

LICENSE AGREEMENT

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

BETWEEN:

THE CORPORATION OF THE CITY OF MISSISSAUGA

(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 Torbram Road, Drew Road and Kimbel Street 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 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) millimeter (sixteen (16) inch) diameter jet fuel pipeline and related equipment and 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 has requested 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;

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 to use the Licensed Lands for the purposes of installing, operating, maintaining, repairing, upgrading and renewing the Works beneath and across the Licensed Lands, together with, subject to the provisions of this Agreement, the right of access for the Licensee, its employees and agents with vehicles, supplies and equipment 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 materially 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.

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 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 (except for (i) the License Fees applicable for the renewal Term which shall be determined by the Licensor at that time in accordance with Section 4.1 and (ii) the insurance coverage in Section 14 for the applicable renewal Term shall be satisfactory to the Licensor and the Licensee, each acting reasonably) 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 no earlier than eighteen (18) months prior to and at least six (6) months prior to the expiration of the original Term (the "Option to Renew Period").

3.0 DEFAULT / TERMINATION

- 3.1 A "default" shall occur under this Agreement if,
 - (a) the Licensee or Licensor breaches in any material respect 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 or the Licensor (the "Breaching Party") occurs which is not properly remedied and continuing, the Licensor or the Licensee, as the case may be, in any order that it chooses, do any one or more of the following:
 - (a) demand payment of any monies due and unpaid; or
 - (b) initiate court proceedings against the Breaching Party to recover the amount of money due; or
 - (c) take proceedings or any other legal action to compel the Breaching Party to comply with this Agreement; or
 - (d) where the Breaching Party fails to diligently pursue a cure of such default or in any event fails to cure such a default within ninety (90) days of the occurrence of the delivery notice by the non-Breaching Party, terminate this Agreement on sixty (60) calendar days written notice to the Breaching Party; or
 - (e) draw on the letter(s) of credit provided for in this Agreement, without notice to the Licensee; or
 - (f) where the Licensee is the Breaching Party, 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 required pursuant to Section 9.1, to the satisfaction of the Commissioner of Transportation & Works, acting reasonably, and in accordance with any order of Ontario Energy Board, 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 or assumed by the Licensor.
- 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 annual fee of TEN THOUSAND AND EIGHTY (\$10,080.00) Dollars (the "License Fee") for the first year of the term, and this sum shall be escalated at a rate of four (4%) per cent per annum thereafter, plus GST and any other applicable taxes. The License Fee is calculated based on the following License Fee Formula: Area of licensed lands (which the parties hereto acknowledge is 0.42 acres) x "Estimate of Market Value of Licensed Lands on a per acre rate" (which the parties hereto acknowledge is \$800,000 for the initial Term) x 50% (the Licensor's Underground Occupation Rate) x 6% (the "License Fee Rate"). The Estimated Market Value of Licensed Lands to be based on an across the fence approach to valuation which estimates the market value of lands adjacent to the road allowance. The Estimated Market Value of Licensed Lands for the initial Term is agreed to be \$800,000 per acre.

The License Fee for the renewal Term will be based on the License Fee Formula; provided, however, that the License Fee for the renewal Term will not be less than the License Fee for the final year of the initial Term. The "Estimated Market Value of Licensed Lands" for the renewal Term will be determined by a third party appraisal report prepared by a third party appraiser selected by the Licensee and approved by the Licensor, each acting reasonably (such appraisal shall be at the Licensee's expense) ("Appraisal"). The Appraisal for the renewal Term shall be prepared and delivered to the Licensor and Licensee within the Option to Renew Period. The "License Fee Rate" for the renewal Term will be based on the 30 year bond yield rate set by the Bank of Canada at the time of renewal plus 2%.

The License Fee shall be paid by cheque, bank draft or wire transfer and is due and payable on execution of this Agreement. 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 third party costs that are incurred by the Licensor to facilitate any maintenance, repairs, 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 as set forth in the Licensor's *General Fees and Charges By-law, as amended*, in effect at the time of default. Nothing herein contained shall be construed so as to compel the Licensor to accept any payment of License Fees in arrears should the Licensor elect to pursue its remedies under any other section of this Agreement in the event of a default by the Licensee.

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.

6.0 CONSTRUCTION AND MAINTENANCE REQUIREMENTS

6.1 Construction

- (a) The Licensee shall provide to the Licensor copies of all drawings for the Works and the Licensor reserves the right to approve the drawings. 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 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 reasonable 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 disruptions for both groups;
 - (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.
- (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 and against accidental impact through the use of concrete encasement. 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 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 including concrete encasement to provide physical protection from an accidental "hit" by later construction in the immediate vicinity of the Works.
- (g) The Licensee shall also have a functioning system for remotely monitoring pressures and flows. Such system must be able to detect material pipeline leaks resulting from 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 that enhances the cathodic protection system of the pipeline.
- (i) There is a minimum requirement for the installation of pipeline markers on each side of the right of way limits.
- (j) During construction of Works existing facilities and features must be protected. The Licensor shall provide the Licensee following execution of this Agreement with plans and drawings 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 and from trees 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 all utilities to be crossed must be supported in accordance with the utilities' requirements. Features such as light standards, traffic light poles, hydro poles and guy poles shall be temporarily supported or relocated as required. Existing traffic signs are to be maintained at all times or alternative arrangements must be made with the City to ensure public safety. 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 Torbram Road, Drew Road and Kimbel Street. To ensure this, the Licensee shall pay all reasonable 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 thirty (30) days prior notice of such shutdown (other than for an Emergency, in which case Licensor shall provide notice of such Emergency to the Licensee) and the period of such shutdown shall not exceed one (1) day (other than for an Emergency, in which case such shutdown period shall continue for so long as the Emergency is continuing), 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 and Licensee shall meet in good faith to coordinate any shutdown so as to ensure minimal disruption of the operation of the Works. For the purpose of this Agreement, "Emergency" shall mean an event occurring on the Licensed Lands that poses actual or imminent risk of serious personal injury or physical damage to the Works and/or the Licensed Lands requiring, in the good faith determination of the Licensor or the Licensee, immediate preventative or remedial action.
- (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 thirty (30) business days 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 in all material respects with all of the reasonable requirements of the Licensor provided such requirements do not conflict with 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 fifteen (15) business days prior 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 Torbram Road, Drew Road and Kimbel Street 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 Torbram Road, Drew Road and Kimbel Street.

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 any other party as requested through the PUCC process.
- (b) The Licensee will undertake monthly cathodic protection readings and annual cathodic protection system performance 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 system 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 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 reasonable costs of 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.

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. Additionally, the Licensee will provide continuous underground warning tape demarking the pipe's presence and location.

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 or licensee of the Licensed Lands. 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 Coordinating 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 Coordination 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, shutdown the Works for a maximum of one day in order to facilitate any third party, or Licensors' 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 Works are subject to the terms of this Agreement, which may be renewed or terminated, and that they shall comply in all material respects, 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 Province of Ontario and Canada, and that the third party shall obtain and maintain any and all material 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, permit requirements including a road occupancy permit, 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.

7.3 Construction by Licensor on Licensed Lands

- (a) Where the Licensor or any other party must carry out construction or landscaping activity on the Public Highways which may be on or in the vicinity of the Licensed Lands, the parties hereto agree as follows:
 - (i) where the activity does not fall within PUCC jurisdiction, the Licensor shall circulate a copy of the required road occupancy permit application to the Licensee for review and comment;
 - (ii) where the matter does fall within PUCC jurisdiction, the Licensee agrees that it shall rely solely on the PUCC for notification of the activity and all information relating to the activity being undertaken.

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, and in accordance with prudent industry practice and standards. 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 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.
- 9.2 Notwithstanding the terms of section 9.1 above, 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 LETTER OF CREDIT

- 10.1 On execution of this Agreement, the Licensee shall provide the Licensor with security for the performance of its obligations hereunder during the construction of the Works by the issuance of an irrevocable letter of credit in the amount of One Million Dollars (\$1,000,000.00), 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. Once the Works have been installed and completed, and the condition of the Licensed Lands are in a state satisfactory to the Licensor's Transportation & Works Department, acting reasonably, this letter of credit shall be reduced to twenty (20%) per cent of its original value and this reduced sum shall be held by the Licensor for a further period of three (3) years for application to any deficiencies or other maintenance issues relating to the Works. Six (6) months prior to the expiry of the said three (3) year period, the Licensee shall write to the Licensor to arrange for final inspections and if no material deficiencies are found, the balance of the letter of credit shall be returned to the Licensee.

11.0 DAMAGE TO THE WORKS

- 11.1 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 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.

12.0 INDEMNITY

- 12.1 The Licensee agrees to indemnify and save the Licensor harmless, including its elected officials, officers, employees and agents (the "Indemnified Parties"), from and against any loss of, or damage to, property, personal injury or death, any form of environmental damage to the Licensed Lands or any other losses, actions, claims, causes of action, damages and such other costs and expenses, howsoever and whatsoever incurred, suffered or sustained by the Indemnified Parties attributable to the construction, operation or maintenance of the Works in, on, under, over, along, above or across the Licensed Lands, including, without limitation, that which has been caused or contributed to by any negligence, breach of the *Occupiers' Liability Act* or breach of statutory 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 and the breach of any of the provisions of this Agreement, including, without limiting the foregoing, any negligent act or omission of the Licensee, its employees or its agents in relation to the Works and the Licensed Lands, or the activities permitted under the Agreement, which directly causes 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 Indemnified Parties' own willful misconduct or gross negligence.

13.0 LOSS OR DAMAGE

- 13.1 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 willful misconduct or gross negligence.

14.0 INSURANCE

14.1 The Licensee shall maintain or cause to be maintained insurance in sufficient amount and description as will reasonably protect the Licensee and the Licensors from claims for damages, personal injury including death, and for claims from property damage which may arise from the Licensee's operations in the Licensed Lands under this Agreement, including without limitation the use or maintenance of the Works on or in the Licensed Lands, or any act or omission of the Licensee's agents or employees while engaged in excavating, placing, maintaining, renewing or removing the Works, and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage. 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.

14.2 In addition to the above, the parties acknowledge that:

- (a) the Licensee's commercial general liability insurance shall be for an all-inclusive limit of not less than Two Hundred and Fifty Million (\$250,000,000.00) Dollars. Such insurance shall specifically state by its wording or by endorsement that:
 - (i) the Licensors are added as additional insureds with respect to liabilities arising out of the operations and activities of the Licensee under this Agreement;
 - (ii) includes non-owned auto insurance; and
 - (iii) the policy contains a cross-liability clause 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 property, equipment, and other such property. The policy shall contain a waiver of rights of subrogation against the Licensors, its elected officials, officers, employees, agents and contractors;
- (c) automobile liability insurance in an amount not less than Five Million (\$5,000,000.00) Dollars per claim, covering all vehicles owned or leased by the Licensee, to be used in connection with this Agreement;
- (d) environmental impairment liability insurance with a limit of not less than Ten Million (\$10,000,000) Dollars per claim, with the Licensors added as additional insureds with respect to environmental liabilities or incidents arising out of the operations and activities of the Licensee under this Agreement;
- (e) all policies shall provide that they are primary insurance which will not call into contribution any other insurance maintained by the Licensors, and further that such insurance shall not be cancelled, lapsed or materially changed to the detriment of the Licensors, acting reasonably, without at least thirty (30) days notice to the Licensors by registered mail;
- (f) 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;
- (g) prior to the execution of this Agreement, the Licensee shall provide the Licensors' Manager, Risk and Insurance, at 300 City Centre Drive, Mississauga, Ontario, L5B 3C1, with original certificates of insurance evidencing the insurance coverage required by this Agreement (quoting file *PO13-TOR*) and thereafter renewals of such

insurance coverage at least fourteen (14) days prior to such renewal.

15.0 WORKPLACE SAFETY INSURANCE BOARD

- 15.1 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 installation of the Works within the Licensed Lands.

16.0 ENVIRONMENT

- 16.1 The Licensee covenants that throughout the Term, in its use of the Works and the Licensed Lands, it shall use commercially reasonable efforts not to contravene in any material respect any of the provisions of the *Environmental Protection Act* of Ontario, as amended or any other Environmental Laws as defined in paragraph 17.3. In the event the Licensee is deemed by the Ontario Ministry of the Environment or its successor, ("MOE") or any other Government Entity as defined in paragraph 17.4 to be in material contravention of the *Environmental Protection Act* of Ontario, or any other Environmental Laws, at any time during the Term, the Licensee shall forthwith take such action as the MOE or other Government Entity may require or stipulate in writing to return the Licensed Lands and all other lands abutting thereto to their condition at the Commencement Date.

17.0 ENVIRONMENTAL LIABILITY

- 17.1 Notwithstanding any other clause in this License 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, officers, employees and agents (the "Indemnified Parties"), from and against the full amount of any and all Environmental Liabilities which 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.
- 17.2 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 Indemnified Parties), 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 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 effected 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.

17.3 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.

17.4 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.

17.5 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.

17.6 For the purposes of this Agreement, "Substance(s)" means any material, matter, waste, or substance regulated 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 promulgated thereunder;
- (b) any hazardous waste as defined, listed, or capable of 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.

18.0 CONSTRUCTION LIENS

- 18.1 The Licensee agrees that this Agreement does not create or provide it with any interest in the Licensed Lands other than a 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.
- 18.2 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.
- 18.3 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.

19.0 NOTICES

- 19.1 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 106
455 Fenelon Boulevard
Dorval, Quebec H9S 5T8
Canada
Attention: James Fee
Tel: (514) 633-8750
Fax: (514) 633-4474

To the Licensor: **The Corporation of the City of Mississauga**
300 City Centre Drive
Mississauga, Ontario, L5B 3C1
Attention: Manager, Realty Services

Tel: (905) 615-3200, ext 5435
Fax: (905) 615-3956

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 Manager of Realty Services or by its legal counsel/solicitor, and need not be under the corporate seal of the City 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.

20.0 NO INTEREST IN FAVOR OF LICENSEE

- 20.1 Subject to the grant of the license in Section 1.1, 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.

21.0 MUNICIPAL DISCRETION

- 21.1 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.

22.0 WAIVER

- 22.1 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 favor 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 favor of the waiving party to be observed or performed by the obligated party under this Agreement.

23.0 TIME OF THE ESSENCE

- 23.1 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.

24.0 SEVERABILITY

- 24.1 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.

25.0 GOVERNING LAW

- 25.1 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.

26.0 ASSIGNMENT

- 26.1 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.
- 26.2 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 City such corporate records for inspection, at all reasonable times, as are required to ascertain whether any such change in control has occurred.
- 26.3 No assignment pursuant to this section 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.
- 26.4 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.
- 26.5 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.
- 26.6 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.

27.0 FORCE MAJEURE

- 27.1 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.

28.0 NO REGISTRATIONS / ENCUMBRANCES / TITLE TO LICENSED LANDS

- 28.1 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.
- 28.2 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.
- 28.3 The Licensor represents that it is the sole registered owner of the Licensed Lands, and that, to the best of the Licensor's knowledge and belief after due inquiry, there is nothing affecting the Licensor's title to the Licensed Lands that would prevent or restrict the license hereby granted.

29.0 ADDITIONAL CONSIDERATIONS

- 29.1 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.

30.0 ENTIRE AGREEMENT

- 30.1 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.

31.0 SUCCESSORS

- 31.1 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.

32.0 CURRENCY

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

33.0 HEADINGS FOR CONVENIENCE ONLY

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

34.0 NO RELATIONSHIP

- 34.1 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.

35.0 LEGAL FEES AND DISBURSEMENTS

- 35.1 The Licensee shall reimburse the Licensor for legal fees and disbursements in connection with the preparation of this Agreement (and for future amendments) in accordance with the City of Mississauga *General 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.

36.0 OTHER LAWS

- 36.1 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. Notwithstanding any provision of this Agreement to the contrary, this Agreement shall not affect or prejudice the Licensee's statutory rights pursuant to the *Ontario Energy Board Act, 1998* and its successors or any order made by the Ontario Energy Board.

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, Director or vice president)) shall meet at any mutually agreed location within 15 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 37 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 Mississauga, 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 parties 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.

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

**THE CORPORATION OF THE CITY OF
MISSISSAUGA**

Per: 

Name: Martin Powell

Title: Commissioner of Transportation and Works

Per: 

Name: Crystal Greer

Title: City Clerk

Authorized through Mississauga By-Law No. 0233-2008



**PEARSON INTERNATIONAL FUEL FACILITIES
CORPORATION**

Per: 

Name: James Fee

Title: President

I have authority to bind the Corporation

SCHEDULE "A"

Legal Description of the Public Highways

Part of Torbram Road (PIN: 13273-0485)

Firstly, Part Road Allowance Between Concession 5 & 6, EHS, Toronto Township; Part Lot 11, Concession 6, EHS, Toronto Part 1, 43R-13533, As In TT171440, VS181335; Part Lot 12, Concession 6 EHS, Toronto Part 3, 43R-2219, Part 3, 43R-1953; Part Lot 13, Concession 6 EHS, Toronto Part 3, 43R-7129; Part Lot 12, Concession 5, EHS, Toronto As In VS36805; Part Lot 13 Concession 5 EHS Toronto Parts 10, 11, 13, 14, 17, 18, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 54, 43R-16683; Part Of Part 7, 43R-12888 South Of Southerly Limit Of Rena Road; 27 Foot Widening Plan 875, Mississauga; 17 Foot Widening Plan 964 Mississauga; 27 Foot Widening Plan 964 Mississauga; Part Block AA Plan 964 Mississauga As In VS294623; Part Block Business Block Plan 964 Mississauga As In VS404257; Part Block CC Plan 964 Mississauga As In VS304526; Part Block DD Plan 964 Mississauga As In VS313106; Street Widening Plan 993 Mississauga; Secondly Block K Plan 852 Mississauga Part Lot 11 Concession 6 EHS Toronto, Parts 3 & 4, 43R-14975, Part 1, 43R-13808, As In TT151227; S/T TT151227, RO819027, RO864358; Being Torbram Road Between Rena Road & Derry Road East; S/T RO707602, VS213894, VS220746, VS68469, VS71229, Mississauga

Part of Drew Road (PIN: 13273-0543)

Drew Rd Plan 875, Mississauga; Part 1 Foot Reserve, Plan 875, Mississauga, As In VS310453 and RO442936; Being Drew Rd; S/T VS52910, Mississauga.

Part of Kimbel Street (PIN: 13273-0542)

Kimbel Street, Plan 993, Mississauga; Part Kimbel Street, Plan 875, Mississauga; 1 Foot Reserve, Plan 875, Mississauga, As In VS301581; Being Part Kimbel Street, Between Torbram Road and Drew Road, Mississauga.

SCHEDULE "B"

See Plan Attached