

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made in quadruplicate and effective as of the 2nd day of July, 2008 (hereinafter the "Agreement").

BETWEEN:

THE REGIONAL MUNICIPALITY OF PEEL
(hereinafter referred to as the "Licensor")

-and-

PEARSON INTERNATIONAL FUEL FACILITIES CORPORATION,
a corporation incorporated pursuant to the *Business Corporations Act*
(Ontario)
(hereinafter referred to as the "Licensee")

WHEREAS the Licensor is the registered owner of certain public highways located within the City of Mississauga, in the Regional Municipality of Peel, known as Derry Road and as described on *Schedule "A"* attached hereto (the "Public Highways");

AND WHEREAS the Licensee is a consortium of airline companies which owns and operates the distribution systems supplying jet fuel to their airplanes at Lester B. Pearson International Airport (hereinafter "Pearson Airport");

AND WHEREAS the Licensee wishes to improve its jet fuel distribution system so as to ensure minimum disruptions and adequate supplies to Pearson Airport at all times;

AND WHEREAS the Licensee wishes to obtain access to and occupy various portions of the Public Highways for the purposes of installing, operating and maintaining a four hundred (400) millimetre diameter jet fuel pipeline and related equipment and, subject to the terms hereof, any replacements thereof (the "Works") beneath and across portions of the Public Highways, as shown on the plan attached hereto as *Schedule "B"* (the "Licensed Lands");

AND WHEREAS the Works installed within the Licensed Lands will form part of an overall underground pipeline system allowing the flow of jet fuel from a tank farm located at 7440 Torbram Road in Mississauga to the aircraft fuelling facilities at Pearson Airport;

AND WHEREAS the Ontario Energy Board issued a Decision and Order under the *Ontario Energy Board Act*, 1998, S.O., 1998, c.15, Schedule B, dated August 17, 2007, granting the Licensee leave to construct the jet fuel pipeline subject to obtaining all necessary approvals and licenses from affected landowners;

AND WHEREAS the Licensee requires the agreement of the Licensor to install, maintain and operate the Works and the Licensor hereby agrees to the installation, maintenance and operation of such Works, subject to the terms and conditions herein contained;

AND WHEREAS the Corporation of the City of Mississauga (hereinafter referred to as the "City") and the Licensee have entered into or will be entering into a License Agreement to occupy various portions of the City's public highways for the purpose of the Works;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the License Fee paid by the Licensee to the Licensor, and of the mutual covenants and agreements herein contained, and subject to the terms and conditions hereinafter set forth, the parties hereto agree as follows;

1.0 GRANT OF LICENSE

- 1.1 The Licensor hereby grants to the Licensee (including its employees and authorized agents), subject to the provisions of this Agreement, a non-exclusive license as provided for herein to use the Licensed Lands for the purposes of installing, operating, maintaining, repairing, upgrading and renewing the Works beneath and across the Licensed Lands (provided, for great certainty, that in connection with any upgrading or renewing of the Works, unless otherwise agreed to by the Licensee, acting reasonably, the Licensor shall continue to be bound by the provisions of Section 6 with respect to the materials and other specifications required in connection with the construction of the Works), together with, subject to the provisions of this Agreement and subject to the Licensor applying for and obtaining from the Licensee any necessary road occupancy permit, the right of access for the Licensee, its employees and agents with vehicles, supplies and equipment at all times and for all purposes and things necessary and incidental to the exercise and enjoyment of the license hereby granted to the Licensee.
- 1.2 For greater clarity, the Licensor reserves the right to grant similar or other interests in the Licensed Lands as it may deem appropriate, provided such interests do not affect the installation, operation and maintenance of the Works.
- 1.3 The Licensee acknowledges that the Licensor has constructed and installed and has permitted the construction and installation, maintenance and repair of existing municipal and private utility infrastructure on or within the Licensed Lands including, without limitation, water lines, storm and sanitary sewers, gas lines, hydro lines and poles and other general service utilities that provide service to the public including businesses located in proximity to the Licensed Lands. The Licensee agrees that the Works and the rights of the Licensee shall not, in any material way, interfere with the continued operation of the existing service utilities.
- 1.4 The Licensee hereby agrees to enter into an agreement for a license with the City which contains such terms as to adequately, and to the satisfaction of the Licensor, protect and give due consideration to the existing infrastructure, of the City and the Licensor, on, over, through, across and under the City's Public Highways identified as Torbram Road, Drew Road, Kimbal Street and all intersections there affected. The Licensee is hereby obliged to provide to the Licensor a copy of the License Agreement with the City and is obliged to provide notice to the Licensor of any material changes to the License Agreement.

2.0 TERM

- 2.1 Subject to the early termination rights set out herein, the term of this Agreement (the "Term") shall be for a period commencing on July 2, 2008 (the "Commencement Date") and thereafter expiring and being fully terminated on July 1, 2028 (the "Termination Date").
- 2.2 Option to Renew: Provided the Licensee is not in a default which is continuing under this Agreement at the time of the renewal, the Licensee shall have the option to renew this Agreement for one term of thirty (30) years, such renewal term to begin upon the expiration of the original Term and all of the provisions of this Agreement shall apply to such renewal term. If the Licensee elects to exercise the aforesaid option to renew, it shall do so by providing the Licensor with notice in writing of its intention to renew at least six (6) months prior to the expiration of the original Term.

3.0 DEFAULT/TERMINATION

- 3.1 A "default" shall occur under this Agreement if:
 - (a) the Licensee breaches its obligations under this Agreement, including where applicable, without limitation, failure to provide and maintain, or cause to be maintained, insurance or a letter of credit required pursuant to this Agreement; or
 - (b) there is instituted by or against the Licensee any proceeding for bankruptcy, the dissolution or liquidation of, or winding up of the affairs of the Licensee, or the making of any proposal under the *Bankruptcy and Insolvency Act* (Canada) or the seeking of any relief under the *Companies Creditors Arrangement Act* (Canada);
 - (c) an order is made or a resolution is passed for bankruptcy, the winding-up, dissolution or liquidation of the Licensee or any bankruptcy proposal or creditors relief arrangement; or

- (d) the Licensee fails to renew and to keep in full force and effect its existence, and the Licensee fails to commence the cure of such default within ten (10) calendar days after written notice from the other party specifying the nature of the default.
- 3.2 If a "default" by the Licensee occurs which is not properly remedied and continuing, the Licensor, in any order that it chooses, may do any one or more of the following:
 - (a) demand payment of any monies due and unpaid; or
 - (b) initiate court proceedings against the Licensee to recover the amount of money due; or
 - (c) take proceedings or any other legal action to compel the Licensee to comply with this Agreement; or
 - (d) where the Licensee fails to diligently pursue a cure of such default or in any event fails to cure such a default within 30 days of the occurrence of the delivery notice by the Licensor (or such longer period of time as may be required provided that the Licensor is satisfied that the Licensee is diligently pursuing such cure), terminate this Agreement on 30 calendar days written notice to the Licensee; provided, however, that if the default is subsequently cured during this termination period, the Agreement shall not be terminated; or
 - (e) draw on the letter(s) of credit provided for in this Agreement, without notice to the Licensee; or
 - (f) for greater clarity, there shall be no obligation on the Licensor to remedy a payment default by drawing down on the letter(s) of credit posted by the Licensee.
- 3.3 For greater certainty, all of the rights and remedies under this Agreement may be exercised alone or in any combination or order and are without prejudice to any other remedies at law or in equity, in contract or in tort.
- 3.4 If a default of the Licensor occurs which is not remedied, the Licensee may take proceedings and any other legal action to compel the Licensor to comply with this Agreement.
- 3.5 If the Licensee fails to complete any relocation or removal work, as required in accordance with Section 9 of this Agreement, to the satisfaction of the Licensor's Commissioner of Environment, Transportation & Planning Services, acting reasonably within eighteen (18) months from the date of written notice to relocate or remove, then at the Licensor's sole option the Licensor may remove the Licensee's Works and or other personal property and collect the costs of such removal from the Licensee.
- 3.6 The Licensee will remain liable to the Licensor for the performance of all obligations, including the payment of money, which by their nature require performance following the expiry or termination of this Agreement. Nothing in this subsection or in any other term of this Agreement will be interpreted so as to restrict or limit the Licensor's remedies for the recovery of, or the Licensee's liability for, all losses caused by the negligent acts or omissions of the Licensee, whether in law or in equity, in contract or in tort, all of which are expressly reserved despite any other term of this Agreement.
- 3.7 For greater certainty, the insurance and indemnity provided in this Agreement by the Licensee (in addition to any other obligations which by their nature continue) shall remain in force with respect to the Works until the Works are removed by the Licensee.
- 3.8 The Licensee hereby agrees that it shall not make any claims or demands for any costs or damages whatsoever as a result of any early termination in accordance with this Agreement.
- 4.0 LICENSE FEE AND OTHER COSTS**
- 4.1 In consideration of the license rights granted, the Licensee shall pay the Licensor an initial licence fee of Twenty Thousand Dollars (\$20,000.00) and annual fee thereafter of Two Thousand Dollars (\$2,000.00) (the "License Fee"), plus GST and any other applicable taxes. The License Fee shall be paid by cheque or bank draft and, with respect to the initial licence fee, is due and payable on

execution of this Agreement and thereafter shall be paid on the anniversary date of this Agreement in each subsequent year this Agreement remains in effect. In the event this Agreement is terminated at any time prior to the last day of any Term, the Licensee shall not be entitled to any refund of License Fees paid.

- 4.2 The Licensee shall, in addition to the License Fee as provided for above, pay to the Licensor any additional reasonable costs, fees or claims attributable to the existence of the Works. This shall include, but not be limited to any additional third party costs that are incurred by the Licensor to facilitate any maintenance, repairs, inspection, restoration, or installation of any public utility, and any additional cost for completing any works on the Licensed Lands, due to the existence of the Works. Such costs shall include but not be limited to, consultant fees, construction costs, surveys, legal fees and Licensor staff time.
- 4.3 The Licensee shall be responsible for any costs, penalties, or fees reasonably incurred by the Licensor or any third party for the costs of any emergency response or any clean up, remediation, restoration or repair or replacement necessitated or caused by the existence of the Works.
- 4.4 Where the Licensee defaults in the payment of any portion of the License Fee or any other cost or expense due and owing under this Agreement, at the Licensor's election, it may charge interest on any unpaid amount at the interest rate of the then prevailing prime rate by the Royal Bank of Canada plus 3%.

5.0 PAYMENT OF TAXES

- 5.1 The Licensee shall pay and shall expressly indemnify and hold the Licensor harmless from, all realty taxes, rates, duties, levies, fees, charges, sewer levies, local improvement rates, assessments and similar charges imposed, assessed, levied or charged now or in the future by the City of Mississauga, or any regional, provincial, federal, parliamentary or other governmental body, corporate authority, agency or commission (including, without limitation, school boards and utility commissions) (collectively "Taxes"), directly attributable to the Works or the use of the Works by the Licensee or any other person including, without limitation, any such taxes which are levied in substitution or in lieu of or in addition to any of the foregoing; provided, however, that the Licensee shall not be responsible for any Taxes that are imposed prior to the date hereof and shall not be responsible for the payment of any Taxes that are not Taxes of general application.

6.0 CONSTRUCTION AND MAINTENANCE REQUIREMENTS

6.1 Construction

- (a) The Licensee shall, prior to undertaking construction of any portion of the Works, submit the following to the Licensor for approval:
 - (i) plans of the proposed construction, describing the exact location of the proposed Works, summarizing the extent of the pipeline to be installed and specifying the areas within the Public Highways within which construction is proposed to take place, including the estimated completion date for construction. In the event the Licensor deems that any documents, plans or materials submitted to the Licensor for approval require peer review or review by an expert, the Licensee shall promptly reimburse the Licensor for all such costs within 30 days following demand by the Licensor (which demand shall include invoices for same);
 - (ii) an information program designed to keep area businesses and residents informed on the progress of construction, so as to minimize traffic or service disruptions for both groups; and
 - (iii) all other plans, drawings and other information as may be reasonably required by the Licensor from time to time for the purposes of issuing approvals or permits.

Approval of the drawings in no way implies any expression or comment of acceptable construction practices and does not in any way make the Licensor liable for the drawings or the Works. The Licensee is solely responsible for any negligence in the preparation of the drawings or the construction thereafter.

- (b) The Licensee will, at its sole cost and expense, maintain the Works in accordance with the drawings or subsequent "as constructed" drawings and in a state of good order, condition and repair in accordance with applicable laws.
- (c) The Licensee will, at its sole cost and expense, maintain the Works in accordance with the drawings or subsequent "as constructed" drawings and in a state of good order, condition and repair, in accordance with applicable laws. A complete copy of the "as constructed" drawings shall be provided to the Licensor within thirty (30) days following completion of construction. Such drawings shall be prepared in accordance with prudent industry practice and standards, sufficient to accurately establish within the Licensed Lands the approximate location, elevation and distance of those portions of the Works constructed or installed by or on behalf of the Licensee. In addition to the above, the Licensee agrees that where "as constructed" plans have not been provided as required under this section, the Licensor shall be under no obligation to issue any further approvals or permits to the Licensee to undertake construction work on the Licensed Lands until such plans are provided.
- (d) The materials used to construct the Works shall be of steel pipe with a nominal 9.53 millimetre wall thickness, notwithstanding any tolerances in wall thickness allowed by the applicable material standard, and shall be 400 millimetres in diameter. The design and construction of the pipeline shall include provisions to protect the pipeline from external corrosion. All pipe sections shall be fully welded together and all girth welds will be x-rayed to ensure that they meet applicable code acceptance criteria prior to the pipeline entering into service. The final location of all girth welds will be shown approximately on the "as constructed" drawings.
- (e) The maximum operating pressure of the pipeline shall be 1930kPa as per the Leave to Construct application to the Ontario Energy Board and/or as certified by the Technical Standards and Safety Authority.
- (f) The design of the Works must incorporate materials that provide for a minimum fifty year long life cycle without undue risk from material deterioration.
- (g) The Licensee shall also have a functioning system for remotely monitoring pressures and flows. Such system must be able to detect pipeline leaks, fractures and ruptures.
- (h) The cathodic protection system of the pipeline shall include test lead connections to allow for monitoring of the cathodic protection system. The external surface of the pipe shall be protected with a suitable coating.
- (i) There is a minimum requirement for the installation of pipeline markers on each side of the limits of the Licensed Lands.
- (j) During construction of the Works existing facilities and features shall be protected. The Licensor shall provide the Licensee following execution of this Agreement with plans and drawings in its possession or control detailing such existing facilities and features and any updates, revisions or amendments of such plans and drawings. In general, this includes, but is not limited to, investigating the site to determine and confirm the location of features and facilities aboveground and underground; arrangements must be made with all utilities companies at least five days in advance for locations of all utilities; and there must be specific minimum separations maintained from other underground utilities as per the applicable codes and utilities' requirements. The Licensee must use vacuum excavation or hand digging (if required by the utility) to confirm the location and elevation of all existing utilities which the pipeline will cross and that all utilities to be crossed must be supported in accordance with the utilities requirements. Features, like light standards, traffic light poles, hydro poles and guy poles shall be temporarily supported or relocated as required. Existing traffic signs are to be salvaged and re-installed. Service laterals are to be supported and re-routed if necessary during construction to the utilities' standards.
- (k) A minimum vertical clearance must be maintained between other utilities and the pipeline as per the applicable codes and the utilities' requirements.

- (l) The Licensor shall have the right to appoint a consultant to inspect and monitor the construction of the Works and for each site visit carried out by the consultant, the Licensee shall reimburse the Licensor for the consultant's reasonable hourly fees and disbursements.
- (m) All reasonable and appropriate provisions must be made to ensure a safe crossing of Derry Road. To ensure this, the Licensee shall pay all costs and fees associated with the Licensor having a full time inspection (either by staff or a consultant) on all parts of the Work throughout design and construction.

6.2 Security

- (a) The necessary equipment and processes must be installed and available so that the Works may be shutdown, at the Licensor's discretion, acting reasonably and in good faith, and provided the Licensee is provided 30 days prior notice of such shutdown (other than for an emergency, in which case the Licensor shall provide notice of such emergency to the Licensee) and the period of such shutdown (which shutdown shall not exceed 72 hours or such longer period agreed to by PIFFC), to allow for maintenance work, or to allow adjacent work to be carried out by third parties or the Licensor, or in the event of an emergency. The Licensor shall be entitled to send four such notices per calendar year (unless such notice relates to an emergency). The Licensor and Licensee shall meet in good faith to coordinate any shutdown so as to ensure minimal disruption of the operation of the Works.
- (b) The necessary equipment and processes must be installed to allow the Works, or a section of the Works, to be drained if a repair has to be done or in the event of an emergency. In the event that the Works must be drained, a vacuum truck or other equipment must be available and provided to limit negative impacts on the environment.

6.3 Restoration of Existing Facilities and Features

- (a) Within a reasonable period following the completion of the construction of the Works, the Licensee must restore at its own expense, to original condition or better all areas and features disturbed during construction.
- (b) The Licensee acknowledges and agrees that:
 - (i) the Licensee shall, when performing any work or remedial work, comply with all applicable laws and all of the Licensor's by-laws and policies, if any, applicable to such work or remedial work, failing which the Licensor shall, following prior 30 days written notice to the Licensee outlining in detail the matter or issue of non-compliance, be entitled to undertake any repairs or other action as may be required under the by-laws or policies and recover all reasonable costs and expenses of such repairs or actions from the Licensee; and
 - (ii) the Licensee will, at its sole cost and expense, repair, to the original condition or better, any damage caused to the boulevard, pavement, drains, conduits, wires, pipes or their appurtenances by the Works.

6.4 Traffic Impact

- (a) The Licensee shall take all commercially reasonable efforts to ensure that two way traffic on Derry Road is maintained in each direction at all times; provided, however, that the Licensor and Licensee shall agree, each acting reasonably, on a program prior to construction or any maintenance of the Works that reduces the period and extent of any lane closures on Derry Road.

6.5 Operation

- (a) The Licensee shall employ such measures as necessary to ensure that a full set of records and drawings and pipeline documentation shall be maintained and available at all times at the request of the Licensor or its contractors, subcontractors or any other party as requested through the PUCC process.

- (b) The Licensee will undertake monthly cathodic protection readings and annual cathodic protection system surveys of the Works.
- (c) The Licensee shall develop and provide to the Licensor a Pipeline Integrity Management Manual and will also submit it to the Technical Standards and Safety Authority. The Pipeline Integrity Management Manual shall contain provisions that include but, shall not be limited to, that the monitoring system for the Works must be installed such that uncontrolled, sudden drops of pressure not caused by pipeline operation will be noted immediately and reaction will be instantaneous, such that the pipeline will be shutdown, the operator notified and a response initiated in accordance with the Pipeline Integrity Management Manual. The response undertaken shall be implemented by the Licensee and at the sole cost and expense of the Licensee. The Licensee will be responsible for all reasonable costs and all measures required to attend to any environment cleanup as a result of any leak or spill. The Licensee shall further develop a contingency plan within the Pipeline Integrity Management Manual to address actions if the pipeline is ruptured or develops a leak.
- (d) The Licensee shall perform a pipeline wall corrosion and anomaly condition assessment of the Works during commissioning of the Works and every ten (10) years thereafter and shall provide a summary of the assessment of the Licensor two (2) months after the completion of the assessment.
- (e) A pipeline integrity pressure test will be carried out semi-annually.
- (f) A pipeline monitoring system is to be installed to continuously track flow volumes and temperatures at both ends of the Works. If comparison of the temperature compensated flow volume shows an unacceptable variation between the inlet and outlet volumes, an alarm will notify the operator and the system's automatic shutoff valves at each end of the pipeline will activate, stopping all flow.
- (g) If any of the monitoring or testing indicates any problem, the Licensee shall inform the Licensor at its earliest opportunity and the Licensee shall immediately take all reasonable steps necessary to rectify the problem in accordance with prudent industry practice and standards, at the sole cost and expense of the Licensee.
- (h) Any costs, damages or fees associated with the maintenance and monitoring of the Works or of the repairs, remediation, restoration of any problems that arise shall be at the sole cost and expense of the Licensee.
- (i) The Licensor may, although it is not required, to draw upon the letter of credit to pay any of the costs associated with the herein paragraph.
- (j) The Licensee shall carry out a visual inspection of the surface of the Licensed lands every two weeks.
- (k) Copies of all reports on a monthly and or a semi-annually or annual basis as appropriate about the results of the Works condition tests shall be delivered and provided to the Licensor and the Licensee shall pay for the Licensor's review of the tests by an independent peer reviewer.

6.6 Topography

- (a) The Licensee shall provide copies of a detailed surface elevation report of the crossing surface:
 - (i) within one (1) month prior to the commencement of construction.
 - (ii) within six (6) months following completion of the pipeline installation, and
 - (iii) on the fifth anniversary of the completion of the pipeline installation.
 - (iv) These reports are to be provided at the sole cost and expense of the Licensee. The surveys must include elevations at every meter along the centre line of the pipeline and two meters on either side of the right-of-way.

7.0 PROVISIONS FOR WORK IN VICINITY OF PIPELINE/WORKS

- 7.1 A construction protocol shall be prepared to the satisfaction of the Licensor, acting reasonably, for future utility installation and emergency response procedures. The Licensee shall provide the Licensor a copy of the Construction Protocol. These shall include and not be limited to the registration with "Ontario One Call" or its successors. The markers along the Works route will contain a 24-hour emergency call number. The Licensee shall place markers demarking the location of the pipeline on the ground surface at regular intervals so as to provide clear warning of the presence of the pipeline.
- 7.2 Stake Out Service
- (a) The Licensee shall provide a stake out service at its own expense for the purposes of locating its Works beneath the Licensed Lands. The said stake out service shall be available within twenty-four (24) hours following written notice to the Licensee by the Licensor. The stakeout shall also include a mark-up of municipal infrastructure design drawings showing the location of any portion of the Works located within the Licensed Lands, and shall provide such accurate and detailed information as may be required by the Licensor. The Licensee shall also provide such stake out service to the Regional Municipality of Peel, any utility provider or any other occupier or licensee of the Licensed Lands.
 - (b) In the event an emergency occurs and is continuing, the Licensee shall provide a stake out service within two (2) hours of written or verbal notice from the Licensor, the Regional Municipality of Peel, any utility provider or any other occupier. The Licensee shall furnish the Licensor with the then current name and telephone number of the individual responsible for the co-ordination of the stake out service.
 - (c) The Licensee shall provide satisfactory evidence to the Licensor that it has registered as a member of the Public Utilities Co-ordinating Committee and the *Ontario One Call* service (www.on1call.com) or its successors for the purposes of making prompt responses to any requests for stake out services relating to the Licensed Lands.
 - (d) If the Licensee fails to provide the necessary stake out service within the time frames stipulated herein, the Licensor, including its employees, agents and contractors, shall not bear any responsibility or liability to the Licensee, whether directly or indirectly, if the Licensee's Works is damaged or destroyed while the Licensor carries out any type of work over, along or beneath the Licensed Lands. The Licensor agrees not to consider the Licensee's failure to provide a timely stake out service a breach of this Agreement and in consideration of same, the Licensee hereby forever releases and discharges the Licensor against any and all demands, claims, actions, causes of action and proceedings for losses, damages, costs and expenses of whatever kind and nature, that may be incurred by the Licensee or any third party as a result of its Works being damaged or destroyed by the Licensor while work is undertaken without the benefit of a stake out service.
 - (e) Subsection 7.2(d) shall be read in conjunction with Section 12 below so as to clarify that under no circumstances shall the Licensor be liable to the Licensee as set out in Subsection 7.2(d).
 - (f) The Licensee shall be a participating member in the Public Utility Coordinating Committee ("PUCC") in order that the Licensee maintains an updated understanding of planned work in its area of interest. The Licensee shall provide to the Licensor evidence of registration and participation in PUCC.
 - (g) When work is being carried out within five metres of each side laterally from the centre line of the Works, by any third party, including but not limited to the Licensor, the Licensee will position one of its representatives on the worksite while the work is ongoing. The cost of the representative shall be solely that of the Licensee. The Licensee, at its own discretion or upon request of a third party may, but shall not be obligated to, shut down the Works for a maximum of 72 hours (or such longer period agreed to by the Licensee) in order to facilitate any third party, or Licensor's work in the vicinity of the Works provided that a minimum of thirty (30) days written notice is provided to the Licensee.

- (h) The Licensee accepts its rights to use the Licensed Lands on an "as is / where is" basis and agrees that nothing herein shall be construed as an assurance, warranty or covenant from the Licensor that the Licensed Lands or any particular alignment or routing over, under, within or upon the Licensed Lands will be useable by the Licensee. For the purposes of greater clarity only, the Licensee agrees to assume all liabilities, costs, expenses and fees in connection with any excavated soils which may be contaminated and may require extraordinary disposal methods.
- (i) If, due to the presence of the Works, the Licensor incurs any additional costs, including additional costs in the repair, maintenance or construction of the Licensor's own facilities or services that are directly attributable to the existence of the Works, the Licensee shall pay all such reasonable additional costs, within 30 days following demand by the Licensor (which demand shall include invoices for such costs). The Licensee hereby acknowledges and agrees that the Licensor may undertake a study to identify unrecovered and direct costs, including pavement degradation and work around costs, incurred by the Licensor as a direct result of the activities of the Licensee doing construction within the Licensed Lands that are directly attributable to the construction, maintenance or operation of the Works, including Canadian carriers and distribution undertakings.
- (j) Licensee agrees that it shall provide in its agreements entered into after the date hereof with third parties relating to any portion of the Works, an acknowledgement and agreement by those third parties that the use of the Works are subject to the terms of this Agreement, which may be renewed or terminated, and that they shall comply, at their sole expense, with all applicable laws, statutes, by-laws, codes, ordinances, rules, orders and regulations of all governmental authorities having jurisdiction, including the Licensor, the City, the Province of Ontario and Canada, and that the third party shall obtain and maintain any and all permits, licenses, official inspections or any other approvals and consents necessary or required for the placement or operation of any third party equipment.
- (k) The Licensee will comply with all applicable laws, statutes, by-laws, codes, ordinances, rules, orders and regulations of all governmental authorities having jurisdiction, including the Licensor, the Province of Ontario and Canada in its exercise of its rights under this Agreement.

8.0 RESTORATION OF LICENSED LANDS AFTER CONSTRUCTION

- 8.1 In the event it becomes necessary, after construction, for the Licensee or for others on behalf of the Licensee to break the surface of the Licensed Lands, the Licensee shall repair and reinstate the surface of such Licensed Lands to the same condition as it was before such work was undertaken by the Licensee and thereafter the Licensee shall, at its own expense, as necessary from time to time, repair that portion of the said Licensed Lands by repairing any settling that may occur, to the complete satisfaction of the Licensor, acting reasonably. In the event the Licensee shall fail to repair and reinstate the Licensed Lands within three (3) calendar days of being notified in writing to do so by the Licensor, the Licensor may complete the restorative work and the reasonable cost thereof shall be paid by the Licensee within 30 days following demand by the Licensor (which demand shall include invoices for such costs).

9.0 RELOCATION AND REMOVAL

- 9.1 In the event of notice of termination of this Agreement or in the event the Licensor requires the relocation of the Works (acting reasonably and in good faith) or the Licensee desires to abandon any such Works, the Licensee shall carry out the prompt removal or relocation of the Works, as the case may be, at its sole expense, within eighteen (18) months from the Termination Date or the receipt of written notice of relocation from the Licensor, as applicable. In the event of failure by the Licensee to undertake such removal and/or relocation of the Works, or in the case of an emergency which is continuing, the Licensor may undertake the required removal or relocation and the Licensor shall not be liable for any damages or costs of any nature whatsoever caused to the Licensee or its Works by reason of such removal and/or relocation. The Licensor's reasonable costs and expenses in any such removal or relocation shall be reimbursed by the Licensee within thirty (30) days after receiving written notice thereof. If the Licensor does not receive payment within the time period required hereby, the Licensor shall be at liberty to draw

from the letter of credit provided for in this Agreement to recover any costs as provided for herein without further notice to the Licensee.

- 9.2 Notwithstanding the terms of Section 9.1, at the termination of this Agreement, the Licensor may, in its sole and unfettered discretion, upon the written request of the Licensee, grant the Licensee with permission to cap all of the pipe ends as opposed to requiring the Licensee to remove all of the Works and restore the Licensed Lands.

10.0 LOSS OR DAMAGE TO THE WORKS

- (a) Subject to the terms of this Agreement, the Licensor shall, acting reasonably, have the right to place pipes, cables, infrastructure wires, poles or any other equipment in and through the Licensed Lands, provided such placement does not materially disrupt or impact the construction, installation, operation or maintenance of the Works.
- (b) The Licensee acknowledges and agrees that the Licensor shall not be responsible, either directly or indirectly, for any damage occurring to the Works during their installation, maintenance, removal or relocation by the Licensee, nor shall the Licensor be liable to the Licensee for any losses, claims, charges, damages and expenses whatsoever suffered by the Licensee in connection with the Works, including claims for loss of revenue or loss of profits; provided that the Licensor shall be liable for any fraud, dishonesty, wilful misconduct or grossly negligent acts of omission or commission by the Licensor, its employees or its agents resulting in losses, claims, charges, damages and expenses to the Works or the Licensee.
- (c) The Licensor is not responsible, either directly or indirectly, for any damage that may occur as a result of the operation of the Works by the Licensee, nor is the Licensor liable to the Licensee for any losses, claims, charges, damages and expenses whatsoever suffered by the Licensee, including claims for loss of revenue or loss of profits, indirect or consequential damages, on account of any actions or omissions of the Licensor, its agents or employees, working in, on, under, over, along, above, or across the Licensed Lands; provided, however, that the Licensor shall be liable to the Licensee for any losses, actions, claims, causes of action, damages, direct costs and expenses suffered or incurred as a result of the Licensor, its employees or its agent's fraud, dishonesty, wilful misconduct or gross negligence.

11.0 LETTER OF CREDIT

11.1 Irrevocable Letter of Credit

On execution of this Agreement, the Licensee shall provide the Licensor with security for the performance of its obligations hereunder (including, without limitation, the obligations to pay insurance premiums in respect of insurance required to be maintained by the Licensor hereunder and the payment of deductible amounts relating thereto) during the construction of the Works and during the remainder of the Term by the issuance of an irrevocable letter of credit in the amount of Five Hundred Thousand Dollars (\$500,000.00), naming the Licensor as the sole beneficiary. The form and content of the irrevocable letter of credit shall be in accordance with the Uniform Customs and Practice for documentary credits of the International Chamber of Commerce, the issuing banks standard practice and satisfactory to the Licensor's solicitor, acting reasonably. In the event the Licensor is required to draw upon the letter of credit to enforce the obligations of the Licensee, the Licensor shall, at its sole discretion, have the right to require the Licensee to replace the letter of credit with a subsequent letter of credit; provided any amount drawn under a letter of credit which is not required or applied for any costs or obligations hereunder shall be forthwith paid to the Licensee.

12.0 INDEMNITY

- 12.1 The Licensee agrees to indemnify and save the Licensor harmless, including its elected officials, officers, board members, employees, agents, volunteers, contractors and subcontractors (the "Indemnified Parties"), from and against any loss of, or damage to, property, personal injury, bodily injury, or death, any form of environmental damage to the Licensed Lands or adjoining lands or any other losses, actions, claims, causes of action, damages, both direct or indirect, and such other costs and expenses, howsoever and whatsoever incurred, suffered or sustained by the

Licensee, its employees, servants, agents or contractors, or any of the Licensee's permitted invitees, contractors, subcontractors, consultants, sub-consultants, suppliers and agents in relation to the Works in, on, under, over, along, above or across the Licensed Lands, including that which has been caused or contributed to by any negligence, breach of the Occupiers' Liability Act or breach of any statutory or legislative duty on the part of the Licensor or on the part of anyone for whom the Licensor is in law responsible by the presence of the Works, the condition or state of repair of the Works and the breach of any of the provisions of this Agreement by the Licensee, including, without limiting the foregoing, any negligent act or omission of the Licensee, its or their employees, invitees, contractors, subcontractors, consultants, sub-consultants, suppliers and agents in relation to the Works and the Licensed Lands, or the activities permitted under the Agreement, which causes or contributes to any such injury, damage or loss; provided, however, that such losses, actions, claims, causes of action, damages, direct costs and expenses were not suffered or incurred as a direct result of the Licensor's own wilful misconduct or gross negligence.

13.0 ENVIRONMENT

- 13.1 The Licensee covenants that throughout the Term, the installation and operation of the Works shall not contravene any of the provisions of the *Environmental Protection Act* of Ontario, as amended or any other relevant legislation or regulations, as amended. In the event the Licensee is deemed by the Ontario Ministry of the Environment or its successor, ("MOE") to be in contravention of the *Environmental Protection Act* of Ontario, at any time during the Term, the Licensee shall forthwith take such action as the Licensor or the MOE may require or stipulate in writing to return the Licensed Lands and all other lands abutting thereto to their condition at the Commencement Date.

14.0 ENVIRONMENTAL LIABILITY

- 14.1 The Licensee is to provide an insurance policy for environmental liability in the amount set forth in Article 15.0 naming the Licensor as an additional insured with respect to liabilities arising out of operations and activities of the Licensee in connection with the Works and shall remain in place for the term of the license and any renewals.
- 14.2 Notwithstanding any other clause in this Agreement to the contrary, and without limiting the generality of Section 12.0, the Licensee agrees to indemnify, save, defend and hold harmless, at the Licensee's sole cost and expense, the Licensor, including its elected officials, board members, officers, employees, invitees, volunteers, agents, contractors, subcontractors and consultants (the "Indemnified Parties"), from and against the full amount of any and all Environmental Liabilities which directly relate to, arise from or are based upon the use of the Licensed Lands or the Works by the Licensee and/or the design, route, installation, construction, existence, location, maintenance, operation, alteration, modification, removal, replacement, reconstruction, enlargement, malfunction, decommissioning, or abandonment of the Licensee's Works; provided, however, that any Environmental Liabilities were not suffered or incurred as a result of the Indemnified Parties' own acts of omission or commission in connection with the Licensed Lands.
- 14.3 For the purposes of this Agreement, "Environmental Liabilities" means any civil, criminal, quasi-criminal or administrative liability and without limiting the generality of the foregoing, includes any and all losses, liabilities, damages, demands, claims, actions, judgments, causes of action, assessments, liens, penalties, fines, costs, expenses (including without limitation of the foregoing, the reasonable fees and disbursements of outside legal counsel and consultants incurred in investigating, preparing for, serving as a witness, in or defending against any action or proceeding whether actually commenced or threatened, which may be asserted against the Licensor), and all foreseeable and unforeseeable, consequential, general, special, exemplary, aggravated, or punitive damages arising from, in respect of, as a consequence of, or in connection with any of the following to the extent they directly or indirectly relate to a Release of any Substance resulting from the use of Works or the use of the Licensed Lands, and without limiting the generality of the foregoing include:
- (a) injury, sickness, disease, or death to any person;
 - (b) damage to or loss of use of the Licensed Lands or other adjacent property or ground water, waterway or body of water adjacent to or otherwise adversely effected;

- (c) the cost of removal, clean-up, or the undertaking of any other remedial action concerning any Substance from the Licensed Lands or surrounding area including any water, waterway or body of water and the preparation of any closure or other activity required by any Governmental Entity pursuant to any Environmental Laws;
 - (d) the cost of any demolition, rebuilding, repair or restoration of the Licensed Lands and/or any adversely affected surrounding areas;
 - (e) any lawsuit or prosecution brought or threatened, settlement reached, or order, penalty, or fine threatened or imposed by a Governmental Entity under any Environmental Laws relating to the presence, suspected presence, Release, or threatened Release of any Substance on, under, from, or affecting the Licensed Lands or any surrounding areas;
 - (f) any costs related to the closing of municipal highways and re-routing traffic that may be necessitated to comply with any of the provisions of this clause.
- 14.4 For the purposes of this Agreement, "Environmental Laws" mean any:
- (a) municipal, provincial, or federal laws and regulations, and instruments, rules, codes, policies, judicial or administrative order, penalty, fine, or judgment having the force of law relating to the environment, health, or safety either in existence as of the date of this Agreement, or enacted, promulgated, or granted after the date of this Agreement, that concern the Release, existence, management, control, inspection, monitoring, mitigation, treatment, containment, remediation, decontamination, decommissioning, and removal in respect of Substances; or
 - (b) any common law rule.
- 14.5 For the purposes of this Agreement, "Governmental Entity" means any municipal, provincial, or federal government, or ministry, department, commission, tribunal, board, or agency thereof, or any court.
- 14.6 For the purposes of this Agreement, "Release" includes contaminate, discharge, dispose, spray, inject, inoculate, abandon, add, disturbance, exposure, deposit, spill, leak, seep, pour, emit, escape, empty, throw, dump, place, migrate, or exhaust as well as each of these terms when used as a noun.
- 14.7 For the purposes of this Agreement, "Substance(s)" means any material, matter, waste, or thing that may give rise to Environmental Liabilities under any Environmental Law including but not limited to:
- (a) any substance, including but not limited to a toxic substance, as defined, listed, or scheduled under the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33 or regulations thereunder;
 - (b) any hazardous waste as defined, listed, or capable as being regulated under the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33 or regulations thereunder;
 - (c) any substance deleterious to waters frequented by fish as defined under the *Fisheries Act*, R.S.C. 1985, c. F-14;
 - (d) any contaminant as defined, listed, or regulated under the *Environmental Protection Act*, R.S.O. 1990, c. E.19 or regulations thereunder;
 - (e) any waste, hazardous waste, or effluent as defined, listed, scheduled, or regulated under the *Environmental Protection Act*, R. S. O. 1990, c. E.19, regulations thereunder;
 - (f) any pollutant as defined, listed, scheduled, or regulated under the *Environmental Protection Act*, R.S.O. 1990, c. E.19, or regulations thereunder;
 - (g) any contaminant of drinking water as identified pursuant to the *Safe Drinking Water Act*, 2002, S.O. 2002, c. 32 or regulations thereunder;

- (h) any sewage as defined under the *Ontario Water Resources Act*, R.S.O. 1990, c. C.40 or any regulations thereunder; and
- (i) any gasoline or associated product as defined by the *Technical Standards and Safety Act*, 2000, S.O.2000, c.16 or any regulations promulgated thereunder.

15.0 INSURANCE

- 15.1 In general, the Licensee shall maintain insurance in sufficient amount and description and with insurers licenced to do business in Canada as will protect the Licensee and the Licensor from claims for damages, bodily injury including death, personal injury including death, and from claims for property damage and nuisance which may arise from the Licensee's operations in the Licensed Lands under this Agreement, including without limitation coverage with respect to the use or maintenance of the Works on or in the Licensed Lands, or any act of the Licensee's agents or employees while engaged in excavating, placing, installing, constructing, restoring, maintaining, renewing, relocating or removing the Works, and such coverage shall include all costs, charges and expenses reasonably incurred with respect to any injury, claim or damage.
 - (a) To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have a Financial Strength Rating of not lower than "A-" for three out of the previous five years but not lower than "B" at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A. M. Best Company (Best) or the insurer must have an equivalent rating determined by a comparable rating agency generally accepted by the insurance industry.
 - (b) If the insurer is not rated by Best or by a comparable rating agency generally accepted by the insurance industry, to be eligible to provide insurance, an insurer must be acceptable to the Licensor and Licensee, acting reasonably, with respect to the insurances required by this Agreement.
- 15.2 The Licensee hereby acknowledges and agrees that any deductible or self-insured retention shall be fully and completely paid by the Licensee under any and all circumstances and shall not exceed \$150,000 for liability and/or casualty insurances unless another deductible is agreed to by the Licensor, acting reasonably;
- 15.3 The amount of any insurance is reviewable by the Licensor and may increase annually at the option of the Licensor to take into consideration inflation and other market considerations. Any such increase in the amount of insurances must take into consideration limits that are available on commercially reasonable terms and limits that are purchased by similar insureds in comparable circumstances for operations and assets of a similar nature;
- 15.4 All insurance policies must include cross-liability and severability of interests clauses and the coverage should apply as if a separate policy had been issued for each insured or additional insured;
- 15.5 With respect to both construction period and post construction period insurances:
 - (a) all policies shall provide that they are primary insurance which will not call into contribution any other insurance available to the Licensor, and further that such insurance shall not be cancelled, lapsed or materially changed to the detriment of the Licensor acting reasonably, without at least thirty (30) days notice to the Licensor by registered mail;
 - (b) the insurance coverage required under this Agreement shall not be construed to and shall in no manner, limit or restrict the Licensee's liability or obligation under this Agreement;
 - (c) with respect to the Construction Period, not later than seven (7) days after execution of this Agreement, the Licensee shall provide the Licensor's Manager, Risk and Insurance, Regional Municipality of Peel, 10 Peel Centre Drive, Brampton, Ontario L6T 4B9 with original certificates of insurance, acceptable to the Licensor and on the Licensor's form of insurance certificate, evidencing the insurance coverage required by this Agreement and thereafter renewals of such insurance coverage at least fifteen (15) days prior to such renewal; such certificates shall clearly indicate the inception and expiration dates for the

insurance and the amounts and types of coverage, all in compliance with the Agreement; and

- (d) during the term of the Agreement, the Licensee undertakes to advise the Licensor of any material changes in insurance coverage or insurability and failure by the Licensee to pay premiums or deductibles or to provide insurance satisfactory to the Licensor shall constitute a default as set out in Article 3.0 hereof;
- (e) the Licensee shall notify the Licensor as soon as practicable in the event of any claim, occurrence or incident that reasonably could be expected to give rise to a claim under the relevant insurance that could result in erosion of more than twenty percent (20%) of the aggregate limit under liability insurances required under this Agreement. In the event of such circumstance, the parties will together determine, each acting reasonably, the actions to be taken to ensure continued protection of the Licensor by maintaining the essential integrity of the insurance requirements in this Agreement.

15.6 Construction Period Insurance

In general, the Construction Period Insurance policies should include comprehensive general liability insurance, property insurance covering all risks of physical loss or damage including but not limited to structural collapse and automobile liability insurance covering any licensed motor vehicles used in connection with construction of the Works. The comprehensive general liability and property insurances shall apply to the Works on site during installation, construction and testing. The property insurance coverage during the construction period should specifically include loss resulting from the perils of explosion, collapse and underground hazards. The comprehensive general liability insurance should include non-owned automobile liability coverage, public liability and property damage for occurrences arising out of the operations of the Licensee and its contractors during installation and construction of the Works. The comprehensive general liability insurance should include a broad form property damage provision including loss of use of the Licensed Lands. Further, the comprehensive general liability policy must provide that for all instances, the insurer will pay for the full legal and defence costs required by the Licensor for claims resulting from the actions of the Licensee or its agents. Further, the Licensee must have pollution coverage with the Licensor to be added as an additional insured with respect to environmental incidents arising out of construction of the Works. In addition to the above, the parties acknowledge that the Licensee will provide, or cause others to provide, insurance as follows:

- (a) Wrap-up general liability insurance covering liabilities associated with construction of the Works, with an all-inclusive limit of at not less than Two Hundred Fifty Million (\$250,000,000.00) Dollars with annual aggregate limits applicable to Products & Completed Operations, Employee Benefits Errors & Omissions, Personal Injury and War Liability. Such insurance shall specifically state by its wording or by endorsement that:
 - (i) the Licensor is added as an additional insured with respect to construction operations and activities of the Licensee under this Agreement;
 - (ii) coverage includes non-owned automobile liability insurance; and
 - (iii) the wrap-up general liability policy contains cross-liability and severability of interest clauses which shall have the effect of insuring each person, firm or corporation named in the policy as an insured or additional insured in the same manner and to the same extent as if a separate policy had been issued to each.
- (b) property insurance coverage in such amounts as required to adequately insure the Licensee's construction related property not destined for incorporation into the Works, contractor's equipment and other similar property. The policy shall contain a waiver of rights of subrogation against the Licensor, its elected officials, officers, employees, agents and contractors;
- (c) builder's risk insurance (property and boilers) in the amount of the value of the Works, such policy to be held by the Licensee and its general contractor;

- (d) automobile liability insurance in a combined single limit of at least Five Million (\$5,000,000.00) Dollars per accident, covering all vehicles owned, leased or operated by the Licensee and to be used in connection with this Agreement;
- (e) errors and omission insurance the Licensee's architects and engineers with a limit of Two Million (\$2,000,000.00) Dollars per claim or occurrence and in the aggregate annually; and
- (f) environmental liability (contractors pollution liability) insurance with a limit of Ten Million (\$10,000,000.00) Dollars per occurrence or claim and in the aggregate annually.

15.7 Completed Operations Insurance

- (a) The Licensee shall provide, or cause others to provide, Complete Operations coverage under the wrap-up general liability insurance during the construction period for all claims that may arise after the Works have been constructed. Such construction period insurance coverage shall be for a period of six (6) years for all matters arising out of or attributable to the construction of the Works.

15.8 Post Construction Period Insurance

- (a) The Licensee shall provide, or cause to provide, comprehensive/commercial general liability insurance in the amount of at least Two Hundred and Fifty Million Dollars (\$250,000,000.00) per occurrence or claim, subject to annual aggregate limits for Products & Completed Operations, Employee Benefits Errors & Omissions, Personal Injury and War Liability, with the Licensor included as an additional insured with respect to operations and activities of the Licensee under this Agreement. The insurance shall cover property damage bodily injury (including death resulting therefrom), personal injury and general liability, all with respect to occurrences after the date of completion of the Works. Such insurance shall specifically state by its wording or by endorsement that:
 - (i) the Licensor is added as an additional insured with respect to operations and activities of the Licensee under this Agreement;
 - (ii) coverage includes non-owned auto insurance;
 - (iii) the policy contains cross-liability and severability of interest clauses which shall have the effect of insuring each person, firm or corporation named in the policy as an insured or additional insured in the same manner and to the same extent as if a separate policy had been issued to each;
- (b) In addition to the above, and without limiting the generality of the above, the parties acknowledge that the Licensee will provide, or cause others to provide, during the Post Construction Period, insurance as follows:
 - (i) property insurance coverage in such amounts as required to adequately insure the Licensee's Works, equipment, and other such property. The policy shall contain a waiver or insurer's rights of subrogation against the Licensor, its elected officials, officers, employees, and agents;
 - (ii) automobile liability insurance in an amount not less than Five Million (\$5,000,000.00) Dollars per accident or claim, covering all licensed motor vehicles owned or leased by the Licensee, and used in connection with this Agreement;
 - (iii) errors and omission insurance for the Licensee's architects and engineers involved with design and engineering related to the Works during the Post Construction Period with a limit of at least One Million (\$1,000,000.00) Dollars per occurrence or claim and in the aggregate annually; and
 - (iv) environmental impairment insurance with a limit of at least Twenty Million (\$20,000,000.00) Dollars per occurrence or claim and in the aggregate annually;
- (c) all policies shall provide that they are primary insurance which will not call into contribution any other insurance available to the Licensor, and further that such insurance shall not be cancelled, lapsed or materially changed to the detriment of the Licensor, acting reasonably, without at least thirty (30) days notice to the Licensor by registered mail;
- (d) the insurance coverage required under this Agreement shall not be construed to, and shall in no manner, limit or restrict the Licensee's liability or obligations under this Agreement; and
- (e) with respect to the post construction period insurances, not later than the commencement of the post construction operations under this Agreement, the Licensee shall provide the Licensor's Manager, Legal and Risk Management, at 10 Peel Centre Drive, Brampton, Ontario, with original certificates of insurance acceptable to the Licensor and on the Licensor's form of insurance certificate evidencing the post construction insurance coverage required by this Agreement and thereafter renewals of such insurance coverage at least fourteen (14) days prior to such renewal, such certificates shall clearly indicate the inception and expiration dates for the insurance and the amounts and types of coverage are in compliance with the Agreement.

16.0 WORKPLACE SAFETY INSURANCE BOARD

- 16.1 The Licensee agrees that it shall, at its own expense, procure and carry or cause to be procured and carried and paid for, full Workplace Safety and Insurance Board coverage for itself and all workers, employees, servants and others engaged in the construction and installation of the Works within the Licensed Lands.

17.0 CONSTRUCTION LIENS

- 17.1 The Licensee agrees that this Agreement does not create or provide it with any interest in the Licensed Lands other than a mere licence and that no person shall be entitled to register or claim an interest of any kind against the Licensed Lands. The Licensee shall comply with the *Construction Lien Act* (Ontario), as amended, to the extent that it is applicable, and any other statutes from time to time applicable to work in the Licensed Lands, and shall promptly pay all accounts relating thereto.
- 17.2 Whenever any construction or other lien for work, labour, services or materials supplied to or for the Licensee or for the cost of which the Licensee may be in any way liable or claims therefor shall arise or be filed, the Licensee shall within thirty (30) days after receipt of notice thereof procure and register the discharge thereof, including any certificate of action registered in respect of any lien, by payment or in such other manner as may be required or permitted by law. In the event of a failure of the Licensee to procure and register a discharge as herein required, the Licensor may but is not obligated to, discharge the lien and seek reimbursement of its full costs and expenses, including legal fees on a substantial indemnity basis, from the Licensee within fifteen (15) days of a written request for same.
- 17.3 The parties agree that any work done in the Licensed Lands during the term of this Agreement by or on behalf of the Licensee shall not be done and shall be deemed not to have been done at the request of the Licensor, unless the Licensor has specifically requested such work to be done and such work is not otherwise required under this Agreement or by law, statute, regulation or by-law. If any contractor with respect to any work done by or on behalf of the Licensee gives notice to the Licensor pursuant to the *Construction Lien Act* (Ontario), as amended, the Licensor shall have the right to refuse to assume responsibility.

18.0 NOTICES

- 18.1 Any demand, notice or communication to be provided hereunder shall be in writing and may be given by personal delivery, by prepaid first class mail or by fax transmission, addressed to the respective parties as follows:

To the Licensee: **Pearson International Fuel Facilities Corporation**

c/o FSM Management Group Inc.
Suite 320
455 Fenelon Boulevard
Dorval, QC H9S 5T8
Canada

Attention: James Fee
Tel: (514) ~~633-8756~~
Fax: (514) 633-4474

To the Licensor: **The Regional Municipality of Peel**
10 Peel Centre Drive
Brampton, Ontario

Attention: _____
Tel: (905) 791-7800
Fax: (905) 791-6992

or to such other address or fax number as any party may from time to time notify the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been received by the party to which it is addressed on the day of actual delivery thereof.

If given by fax transmission, on the same day as the date of faxing provided that a fax transmission report is generated and retained. Any notice sent by prepaid first class mail as aforesaid shall be deemed to have been delivered on the fifth (5th) business day (excluding Saturdays, Sundays and Statutory Holidays) following the date of mailing thereof provided that postal services have not been interrupted, in which case notice shall only be given by personal delivery or fax transmission as aforesaid. It is agreed that any notice to be given by the Licensor may be by the Commissioner of Environmental, Transportation and Planning Services or by the Regional Solicitor, and need not be under the corporate seal of the Licensor and any such notice, so signed, shall be conclusively deemed to express the will and corporate act of the Licensor as therein contained and no further evidence thereof or of any by-law or resolution need be given.

19.0 NO INTEREST IN LAND IN FAVOUR OF LICENSEE

- 19.1 The Licensee acknowledges and agrees that the license rights hereby granted do not create or grant the Licensee with any further or other interest or easement in, over or upon the Licensed Lands.

20.0 MUNICIPAL DISCRETION

- 20.1 The Licensee acknowledges that this Agreement shall not in any manner whatsoever fetter the discretion or authority of the Licensor under the *Municipal Act*, R.S.O. 2001, as amended, and/or the *Planning Act*, R.S.O. 1990, as amended, with respect to the Licensed Lands.

21.0 WAIVER

- 21.1 A party hereto (the "waiving party") may from time to time in writing and in its sole discretion waive in whole or in part any default, breach, non-performance and/or non-observance by the other party hereto (the "obligated party") of any of the covenants or obligations in favour of the waiving party to be observed or performed by the obligated party under this Agreement. Any such waiver may be retroactive but in any event shall only apply and extend to the specific matter forming the subject of such waiver, shall only extend to the waiving party and shall not otherwise affect or prejudice the right of the waiving party to require the due and strict observance and/or performance by the obligated party of such covenant or obligation thereafter or any other covenant or obligation in favour of the waiving party to be observed or performed by the obligated party under this Agreement.

22.0 TIME OF THE ESSENCE

- 22.1 Time shall in all respects be of the essence hereof, provided, however 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, or by their respective legal counsel who are hereby expressly appointed in that regard.

23.0 SEVERABILITY

- 23.1 If any section or paragraph of this Agreement is determined to be void or unenforceable in whole or in part by a court of competent jurisdiction, the section or paragraph shall be deemed to be severable from this Agreement and shall not cause the invalidity or unenforceability of any other section or paragraph of this Agreement. Where appropriate, a provision declared to be void and unenforceable against some persons shall continue to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

24.0 GOVERNING LAW

- 24.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

25.0 ASSIGNMENT

- 25.1 The Licensee shall not assign its rights under this Agreement without the prior written consent of the Licensor, which consent may not be unreasonably withheld or delayed. For greater certainty, the Licensee agrees that the Licensor shall withhold consent where the Licensee is in breach of its obligations under this Agreement.

- 25.2 Any actual change in the effective control of the Licensee resulting from any transfer or sale, amalgamation, merger, take-over, assignment, bequest, inheritance, consolidation, subscription, operation of law or other disposition or liquidation, from time to time of all or a sufficient part of the voting shares or assets of the Licensee after the date this Agreement is executed, shall be deemed to be an assignment for the purposes of this section and shall be subject to the restrictions herein. A change of control occurring as a result of a trade in securities of the Licensee which are listed on a recognized public stock exchange shall not be considered to be an actual change in control for the purposes of this section, provided that those persons in control of the management of the Licensee remain in control of the management of the Licensee. The Licensee shall, upon request, make available to the Licensor such corporate records for inspection, at all reasonable times, as are required to ascertain whether any such change in control has occurred.
- 25.3 No assignment pursuant to subsection 25.1 shall take effect until the assignee to which the consent of the Licensor is given shall have entered into the Licensor's form of agreement directly with the Licensor on terms and conditions satisfactory to the Licensor's solicitor whereby, among other things, the assignee covenants with the Licensor to perform, observe and keep each and every covenant, proviso, condition and agreement in this Agreement on the part of the Licensee to be performed, observed and kept.
- 25.4 Any request for consent shall be in writing and the Licensee shall furnish to the Licensor all information available to the Licensee or any additional information requested by the Licensor, as to the corporate relationship, responsibility, reputation and financial standing of the proposed assignee.
- 25.5 Notwithstanding anything else contained herein:
- (a) whether or not the Licensor's consent is required, no assignment shall release or relieve the Licensee from any of its obligations hereunder until the Licensor's consent is granted; and
 - (b) no consent by the Licensor to any assignment shall be construed to mean that the Licensor has consented or will consent to any further assignment which shall remain subject to the provisions of this section.
- 25.6 The Licensee acknowledges that if it breaches or permits a breach of this section, the Licensor shall not be required in any way to recognize the purported assignment and that the Licensor shall continue to hold the Licensee responsible for all of its obligations hereunder.
- 25.7 Notwithstanding Section 25, the Licensee shall be entitled to assign the rights and privileges granted to the Licensee hereunder to the Contracting Airlines; provided, however, that in no event shall such assignment relieve the Licensee from its obligations hereunder. "Contracting Airlines" means all air carriers which are parties from time to time to an Interline Agreement amended and restated as of December 1, 2006 between those airlines referred to therein and those airlines which thereafter become parties thereto, for *inter alia* the use and operation of the jet fuel storage and distribution system at Toronto Pearson International Airport, as such agreement may be from time to time further amended, restated or replaced.

26.0 FORCE MAJEURE

- 26.1 Notwithstanding any other provision contained herein, in the event that either the Licensor or the Licensee should be delayed, hindered or prevented from the performance of any act required hereunder by reason of strikes, lockouts, unavailability of materials, inclement weather, acts of God or acts of terrorism or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this subsection shall not under any circumstances operate to excuse the Licensee from the prompt payment of fees and/or any other charges payable under this Agreement.

27.0 NO REGISTRATIONS / ENCUMBRANCES / TITLE TO LICENSED LANDS

- 27.1 A copy of this Agreement and/or a document providing notice of this Agreement, whether in electronic format or not, may not be registered by the Licensee against title to the Licensed Lands.

- 27.2 The Licensee or anyone acting on behalf of the Licensee, shall not encumber or register on title to the Licensed Lands, any form of lease, charge, mortgage, chattel mortgage, security instrument, hypothecation, lien or any other form of debt instrument in connection with the Works.

28.0 ADDITIONAL CONSIDERATIONS

- 28.1 During the Term the parties shall sign such further or other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

29.0 ENTIRE AGREEMENT

- 29.1 This Agreement and the schedules attached hereto shall constitute the entire agreement between the parties. This Agreement shall not be modified or amended in any way except by written agreement executed and dated by both parties.

30.0 SUCCESSORS

- 30.1 All rights and liabilities herein granted or imposed on the parties extend to and bind the successors and permitted assigns of the Licensor and the Licensee, as the case may be.

31.0 CURRENCY

- 31.1 Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.

32.0 HEADINGS FOR CONVENIENCE ONLY

- 32.1 The division of this Agreement into articles and sections is for convenience only and shall not affect the interpretation or construction of this Agreement.

33.0 NO RELATIONSHIP

- 33.1 Nothing in this Agreement shall create any relationship between the parties other than that of the licensee and licensor and it is specifically agreed that the parties are not partners, joint venturers, agents or trustees of the others. Without limiting the generality of the foregoing, the parties expressly acknowledge and agree that the Licensor is in no way liable for the debts or any other liabilities of the Licensee, whether relating to the Works or otherwise.

34.0 LEGAL FEES/CONSULTANT COSTS

- 34.1 The Licensee shall reimburse the Licensor for out-of-pocket legal fees and consultant costs in connection with the preparation of this Agreement (including future amendments) in accordance with The Regional Municipality of Peel Fees & Charges By-Law. The Licensee shall also be responsible for the full payment of the Licensor's costs and expenses, including legal fees on a substantial indemnity costs basis, in the event the Licensor is required to obtain external legal advice or initiate legal proceedings to enforce any of its rights and remedies herein described.

35.0 OTHER LAWS

- 35.1 During the Term of this Agreement the Licensee shall remain subject to applicable laws having the force of law made or to be made by any lawfully constituted authority having jurisdiction.

36.0 [INTENTIONALLY DELETED]

37.0 DISPUTE RESOLUTION

- 37.1 The parties hereto agree to make a diligent, good faith attempt to resolve any dispute before commencing dispute resolution by arbitration with respect to any such dispute and, with respect to any dispute regarding amounts owed under this Agreement, to pay such undisputed amounts pursuant to the terms hereof. If, despite the parties' diligent, good faith attempt to resolve such dispute pursuant to the first sentence of this Section 37.1, the parties do not resolve such dispute, then at the written request of either party, the designated representative of each party (such designated representative must hold an upper level management office (e.g. general manager or


vice president)) shall meet at any mutually agreed location within 30 days of receipt of such request to resolve the dispute. If despite such meeting the parties do not resolve the dispute, or if no such meeting takes place within such time despite one party's attempts therefor, either party may commence an arbitration in accordance with the terms hereof. Arbitration shall be the sole and exclusive remedy for any dispute under this Agreement, and shall be binding and final among the parties; provided, however, that any party hereto may bring an application to the Ontario Energy Board in respect of any dispute between the parties arising pursuant to this Agreement or pursuant to the construction, installation, operation, maintenance or renovation of the Works that is within the jurisdiction of the Ontario Energy Board and in accordance with the Ontario Energy Board's process.

- 37.2 Subject to Section 37.1, either party may commence arbitration by submitting a request for arbitration to the other party.
- 37.3 The arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules") as in effect on the date hereof or such other rules as the parties may agree to prior to such arbitration, except as such ICC Rules or other rules conflict with the provisions of this Section 37, in which event the provisions of this Section 39 shall prevail. Notwithstanding any other provision of this Agreement to the contrary, the provisions of this Section 37 shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflict of law principles thereof.
- 37.4 The arbitral tribunal shall consist of three arbitrators. Each party shall appoint one arbitrator with, in the case of a dispute of a technical nature, knowledge and experience in such technical matters. The two arbitrators so appointed shall appoint the third arbitrator who shall serve as the chairman of the arbitral tribunal. If a party fails to appoint its arbitrator within a period of 30 days after receiving notice of the arbitration, or if the two arbitrators appointed cannot agree on the third arbitrator within a period of 30 days after appointment of the second arbitrator, then such third arbitrator shall be appointed pursuant to the procedures of the ICC Rules or other rules agreed to between the parties.
- 37.5 In the event an arbitrator is appointed pursuant to the last sentence of the foregoing paragraph, such arbitrator shall be a person with experience in commercial agreements and, in particular, the implementation and interpretation of contracts relating to construction, installation, operation and maintenance of transmission pipelines or related facilities (and if the dispute concerns a technical issue, a person who has knowledge and experience in technical matters). No arbitrator shall be a present or former employee or agent of, or consultant or counsel to, either party or any affiliate thereof.
- 37.6 The arbitration shall be conducted in Toronto, Ontario and shall apply English as the language of the arbitration proceedings. All documents or evidence presented at such arbitration in a language other than in English shall be accompanied by an English translation thereof certified by a neutral third party. The arbitrators shall apply, and shall be bound by, the applicable rules of law and the terms of this Agreement. Unless both parties agree otherwise in writing, the arbitrators shall be permitted to order the parties to an arbitration to engage in discovery (including the taking of depositions). The arbitrators shall decide the dispute by majority of the arbitral tribunal and shall state in writing the reasons for its decision. Any monetary award of the arbitral tribunal shall be denominated in Dollars and shall be paid by the earlier of (i) the time period specified by the arbitral tribunal and (ii) 30 days after the arbitral tribunal notifies the party of such award, by wire transfer to an account designated in writing by the party receiving such award. The parties agree to direct the arbitral tribunal to complete the arbitration proceeding, and issue a decision, within (i) 120 days for all disputes involving the operation of the facility, after the submission of the request for arbitration and (ii) for all other disputes, within 180 days after the submission of the request for arbitration.
- 37.7 To the fullest extent permitted by law, the parties hereby waive any rights to appeal or to review such award by any court or tribunal, and such award shall be final and binding. The parties further undertake to carry out without delay the provisions of any arbitral award or order, and each agrees that any such award or order shall be conclusive and may be enforced in any jurisdiction (and the parties shall submit to any such jurisdiction) by suit on the arbitral award or by any other manner provided by law. A party may disclose the contents of an award of the arbitral tribunal only to affiliates of a party, governmental authorities or other persons as required by applicable law.


- 37.8 The costs of such arbitration shall be determined by and allocated between the parties by the arbitral tribunal in its award.
- 37.9 Notwithstanding any provision to the contrary in this Agreement, during the time that any dispute is subject to this Section 37, any cure period, termination period or notice period which may relate to such dispute shall be suspended from the date the parties meet to resolve the dispute pursuant to Section 37.1 to the date the arbitral tribunal renders its decision and makes its award, if any.

THE PARTIES HERETO have executed this Agreement and hereby assert their authority to enter into and be bound by its terms.

THE REGIONAL MUNICIPALITY OF PEEL

Per: 
Name: Andrew Billock
Acting Commissioner of Environment,
Transportation and Planning Services
Per: _____
Name: _____

**PEARSON INTERNATIONAL FUEL
FACILITIES CORPORATION**

Per: 
Name: WADE MORRELL
Title: V.P. & CFO
I/We have authority to bind the Corporation

Document Execution No. L03 9179.
I/We have Authority to Bind the Regional Corporation

SCHEDULE "A"

PIN 13273-0486 (LT)

Part of Derry Road East between Torbram Road and Airport Road being Part of the Road Allowance between Concessions 5 and 5 East of Hurontario Street; Part of the Road Allowance between Lots 10 and 11, Concession 6 East of Hurontario Street; Part Lot 11, Concession 6 East of Hurontario Street as in TT105311, TT170713; Part Derry Road East (formerly Holderness Street); Government Road Allowance Plan Tor-4, Part 1, 43R-5774, Parts 4 to 7, 43R-14919, Part 4, 43R-18998, Part 1, 43R-19749, Part 1, 43R-20035; Part 10, Concession 6 East of Hurontario Street being Parts 7 to 10, 48 to 50, 43R-3787, Parts 7 to 9, 43R-5773, Part 3, 43R-18997, Part 3, 43R-19749, Parts 11 to 14, 46 and 47, 43R-3787, City of Mississauga (formerly Township of Toronto) Regional Municipality of Peel

SCHEDULE "B"

See Plan Attached

See attached drawings prepared by MMM Group (MMM No. 19-06040)