip, including the exception, and it being a high-voltage environment and insist on all the contractors and invitees complying with all safety and environmental laws and all rules and regulations applicable thereto and provide Hydro upon request to do so with the contractors' and invitees' acknowledgement of said laws, rules and regulations and satisfactory evidence of such compliance.
- e) Make all necessary arrangements to Hydro's satisfaction, with all relevant Hydro tenants, subtenants, licensees, occupants and other users and adjacent property owners respecting access routes, temporary work areas, fencing, movement and care of livestock, vehicles and equipment.
- f) ABCDE is responsible for arranging underground locates prior to digging or auguring any holes, or performing any excavation works.
- g) Give Hydro a minimum of seventy-two (72) hours' notice prior to Commencement of Construction so that Hydro, at its sole discretion, may have its representatives present at ABCDE's expense, to ensure conformity with Hydro's terms and conditions of Construction.
- h) Mark all poles and guy wires on the property with bright markers, such as yellow plastic guards on the guy wires, and either red or yellow tape or paint on the poles at eye level and lower, to avoid potential hazards. These markers must be in place prior to the Commencement of Construction and left on and kept in good condition for the duration of the Term or any renewal thereof.
- i) Erect signage on the Strip clearly indicating the overhead dangers that exist with reference to section 186 of the Occupational Health and Safety Act, R.S.O., 1990, c. O.1 ("OHSA"). Signs must be clearly visible, and maintained up at all times during the Term or any renewal thereof. The raising of loaders and/or dump boxes is permitted provided that appropriate clearances are kept at all times. .
- j) Any proposed drainage ditch or drains of any kind crossing or within the Strip must be pre-approved by Hydro and meet the following conditions:
 - i) Have a culvert or similar crossing allowing Hydro and any other Hydro approved contractor, linear crossing of the ditch at all times.
 - ii) The culvert must be capable of withstanding heavy loads similar to a pipeline installation.

- iii) Must have a minimum cement culvert with appropriate cover that will never require maintenance.
 - iv) The culvert must be a minimum of 25 feet wide.
 - v) The culvert must be kept free of debris and water blockage.
 - vi) Maintain the culvert cover and allow Hydro to cross at any time without notice.
 - vii) The culvert must be capable of handling flows considered to be heavy as would be evaluated in 100 year storm water run-off.
 - viii) Swales proposed must have a culvert installation to ensure crossing of the swale will not result in damage, and create ruts that do not allow water to pass effectively; in order to allow Hydro to access its facilities at any time without the interference of a secondary land use.
- k) Ensure the design of the proposed underground collector line will withstand the loading conditions created by heavy maintenance vehicles that may be used by Hydro.
 - l) Ensure any fill material that is placed on the Strip is designated as clean fill, certified by an independent soils engineer. The fill material must meet or exceed the Ministry of the Environment requirements for clean soil. ABCDE agrees to assume liability for the fill material used to create positive drainage on the Strip. A complete and detailed soil report for the imported fill must be forwarded to Hydro in order to have a record of the material on file.
 - m) Ensure all proposed works on the Strip provide adequate overhead transmission line clearance from the high voltage conductors at maximum sag conditions to the proposed ground elevations.
 - n) Ensure that safe working clearances as specified in the OHSA for workers and equipment are maintained at all times during construction activities. The transmission line(s) on the Strip operate at ___Kv and the safe working clearance requirements are ___ feet, as per Section 186, "Proximity", of the OHSA.
 - o) Ensure that access to Hydro's structures and works is maintained at all times. Hydro maintenance and repair equipment includes large heavy rubber tired road vehicles and large heavy tracked equipment. An adequately sized work zone must be maintained at the base of a structure at all times. No activity that restricts Hydro's access to its structures will be permitted on the Strip.
 - p) Install temporary fencing around all Hydro's transmission line structures and associated equipment. The temporary fencing must be at a minimum a 4-foot-high orange nylon snow fence, maintained in an upright condition for the Term or any renewal thereof. Fencing must be installed at a minimum of three meters away from all Hydro owned structures and equipment.

- q) Shall not obstruct access to Hydro facilities, at any time, during construction or after the facilities are in service. The Strip must be kept free of all debris and equipment which could prohibit access to Hydro facilities.
- r) Be responsible for maintaining security of the site and for the safety of the people working within the Strip.
- s) Suspend its operations, if required, in the case of Hydro emergency work, until Hydro crews have completed their work.
- t) Provide grading and drainage plans to Hydro for review and approval. Any change in grade that may adversely affect the present water flow on the Strip must be reviewed and approved by Hydro.

8. During construction of the Works **ABCDE** shall at all times, at its sole expense:

- a) Obtain confirmation and approval in writing of all deviations to field approvals of the Works previously given by Hydro's Inspectors.
- b) Not erect or allow any structures, erections, buildings, installations, works, work shacks, materials, equipment, garbage, refuse, snow, ice, soil, to be erected, built, installed, accommodated, completed, stored, parked, fuelled or located on the Strip or vehicles on the Strip except in those places or in such manner as shall be approved by Hydro's inspectors and subsequently confirmed satisfactory in writing. Further **ABCDE** shall not erect nor allow to be erected any aerial service lines including electrical power, telephone, cable television or lamp standards or other similar service within the Strip without prior written consent of Hydro.
- c) Erect satisfactory temporary barriers on access routes and make all reasonable efforts to prevent use of these routes by private or commercial vehicles.
- d) Erect temporary barriers e.g. snow-fencing between **ABCDE**'s **access road(s)**, and construction areas and all transmission towers and poles so as to provide a minimum 3 meter horizontal separation between the barriers and towers and poles on the Strip to restrict all access road and construction traffic, equipment and material from within the fenced area(s), including plowed snow.
- e) Participate in and attend from time to time as requested all Hydro arranged co-ordination meetings with representatives of **ABCDE**'s contractors, if required.
- f) Comply satisfactorily with all instructions of Hydro's inspectors from time to time including without limitation, instructions to halt construction if, in the opinion of such inspectors, Hydro's works from time to time may be interfered with, or the safety of

the public or such works may be in danger, or the Project is not being constructed in accordance with Hydro's terms and conditions of Construction.

- g) Contact Hydro immediately when Hydro's buried counterpoise (ground wire(s)) are exposed, damaged or cut through during Construction.
 - h) During all blasting operations, ensure ground vibrations do not exceed a peak particle velocity rate of 50mm per second, and shall further ensure that appropriate blast-mats are in place during all blasting operations within 61m of any transmission line to eliminate damage or injury to Hydro's plant and equipment from blasted flyrock.
9. After Construction and completion of the Project, **ABCDE** shall, at all times at its sole expense and to the satisfaction of Hydro:
- a) Advise Hydro, with seventy-two (72) hours prior notice in writing, that all Construction on the Strip has been completed and ready for Hydro's inspection.
 - b) Repair and restore all fences, gates and improvements (including, without limitation, field tiles and wells) to a condition equivalent to that existing prior to installation of the Works.
 - c) Restore all earth, topsoil and ground cover disturbed by Construction and, if necessary or requested, replace destroyed or damaged trees and shrubs, and do all requested or necessary grading to ensure soil and slope stability to the satisfaction of Hydro and guarantee Landscaping and Plantings for a subsequent term of three (3) years.
 - d) Compensate Hydro tenants on demand for any damages, such as crop loss or injury to livestock, caused by **ABCDE**, its servants or agents as a result of the construction, operation and maintenance of the Works.
 - e) Pay Hydro all its costs of replacing, relocating or repairing all or any of Hydro's works, where Hydro has incurred these costs because of the Project and Construction or presence of the Works and/or the entering into of this Agreement.
 - f) Send to Hydro for its records, satisfactory copies of properly executed final releases of claims for damages executed by Hydro tenants, subtenants, licensees, occupants and other users.
10. **ABCDE** acknowledges, covenants and agrees that if there is insufficient room within the Strip for the Works or appurtenances thereto Hydro is under no obligation to provide alternate lands or compensation to accommodate the Works and Hydro is and shall be

released of any and all liability to **ABCDE** of any kind whatever as a result or in connection therewith.

11. Any renewal of this construction portion of this Agreement and the terms and conditions associated therewith, are at the sole discretion of Hydro. Request for renewal must be submitted in writing by **ABCDE** to Hydro at least two months prior to the expiration of the Agreement.

ENCROACHMENT TERMS AND CONDITIONS

12. a) **ABCDE** and Hydro covenant and agree that the Agreement shall and does serve as a binding and irrevocable encroachment agreement, accommodating the Encroachment of the Works as part of the Project within the Strip, for and during the intended operational life of the Works described and shown on the Plan;
- b) Hydro hereby acknowledges the intention of the said Encroachment of the Works and hereby agrees, that **ABCDE** shall be permitted to maintain the Works in the form and position described and shown on the Plan, provided that no portion of the Works and/or Construction shall be permitted to extend further onto the Strip than as described and shown on the Plan; and provided that the Encroachment will not interfere with any Hydro works on the Strip or any future changes or additions made thereto. If the Encroachment does in the opinion of Hydro, acting reasonably, interfere with any Hydro works or any future changes or additions thereto on the Strip, then the Agreement may be terminated at the option of Hydro, *upon ninety (90) days prior written notice to ABCDE. Within ninety (90) days of receipt of written notice of termination, or as soon as practicable, thereafter acting diligently and expeditiously, ABCDE shall remove or relocate its Works to eliminate the interference.*
- c) **ABCDE** covenants that it shall execute any further assurances as Hydro in its sole discretion may from time to time require with regard to the Encroachment.
13. **ABCDE** shall not perform nor allow to be performed any act, which shall cause further encroachment over or upon the Strip and without limiting the generality of the foregoing, **ABCDE** shall:
- a) Not increase the size nor alter the position of the Works, nor erect any erection or temporary or permanent structure of any nature whatsoever, on or upon the Strip.
- b) Not use any equipment on the Strip closer than 6.1 metres (20 feet) to all Hydro electrical wires.

- c) Not install any light standards, flag poles, power distribution pole lines or other aerial installations on the Strip, whether temporary or permanent, without the written approval from Hydro.
 - d) Not plant, without prior permission, other than grass or approved species in accordance with Hydro's Forestry Policy. All plantings and landscape will be reviewed and approved on proper numbered drawings.
 - e) Keep tower bases clear of plantings, material storage or debris of any kind at all times.
 - f) Not burn brush or other agricultural, or construction debris, as it is strictly prohibited on the Strip.
14. The Works and all other property of ABCDE at any time within the Strip shall be at the sole risk of ABCDE and Hydro shall not be liable for any loss or damage thereto howsoever occurring and ABCDE fully releases Hydro from all claims and demands in respect of any such loss or damage, except and to the extent to which such loss or damage is caused or contributed to by the neglect or default of Hydro, its servants or agents.
15. ABCDE shall in respect of the Encroachment assume all liability and obligation for any and all loss, damage or injury to property or persons (including loss of life) which would not have happened but for the Encroachment or anything done or maintained by ABCDE under this Agreement or intended so to be, and ABCDE shall at all times indemnify and save harmless Hydro from and against all such loss, damage, or injury and all actions, suits, proceedings, costs, charges, damages, expenses, claims or demands arising therefrom or connected therewith; provided that ABCDE shall not be liable under this paragraph to the extent to which such loss, damage, or injury is caused or contributed to by the neglect or default of Hydro, its servants or agents.
16. The rights and easement of Hydro are hereby ratified and confirmed.
17. The provisions hereof shall enure to the benefit of the undersigned and be binding upon their respective successors and assigns. Any assignment of this Agreement is prohibited without the prior written consent of Hydro. Notwithstanding the foregoing, ABCDE shall be entitled to assign this agreement to its affiliates or to its lenders as security for ABCDE's obligations to such lenders.
18. The failure of Hydro to exercise any right, power or option or to enforce any remedy or to insist upon the strict compliance with the terms, conditions and covenants under this Agreement shall not constitute a waiver of the terms, conditions and covenants herein with respect to that or any other or subsequent breach thereof nor a waiver by Hydro at any time thereafter to require strict compliance with all terms, conditions and covenants hereof, including the terms, conditions and covenants with respect to which Hydro has failed to

exercise such right, power or option. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by a duly authorized officer of Hydro which expressly or impliedly waives a right, power or option under this Agreement.

- 19. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein, and the parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in the event of a dispute hereunder.
- 20. Time shall in all respects be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the signatures of their proper officers, as of the day and year first written above.

ABCDEABCDEABCDEABCDEXXXXX

Per _____

Name:
Position:

Per _____

Name:
Position:

We/I have the authority to bind the Corporation. (*general partner and the general partner has the authority to bind the limited partnership*)

HYDRO ONE NETWORKS INC.

Per _____

BBBBBBBBBB

Senior Real Estate Coordinator,
Real Estate Services

I have authority to bind the Corporation.

Schedule "A-1"